



Stephen Wilkes, Getty Images

Immigration and Legalization

Roles and Responsibilities of States and Localities

Overview

Only the federal government can give lawful status to immigrants who are not U.S. citizens, but states and localities play an important part in implementing legalization programs and integrating newly legalized immigrants into their communities. Past and current experiences provide valuable insight into the potential roles and responsibilities of states and localities if the U.S. government were to enact a new large-scale legalization program.

During the past century, the government has made several efforts to bestow some type of legal status on unauthorized immigrants or to provide relief from deportation. (See Appendix A.) This report examines the function of states and localities in implementing the Immigration Reform and Control Act, enacted in 1986, and the Deferred Action for Childhood Arrivals program, initiated in 2012, to inform states and localities of their potential roles in implementing a new legalization program.

Two Programs That Can Guide Planning for the Future

The Immigration Reform and Control Act, which took effect in the late 1980s, included several distinct programs to legalize and grant permanent residence to noncitizens living in the United States if they met specified criteria. The largest were the general legalization program and the Special Agricultural Worker program. The former created a multistage path to citizenship for qualified unauthorized immigrants. Applicants could receive temporary status if they met the requirements, including having lived in the United States since 1982. Those with temporary status could apply for permanent legal status if they met additional requirements, which included proof of English language competency and knowledge of U.S. civics and history. Unauthorized farm laborers could obtain permanent resident status through the Special Agricultural Worker program if they met requirements for physical presence and agricultural work.

The law also included State Legalization Impact Assistance Grants, which reimbursed states and localities for the costs of providing basic health, welfare, and education services for the newly legalized, including English language and civics training needed to fulfill the requirements for becoming permanent residents.

The Deferred Action for Childhood Arrivals program, launched by the Obama administration in 2012, provides temporary relief from deportation to qualified individuals on a case-by-case basis. Those granted deferred action are authorized to be present in the United States. They are eligible for employment authorization documents and Social Security numbers. Relief under the program is renewable, but beneficiaries are not, by virtue of this program, made eligible for legal permanent residency. Intended for young people brought to the country by their parents, applicants must meet age, education, and residency requirements.

Since the last major legalization in the 1980s, the number of immigrants in the United States has greatly increased, and they are much more widely dispersed across the country. If a broad new legalization program were to be enacted, the six states that have historically received the most immigrants would certainly be the most affected, but other states, less traditionally associated with large immigrant populations, also are likely to have significant numbers of immigrants eligible for the new status. This means that many states likely to be affected by a new legalization program do not have much experience implementing such programs.

Since the last major legalization in the 1980s, the number of immigrants in the United States has greatly increased, and they are much more widely dispersed across the country.

About 2.7 million immigrants were legalized under the Immigration Reform and Control Act's general legalization and Special Agricultural Worker programs.¹ Hundreds of thousands are poised to benefit from the ongoing Deferred Action for Childhood Arrivals initiative. A broad new program, however, could lead to legalization of many of the 11.7 million unauthorized immigrants living in the United States, depending on how it is crafted.² It is impossible to precisely estimate how many would be eligible without knowing specific eligibility requirements. In addition, of those eligible, not all would choose to pursue legalization.

Recent legalization proposals in Congress have focused on three groups of unauthorized immigrants: those who arrived in the United States at a young age, unauthorized agricultural workers, and other unauthorized immigrants who have been in the country for an extended period of time. Eligibility requirements for these types of legalization programs may be based on age, education, length of U.S. residency, criminal record, length of employment in the United States, payment of taxes, payment of application fees and fines, and knowledge of English and U.S. history.

The Congressional Budget Office has estimated that about 8 million unauthorized immigrants already in the United States could be eligible to obtain legal status if the 2013 Senate-passed bill (S. 744) were enacted.³ Depending on the type of program, eligibility requirements, and other factors—such as the level of outreach provided by all levels of government—this number could shift up or down.

Roles and responsibilities of states and localities

The magnitude of a new legalization program could be significantly different from past programs, given the number of unauthorized immigrants in the United States today and their locations across all 50 states and the District of Columbia. Still, we can learn about the potential roles of states and localities in implementing such a program by examining previous efforts.

