



**Legislative Bulletin.....January 13, 2015**

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**H.R. 240 —Department of Homeland Security Appropriations Act, 2015 (Rogers, R-KY)**

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**H.R. 240 —Department of Homeland Security Appropriations Act, 2015  
(Rogers, R-KY)**

**Topline Summary:** The base text under consideration on the House floor makes appropriations for the Department of Homeland Security through the end of Fiscal Year 2015. Several amendments addressing the enforcement of immigration law will also be considered.

The text of H.R. 240 can be found [here](#) and the Explanatory Statement can be found [here](#). The text of the amendments can be found [here](#).

**Order of Business:** H.R. 240 is expected to be considered on January 13, 2015 under a [rule](#).

The rule is expected to make in order five amendments regarding President Obama’s amnesty policies (summarized below).

**Amendments Expected to be Made in Order:**

1. [Aderholt/Mulvaney/Barletta](#): The amendment would prohibit the use of any fees or funds made available to any federal agency, by any Act, for any Fiscal Year, including specifically the USCIS Immigration Examinations Fee Account, to implement, administer, enforce, or carry out the four Morton Memos issued in 2011 and 2012 and the 11 executive actions taken in November 2104. The amendment would prohibit the funding of any substantially similar policies to those specified.

The amendment states that the specified policies have no statutory or constitutional basis and therefore have no legal effect.

The amendment would prohibit the use of funds to confer any alien under the specified policies.

The amendment includes budgetary scorekeeping provisions that would prohibit the budgetary effects of the amendment from being included on the Statutory PAYGO scorecard or being scored as being a part of an appropriations bill.

2. **Blackburn**: The amendment would prohibit the use of federal funding or resources by any federal agency to consider or adjudicate any new, renewal, or previously denied application for Deferred Action for Childhood Arrivals (DACA) on or after January 9, 2015.

The amendment includes budgetary scorekeeping provisions that would prohibit the budgetary effects of the amendment from being included on the Statutory PAYGO scorecard or being scored as being a part of an appropriations bill.

3. **DeSantis/Roby**: The amendment would prohibit the use of funds or fees made available to the Secretary of Homeland Security by any Act in any Fiscal Year to implement, administer, enforce, or carry out any policy relating to the apprehension, detention, or removal of aliens that does not treat aliens convicted of domestic violence, sexual abuse, child molestation, or child exploitation as within the highest priorities for immigration enforcement

The amendment includes budgetary scorekeeping provisions that would prohibit the budgetary effects of the amendment from being included on the Statutory PAYGO scorecard or being scored as being a part of an appropriations bill.

4. **Salmon/Thompson**: The amendment would insert findings that aliens that have been granted deferred action and work authorization under the President's executive actions are exempt from the Individual and Employer Mandates under Obamacare.

The amendment would establish the sense of Congress that this disparate treatment has the unacceptable effect of discouraging hiring U.S. citizens and lawful immigrants and that the Executive Branch should refrain from pursuing policies that disadvantage U.S. citizens and lawful immigrants.

5. **Schock**: The amendment would establish the sense of Congress that the U.S. Citizenship and Immigration Services (USCIS) should stop putting the interests of unlawfully present aliens ahead of the interests of aliens that are following immigration laws. When USCIS resources are used to process petitions and applications for unlawful aliens, a backlog is created and it is unfair to use the fees paid by aliens following the law to cover the costs of those aliens that are unlawfully present.

### **Homeland Security Appropriations:**

#### **By the Numbers:**

The bill provides a total of \$39.67 billion in regular discretionary appropriations.

Additionally, the bill provides \$6.438 billion in discretionary appropriations designated for disaster relief and \$213 million in discretionary appropriations designated for Overseas Contingency Operations (OCO). Both of these categories are exempt from the discretionary spending caps established by the Budget Control Act (BCA).

The bill provides a grand total of \$47.771 billion in budget authority.

### **DHS Appropriations Provisions:**

**Unaccompanied Alien Children (UAC):** The bill includes a total of \$553.589 million to respond to the surge of UACs. These funds, contained in the different accounts throughout the bill, are [for](#) “detering such illegal migration, interdicting these migrants, caring for and transporting an estimated 58,000 undocumented children to the custody of the Department of Health and Human Services (HHS), and facilitating the movement of thousands of undocumented families through removal proceedings after they illegally cross the U.S. border during this fiscal year.” The bill requires regular reporting to Congress on UACs and for the President’s FY 2016 budget to address the needs of DHS for UAC response funding.

