

SAFE FOR AMERICA ACT

NOVEMBER 10, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 704]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 704) to amend the Immigration and Nationality Act to eliminate the diversity immigrant program, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## Purpose and Summary

H.R. 704 amends the Immigration and Nationality Act to eliminate the diversity immigrant program.

### Background and Need for the Legislation

As part of its consideration of legal immigration reform in 1990, Congress acted to “further enhance and promote diversity” of immigrants. In the Immigration Act of 1990 (IMMACT 90), one of the ways Congress did so was by making 55,000 “diversity” immigrant visas available each year beginning in October 1994. This program was called the DV program.

The DV program is designed to increase diversity in the U.S. immigrant population by providing nationals of countries that have traditionally had low numbers of immigrants to the United States the opportunity to apply for immigrant visas. IMMACT 90 set forth extremely complicated formulas for determining which aliens could qualify for the benefits of the program.

Briefly stated, immigrant visas are apportioned among six geographic regions, according to a formula based on total immigrant admissions over the preceding 5-year period. Both high- and low-admission regions are identified, and a greater share of the available numbers is allocated to low-admission regions. Nationals of specified high-admission countries are excluded from the benefits of the program. No single country may receive more than 7 percent of the worldwide total of DV visa numbers.

Between 1995 and 2010, 785,695 diversity visas have been issued.<sup>1</sup>

For the DV–2011 application period, natives of the following countries were ineligible to apply: Brazil, Canada, China (mainland-born, excluding Hong Kong S.A.R. and Taiwan), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, the Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

The DV program is also called the “visa lottery” because the winners are determined through a computer-generated random drawing.<sup>2</sup> Approximately 12.1 million applications were submitted for the DV–2011 program (16.5 million when derivative immediate relatives are added). From the millions of qualifying applicants, the State Department randomly selected 100,600 applications as “selectees” who may then apply for visas at the consular offices nearest them.<sup>3</sup>

<sup>1</sup> Information provided by the U.S. Department of State.

<sup>2</sup> As the State Department website explains:

At the Kentucky Consular Center [KCC], all entries received from each region will be individually numbered. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered, the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the applicant will be sent a notification letter by the [KCC], which will provide visa application instructions. The [KCC] will continue to process the case until those who are selected are instructed to appear for visa interviews at a U.S. consular office, or until those able to do so apply at a BCIS office in the United States for change of status.

<sup>3</sup> [http://travel.state.gov/visa/immigrants/types/types\\_5073.html](http://travel.state.gov/visa/immigrants/types/types_5073.html).

At these offices, about 45 percent of the selectees fail to meet the minimum educational or work experience or training requirements, fail to supply the required medical information, or fail to complete the additional required paperwork either completely or on time. For the rest of the fiscal year after the lottery takes place, the qualifying winners are issued Diversity Visas on a first-come, first-served basis until the requisite 50,000 are issued.<sup>4</sup>

Most immigration to the United States is based upon family relationship to U.S. citizens and permanent residents or the requests of U.S. businesses. DV applicants, however, once selected, can qualify on the basis of minimal levels of education level and/or work experience. Like other immigrant applicants, they are subject to being denied entry based on any of the grounds of inadmissibility. If the applicant is otherwise eligible, he only needs to demonstrate that he has the equivalent of a U.S. high school education or possesses 2 years of work experience in an occupation that requires 2 years of training or work experience within the 5 year period immediately prior to the application.<sup>5</sup>

There are five main criticisms of the DV program: 1) fraud, 2) national security concerns, 3) fairness, 4) visa issuance deadlines and 5) program rationale.

The DV program is susceptible to fraud and manipulation. That complaint was verified by a 2003 State Department Office of Inspector General (OIG) Report, a 2007 Government Accountability Office report and continuous reports from consular officers. In 2003 the GAO stated, "The DV program is vulnerable to fraud committed by and against DV applications, but State has not compiled comprehensive data on detected and suspected fraudulent activity."<sup>6</sup>

A DV applicant will be disqualified for the year of entry if more than one application is filed for the applicant. Nonetheless, it is commonplace for aliens to file multiple applications for the lottery using different aliases. As the OIG reported, a partial check done by the Kentucky Service Center on applications filed in the DV-2003 lottery identified 364,000 duplicates. And for the DV-2012 program out of 19.7 million initial entries, 1.2 million were immediately disqualified as duplicates by exact match photo screening.<sup>7</sup> And another nearly 10% of the selectees were disqualified after secondary photo screening technology found they had submitted multiple applications.<sup>8</sup>

Examples of this problem include an October 2001 incident in which a New Jersey mailman falsified hundreds of visa applications to bring his cousin from Bangladesh to the United States. The man, dressed in his postal uniform, aroused suspicions when he was seen dropping documents into several mailboxes, instead of taking them out. When he was detained, police found 185 applications for the visa lottery in his bag, and he had allegedly already tried to mail 147 applications, which were retrieved. He had pur-

<sup>4</sup>Pursuant to 8 U.S.C. §1151(e), the actual number of Diversity Visas is 55,000. However 5,000 of the visas are allocated for use under the provisions of P.L. 105-100, the "Nicaraguan Adjustment and Central American Relief Act."

<sup>5</sup>8 U.S.C. §1153(c)(2).

<sup>6</sup>U.S. Government Accountability Office, *Border Security: Fraud Risks Complicate State's Ability to Manage Diversity Visa Program*, (2007) (GAO-07-1174).

<sup>7</sup>Information provided by Department of State.

<sup>8</sup>*Id.*

portedly tried to help his cousin by using false addresses on the multiple applications.

Beyond violating our immigration laws and unfairly gaining an advantage over other similarly situated aliens who play by the rules, some of those who engage in such deception pose a criminal or terrorist threat to the United States. The case of Mekki Hamed Mekki, a Sudanese pilot who was under investigation for possible al-Qaeda links and who was arrested in North Carolina in September 2002, illustrates this point. In an affidavit filed in Federal court, the FBI alleged that Mekki had admitted submitting several forms with variations on his name, date of birth, and place of birth to improve his chances in the visa lottery. He was sentenced to 6 months in prison for immigration fraud and ordered deported in March 2003.

If an immigrant who files under numerous aliases is selected under one of those aliases, the alien must then support his visa application with fraudulent documents. As OIG found in a September 2003 report on the DV program, however: “Identity fraud is endemic, and fraudulent documents are commonplace. Many countries exercise poor control over their vital records and identity documents, exacerbating the potential for program abuse. In some countries, this control is so poor that consular officers must assume that all travel, identity, and civil documents are unreliable.”<sup>9</sup> A 2007 General Accountability Office report found that “Consular officers at 6 posts reported that widespread use of fake documents, such as birth certificates, marriage certificates, and passports, presented challenges when verifying identities of applicants and dependents.”<sup>10</sup>

OIG found that fraud is an “on-going major program issue.” Specifically, OIG found that anti-fraud activities are generally dominated by nonimmigrant visa fraud cases, and that many embassies and consulates with significant DV issues, therefore, do not routinely refer problem cases to their anti-fraud units. Further, OIG found, some posts, such as U.S. Embassy Accra (which is a major DV issuer) have no anti-fraud officer.<sup>11</sup>

This is not to say, however, that the State Department has made no efforts to address fraud in the DV program. In 2004, the State Department implemented an electronic registration system (E-DV), which was designed to enhance the security of the program. The primary reason for moving the program from a paper-based to an electronic registration system was “to eliminate vulnerabilities related to the identity of the visa applicant.” The E-DV allows the State Department to look at every entry, run facial recognition on them, and share data with intelligence and law enforcement agencies. Further, the State Department contends that “posts fairly routinely conducted investigations on bona fides of DV applicants,” including verifying school certificates, employment, and claimed relationships.<sup>12</sup>

<sup>9</sup>U.S. Department of State, office of the Inspector General, *Memorandum Inspection Report: Diversity Visa Program*, (Sept. 2003) (Report Number ISP-CA-03-52), Pg. 2.

