



## **USCCB/CLINIC's Legalization Implementation Principles**

**The following principles are critical to the successful implementation of any future legalization program and must therefore be included in any legislation that creates a legalization program.**

### **Department of Homeland Security (DHS) Planning, Funding, and Creation of a Separate**

**Adjudicating Entity:** The DHS struggles to process the roughly six million applications for immigration benefits that it receives each year. A broad legalization program, covering a significant percentage of the estimated 12 to 15 million undocumented persons, will present significant challenges to the agency. There are three important DHS planning and “resource” needs.

First, DHS needs to develop a comprehensive plan – in collaboration with its partner agencies – on how it will accommodate this work. The plan should be broadly vetted with community-based organizations (CBOs). Ultimately, it would need to be incorporated into any immigration reform legislation.

Second, Congress should appropriate sufficient funding to DHS and to other relevant federal agencies to carry out this program. A program of this magnitude cannot be exclusively supported by application fees, even if 100 percent of those fees were devoted to adjudications. This is an issue of both timing (fee revenues alone would not allow DHS to build the necessary infrastructure at the program's outset) and total cost of the program (which might well exceed USCIS's annual budget). If a legalization program were to try to rely solely on application fees, these fees would need to be exorbitant and would likely keep many low-income persons from applying. A multi-year appropriation commensurate with the size of the potential applicant pool is necessary. Fee-generated revenues should not be diverted to immigration enforcement activities. Congress should also establish a viable fee waiver program, which takes into account the financial limitations of many immigrants. Finally, Congress should appropriate sufficient funding to the Federal Bureau of Investigation (FBI) so that it can expeditiously conduct identity and security checks. A legalization program will lack credibility if it does not include a “good moral character” requirement and rigorous identity and security checks.

Third, a legalization program that operated through existing USCIS systems would worsen USCIS backlog and customer service problems. Any immigration reform bill should create a separate entity within the USCIS to implement a legalization program. In particular, USCIS should create a specially trained unit that will handle legalization applications.

**Funding for CBOs:** To be successful, a legalization program will require a high degree of collaboration between the government and CBOs. In particular, CBOs will be needed to conduct outreach and public education, to encourage potential applicants to apply, to assist immigrants in filing applications, and to provide English language instruction. Most CBOs are over-extended and under-funded. To meet the increased demand for their services, they will need to expand. This will be impossible without government funding, particularly at the program's outset. Funding should be provided to qualified CBOs to provide public education, outreach, training, English language classes, application assistance, and liaison work with DHS related to the new law. Funding for application assistance should be limited to attorney-driven and BIA-recognized agencies. In addition, the BIA-recognition process should be adequately funded and should be streamlined to allow for a surge in newly “recognized” agencies. Barriers to the provision of immigration services – for example, the requirement that “accredited” representatives be accredited at every site where they work – should be eliminated.



With the passage of reform legislation, the need for outreach and representation of those in detention will increase. Information will need to be made available to detained immigrants to determine their potential eligibility for legalization. In addition, an increase of people coming forward to apply may result in the placement of more people in deportation proceedings and detention. For this reason, the federal legal orientation program (LOP), which provides orientation on the law and deportation process, should be fully funded and extended to everybody in DHS custody.

CBOs should also be funded to assist persons who wish to become U.S. citizens. The goal should be to create the community infrastructure that will allow legalized immigrants to be placed on a fast-track to citizenship. Congress should appropriate funding for civic integration programs that provide assistance with the application process and related services.

**Simple and Broad Eligibility Provisions:** The success of immigration reform legislation will depend, in large part, on the simplicity and scope of its legalization eligibility provisions. The simpler and broader the eligibility standard(s), the more successful the program will be. A program with multiple “paths” to legal status – each with distinct residency, employment, education, evidentiary, and other requirements – will significantly compound the difficulties of implementing a program of this magnitude. Examples of simple, broad eligibility standards would be legislation that moved forward the registry date or that provided legal status to people who were present in the United States on a certain day. It would also simplify and broaden any legalization program if Congress provided derivative benefits – legal status -- to the immediate family members of the principal applicants. However, derivative benefits should not turn on the ability of the principal to support the family member. Such a requirement would effectively bar those most in need of legalization and would constitute a barrier to family unity.