**Situational Awareness Report:** The bill requires DHS to submit to Congress a plan for situational awareness along the Southwest Border within 180 days.

**U.S. Customs and Border Protection (CBP):** The bill provides a total of \$10.699 billion in appropriations for CBP, a level that is \$119 million above the FY 2014 level and \$3 million below the President’s budget request.

Within the total, \$3.9 billion is for border security between ports of entry and \$2.8 billion is for inspections at ports of entry. Funding is provided to support the current-law minimum of 21,370 Border Patrol agents, and the bill directs CBP to take steps to comply with this required staffing level.

\$382 million is provided for Border Security Fencing, infrastructure, and Technology.

**U.S. Immigration and Customs Enforcement (ICE):** The bill provides a total of \$5.959 billion in appropriations for ICE, a level that is \$689 million above the FY 2014 level and \$945 million above the President’s budget request.

The bill includes \$3.431 billion for Enforcement and Removal operation, including full funding to support the [287\(g\) program](#) that support local law enforcement of immigration law.

The bill includes \$2.523 billion for Custody Operations, enough to fund the 34,000 detention beds mandated by the bill.

The bill provides \$109.7 million for Alternatives to Detention, which places “low-risk aliens” under supervision or electronic monitoring instead of detention prior to hearings and removal.

The bill provides \$319 million for the Transportation and Removal Program, which provides for removal of aliens.

**Transportation Security Administration (TSA):** The bill provides a total of \$4.834 billion in net discretionary appropriations for TSA, a level that is \$94 million below the FY 2014 level and \$509 million above the President’s budget request.

The bill provides \$790 million for the Federal Air Marshals.

The bill provides \$124 million for Surface Transportation Security, which includes funds for 31 [Visible Intermodal Prevention and Response \(VIPR\)](#) teams.

**Coast Guard:** The bill provides a total of \$8.591 billion in discretionary appropriations for the Coast Guard, a level that is \$150 million below the FY 2014 level and \$440 million above the President's budget request.

Of the total, \$213 million is designated as for Overseas Contingency Operations (OCO), which do not count against the Budget Control Act (BCA) caps on regular appropriations.

**U.S. Secret Service:** The bill provides a total of \$1.666 billion for the Secret Service, a level that is \$81 million above the FY 2014 level and \$30 million above the President's budget request.

The bill provides a \$25 million increase to support infrastructure improvements, additional staff, and tactical canine units at the White House to respond to recent security incidents. The Secret Service is required to brief Congress on their efforts to enhance security at the White House.

The bill withholds \$10 million from Management funding until the Secret Service submits a report to Congress detailing the Secret Service's efforts to improve its standards of conduct.

The bill provides \$22 million to begin preparation for 2016 Presidential candidate protection.

The bill provides \$4 million to establish the protective detail of the next former President.

**Federal Emergency Management Agency (FEMA):** The bill provides a total of \$10.785 billion for FEMA, a level that is \$804 million above the FY 2014 level and \$377 million above the President's budget request.

The bill provides \$7.033 billion for the Disaster Relief Fund (DRF). Of this total, \$6.438 billion is designated as for disaster relief. The DRF is FEMA's primary account for funding disaster response efforts, such as direct aid to individuals, aid to state and local governments, cleanup, and infrastructure repair. Funds appropriated the DRF are available until they are spent; because it is a "no-year" account, funds do not expire at the end of the fiscal year like normal appropriations. The DRF can be funded through regular appropriations bills as well as supplemental appropriations bills.

The [Budget Control Act](#) (BCA) allows appropriations for disaster relief above the regular appropriations caps. As described by [CRS](#), the allowed amount of disaster appropriations is calculated as the "average funding provided for disaster relief over the previous 10 fiscal years—excluding the highest and lowest years—plus any amount by which the prior year's appropriation was below the maximum allowable cap adjustment for that year."

The bill provides \$680 million for Firefighter Assistance Grants. Firefighter Assistance Grants are made available to local firefighter departments and cover both personnel and equipment costs.

**U.S. Citizenship and Immigration Services (USCIS):** The bill provides a total of \$124 million in discretionary appropriations for USCIS. The only discretionary funding USCIS receives is for the E-Verify program, which allows employers to verify the immigration status of workers. Unlike most agencies, USCIS is almost entirely funded through fees. USCIS is carrying out the President's executive amnesty actions using fees.