<sup>10</sup>U.S. Government Accountability Office, *Border Security: Fraud Risks Complicate State’s Ability to Manage Diversity Visa Program*, (2007) (GAO-07-1174).

<sup>11</sup>U.S. Department of State, office of the Inspector General, *Memorandum Inspection Report: Diversity Visa Program*, (Sept. 2003) (Report Number ISP-CA-03-52).

<sup>12</sup>Information provided by Department of State.

While OIG did not reference these efforts in its September 2003 report, it noted that the Consular Affairs Bureau (CA) at the State Department did not know how significant the DV fraud problem was, and could not document the widespread belief that certain countries' records are under such poor control that their passports, identity documents, and vital records are so unreliable as to be useless for visa purposes.<sup>13</sup>

Unfortunately the OIG's report seemed to effect little change in the DV program and the same problem exists years later. The 2007 GAO report noted, "Despite taking steps to strengthen the DV program, State does not have a strategy to address the pervasive fraud reported by some [consular] posts."<sup>14</sup>

In addition to entry fraud, the visa lottery program has spawned a cottage industry in the United States for sponsors who falsely promise success in exchange for large sums of money. This problem is so pervasive that the State Department's media notice announcing electronic filing carried the following "Important Notice":

***NO** fee is charged to enter the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV casework for applicants do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the applicant's discretion.*

*A qualified entry submitted electronically directly by an applicant has an equal chance of being selected by the computer at the Kentucky Consular Center as does an entry submitted electronically through a paid intermediary who completes the entry for the applicant. Every entry received during the lottery registration period will have an equal random chance of being selected within its region. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.*

Illustrating this problem is the case of a company named "USA Immigration Services" (USAIS). On October 1, 2003, the Federal Trade Commission (FTC) filed a lawsuit against the company and its operators, alleging that they misled consumers into believing they were affiliated with the United States government, and that for a fee, they could help consumers register through the DV lottery for a chance to apply for a green card.<sup>15</sup> According to the FTC, the defendants, who had no connection to the Federal Government,

<sup>13</sup>U.S. Department of State, office of the Inspector General, *Memorandum Inspection Report: Diversity Visa Program*, (Sept. 2003) (Report Number ISP-CA-03-52).

<sup>14</sup>U.S. Government Accountability Office, *Border Security: Fraud Risks Complicate State's Ability to Manage Diversity Visa Program*, (2007) (GAO-07-1174).

<sup>15</sup>According to the FTC, using both keyword "metatags" and express language on the websites, USAIS claimed to be either an official agency of, or affiliated with, the U.S. Government. The metatags typically led unwitting consumers to USAIS's sites on the Internet through the use of search engines. The website featured an official-looking eagle and billowing flag banner across the top of the site, American iconic images (such as the Statue of Liberty, the flag, and the Capitol), and the official seals and logos of—and links to—USA Freedom Corps, the White House, and FirstGov on the home page. Further, the defendants allegedly claimed to use actual government telephone numbers that actually belong to the State Department. They also listed a Washington, D.C. address that, in fact, was a commercial mail store. Finally, they used terms such as "Official U.S. Immigration Forms" to describe subjects they addressed.

misled aliens in a variety of ways about the services they claimed to provide.

And the 2007 GAO report noted, “At 5 of the 11 posts we reviewed, consular officers reported that the majority of DV applicants, lacking access to a computer or Internet savvy, use ‘visa agents’ to enter the lottery. Some agents take advantage of DV applicants. . . .”<sup>16</sup>

Perhaps the best confirmation of rampant fraud in the DV program is the U.S. Government itself. The current homepages of many State Department U.S. Embassy websites, for instance London, Dublin and Cairo, include diversity visa “Fraud Alerts.” And on June 20, 2011, U.S. Citizenship and Immigration Services (USCIS), the agency responsible for adjudicating DV petitions, sent out an email entitled, “Email Scam: Avoid Green Card Lottery Fraud!” that contained a link to a USCIS blog entry. The blog stated in part, “Have you or someone you know recently received an e-mail claiming you’ve won the Green Card lottery and asking you to send or wire money? Don’t fall for it—the sender is trying to steal your money!”

At an April 5, 2011, hearing on the SAFE for America Act, the former Deputy Assistant Secretary of State for Visa Services, Tony Edson, testified about the many types of fraud he and his colleagues saw in the program.

He stated that visa lottery fraud, “includes . . . multiple entries, fraudulent claims to education and work experience, pop-up spouses or family members, relatives added after the application is submitted, and false claims for employment or financial support in the United States.”<sup>17</sup> And he noted that unscrupulous third-party agents often enroll individuals in the visa lottery without the individual’s knowledge. If the person is selected for the lottery, the agent then sells the “winning” visa lottery slot to the highest bidder.

The DV program poses a potential threat to the national security, for a number of reasons. In fact, the 2007 GAO report noted that, “Difficulty in verifying identities has security-based implications because State’s security checks rely heavily on name-based databases.”<sup>18</sup> One of the main national security weaknesses that experts have identified in the DV program is the lack of restrictions on admissions. This plays out in two ways.

First, there are few restrictions on the countries from which applicants may come, and no security restrictions. By way of contrast, aliens from countries designated as state sponsors of terrorism cannot be issued nonimmigrant visas except in limited circumstances.<sup>19</sup> OIG determined that between two and 4 percent of all DV issuances are to nationals of countries designated as state sponsors of terrorism (Cuba, Iran, Sudan and Syria). For the DV–

<sup>16</sup>U.S. Government Accountability Office, *Border Security: Fraud Risks Complicate State’s Ability to Manage Diversity Visa Program*, (2007) (GAO-07-1174).

<sup>17</sup>H.R. 704, the “SAFE for America Act,” Hearing Before the Subcomm. on Immigration Policy and Enforcement of the House Comm. on the Judiciary, 112th Cong. 31 (2011) (statement of Stephen A. Edson, Former Deputy Assistant Secretary of State for Visa Services).

<sup>18</sup>*Id.*

<sup>19</sup>Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 prohibits nonimmigrant visa issuance to aliens from countries that are state sponsors of international terrorism unless it is determined that such aliens do not pose a threat to the safety and national security of the United States. The countries currently designated as state sponsors of international terrorism are Cuba, Sudan, Syria, and Iran.