**Generous Evidentiary Standards and Requirements:** People without legal status often cannot acquire the records which would allow them to document their residency and employment. A legalization bill should set forth generous evidentiary standards, such as the “preponderance of the evidence” standard. Under this standard, an applicant could present any reasonable evidence, including affidavits or declarations, to meet his or her burden of proof. More stringent standards, such as “clear and convincing evidence,” would exclude many bona fide applicants. An alternative could be the “any credible evidence” requirement established by the Violence Against Women Act.

**Simple Program Design:** A legalization program would optimally be structured as a one-step application process. Once an applicant met the eligibility standards and background checks, he or she would be permitted to adjust status without having to re-apply for a visa. A two-step process would compound the complexity, resources, and time it would take to serve such an immense population. However, if a two-step process were deemed necessary, the first step should consist of a simple enrollment process – i.e. submission of a short application form, either on-line or in hard copy – that would provide applicants with identity, work, and travel documents of indefinite duration.

**Enactment and Application Periods:** Short timelines for enrolling in a legalization program or for submitting an application could significantly reduce the number of eligible immigrants who can apply. Immigration reform legislation should provide for a sufficient amount of time from the date of passage of the bill to the date of the program’s initiation. This will allow DHS to issue final regulations, to set forth application procedures, and to establish the infrastructure for implementing the program. While Congress should mandate expedited rulemaking for this program, it may nonetheless take up to a year to build the necessary legal and programmatic infrastructure. If key issues are not resolved and if strong systems are not in place by the program’s outset, inefficiencies and litigation will invariably result. Once the program begins, the application period should extend for at least two years. If an “enrollment” period is established as the first step in a two-step program, the “enrollment” period should extend at least 18 months.

**Exemption from Most Grounds of Inadmissibility and Broad Humanitarian Waivers:**

Undocumented immigrants typically commit a range of immigration-related violations that bar them from reentering the country and from securing permanent residency. A workable legalization bill would exempt applicants from most grounds of inadmissibility, particularly those related or incidental to unlawful entry and presence. Broad humanitarian waivers should be available for all other grounds of inadmissibility, except those related to national security, genocide, and terrorism.

**Confidentiality of Applicant Information:** Immigrants will be reluctant to participate in a program if the information they provide may ultimately be used to detain and deport them. A legal requirement or a policy that allowed DHS to disclose the information provided by applicants to its immigration enforcement arm (ICE) or to law enforcement entities in connection with criminal investigations would be counter-productive. Confidentiality should be breached only for national security and for serious non-immigration-related criminal investigations.

**Definition of Operational Terms:** Congress should unambiguously define the terms in a legalization bill. Terms like “continuous residence,” “brief, casual, and innocent,” and “known to the government” were the subject of protracted litigation during and following IRCA. Clear and unambiguous definitions of these terms will mitigate the likelihood of litigation, benefit potential applicants, and allow for the program’s efficient implementation.

**Freedom of Information Act (FOIA) Process:** In order to apply for legalization, immigrants will need timely access to their immigration files. However, the backlog for obtaining immigrant records under the FOIA currently exceeds one year. The FOIA process must be expedited so that legalization applicants can obtain their files in a more timely fashion.

**Paper Filing Option (vs Electronic Only):** In order to ensure that unrepresented individuals without access to computers are able to apply for benefits under a legalization program, USCIS must maintain a paper application filing option. A paper filing option is also necessary to enable CBOs to use the “group processing” model that will be necessary to meet the large demand of eligible, low-income applicants.