SPECIAL Report
NATIONAL ROOFING CONTRACTORS ASSOCIATION

NRCA BRIEFING ON IMMIGRATION LAW ISSUES

Following enactment in 1986 of the Immigration Reform and Control Act (IRCA), all U.S. employers are required to verify the identity and employment eligibility of all new employees, citizens and noncitizens, hired to work in the U.S. after Nov. 6, 1986. It is illegal for an employer to hire, recruit or continue to employ an individual whom the employer knows is an unauthorized alien or if the employer is found to have "constructive knowledge" of the individual's ineligible work status. Employers who violate IRCA, through either paperwork violations or knowingly employing illegal aliens, are subject to civil and criminal penalties, including imprisonment.

Current Federal I-9 Requirements

The principal mechanism used to verify identity and work eligibility is Form I-9, Employment Eligibility Verification, now issued by U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security (DHS). Federal law requires all employers to complete an I-9 form whenever an employee is hired or rehired. Form I-9 can be obtained from the U.S. Citizenship and Immigration Services Web site (www.uscis.gov) and contains instructions about how to complete the form. The I-9 requirements apply only to employees; they do not apply to independent contractors.

Section 1 of Form I-9, Employee Information and Verification, is to be completed and signed by the employee at the time employment begins. Section 1 must be completed and signed by the employee no later than the close of business on the first day of work. The employer is responsible for ensuring the employee completes Section 1 in full.

Section 2 of Form I-9, Employer Review and Verification, is to be completed and signed by the employer after the employer has reviewed certain prescribed documents to establish worker identity and eligibility to work in the U.S. Section 2 is to be completed and signed by the employer no later than the close of business on the employee's third day of employment. If the employee is hired for three or fewer days, the I-9 form must be completed at the time of hire. In Section 2, the employer identifies the documents that have been examined from the prescribed list of acceptable documents. The employer is not required to verify the authenticity of the documents presented but must examine the documents and certify the listed documents appear to be genuine and pertain to the employee named. If the document submitted by the prospective employee has an expiration date, such as an unexpired employment authorization card, the expiration date must also be included in Section 2. The employer inserts the date employment began and certifies that, to the best of the employer's knowledge, the employee is eligible to work in the U.S.

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IRCA requires employers not discriminate against job candidates on the basis of race, color, national origin or citizenship. Employers who impose citizenship requirements or give preference to U.S. citizens in hiring or employment opportunities may be in violation of IRCA unless otherwise required by federal, state or local law, or by government contract. The Immigration and Naturalization Act of 1990 also prohibits employers from asking for more or different documents than what the prospective employee submits from the prescribed list of acceptable documents. An employer cannot require specific documents. The employer must examine the documents presented and accept them if they reasonably appear to be genuine and relate to the employee that presents them. If the documents presented do not reasonably appear to be genuine or relate to the employee who presents them, the employer must refuse acceptance and ask for other documentation from the list of acceptable documents. The most commonly presented acceptable documents are a driver's license with a photograph and/or description of the individual to establish identity and a U.S. Social Security card issued by the Social Security Administration to establish work eligibility.

Employers are required to retain I-9 forms for each employee for a period of three years from the date of hire or one year after the date of termination, whichever is longer. Employers are not required but are allowed to make and keep copies of the documents that were examined when completing Section 2 of the I-9 form. If an employer makes copies of the supporting documents, they should be attached to the I-9 form. Employers may now digitize I-9 forms and maintain I-9 records electronically rather than maintaining paper copies. Employers do not submit completed I-9 forms to any government agency but must have the forms available for inspection if audited. Employers are entitled to three days written notice if federal officials intend to conduct an I-9 audit unless a warrant has been obtained.

The I-9 process to verify employment eligibility has failed for numerous reasons, including the development of a vast underground industry producing counterfeit social Security cards and other documents that appear genuine. Employers have a good-faith defense to a charge of employing unauthorized aliens if they have complied with the I-9 process in good faith and do not have knowledge they are employing unauthorized workers. However, even if an employer does not have actual knowledge of employment of an illegal alien, an employer may be liable for civil or criminal violations of IRCA if the employer is deemed to have "constructive knowledge" or the employer has displayed "willful blindness."