2011 lottery, 2,819 Iranians, 132 Syrians, 1,156 Sudanese and 406 Cubans were deemed *eligible* for the visa lottery. In addition, thousands of individuals from countries such as Libya, Afghanistan, Yemen and Nigeria were also deemed *eligible*. The number of diversity visas *actually issued* to individuals from countries designated as state sponsors of terrorism were as follows:<sup>20</sup>

- Iran: 1,842
- Sudan: 553
- Syria: 32
- Cuba: 140

Second, under the program, successful applicants are chosen at random. Consequently, those who win the DV lottery do not necessarily have any ties to the United States, unlike other visa categories, which rely on family or business ties. Critics of the DV program have argued that family and business relationships help ensure that immigrants entering the United States have a stake in our country's success, and have the advanced skills to contribute to our economy. Because DV winners do not necessarily have such ties, critics have asserted, the program could offer an opportunity for individuals or groups who want to harm the United States, its institutions, and its people to place terrorists in the United States.

In addition to the openness of the program, the susceptibility of the program to fraud exposes the United States to terrorism. The Center for Immigration Studies (CIS) has found that. "The program is a national security vulnerability, and has been used by terrorists and organized criminals to not only enter the U.S., but bring others as well."<sup>21</sup>

Any potential terrorist who did win the DV lottery could live here freely, and come and go with little scrutiny. In fact, a number of immigrants who have been accused or convicted in connection with terrorism plots have entered in this manner. For instance, Hesham Hedayet, an Egyptian terrorist who killed two and wounded several others at Los Angeles International Airport on July 4, 2002, was a lawful permanent resident who received his green card through the DV program. He had originally entered as a visitor, and thereafter applied for asylum. In his asylum application, he claimed that he had been accused of being a terrorist by the Egyptian government. When he failed to respond to the notice of intent to deny that application, the former INS issued a charging document placing him in deportation proceedings, but could not serve him. In 1996, Hedayet's wife was selected for the visa lottery, allowing Hedayet to adjust his status. He was a lawful permanent resident at the time of the 2002 attack.

Similarly, in August 2002, Pakistani national Imran Mandhai pleaded guilty to conspiring to destroy buildings affecting interstate commerce by means of fire or explosives. He entered the United States with his parents, who had been selected for the visa lottery in 1998.

The program is also unfair because it moves 50,000 new immigrants ahead of family and employer-sponsored immigrants who

<sup>20</sup> Information provided by the State Department.

<sup>21</sup> Janice Kephart, *Sen. Hatch's Proposal to Do Away with the Diversity Visa Lottery*, Center for Immigration Studies, Feb. 2011.

may have waited many years for the opportunity to immigrate to the U.S. This is significant considering, for example, that family fourth-preference visa applicants from the Philippines are currently oversubscribed to January 15, 1988, meaning that only those aliens in this class for whom visa petitions were filed before such date can come to the United States.

Finally, it is not reasonable to continue a program in which applicants are randomly selected. Further, some have argued that the DV program no longer meets its stated purposes.

The United States should select, out of the many millions of persons who would like to immigrate to the U.S., those who most contribute to the national interest. In addition to persons who want to unite with family members in the U.S., there are a large number of individuals with marketable skills who would immigrate to the United States if given the opportunity. Preference should be given to those aliens who would make a large and positive commitment to the U.S. economy. The program's requirements are so low that they do nothing to ensure that the applicants have the skills needed to compete in the U.S. economy, noting that the final selection is based on luck, not skill.

### Hearings

The Committee's Subcommittee on Immigration Policy and Enforcement held 1 day of hearings on H.R. 704, to eliminate the diversity immigration program, on April 5, 2011. Testimony was received from the Honorable Bob Goodlatte (R-VA); Mr. Stephan A. Edson, former Deputy Assistant Secretary of State for Visa Services; Ms. Janice Kephart, Director of National Security Policy at the Center for Immigration Studies; and Ambassador Johnny Young of the U.S. Conference of Catholic Bishops.

### Committee Consideration

On July 20, 2011, the Committee met in open session and ordered the bill H.R. 704 favorably reported without amendment, by a rollcall vote of 19 to 11, a quorum being present.

### Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following recorded votes occurred during the Committee's consideration of H.R. 704.

1. An amendment offered by Ms. Jackson Lee to strike the provisions of H.R. 704 and replace them with a requirement that the Secretaries of Homeland Security and State report to Congress regarding how to eliminate the potential for fraud and other security risks in the diversity program. Defeated 12 to 14.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Smith, Chairman .....		X	
Mr. Sensenbrenner, Jr. ....		X	
Mr. Coble .....		X	
Mr. Gallegly .....			
Mr. Goodlatte .....		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Lungren .....			
Mr. Chabot .....			
Mr. Issa .....			
Mr. Pence .....		X	
Mr. Forbes .....		X	
Mr. King .....		X	
Mr. Franks .....		X	
Mr. Gohmert .....		X	
Mr. Jordan .....			
Mr. Poe .....			
Mr. Chaffetz .....		X	
Mr. Griffin .....			
Mr. Marino .....		X	
Mr. Gowdy .....		X	
Mr. Ross .....			
Ms. Adams .....		X	
Mr. Quayle .....		X	
Mr. Conyers, Jr., Ranking Member .....	X		
Mr. Berman .....			
Mr. Nadler .....	X		
Mr. Scott .....	X		
Mr. Watt .....	X		
Ms. Lofgren .....	X		
Ms. Jackson Lee .....	X		
Ms. Waters .....	X		
Mr. Cohen .....	X		
Mr. Johnson .....	X		
Mr. Pierluisi .....	X		
Mr. Quigley .....	X		
Ms. Chu .....			
Mr. Deutch .....	X		
Ms. Sánchez .....			
Ms. Wasserman Schultz .....			
Total .....	12	14	

2. An amendment offered by Ms. Lofgren to replace the provisions of H.R. 704 limiting the program only to individuals with approved family-based immigrant petitions, and requiring that the visas are issued by order of priority date. Defeated 11 to 19.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Smith, Chairman .....		X	
Mr. Sensenbrenner, Jr. ....		X	
Mr. Coble .....		X	
Mr. Gallegly .....		X	
Mr. Goodlatte .....		X	
Mr. Lungren .....			
Mr. Chabot .....		X	
Mr. Issa .....		X	
Mr. Pence .....		X	
Mr. Forbes .....		X	
Mr. King .....		X	
Mr. Franks .....		X	
Mr. Gohmert .....		X	
Mr. Jordan .....			
Mr. Poe .....		X	
Mr. Chaffetz .....		X	
Mr. Griffin .....		X	
Mr. Marino .....		X	
Mr. Gowdy .....		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Ross .....			
Ms. Adams .....		X	
Mr. Quayle .....		X	
Mr. Conyers, Jr., Ranking Member .....	X		
Mr. Berman .....			
Mr. Nadler .....	X		
Mr. Scott .....	X		
Mr. Watt .....	X		
Ms. Lofgren .....	X		
Ms. Jackson Lee .....			
Ms. Waters .....	X		
Mr. Cohen .....	X		
Mr. Johnson .....	X		
Mr. Pierluisi .....	X		
Mr. Quigley .....	X		
Ms. Chu .....			
Mr. Deutch .....	X		
Ms. Sánchez .....			
Ms. Wasserman Schultz .....			
Total .....	11	19	