**Science and Technology Directorate (S&T):** The bill provides a total of \$1.104 billion for the S&T, a level that is \$116 million below the FY 2014 level and \$32 million above the President's budget request. The Science and Technology Directorate's mission is to research and develop technology to support the mission of DHS. S&T funding supports laboratories, including the National Bio- and Agro-Defense Facility, Centers of Excellence, and other research.

**National Identification Card:** The bill prohibits funds to develop a national identification card.

**Guantanamo:** The bill prohibits funds to transfer or release detainees from Guantanamo.

**Immigration Law:** The bill includes a provision to require the Secretary of Homeland Security to enforce all existing immigration laws.

**Grants for State and Local UAC Response:** The bill would make care, transportation, and humanitarian relief of unaccompanied immigrant children by state and local governments an expense eligible for reimbursement under Homeland Security grant programs.

### **Additional Background:**

#### **The President's Actions on Amnesty**

##### **Morton Memos**

In 2011 and 2012, former Immigration and Customs Enforcement (ICE) Director John Morton issued a series of memorandums to limit the federal government's enforcement of immigration law. Collectively, these memorandums are referred to as the "Morton Memos." Links to the major memorandums can be found below:

- [Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens](#), dated March 2, 2011.
- [Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens](#), dated June 17, 2011.
- [Case by Case Review of Incoming and Certain Pending Cases](#), dated November 17, 2011.

- [Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems](#), dated December 21, 2012.

The Federation for American Immigration Reform (FAIR) has links and descriptions of other Morton Memos available [here](#).

### **Deferred Action for Childhood Arrivals (DACA)**

DACA was created by President Obama on June 15, 2012. This policy allows people who have resided in the United States continuously since June 15, 2007, arrived in the U.S. before June 15, 2012, came to the U.S. before the age of 16, and were under 31 years old as of June 15, 2012, to apply for deferred action for removal proceedings for a period of two years, during which they cannot be removed. During this time they are also eligible for work authorization. Detailed information about DACA can be found on the United States Customs and Immigration (USCIS) website [here](#). According to [U.S. Citizenship and Immigration Services](#), “as of April 2014, more than 560,000 individuals have received DACA.”

### **The President Expands Amnesty**

On November 20, 2014, President Obama [announced](#) a [series of executive actions](#) regarding the nation’s immigration system. The executive actions will primarily be carried out by the [Department of Homeland Security](#) through several memorandums. Links to the different memorandums can be found below:

- [Strengthen Border Security](#)
- [Revise Removal Priorities](#)
- [End Secure Communities and Replace it with New Priority Enforcement Program](#)
- [Personnel Reform for ICE Officers](#)
- [Expand Deferred Action for Childhood Arrivals \(DACA\) Program](#)
- [Extend Deferred Action to Parents of U.S. Citizens and Lawful Permanent Residents](#)
- [Expand Provisional Waivers to Spouses and Children of Lawful Permanent Residents](#)
- Revise Parole Rules
  - [Entrepreneurs](#)
  - [Parole-in-Place and Deferred Action](#)
  - [Advance Parole](#)
- [Promote the Naturalization Process](#)
- [Support High-skilled Business and Workers](#)

The Department of Justice Office of Legal Counsel released a [legal opinion](#) justifying the Department of Homeland Security’s authority to prioritize removal of certain aliens unlawfully present in the United States and to defer removal of others.

The Speaker’s office has documented [22 Times President Obama Said He Couldn’t Ignore or Create His Own Immigration Law](#).

CRS has a report available titled [Executive Discretion as to Immigration: Legal Overview](#).

## **Implementing the Executive Actions**

According to the [USCIS](#), the President's expanded Deferred Action for Childhood Arrivals (DACA) program will go into effect "Approximately 90 days following the President's November 20, 2014, announcement." That timeframe would be February 18, 2015.

According to the [USCIS](#), the President's deferred action for parents of U.S. citizens and lawful permanent residents program will go into effect "Approximately 180 days following the President's November 20, 2014, announcement." That timeframe would be May 19, 2015.

It has been [reported](#) that USCIS is opening a new operational center and hiring 1,000 full time employees to process amnesty applications. It has been [further reported](#) that this effort will cost \$48 million per year.