The Immigration Reform and Control Act and the Deferred Action for Childhood Arrivals program differ in scale, goals, and reach. One was a law that led to the legalization of several million unauthorized immigrants in the late 1980s, while the other is an ongoing administrative directive that has provided temporary relief from deportation to more than 500,000 qualified young people brought to this country by their parents as children. However, the experiences with both show that states and localities have been required, or have chosen, to take on various roles and responsibilities during implementation. Among the most critical:

- **Outreach and public education.** States and localities may inform potential applicants about programs and provide information about the application process.

- **Documentation.** State and local governments may be the source of the documentation that applicants need to meet certain eligibility requirements, including presence in the United States for a defined period and proof of educational attainment.
- **Education.** State and local institutions are likely to be the source of English language and U.S. history and civics education, as well as other specified education that applicants may need to qualify for a legalization program.
- **Protection from fraudulent or predatory providers of immigration legal services.** States have played a prominent role in protecting noncitizens from fraudulent activities targeting them and promising legal status for a fee—a practice that has historically occurred when the federal government has announced a legalization or immigration relief program or even when there have been rumors of a possible new legalization program.

Other roles that state and local governments have had and could assume in the future include coordinating among various government agencies and nongovernmental organizations, monitoring implementation, and assessing the future needs of a newly legalized population.

Help from the federal government

As part of the Immigration Reform and Control Act, Congress created State Legalization Impact Assistance Grants to reimburse states and localities for certain expenses related to the new legalization programs. The law provided \$1 billion annually for four years—a total of \$4 billion—and allowed the spending to take place over seven years from the date of enactment.⁴ The funding provided an opportunity for states and localities to influence and customize the implementation of legalization within the states. Its implementation, however, created challenges as well, as states and localities faced significant delays in getting reimbursements.

Conclusion

The magnitude of involvement of states and localities depends, of course, on the type and details of the legalization program enacted and, to some extent, on the jurisdictions' desire to engage in these policies. The specific eligibility requirements and the amount of time applicants have to fulfill them also are important in determining what states and localities may need to do—and how much time they will have to prepare for and respond to applicants' needs. In addition, states and localities face their own fiscal and economic challenges. Still, they are on the front line of integrating immigrants into their communities. They therefore have strong incentives to make sure a federal legalization program is implemented successfully.

This report focuses solely on the roles and responsibilities of states and localities during implementation of a legalization program. It does not examine the roles of other entities, such as nongovernmental organizations, that may overlap with state and local responsibilities, nor does it consider the fiscal and economic impacts of legalization that can extend well beyond initial implementation. In addition, it does not analyze the roles that states and localities may have regarding implementation of other elements of comprehensive immigration reform, such as immigration enforcement.

Pew has no position on whether Congress should pass legislation on immigration, but believes that state and local governments can be prepared to implement a possible federal initiative. It is also critical that the role of states and localities be taken under consideration as Congress considers immigration legislation.

Endnotes

- 1 Donald Kerwin, "More Than IRCA: U.S. Legalization Programs and the Current Policy Debate," Migration Policy Institute (December 2010), 7-8, <http://www.migrationpolicy.org/research/us-legalization-programs-by-the-numbers>.
- 2 Jeffrey Passel, D'Vera Cohn, and Ana Gonzalez-Barrera, "Population Decline of Unauthorized Immigrants Stalls, May Have Reversed," Pew Research Center, Hispanic Trends Project (Sept. 23, 2013), <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.
- 3 Congressional Budget Office, "Cost Estimate, S. 744 Border Security, Economic Opportunity, and Immigration Modernization Act" (June 18, 2013), <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744.pdf>.
- 4 Lin C. Liu, "IRCA's State Legalization Impact Assistance Grants (SLIAG): Early Implementation," RAND Note, N-3270-FF (Santa Monica, CA: RAND Corp., 1991), <http://www.rand.org/pubs/notes/N3270.html>.

For further information, please visit:

pewstates.org/immigration

Contact: Sarah Leiseca, communications officer

Email: sleiseca@pewtrusts.org

Project website: pewstates.org/immigration

The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and stimulate civic life.