Constructive knowledge is knowledge that may be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition. Deliberate failure to investigate suspicious circumstances may also impute knowledge. For example, in the case of *Messer Manufacturing Co. v. Immigration and Naturalization Service,* 879 F.2d 561 (9th Cir. 1989), the U.S. Court of Appeals ruled the employer had constructive knowledge and was liable because the Immigration and Naturalization Service had notified the employer that three employees were suspected of green card fraud, the employer was instructed how to confirm this

information and the employer made no further inquiry and failed to take appropriate corrective action. If the employer is informed by a government agency that an employee is likely to be an unauthorized alien and the employer takes no action, the employer's conduct may be characterized as "willful blindness" and the employer will be held to have constructive knowledge.

New ICE Worksite Enforcement Policy

For most of the past six years, few U.S. employers have been subject to federal IRCA enforcement actions. Following Sept. 11, despite the employment of an estimated 7 million to 8 million unauthorized workers in this country, federal officials had higher priorities and immigration enforcement actions have focused on patterns of criminal behavior, smuggling, arresting foreign criminals and egregious cases of wholesale employment and/or exploitation of illegal workers. However, on April 26, 2006, one day after the largest workplace raid ever undertaken at 40 plants operated by IFCO Systems, a pallet supplier, in 26 states resulted in the arrests of seven IFCO Systems managers and 1,180 unauthorized workers, DHS Secretary Michael Chertoff announced that DHS, through its Immigration and Customs Enforcement (ICE) arm, would be adding work-site enforcement agents and launching a more aggressive campaign against employers who knowingly hired illegal immigrants.

As the nationwide immigration political debate has taken center stage, ICE has embarked on a program in recent months of work-site enforcement raids, bringing criminal actions against employers instead of civil fines and immediately deporting unauthorized workers. In a recent article written for *The Washington Post*, Julie L. Myers, assistant DHS secretary for ICE, described her agency's new approach:

> My agency, Immigration and Customs Enforcement (ICE), was created in the aftermath of September 11, 2001. At first we focused our work-site enforcement efforts on illegal workers at critical-infrastructure locations such as nuclear and chemical plants, military installations, airports and seaports. While we continue to maintain these priorities, the agency is also focusing more on traditional work sites.
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> We believe the most effective strategy in combating illegal employment is criminal prosecution of unscrupulous employers and seizure of their ill-gotten assets. As the immigration debate has heated up, we have heard repeated charges the ICE is failing in its work-site enforcement efforts because the number of employer fines has decreased. In fact, our efforts have grown more robust. What has changed is our strategy.
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> One thing we have learned from the old Immigration and Naturalization Service (INS) is that simply fining employers for hiring illegal workers doesn't work. INS agents invested substantial time and effort in issuing proposed administrative fines against unscrupulous employers, only to see the fines ignored, paid in an untimely manner or reduced to nothing. For

> many employers, these fines amount to a cost of doing business. They were no deterrent.
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> We can achieve far greater respect for the law among employers by bringing criminal prosecutions and seizing assets derived from illegal employment schemes. The prospect of 10 years in federal prison and losing that new home and car to forfeiture has much sharper teeth than a small fine. This is the future of work-site enforcement.

In testimony on June 19, 2006, before the U.S. Senate Judiciary Committee Subcommittee on Immigration, Border Security and Citizenship, ICE Assistant Secretary Myers was succinct in explaining why her agency intends to proceed with criminal prosecutions of employers: "Criminally charging employers who hire undocumented aliens will create the kind of deterrence that was previously absent in enforcement efforts. We are also identifying and seizing the assets that employers derive from knowingly employing illegal workers, in order to remove the financial incentive to hire illegals and to pay them substandard wages."

Recent ICE Raids

ICE has conducted numerous raids at construction work sites, restaurants and other work sites in recent months. A spokesman for ICE reported that the agency makes arrests on a daily basis based on investigations, evidence and intelligence but does not conduct random sweeps. Some of the recent ICE raids certainly appear to be directed at "bad apples," while, in other cases, reputable contractors may have been caught in an ICE raid as a result of working at a sensitive site such as an airport or military installation.