## **Congressional Response to The President's Actions**

### **House Vote to Prohibit Funding for Morton Memos in FY 2013 DHS Appropriations**

On June 7, 2012, the House passed [an amendment](#) from Rep. King (R-IA) to the FY 2013 Homeland Security Appropriations bill that would have prohibited funds to implement 3 of the Morton Memos by a [238 – 175](#) vote.

### **House Vote to Prohibit Funding for Morton Memos in FY 2014 DHS Appropriations**

On June 6, 2013, the House passed [an amendment](#) from Rep. King (R-IA) to the FY 2014 Homeland Security Appropriations bill that would have prohibited funds to implement 6 of the Morton Memos by a [224 – 201](#) vote.

### **House Vote to Prohibit Federal Funding for Deferred Action for any Class of Alien Not Lawfully Present**

On August 1, 2014, the House passed legislation ([H.R.5272](#)) to prohibit the use of Federal funds or resources to authorize deferred action for any class of alien not lawfully present in the United States or to authorize any alien to work in the United States that not in lawful legal status by a [216 – 192](#) vote. However, the Senate failed to take action on this issue.

### **House Vote to Prohibit Executive Amnesty to Any Class of Aliens that are Unlawfully Present**

On December 4, 2015, the House passed [H.R. 5759](#), the Preventing Executive Overreach on Immigration Act of 2014, by a [219 – 197](#) vote. The bill would have prohibited the executive branch from:

- (1) Exempting or deferring the removal of categories of aliens that are unlawfully present in the United States by Executive order, regulation, or any means.

- (2) Treating unlawfully present aliens as if they were lawfully present or had a lawful immigration status.
- (3) Treating unlawfully present aliens as anything other than unauthorized aliens.

The bill would have been retroactive as if it were enacted on November 20, 2014. However, the Senate failed to take action on this issue.

**Committee Action:** H.R. 240 was introduced on January 9, 2015, and referred to the Committee on Appropriations and the Committee on the Budget. No further action was taken by either Committee.

On December 11, 2014, the House passed H.R. 83, the Consolidated and Further Continuing Appropriations Act, 2015, by a [219–206](#) vote. H.R. 83 provided full appropriations language for Fiscal Year 2015 for 11 of the 12 regular appropriations bills, while also providing funding for the Department of Homeland Security until February 27, 2015. The bill provided the DHS flexibility with regards to Secret Service protection for Presidential candidates and the National Bio- and Agro-defense Facility. H.R. 83 was signed into law on December 16, 2014.

The Appropriations Committee marked up and approved the FY 2015 DHS Appropriations bill on [June 11, 2015](#), by voice vote. The House took no further action on the bill in the 113<sup>th</sup> Congress.

The House Appropriations Committee held [several hearings](#) on the DHS appropriations provisions, including a [Budget Hearing on United States Immigration and Customs Enforcement](#) on March 13, 2014, and a [Budget Hearing on United States Customs and Border Protection](#) on April 2, 2014.

On December 2, 2014, the House Homeland Security Committee held a hearing titled “[Open Borders: The Impact of Presidential Amnesty on Border Security](#),” featuring DHS Secretary Jeh Johnson.

On December 2, 2014, the House Judiciary Committee held a hearing titled “[President Obama's Executive Overreach on Immigration](#).”

### **Outside Groups:**

**Heritage Action - [Key Vote](#):** “If the bill is amended to stop President Obama’s dangerous and unlawful amnesty as expected, Heritage Action will support H.R. 240 and will include it as a key vote on our legislative scorecard.”

**[Numbers USA](#):** “The House of Representatives will vote on two amendments to the Department of Homeland Security spending bill in the coming days that will defund Pres. Obama's executive amnesties.”

**[FAIR](#):** “House Settles on Plan to Defund Executive Amnesty.”

**Administration Position:** The President’s Statement of Administration Policy states that “The Administration supports House passage of H.R. 240 as introduced... However, the Administration strongly opposes the addition of any amendments to the legislation that would place restrictions on the Department's ability to set smart enforcement priorities focused on criminals, national security threats, and recent border crossers, hold undocumented immigrants accountable, and modernize the legal immigration system...If presented to the President with objectionable restrictions, his senior advisors would recommend that he veto this bill.”

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

**Constitutional Authority:** “Congress has the power to enact this legislation pursuant to the following: The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . . .” In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: “The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States. . . .” Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use.”

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