3. A vote on final passage of H.R. 704. Reported favorably out of Committee 19 to 11.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Smith, Chairman .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....			
Mr. Goodlatte .....	X		
Mr. Lungren .....			
Mr. Chabot .....	X		
Mr. Issa .....	X		
Mr. Pence .....	X		
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Franks .....	X		
Mr. Gohmert .....	X		
Mr. Jordan .....			
Mr. Poe .....	X		
Mr. Chaffetz .....	X		
Mr. Griffin .....	X		
Mr. Marino .....	X		
Mr. Gowdy .....	X		
Mr. Ross .....	X		
Ms. Adams .....	X		
Mr. Quayle .....	X		
Mr. Conyers, Jr., Ranking Member .....		X	
Mr. Berman .....			
Mr. Nadler .....		X	
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....		X	
Ms. Jackson Lee .....			
Ms. Waters .....		X	
Mr. Cohen .....		X	
Mr. Johnson .....		X	
Mr. Pierluisi .....		X	
Mr. Quigley .....		X	
Ms. Chu .....		X	

## ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Deutch .....			
Ms. Sánchez .....			
Ms. Wasserman Schultz .....			
Total .....	19	11	

**Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

**New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

**Congressional Budget Office Cost Estimate**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 704, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 4, 2011.*

Hon. LAMAR SMITH, CHAIRMAN,  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 704, the “Security and Fairness Enhancement for America Act of 2011.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jonathan Morancy, who can be reached at 226–2820.

Sincerely,

DOUGLAS W. ELMENDORF,  
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H.R. 704—Security and Fairness Enhancement for America Act of 2011.*

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As ordered reported by the House Committee on the Judiciary on  
July 21, 2011

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## SUMMARY

H.R. 704 would eliminate the diversity visa program. Diversity visas go to people from countries that U.S. Citizenship and Immigration Services (USCIS) has determined have had low ratios of immigrants admitted under other sections of immigration law. Currently, 55,000 diversity visas are available each year. Eliminating the diversity visa program would lower the number of immigrants entering the country who would become legal permanent residents (LPRs) by about 460,000 during the 2012–2021 period, CBO estimates. That decline in the number of LPRs would decrease spending on needs-based and social-insurance programs and would reduce the fees collected from immigrants.

CBO estimates that enacting H.R. 704 would decrease direct spending by \$1.3 billion and would decrease revenues by about \$0.1 billion over the 2012–2021 period. In addition, CBO estimates implementing the bill would reduce discretionary spending by \$30 million over the 2012–2021 period, assuming appropriations are reduced by the estimated amounts.

Because enacting the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

H.R. 704 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 704 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 500 (education, training, employment, and social services), 550 (health), 570 (Medicare), 600 (income security), 650 (Social Security), and 750 (administration of justice).

## By Fiscal Year, in Millions of Dollars

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012– 2016	2012– 2021
<b>CHANGES IN DIRECT SPENDING</b>												
<b>On-Budget Changes</b>												
Medicaid												
Estimated Budget Authority	0	-5	-18	-36	-55	-77	-114	-170	-231	-301	-114	-1,007
Estimated Outlays	0	-5	-18	-36	-55	-77	-114	-170	-231	-301	-114	-1,007
SNAP												
Estimated Budget Authority	0	-1	-4	-6	-8	-11	-22	-34	-47	-60	-19	-193
Estimated Outlays	0	-1	-4	-6	-8	-11	-22	-34	-47	-60	-19	-193
Pell Grants												
Estimated Budget Authority	0	*	-1	-1	-2	-2	-3	-3	-4	-4	-4	-20
Estimated Outlays	0	*	*	-1	-1	-2	-2	-3	-3	-4	-2	-16
Supplemental Security Income												
Estimated Budget Authority	0	*	*	*	-1	-1	-2	-3	-4	-5	-1	-16
Estimated Outlays	0	*	*	*	-1	-1	-2	-3	-4	-5	-1	-16
Medicare												
Estimated Budget Authority	0	0	0	0	0	*	-1	-1	-3	-5	0	-10
Estimated Outlays	0	0	0	0	0	*	-1	-1	-3	-5	0	-10
Subtotal-On-Budget Effects												
Estimated Budget Authority	0	-6	-23	-43	-66	-91	-142	-211	-289	-375	-138	-1,246
Estimated Outlays	0	-6	-22	-43	-65	-91	-141	-211	-288	-375	-136	-1,242
<b>Off-Budget Changes</b>												
Social Security												
Estimated Budget Authority	0	0	0	*	-1	-2	-5	-11	-25	-53	-1	-97
Estimated Outlays	0	0	0	*	-1	-2	-5	-11	-24	-50	-1	-93
<b>Total Changes in Direct Spending</b>												
Estimated Budget Authority	0	-6	-23	-43	-67	-93	-147	-222	-314	-428	-139	-1,343
Estimated Outlays	0	-6	-22	-43	-66	-93	-146	-222	-312	-425	-137	-1,335
<b>CHANGES IN REVENUES</b>												
Visa Fees	0	-15	-15	-15	-15	-15	-15	-15	-15	-15	-60	-135
<b>NET INCREASE OR DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES</b>												
Net Changes in Deficits	0	9	-7	-28	-51	-78	-131	-207	-297	-410	-77	-1,200
On-Budget Effects	0	9	-7	-28	-50	-76	-126	-196	-273	-360	-76	-1,107
Off-Budget Effects	0	0	0	*	-1	-2	-5	-11	-24	-50	-1	-93
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>												
Pell Grants <sup>1</sup>												
Estimated Authorization Level	0	-1	-3	-4	-6	-7	-9	0	0	0	-14	-30
Estimated Outlays	0	*	-1	-3	-5	-6	-8	-7	*	0	-9	-30

Notes: Components may not sum to totals due to rounding; SNAP = Supplemental Nutrition Assistance Program; \* = between -\$500,000 and 0.

1. The Pell Grant program is currently authorized through 2018.

## BASIS OF ESTIMATE

For this estimate, CBO assumes the bill will be enacted near the start of calendar year 2012 and that the restrictions on issuing new visas will affect anyone who had applied for the diversity lottery held in fiscal year 2012. Under current law, 55,000 visas are available each year under the diversity visa program. Since 1999, up to 5,000 of those have been reserved each year for unsuccessful seekers of asylum from countries such as El Salvador and Guatemala. Thus, the Department of State processes about 50,000 immigrant visas for natives of foreign states that USCIS determines have had a low ratio of immigrants admitted under other sections of immigration law.

The immigrants are selected randomly by the Secretary of State from among persons who have applied to a special lottery for the visas. Persons apply in one fiscal year for visas to be issued in the coming fiscal year. Applicants must meet minimum requirements for education or work experience and otherwise be eligible for immigrant visas as specified in the Immigration and Nationality Act. Those selected in the diversity lottery must obtain their visas by the end of the fiscal year covered by the lottery.