On May 2, 2006, the owner of Stucco Design Inc., headquartered in Franklin, Ind. was indicted for harboring and transporting illegal aliens; money laundering; and making false statements in connection with his company's illegal employment of aliens who performed stucco work at construction sites in Michigan, Minnesota, North Dakota, Ohio and Wisconsin. He was also charged with failing to pay these employees overtime and did not withhold state and federal taxes or Social Security taxes. The indictment alleges that Stucco Design was able to undercut the bids of competitors and win contracts with general contractors by taking advantage of cheaper labor costs resulting from the employment of illegal aliens. ICE also sought forfeiture of approximately $1.5 million, which is estimated to be the proceeds of illegal business activity. If convicted, the owner of Stucco Design could face as many as 40 years in prison.

On May 9, 2006, ICE raided the headquarters and construction work sites in the Kentucky cities of Hebron, Union and Florence of Fischer Homes, a leading home builder in Indiana, Kentucky and Ohio. A Fischer Homes construction manager, two construction superintendents, an assistant superintendent and 76 undocumented workers were arrested. Each supervisor faces a criminal felony charge of aiding, abetting and harboring illegal aliens for commercial advantage or private financial gain and could receive a maximum prison sentence of 10 years imprisonment, a $250,000 fine or both if

convicted. Fischer Homes' executives asserted that the illegal workers worked for a subcontractor who was also indicted. Following the arrests, ICE Assistant Secretary Myers issued a statement saying: "ICE has no tolerance for corporate supervisors who harbor illegal aliens for their work force and deny labor opportunities for legitimate American employees. This enforcement action demonstrates how we will use all our investigative tools to bring these individuals to justice, no matter how large or small the company."

On May 23, 2006, after reviewing the hiring records of more than 360 employees of Standard Drywall, a San Diego firm that performs construction work at the Camp Pendleton Marine Corps Base in Oceanside, Calif., ICE arrested 20 workers at their homes. On May 26, 2006, ICE arrested 25 illegal aliens employed as contractors at Lucite International and Arkema Chemical plants in Tennessee. On June 1, 2006, ICE raided Texas French Bread, a restaurant and bakery in Austin, Texas and arrested five kitchen workers on immigration charges. In Buffalo, N.Y., 34 illegal workers at a landscape nursery were arrested, detained and repatriated to Mexico within 24 hours.

On June 14, 2006, ICE arrested 55 unauthorized immigrant construction workers who were working on the expansion of Dulles International Airport outside of Washington, D.C. The arrested workers were from Bolivia, El Salvador, Guatemala, Honduras and Mexico and were employed by two construction companies. Busses carrying construction workers from the parking lot to the construction site were stopped at a security checkpoint on the edge of the airport property where ICE agents checked work and immigration documents; if documents did not hold up, individuals were handcuffed, transported to an ICE field office and flown to a deportation center in El Paso, Texas. Although there was no allegation that any of the arrested workers were involved in terrorist activity, ICE Assistant Secretary Myers reiterated that illegal aliens working a sensitive sites would remain a priority for her agency: "Unauthorized workers employed at sensitive sites and critical infrastructure facilities—such as airports, seaports, nuclear plants, financial institutions, water and food processing plants and defense facilities—pose serious homeland security threats. Not only are the identities of these individuals in question, but these aliens are also vulnerable to exploitation by terrorists and other criminals, given their illegal status in this country."

On July 18, 2006, ICE arrested 58 primarily construction workers at Fort Bragg, N.C. and charged them with false or fraudulently obtained identification. Nine contractors are being investigated for hiring the 58 workers who were detained.

New Proposed Regulation Concerning SSA No-Match Letters

In addition to workplace raids, ICE has signaled that it intends to prosecute employers for immigration violations through gaining greater access to the records of the Social Security Administration (SSA) and for failure of employers to terminate employees who are the subject of SSA "no-match" letters that are not resolved. On June 14, 2006, ICE proposed a new federal regulation that would, in effect, require employers to terminate

workers who are the subject of SSA "no-match" letters if the discrepancy was not resolved within 60 days after the employer's receipt of the no-match letter.