By eliminating the diversity visa lottery, CBO estimates that H.R. 704 would decrease the number of immigrants who become legal permanent residents by about 51,000 each year (not all persons selected immigrate to the United States within the period in which the visas are valid). Fewer legal permanent residents would, over time, lower the number of persons eligible for Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and other needs-based and social-insurance programs. Because the first group affected by this bill would be those who would apply during fiscal year 2012 for arrival during fiscal year 2013, the effects would not begin until fiscal year 2013.

CBO estimates that under the bill, the number of LPRs will decline by about 460,000 over the 10-year period. A decline in LPRs would result in savings for many programs as detailed below.

*Direct Spending*

With the exception of Social Security, all of the budgetary effects are on-budget.

**Medicaid.** By decreasing the number of LPRs, enacting H.R. 704 would reduce the number of individuals who enroll in the Medicaid program. Under Medicaid law, immigrants entering the United States are not eligible to receive Medicaid coverage for five years after entering the country, except for emergency Medicaid. (Current law does allow those immigrants who are children or pregnant women that would otherwise qualify for Medicaid to obtain coverage at state option before they have been in the country for five years.) Some of those immigrants (mainly children, pregnant women, and some disabled people) qualify for Medicaid five years after they enter the United States. Under the bill, CBO estimates that by 2021 about 64,000 fewer people would receive Medicaid and that Federal spending for Medicaid would decline by about \$1 billion over the 2012–2021 period.

**Supplemental Nutrition Assistance Program.** Legal permanent residents who are adults and who meet the necessary quali-

fications are eligible for SNAP benefits after a 5-year waiting period (those under the age of 18 who qualify are automatically eligible). Based on the estimated decline in LPRs and data from the Current Population Survey, CBO estimates that by 2021 about 40,000 fewer people would participate in SNAP. Accordingly, CBO estimates that enacting the bill would lower costs for SNAP by \$193 million over the 2012–2021 period.

**Pell Grants.** As discussed below under the heading “Spending Subject to Appropriation,” CBO projects that H.R. 704 would reduce the number of students eligible for Pell grants. Though most Pell grant funding is discretionary, CBO estimates enacting the bill would decrease direct spending by \$16 million over the 2012–2021 period for the mandatory portion of the Pell Grant program. (The bill would have an insignificant effect on direct spending for student loans.)

**Supplemental Security Income.** Based on information from the Current Population Survey, CBO projects that under current law fewer than 100 immigrants affected by H.R. 704 would have naturalized and received Supplemental Security Income (SSI) benefits based on old age or disability during the 2012–2021 period. In addition, CBO expects that around 1 percent of the citizen-children who would have been born in the United States to those immigrants affected by H.R. 704 would have qualified for SSI as the result of birth defects or other severe disabilities. In total, CBO estimates that enacting H.R. 704 would reduce SSI outlays by \$16 million over the 2012–2021 period.

**Social Security and Medicare.** Few of the individuals affected by H.R. 704 would have been able to work long enough to become eligible for Social Security retirement benefits or Medicare (based on age) within the 2012–2021 period under current law, but many could earn eligibility for Social Security Disability Insurance over that period. Based on information from the Current Population Survey, CBO projects that under the bill, about 1,200 fewer people would receive Social Security benefits (primarily for disability insurance) by 2021. Thus, CBO estimates that enacting H.R. 704 would reduce Social Security outlays by \$93 million (which are off-budget) and Medicare outlays by \$10 million (which are on-budget) over the 2012–2021 period.

#### *Revenues and Offsetting Receipts*

Applicants do not pay a fee for submitting an application to the Department of State for the diversity lottery. The visa-lottery winners must pay a \$305 immigrant visa application processing fee. That visa fee is a revenue and is not available to be spent. CBO estimates that eliminating the diversity visa program would decrease revenues by about \$15 million a year, totaling \$135 million over the 2012–2021 period.

USCIS currently charges fees totaling about \$1,000 to register each selected applicant as a permanent U.S. resident. CBO estimates that CIS collects and spends about \$50 million annually in fees from diversity immigrants—a small fraction of more than \$2 billion in fees the agency collects and spends each year to administer programs relating to the entry of aliens. CBO estimates that eliminating the diversity visa program would reduce fee collections by about \$50 million annually, but that direct spending also would

decline by an equivalent amount; thus, enacting the bill would have no significant effect on net direct spending for USCIS.

*Spending Subject to Appropriation*

**Pell Grants.** Using data from the Congressional Research Service and the Department of Education, CBO projects that H.R. 704 would reduce the number of students eligible for Pell grants and student loans by a total that grows from several hundred students in fiscal year 2013 to several thousand students in fiscal year 2021. The bulk of funding for Pell grants is discretionary. Assuming appropriations are reduced by the estimated amounts and a maximum discretionary award level of \$4,860 as in the most recently enacted appropriations act, CBO estimates the bill would reduce discretionary costs by \$9 million over the 2012–2016 period, and \$30 million over the 2012–2021 period.

**Offsetting Collections.** The visa-lottery winners (discussed above) also must pay a \$440 processing fee to the Department of State. That processing fee generates about \$24 million a year in offsetting collections, which are a credit against discretionary spending. Implementing the bill would lower collections by the Department of State, but spending also would decline by the amount of forgone collections; thus, there would be no significant effect on discretionary spending for the Department of State.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO Estimate of Pay-As-You-Go Effects for H.R. 704, the “Security and Fairness Enhancement for America Act of 2011,” as ordered reported by the House Committee on the Judiciary on July 21, 2011

	By Fiscal Year, in Millions of Dollars											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
	NET INCREASE OR DECREASE (–) IN THE ON-BUDGET DEFICIT											
Statutory Pay-As-You-Go Impact	0	9	–7	–28	–50	–76	–126	–196	–273	–360	–76	–1,107
Memorandum:												
Change in Outlays	0	–6	–22	–43	–65	–91	–141	–211	–288	–375	–136	–1,242
Change in Revenues	0	–15	–15	–15	–15	–15	–15	–15	–15	–15	–60	–135

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 704 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would reduce the number of legal permanent residents eligible for Medicaid assistance. Since a portion of Medicaid is paid for by state governments, CBO estimates that state spending on the program would decline by about \$750 million over the 2012–2021 period. The bill contains no private-sector mandates.

## ESTIMATE PREPARED BY:

Federal Costs: Jonathan Morancy, Kirstin Nelson, Kathleen Fitzgerald, David Rafferty,  
 Mark Grabowicz, Sunita D'Monte, and Justin Humphrey  
 Impact on State, Local, and Tribal Governments: Melissa Merrell  
 Impact on the Private Sector: Paige Piper-Bach

## ESTIMATE APPROVED BY:

Peter H. Fontaine  
 Assistant Director for Budget Analysis

**Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 704, amends the Immigration and Nationality Act to eliminate the diversity immigrant program.

**Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 704 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

**Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short title.* Section 1 sets forth the short title of the bill as the “Security and Fairness Enhancement for America Act of 2011,” or the “SAFE for America Act.”