When the information contained on W-2 forms does not match the SSA's records, SSA issues no-match letters so workers may be properly credited with Social Security earnings. The SSA letters are not intended for immigration enforcement purposes, and the SSA data is not presently shared with DHS. However, DHS is pushing for legislation in Congress that would provide DHS with access to SSA no-match data. In a June 19, 2006 appearance before the U.S. Senate Judiciary Subcommittee on Immigration, ICE Assistant Secretary Myers testified that "[a]ccess to this data will allow ICE agents to quickly identify and remove unauthorized workers and identify employers who appear to rely on illegal workers as part of their business practices .... From a national security standpoint, access to SSA no-match data is essential to ICE's efforts to identify criminal employers and vulnerabilities in critical infrastructure industries and sections throughout the country."

At the present time, federal immigration regulations do not require employers to take specific actions when receiving SSA no-match letters. The former Immigration and Naturalization Service issued letters in December 1997 and February 1998 stating that a discrepancy between an employee's name and Social Security number does not by itself put the employer on notice that the employee is unauthorized to work or require reverification of documents or further inquiry as to the employee's work authorization, but there may be specific situations in which an SSA notice of a discrepancy would cause or contribute to a determination that the employer was on notice of an unauthorized employment situation. The employer should take reasonable steps after receiving the no-match letter. Employers should notify employees who are the subject of no-match letters and advise them the discrepancy should be resolved. Employers are not responsible for resolving the discrepancies and should not take adverse action against employees based only on receipt of a no-match letter.

Although stating that whether an employer would be found to have constructive knowledge in particular cases depends on the "totality of the relevant circumstances," the new regulation proposed by DHS on June 14, 2006, describes specific steps that an employer should take upon receipt of a SSA no-match letter or DHS communication to avoid a finding that the employer had constructive knowledge of employing an illegal alien. If the employer failed to follow the "safe-harbor" procedures prescribed in the proposed regulation and an employee, who was the subject of a no-match letter, was found to be an unauthorized alien, the employer may be found to have constructive knowledge of the employee's unauthorized status and would be liable for an immigration violation. The steps that an employer may take to avoid a potential finding that it had constructive knowledge are as follows:

> (1) Upon receiving a no-match letter from SSA, the employer should check its records promptly to determine whether the discrepancy is due to a typographical, transcribing or similar clerical error in the employer's records or in its communication to

SSA. If there is such an error, the employer would correct its records, inform SSA; verify that the corrected information resolves the issue with SSA; and make a record of the manner, date and time of the verification. The employer is to take these steps within 14 days of receipt of the no-match letter.

(2) If step 1 does not resolve the discrepancy, the employer is to request the employee to confirm that the employer's records are correct. If correction is required, the employer would make the correction; inform SSA; verify the corrected records with SSA; and make a record of the manner, date and time of any such verification as SSA may not provide any documentation. If the employee states that the employer's records are correct, the employer is to request the employee to resolve the discrepancy with SSA. Again, the employer is to take these steps within 14 days of receipt of the no-match letter.

(3) Within 60 days of receipt of the no-match letter, the employer is to verify with SSA that the employee's name and Social Security Number matches SSA's records. If the employer has not verified with SSA that the discrepancy has been resolved but the employee maintains he is authorized to work, the employer must, within no more than a total of 63 days after receiving the no match letter, reverify the employee's identity and work authorization by following a modified version of the I-9 procedure. No document containing the Social Security Number that was the subject of the no-match letter can be used, and no document without a photograph may be used to establish identity.

(4) If the discrepancy in the no-match letter is not resolved within 60 days and if the employee's identify and work authorization cannot be verified as prescribed in step 3 then, according to the DHS proposal, the employer **must choose between terminating the employee or facing the risk that DHS may find that the employer had constructive knowledge that the employee was an unauthorized alien** and the employer violated the law by continuing to employ the individual.

The proposed regulation acknowledges that there may be other procedures an employer could follow in response to a no-match letter that DHS might consider reasonable depending on the totality of relevant circumstance. However, DHS warns that an employer who followed a procedure other than the safe-harbor procedures described in the proposed regulation would face the risk that DHS may not agree. Employers are to follow the procedures in the regulations uniformly to all employees who are the subject of no-match letters; otherwise, DHS cautions, the employer may violate applicable anti-discrimination laws.

Immigration Reform Legislation Update

This past December, the U.S. House of Representatives passed a bill (H.R. 4437) that focuses solely on border security and workplace enforcement. H.R. 4437 is a hard-edged, partisan product that sparked pro-immigrant street protests, would make felons of the roughly 12 million undocumented immigrants in the country and essentially forces employers to act as the "document police."

To make matters worse, the legislation fails to recognize the long-term demographic trends and economic realities facing our nation and provide legal channels for employers to access needed immigrant workers when U.S. workers are unavailable. NRCA's member companies face an enduring shortage of workers. The U.S. Bureau of Labor Statistics (BLS) projects the roofing industry alone will need 70,000 new workers during the next decade to keep pace with the demand for professional roofing services. Immigrants will remain an indispensable component of the U.S. work force needs as the pool of native-born workers is expected to decline in the coming decades.

In May of this year, the Senate opted for a balanced and strikingly different approach than the House's. Opponents tried to pick apart S. 2611 through the amendment process, but a bipartisan group of supporters demonstrated remarkable resiliency in fending off attempts to gut the bill. S. 2611 is by any measure a sweeping overhaul of our nation's immigration laws, and though not perfect, it constitutes a sound legislative blueprint that addresses the security and economic needs of the country. Its provisions break down into three broad categories: border security and interior enforcement, a new temporary guest worker program and a path for those here illegally two years or more to earn legal status and remain in the country.

The disparities between the two bills reveal deep divisions within the Republican party.

House Bill – HR 4437

On Dec. 16, 2005, the House approved legislation introduced by Rep. James Sensenbrenner (R-Wis.). The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) passed the House 239 to 182, with 36 Democrats joining 203 Republicans in favor. H.R. 4437 would dramatically ratchet up interior enforcement and require employers to participate in a new employment eligibility verification system. The vote represents a victory for the House Immigration Reform Caucus – a group of restrictionists led by Rep. Tom Tancredo (R-Colo.) that argues undocumented workers present a security threat and take jobs that could be filled by U.S. workers. The bill focuses solely on enforcement and border security and rebuffs President Bush's appeal for a legal mechanism for foreign workers to fill jobs when no U.S. workers can be found.

H.R. 4437 would place U.S. employers squarely in the cross-hairs of the federal government. The centerpiece of the bill is mandatory participation by all employers in an

experimental employment eligibility verification program known as "Basic Pilot." The bill would replace the current I-9 hiring process with this expanded and unproven government-run electronic verification program to determine whether potential employees are authorized to work in the U.S., and would require a blanket re-examination of all existing employees—even those who already have gone through the I-9 process. The current Basic Pilot program is voluntary and limited to approximately 10,000 employers and only "new hires." H.R. 4437 would expand the program to cover more than 8.4 million employers and more than 140 million employees in two years' time.

Provisions of the legislation include

The bill would increase civil penalties for employers that hire undocumented workers to "not less than $5,000" for each worker on a first offense with no upper limit on the fine. Under current law, the penalty can range from $250 to $2,000 per worker.

- For second offenses, Sensenbrenner's bill would impose penalties of at least $10,000 per unauthorized worker with no upper limit. Under current law, second-time offenses are capped at $5,500 per undocumented worker.

  Third offenses, which range from $3,000 to $10,000 per unauthorized worker under current law, would increase to at least $25,000 per violation under the bill.

- Employers determined to exhibit a pattern of violating the new mandates can be subject to fines as high as $50,000 and a year in prison for each violation.

  Paperwork violations, such as checking the wrong box on an I-9 form, could result in a $25,000 fine. This is a 25-fold increase—the current fine is $1,000.

  Employers are required to confirm the documentation of every employee, including some former employees.