*Sec. 2. Elimination of Diversity Immigrant Program.* Section 2 amends sections 201, 203 and 204 of the Immigration and Nationality Act to strike references to the diversity immigrant program.

**Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**IMMIGRATION AND NATIONALITY ACT**

\* \* \* \* \*

**TITLE II—IMMIGRATION****CHAPTER 1—SELECTION SYSTEM**

\* \* \* \* \*

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; *and*

(2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

[(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed in any fiscal year the number specified in subsection (e) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.]

\* \* \* \* \*  
 [(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.]

\* \* \* \* \*

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. (a) \* \* \*

\* \* \* \* \*

[(c) DIVERSITY IMMIGRANTS.—

[(1) IN GENERAL.—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(e) for diversity immigrants shall be allotted visas each fiscal year as follows:

[(A) DETERMINATION OF PREFERENCE IMMIGRATION.—The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2).

[(B) IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMISSION REGIONS AND HIGH-ADMISSION AND LOW-ADMISSION STATES.—The Attorney General—

[(i) shall identify—

[(I) each region (each in this paragraph referred to as a “high-admission region”) for which the total of the numbers determined under subparagraph (A) for states in the region is greater than  $\frac{1}{6}$  of the total of all such numbers, and

[(II) each other region (each in this paragraph referred to as a “low-admission region”); and

[(ii) shall identify—

[(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a “high-admission state”), and

[(II) each other foreign state (each such state in this paragraph referred to as a “low-admission state”).

[(C) DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.—The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

[(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITHIN LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.—The Attorney General shall determine—

[(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

[(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

[(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

[(E) DISTRIBUTION OF VISAS.—

[(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.—The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

[(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

[(I) the percentage determined under subparagraph (C), and

[(II) the population ratio for that region determined under subparagraph (D)(ii).

[(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to

natives (other than natives of a high-admission state) in a high-admission region is the product of—

【(I) 100 percent minus the percentage determined under subparagraph (C), and

【(II) the population ratio for that region determined under subparagraph (D)(iii).

【(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.—If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

【(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.—The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

【(F) REGION DEFINED.—Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

【(i) Africa.

【(ii) Asia.

【(iii) Europe.

【(iv) North America (other than Mexico).

【(v) Oceania.

【(vi) South America, Mexico, Central America, and the Caribbean.

【(2) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is not eligible for a visa under this subsection unless the alien—

【(A) has at least a high school education or its equivalent, or

【(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

【(3) MAINTENANCE OF INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.】

#### Treatment of Family Members

(d) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection 【(a), (b), or (c),】 (a) or

(b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

Order of Consideration

(e) ORDER OF CONSIDERATION.—(1) \* \* \*

[(2) Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.]

[(3) (2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

Authorization for Issuance

(f) AUTHORIZATION FOR ISSUANCE.—In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(2) or in subsection [(a), (b), or (c)] (a) or (b) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

Lists

(g) LISTS.—For purposes of carrying out the Secretary’s responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections [(a), (b), and (c)] (a) and (b) and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien’s control.

\* \* \* \* \*

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a)(1)(A) \* \* \*

\* \* \* \* \*

[(I)(i) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

[(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

[(II) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only

through the end of the specific fiscal year for which they were selected.

[(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

[(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.]

\* \* \* \* \*

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to be admitted the United States as an immigrant under subsection [(a), (b), or (c)] *(a) or (b)* of section 203 or as an immediate relative under section 201(b) if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

\* \* \* \* \*

## Dissenting Views

### I. INTRODUCTION

Our current immigration system revolves heavily around family- and employment-based immigration. For persons who lack such existing familial ties or special skills, the only opportunity to immigrate to the United States is the diversity visa program (DV program), which provides a small, but important opportunity for persons who come from countries that are otherwise poorly represented in our immigration system to obtain immigrant visas.

When the DV program was created in 1990, it was championed by Sen. Edward Kennedy (D-MA) and Rep. Peter Rodino (D-NJ), who were concerned that our largely family-based immigration system would disadvantage immigrants of Irish and Italian descent.<sup>1</sup> In recent years, African immigrants have comprised about two-fifths of the DV program's beneficiaries, but account for only 3% of family- and employment-based immigrants.<sup>2</sup>

Although the Majority charges that the DV program “is an open invitation for fraud and a jackpot for terrorists,”<sup>3</sup> the Government Accountability Office (GAO) “found no documented evidence that DV immigrants . . . posed a terrorist or other threat.”<sup>4</sup> And, where security and other programmatic weaknesses have been identified, the State Department has made major improvements, such as converting to an electronic application process, requiring the submission of digital photographs for facial recognition analysis, ending the practice of notifying winners by mail, and increasing outreach and education to applicants.<sup>5</sup>

The short title of H.R. 704—the “Security and Fairness Enhancement for America Act” or the “SAFE for America Act”—is classic Orwellian “newspeak” for a bill that enhances neither security nor fairness in our immigration system. Rather, the bill eliminates the DV program and, as a result, dramatically and adversely changes the face of immigration to the United States. Eliminating the program would effectively end legal immigration from large swathes of the globe and undercut a significant foreign policy goal, namely, sustaining the American dream in parts of the world where winning the DV lottery represents the only realistic opportunity for immigrating to the United States. For a program proven to provide significant benefits to the Nation, the response to lingering con-

<sup>1</sup>Unofficial Tr. of Markup of H.R. 704, the Security and Fairness Enhancement for America Act, by the H. Comm. on Judiciary, 112th Cong. 32–33 (2011) [hereinafter Markup Transcript], available at <http://judiciary.house.gov/hearings/pdf/7%2020%2011%20HR%20704%20HR%201550%20HR%202076%20HR%20963%20HR%201059%20HR%202552.pdf>.

<sup>2</sup>U.S. Government Accountability Office, *Border Security: Fraud Risks Complicate State's Ability to Manage Diversity Visa Program*, GAO-07-1174 at 13 (2007) [hereinafter GAO Report].

<sup>3</sup>See Markup Transcript at 7.

<sup>4</sup>See GAO Report at 26.

<sup>5</sup>*Safe for America Act: Hearing on H.R. 704 Before the H. Subcomm. on Immigration Policy and Enforcement of the H. Comm. on the Judiciary*, 112th Cong. 22, 126–27 (2011) [hereinafter H.R. 704 Hearing].

cerns over fraud and national security risks should be to make further improvements to fix the program, not to eliminate it.

Moreover, when our family- and employment-based immigration programs are suffering from substantial, sometimes decades-long, backlogs due to insufficient numbers of visas, it makes no sense to simply eliminate the DV program's immigrant visas without re-allocating the visas to ameliorate existing backlogs or otherwise strengthen our economy.<sup>6</sup> During consideration of the bill, the Committee debated an amendment offered jointly by Rep. Zoe Lofgren (D-CA) and Rep. Howard Berman (D-CA) that would have used these visas to continue to promote diversity while also helping to reduce our backlogs in the family-based immigration system, but the Majority voted the amendment down.<sup>7</sup> Another amendment offered by Reps. Lofgren and Berman that would have re-allocated the 55,000 immigrant visas associated with the DV program to the existing family- and employment-based immigration systems, in an effort to reduce the extraordinary backlogs that the bill's sponsor himself has complained of, was ruled non-germane by the Chairman of the Judiciary Committee.<sup>8</sup> As reported by the Committee, H.R. 704 is an attack on legal immigration, on diversity in the United States, and on families. It is opposed by the United States Conference of Catholic Bishops, the National Immigration Forum, and Sen. Charles Schumer (D-NY), who submitted a letter in opposition to the bill at the Subcommittee's legislative hearing.<sup>9</sup>

For these reasons and those discussed below, we respectfully dissent and urge our colleagues to reject this anti-immigrant measure. These dissenting views provide background on the DV program and the bill and respond to the flawed criticisms of the DV program that have motivated this proposed legislation.