- The bill criminalizes the status of those here unlawfully, making all current undocumented workers "aggravated felons"—this would force them to leave the country and preclude them from ever returning. Until now, unauthorized presence in the U.S. has subjected aliens to a civil violation involving fines and deportation.

On a positive note, an NRCA-inspired amendment introduced by Rep. Lynn Westmoreland (R-Ga.) was adopted 247-170. The amendment would cap penalties, permit companies to escape first-offense fines if they made a good-faith effort and exempt firms from penalties for hiring by subcontractors.

Senate Bill – S. 2611

On May 25, the Senate approved legislation introduced by Sen. Arlen Specter (R-Pa.), the Comprehensive Immigration Reform Act of 2006 (S. 2611), by a vote of 62-36.

On the enforcement front, S. 2611 provides for 1,000 new Border Patrol agents, thousands of National Guard troops to support them, 375 miles of triple-layer fencing along the Mexican border, unmanned aerial vehicles, electronic fencing, additional jail cells and tamper proof identification documents with biometric identifiers. It also would require all employers to use a new employment verification system to determine work eligibility for current and new hires and impose stiff penalties for violations by employers. By virtue of omission, H.R. 4437 is in some respects more business-friendly than S. 2611. An amendment by Sen. Barak Obama (D-Ill.), for instance, would expand Davis-Bacon Act wage laws into projects where no federal money is involved. Another provision would hold companies and individuals liable for the hiring practices of any entity with which they have a contractual relationship.

The second component to S. 2611 would provide 200,000 new temporary guest-worker visas (known as H-2C) a year while creating a separate guest-worker program for immigrant farm laborers (known as the "Blue Card Program"). The H-2C visa would be valid for three years and could be renewed once for a total stay of six years; at the end of the visa period, the worker would have to return home or be in the pipeline for a green card.

The third, and most politically contentious, leg of the stool is a plan that would divide the nation's estimated 12 million illegal immigrants into three groups:

> Those who have lived in the U.S. for five years or more—some 7 million people—would be allowed to remain and apply for citizenship, provided they were employed for at least three of the previous five years, pass background checks, pay fines and back taxes, register for the Selective Service, learn English and complete U.S. civics classes.
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> Those illegal immigrants who have lived here two years to five years—about 3 million people—would be authorized to stay and work in the U.S. for three years but would be required to return to a U.S. port of entry to apply for a temporary work visa before returning as a guest worker. Eventually, these immigrants would be allowed to apply for permanent residency and, ultimately, citizenship.
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> The 1 million to 2 million illegal immigrants who have been in the U.S. less than two years would be required to leave the country altogether. They would be permitted to apply for admission to the temporary guest worker program but would receive no guarantee of acceptance.

Hutchison-Pence Plan

On July 25, Senator Kay Bailey Hutchison (R-Texas) and Representative Mike Pence (R-Ind.) introduced an immigration proposal that represents a compromise of positions. This proposal signals both a broadly shared understanding that neither H.R. 4437 nor S. 2611 has much chance of advancing and that a majority of Congress is committed to passing comprehensive immigration-reform legislation. This new compromise agreement is a consensus building vehicle and already is attracting the interest and support of many members of Congress who would otherwise not be inclined to support a measure that provides for a temporary guest worker program and addresses the undocumented immigrants currently living and working in the U.S. As of yet, there has been no legislative language released—only a document explaining and outlining the proposal. Here is a brief overview:

Securing the U.S. Border—Increased Personnel, Equipment, Technology and Barriers

For the initial two years after enactment, the focus will be the implementation of new border security measures. This is the guiding principle of the Hutchison-Pence Plan.

The border security initiative includes: comprehensive surveillance; infrastructure improvements, including fences and vehicle barriers; checkpoints; detention facilities; judicial support; and increased border and drug patrol officers.

The plan mandates that the border be secured before the temporary worker program can begin and requires that the secretary of homeland security certify to the president and Congress that operational control over the border has been substantially achieved prior to the implementation of the temporary guest worker program.

If at the two-year mark the objective is met and has been certified, only then can a temporary work program be initiated.

Temporary Worker Program—the Good Neighbor SAFE (Secured Authorized Foreign Employee) Visa Program

Once the border has been successfully secured, a temporary worker program—the Good Neighbor SAFE Visa Program—will commence. The program is designed to provide U.S. employers with willing temporary workers.

This plan includes the undocumented immigrants currently residing in the U.S. and calls for individuals interested in the temporary worker program to depart voluntarily and apply from outside the U.S. through privately run employment agencies called "Ellis Island Centers." These centers will be branches of U.S.-

based employment placement agencies and will maintain a jobs database for positions that have been offered to U.S. workers and remain unfilled.

For the first three years of the program, the number of visas made available will be uncapped and dependent on the labor market. After that, the number of visas available annually under the program will be determined by the Department of Labor.

This program is limited to citizens of NAFTA and CAFTA-DR countries and will only be available if a U.S. worker "cannot be hired for the job."

Some of the requirements for the Good Neighbor SAFE Visa Program include: criminal background check; public health screening; and learning English language after two years as a basis for visa renewal.

The initial length of the visa is a two-year period and is renewable for up to 12 years at which point the holder must return to his or her home country or apply for another category visa if eligible.

It is unclear whether an employer could begin the permanent residence process for an employee using the SAFE visa. The employee would need to return to his/her home country to make the final application for the lawful permanent resident status/green card.

Spouses and children, if they pass the criminal background and public health tests, are allowed to accompany the principal visa holder. Such spouses and children are not eligible for public benefits and principal SAFE visa holders will be required to pay into a Medicare contribution fund to cover the cost for emergency care for foreign workers.

Additionally, the foreign worker will be entitled to receive Social Security withholdings in a lump sum upon departure from the visa program.

X-Change Visa Following the SAFE Visa

Should the foreign worker maintain a clean record for the full 12 years of the SAFE visa, she/he would be eligible to apply for the X-Change Visa which would allow the foreign worker to remain and work in the U.S. indefinitely. There would be no need for a labor market test of the U.S. workforce for the X-Change Visa. Renewal under the X-Change visa would not be required.

At the conclusion of five years in X-Change status, the individual would have the option to continue to remain on the X-Change visa, or convert to U.S. citizenship. This is not a green card/permanent residence conversion but full U.S. citizenship.

Interior Enforcement, Employment Eligibility and Employer Sanctions

Visas issued would be secure and tamper-proof with biometric information, and the identification card would work in tandem with the employment eligibility and verification system.

The SAFE program would operate under the employment eligibility verification system. Two years after the program begins, employers would be required to verify the status of all new workers, including temporary workers, or else be subject to "significant fines."

If under the SAFE program a temporary worker is fired, convicted of a crime or simply stops showing up for work, the worker's tamper-proof identification card would be cancelled; the intention is to prevent another employer from hiring this worker.

If the temporary worker leaves a job, she/he would have 45 days to secure new employment.

Outlook

President Bush has publicly urged U.S. House members and senators to begin working to reconcile the two immigration bills when legislators return to Washington, D.C., in September. But with the two chambers' products so philosophically antagonistic, compromise is certain to be problematic. From the moment the Senate passed S. 2611, Republican House members have dismissed the notion of a compromise that deviates from their own legislation. Any deviation, they say, would amount to "amnesty," and is a "nonstarter." However, there are three reasons to be optimistic that if anything eventually passes, it will more closely resemble S. 2611 than H.R. 4437 or perhaps the Hutchison-Pence plan.

First, President Bush has stated he will not sign any legislation that fails to include a legal avenue for foreign workers to fill jobs that are going unfilled by U.S. workers. Second, the public overwhelmingly supports the idea of wedding tougher enforcement to a temporary worker program and a path for illegal immigrants already here to *earn* legal status. Poll after poll shows that 70 percent to 80 percent of voters favor such a plan. And third, House Republicans are faced with a dilemma. For the past two years, they've nurtured anger within elements of the GOP base who now demand a solution to our porous border. It could prove difficult to walk away from the negotiating table and head into the November election with no bill at all.