## II. BACKGROUND ON H.R. 704

H.R. 704 eliminates the DV program, which was first created by Congress in 1990 to stimulate "new seed" immigration. Our current immigration system, created in 1965, was preceded by national origin quotas that heavily favored immigrants from countries whose citizens had previously emigrated to the United States, largely from Western Europe. Prior to the creation of the DV program, the system's emphasis on the existence of close familial ties as a basis for receiving immigrant visas led to a concentration of immigration from a handful of source countries, despite the fact that the prior national origin quota system had been abolished. Because this approach alone would necessarily limit our ability to grow and sustain a diverse nation, the DV program created an important and necessary balance to this concentration.

<sup>6</sup>The merit of such a re-allocation has support from at least one Member of the Committee's Majority. Rep. Darrell Issa (R-CA) introduced H.R. 43 to eliminate the DV program and re-allocate its visas to certain employment-based immigrants with advanced degrees obtained in the United States. See H.R. 43, 112th Cong. (2011).

<sup>7</sup>See Markup Transcript at 48-61.

<sup>8</sup>*Id.* at 61-64.

<sup>9</sup>Letter from Sen. Charles E. Schumer, Chairman, Senate Judiciary Subcommittee on Immigration, Refugees and Border Security, to Rep. Elton Gallegly & Rep. Zoe Lofgren (Apr. 5, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff) [hereinafter Sen. Schumer Letter]; H.R. 704 Hearing (statement of Ambassador Johnny Young, Executive Director, Migration and Refugee Services, United States Conference of Catholic Bishops); *Id.* (statement of the National Immigration Forum) (Apr. 5, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff).

Under the DV program, 50,000 immigrant visas<sup>10</sup> are made available annually to immigrants from otherwise under-represented countries, as determined by a statutorily mandated formula.<sup>11</sup> Since 1995, approximately 785,000 diversity visas have been issued. In order to be eligible for an immigrant visa under the DV program, a person must have a high school education (or the equivalent) or, within 5 years of applying, at least 2 years of work experience in an occupation requiring at least 2 years of training or experience. The program is also known as the “diversity visa lottery” because recipients of immigrant visas under the program are randomly selected and such immigrant visas are distributed on a “first-come, first-served” basis by the State Department.<sup>12</sup> Winning the lottery does not guarantee a visa, as the State Department solicits more “winning” applications than the number of visas available and requires winners to act quickly to file the necessary documentation demonstrating that they are admissible to the United States.

Diversity visa winners are subject to the same immigration, criminal and national security background checks applicable to all individuals applying to become lawful permanent residents, as well as interviews performed by officials from the State Department and the Department of Homeland Security. As discussed further below, following reports by both the GAO and the State Department’s Office of Inspector General (OIG), numerous improvements have already been made to address concerns over fraud and security.

### III. FLAWED CRITIQUES OF THE DIVERSITY VISA PROGRAM

As the title of H.R. 704 suggests, opposition to the DV program has traditionally been justified on two bases: first, that the program poses fraud and national security risks, and, second, that allocating visas through a random, lottery-style system is fundamentally unfair to those who have been waiting for years in family- and employment-based immigration categories. These critiques and their flaws will be addressed in reverse order below.

#### A. *Fairness and the Diversity Visa Program*

The implicit, underlying rationale behind the fairness critique is that it is unjust to allow DV recipients to receive their immigrant visas before other prospective legal immigrants waiting in backlogged family- and employment-based categories, because DV immigrants are somehow either less qualified than employment-based immigrants (who generally are subject to more stringent educational requirements and already have jobs awaiting them in the United States) or less likely to be successful than family-based immigrants (who have existing family support networks in the United States due to the necessary close familial ties required of spon-

<sup>10</sup> Although the Immigration and Nationality Act (INA) sets the worldwide level of immigrant visas available under the DV program at 55,000 annually, 5,000 of these visas are unavailable as a set-aside for immigrants eligible for relief under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA). See INA § 201(e), 8 U.S.C. § 1151(e) (setting DV levels at 55,000); see also, section 203(d) of P.L. 105–100 (allocating 5,000 visas from the DV program for recipients of relief under NACARA).

<sup>11</sup> See INA § 203(c), 8 U.S.C. § 1153(c) (outlining how countries are determined to be high- or low-admission countries for purposes of DV program eligibility).

<sup>12</sup> See INA § 203(e)(2), 8 U.S.C. § 1153(e)(2) (stating that immigrant visas “shall be issued to eligible qualified immigrants strictly in a random order”).

soring relatives). While the baseline eligibility requirements are, by design, less stringent in the DV program than in other immigrant visa categories, DV immigrants have been generally more—not less—successful than the overall lawful permanent resident population.

According to an analysis issued by the Congressional Research Service (CRS) in April 2011:

Although the diversity immigrants are required to have only a high school education (or the equivalent) or 2 years experience in an occupation which requires at least 2 years of training or experience, they were more likely to report managerial and professional occupations than LPRs generally. Specifically, almost [a] quarter (24%) of diversity immigrants reported managerial and professional occupations in contrast to 10% of the 1.1 million LPRs in FY2009.”<sup>13</sup>

The CRS report also notes that diversity visa recipients are generally younger and more likely to become lawful permanent residents as they begin their working years than other persons who become lawful permanent residents, which means that DV immigrants contribute to our Nation’s economy for longer periods than lawful permanent residents generally.<sup>14</sup> Moreover, according to the most recent DHS yearbook of immigration statistics, DV holders have only a 3 percent rate of unemployment, significantly lower than the general unemployment rate of approximately 9 percent and the unemployment rate for all immigrants of about 8 percent.<sup>15</sup> The argument that DV recipients provide less economic benefits to the country than other lawful permanent residents is simply unsustainable.

During a legislative hearing on the bill, the Executive Director for Migration and Refugee Services for the United States Conference of Catholic Bishops testified about a DV winner he met when he was serving as the United States Ambassador to Togo. Ambassador Young stated:

I can cite the case of a woman that I knew in Togo. She was educated. She had a sister in the United States who was a U.S. citizen. The sister had petitioned for her. She believed that the wait would have been about 25 years, and while waiting, she applied for the lottery. She didn’t win the first few times but she won—I think it was about the fourth time around. She came to the United States. She brought her teenage son. He finished school here in the United States and last year got his MBA at Harvard.<sup>16</sup>

Moreover, attacking the program as unfair to families who wait in long backlogs misses the point of the program. In testifying about the DV program in 2005, former Rep. Bruce Morrison (D-CT), Chairman of the Immigration Subcommittee at the time the program was created, stated:

<sup>13</sup> Ruth Wasem, *Diversity Immigrant Visa Lottery Issues*, Congressional Research Service, R41747 at 6 (Apr. 1, 2011) [hereinafter CRS Report].

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.*; see also Sen. Schumer Letter, *supra* note 9.

<sup>16</sup> Markup Transcript at 126, *supra* note 1.

The bulk of immigrant flows will always come from those places of close proximity, long immigrant history or large population. However, the principle that all nationalities are welcome, subject to available numbers reflecting overall legislated limits, is at the heart of the definition of America. We are a nation defined by allegiance to democracy, human rights and equal opportunity. . . . It balances the limitations of a structure based only on family ties and established employment.<sup>17</sup>

The goal of the DV program is to foster “new seed” immigration in recognition of the principle that the United States remains the land of opportunity that is open to all people of the world, regardless of nationality. As Ambassador Young testified,

the diversity immigrant visa program generates goodwill and hope among millions across the globe ravaged by war, poverty, undemocratic regimes, and opacity in government. Through the diversity immigrant visa program, the United States makes a counterpoint to that reality, a chance at becoming an integral member of an open, democratic society that places a premium on hard work and opportunity.<sup>18</sup>

Finally, it is impossible to ignore the hypocrisy of the fairness attack by our Republican colleagues on the DV program, in light of the fact that H.R. 704 eliminates the program along with the 55,000 visas that it makes available each year. Eliminating those visas will do nothing to reduce the incredible delays that family members and highly skilled workers experience in our Nation’s backlogged immigration system. In fact, the Majority voted down an amendment that would have reduced the family backlog while promoting the value of diversity and insisted upon a germaneness point of order on a second amendment that would have reallocated the 55,000 visas equally to the family- and employment-based immigrant visa backlogs.<sup>19</sup> By rejecting those amendments and proceeding with this bill, as introduced, the Majority is destroying the only legal avenue by which persons without existing familial or employment ties to the United States can immigrate to this country while doing nothing to alleviate the unacceptable delays currently experienced by American families and businesses stuck in the family- and employment-based visa lines.

#### *B. Fraud, Security Risks and the Diversity Visa Program*

The bill’s supporters also argue that H.R. 704 will enhance the security of the United States by ending a program that can be used by terrorists and is rife with fraud. In 2003, the State Department’s OIG issued a report discussing each of these concerns.<sup>20</sup> In response, the State Department made significant, notable improvements to the program. The program now requires submission of

<sup>17</sup> *Hearing on the Diversity Visa Program Before the H. Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on Judiciary*, 109th Cong. 49 (2005) (statement of the Honorable Bruce A. Morrison, former Member of Congress).

<sup>18</sup> See Markup Transcript at 45, *supra* note 1.

<sup>19</sup> *Id.* at 48–64.

<sup>20</sup> See U.S. Department of State Office of the Inspector General, Memorandum Inspection Report Number ISP–CA–03–52, *Diversity Visa Program* (2003).

fingerprints and digital photographs to identify duplicative and fraudulent applications through the use of facial recognition technology. It has also shifted to an electronic application process and away from notifying winners by mail, in an effort to reduce the opportunity for unscrupulous persons to extort money from lottery winners in exchange for their results. Finally, State Department consular posts now provide education to the community about the rules of the program in an effort to empower potential applicants to apply for the program without seeking assistance from others.<sup>21</sup>

In a 2007 report, the GAO “found no documented evidence that DV immigrants . . . posed a terrorist or other threat.”<sup>22</sup> The GAO also concluded that the DV program is accomplishing Congress’ goal of diversifying the pool of immigrants to the United States. For example, in fiscal year 2006, 40 percent of diversity visa beneficiaries were from Africa and 34 percent were from Europe, while only 3 percent of family- and employment-based visas went to persons from Africa and only 8 percent went to persons from Europe.<sup>23</sup>

The GAO report did identify some continuing problems with fraud, including the widespread use of “visa consultants” and “visa agents,” who charge exorbitant fees for processing otherwise free DV applications and provide false information. To address these issues, consular posts attempt to educate potential applicants about the process and the penalties for fraudulent or multiple entries in order to reduce the influence of visa consultants.<sup>24</sup> The GAO further noted that heightened fingerprint and facial recognition checks help to identify a great deal of fraud and multiple entries.<sup>25</sup>

H.R. 704 purports to enhance security by eliminating the DV program. Yet, as the GAO found, there is no evidence that DV recipients pose a greater terrorist or national security threat than any other immigration category. And while fraud certainly exists in the program, important improvements already have been made and further steps can be taken. The Majority’s suggestion that terrorists and hostile foreign intelligence officers utilize this program in particular to immigrate to our country is baseless. Given that tens of millions of applicants apply annually for 50,000 slots, it is simply implausible that those who would do us harm would rely on winning the lottery to gain entry to our country. Instead of working to improve a program that has great value to our country and its image around the world, H.R. 704 would end it to nominally reduce an overstated threat.

Moreover, rather than making Americans safer and improving our current immigration system, eliminating the DV program is likely to create greater problems for our immigration system. As Sen. Schumer explains in his letter opposing the bill:

The DV Program also plays a helpful role in enhancing America’s security. As our world becomes ever more interconnected, our border patrol is facing increased challenges from immigrants who seek to enter the United States through our land borders even though they are coming

<sup>21</sup> H.R. 704 Hearing at 26–27, *supra* note 5; see CRS Report at 10, *supra* note 13.

<sup>22</sup> GAO Report, *supra* note 2, at 5.

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.* at 28–30.

<sup>25</sup> *Id.* at 27–28.

from Africa, Asia, and Eastern Europe. The DV Program reduces incentives for illegal immigration by encouraging prospective immigrants to wait for years at home until they win the lottery, as opposed to attempting to enter illegally. It is far better to have a manageable flow of 50,000 yearly immigrants who wait and receive background checks, medical screenings, and consular interviews before entering the United States legally than to cancel this program and create a situation of hopelessness and despair whereby hundreds of thousands of illegal immigrants from Africa, Asia, and Eastern Europe attempt to cross our borders each year without our knowledge.<sup>26</sup>

### III. CONCLUSION

The “Security and Fairness Enhancement for America Act” would enhance neither security nor fairness for America. Instead, it ends an immigration program that serves as a powerful diplomatic tool that effectively accomplishes its goal of fostering immigration from underrepresented areas of the world. The DV program engenders goodwill towards the United States in a world suffering from war, poverty and tyranny by providing hope that anyone can become a part of our peaceful, open and free society. Ending, instead of improving, this program based on the flawed critiques described above is simply inappropriate. And ending the program without re-allocating these visas to ameliorate existing backlogs for other legal immigrants shows a lack of respect for those who have waited decades to legally immigrate to the United States. For these reasons, we respectfully dissent and urge our colleagues to reject H.R. 704.

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<sup>26</sup> Sen. Schumer Letter, *supra* note 9.