Summary:
Amendments to be Made in House Rules Committee (revised 1.13.15),
Accompanying DHS Appropriations Act (H.R. 240)

On Friday, Jan. 9, 2015, Rep. Hal Rogers (R-KY), Chair of the House Appropriations Committee, introduced H.R. 240, the Department of Homeland Security (DHS) Appropriations Act 2015. (See links to H.R. 240 bill text and explanatory statement, which refers back to the House and Senate Appropriations Committee Reports from summer 2014).

The House Rules Committee also held a meeting Monday, Jan. 12, 2015 at 5 pm in H-313. The Rules Committee sent five amendments to HR 240 on to the floor, to be made in order. (Only these amendments will be made in order on the floor). See rules for debate and summary of amendments; H. Res. 27 (sending legislation to floor); H. Rept. 114-2 (attaching amendments, some revised slightly). These amendments are summarized below. The first three would change substantive law, while the fourth and fifth are “sense of the Congress” amendments.

Notably, the first three changes to substantive law are all exempt from budgetary pay-as-you-go and balanced-budget rules (i.e. the “PAYGO” Pay-As-You-Go Act of 2010, and sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985). Thus, if these amendments passed, the loss of (1) DHS revenue from fees of immigrants coming forward, or (2) new taxes generated by those granted work authorization, would not be subject to pay-as-you-go and balanced-budget analysis.

Amendment One

- **Sponsors:** Aderholt (R-AL), Mulvaney (R-SC), Barletta (R-PA)

- **Description:**
  - This amendment prevents the use of “funds or fees” to carry out, and declares “without legal effect,” nearly all of President Obama’s November 20 executive actions (i.e. nine 11/20/14 DHS memoranda and two Presidential memoranda—all except DHS’ memo re: considering ICE officer payment increases).
    - Specifically, prohibits U.S. Citizenship and Immigration Services (USCIS) from carrying out these actions, even though USCIS is a fee-funded agency (as Congressional Research Service has pointed out). Specifically prohibits “funds or fees” (emphasis added), and includes deposits into the Immigration Examinations Fee Account that funds USCIS under 8 USC § 1356(m).
  - Also prevents the use of “funds or fees” to be used to carry out, and declares “without legal effect,” prior ICE Director Morton prosecutorial discretion memos (2011), and on detainers (Dec. 2012)
    - Notably, however, DACA is not addressed in this amendment.
    - Also, in Rules Committee, the amendment was amended to delete references to other prior memos, not directly related to prosecutorial discretion—i.e. USCIS referrals of NTAs (2011), ICE response to Secure Communities Task Force (Apr. 2012), and adjustment of status under visa waiver program (Nov. 2013).
  - Prohibits any “substantially similar” policy changes to these memos in the future.
Moreover, prohibits the use of funds or fees to “grant any Federal benefit” to any noncitizen pursuant to any of the policy changes in these memos.

- **Impact:**
  - Like [H.R. 5759](https://www.congress.gov/bill/116th-congress/house-bill/5759), the Rep. Ted Yoho bill that House Republicans passed in December, this Amendment repeals President Obama’s executive actions, most notably:
    - Deferred Action for Parental Accountability (DAPA) initiative, which will offer temporary protection from deportation and employment authorization to certain parents of U.S. citizen or lawful permanent resident children.
  - And the amendment would go *far beyond* repealing that actions to also repeal other actions taken on November 20:
    - improving the provisional waiver for the 3- and 10-year unlawful presence bars to help close relatives of U.S. citizens and lawful permanent residents obtain green cards *through existing legal channels* by more closely aligning the provisional waiver with the terms of the waiver enacted by Congress two decades ago;
    - establishing three Joint Task Forces to strengthen the Southern Border and Approaches Campaign to reduce the terrorism risk to the Nation, combat transnational criminal organizations, and prevent the illegal flow of people and goods along our border;
    - ensuring that U.S. citizens who want to serve in the military will be permitted to do so notwithstanding the fact that they have an undocumented parent, spouse, or child;
    - protecting American and foreign workers and expanding opportunities for high-skilled companies by increasing job portability and finalizing a pending rule that would permit certain spouses of H-1B workers to obtain work authorization;
    - using the statutory “parole” authority and the statutory “national interest waiver” to capitalize on the innovation of foreign entrepreneurs and make green cards available to accomplished entrepreneurs with a proved record of creating jobs and generating substantial revenue;
    - adopting common-sense reforms to the naturalization process to promote citizenship, such as accepting credit cards as a form of payment for the naturalization fee and exploring partial fee waivers for low-income lawful permanent residents;
    - promoting integration of immigrants and refugees into our communities;
    - modernizing and streamlining the immigrant visa system;
    - implementing guidance regarding sensible enforcement priorities for those with criminal convictions, and the use of prosecutorial discretion;
    - enhancing public safety by replacing the failed Secure Communities program with the Priority Enforcement Program, that will better direct immigration enforcement actions against persons convicted of crimes who pose a danger to the public and help to protect community policing efforts;
    - implementing a decision by the Board of Immigration Appeals regarding “advance parole” to facilitate travel abroad for persons who require permission to reenter the country.
ICE would be essentially required to pursue deportation randomly and without any sensible priorities to maximize public safety and national security.

This amendment also prevents the use of Federal funds or fees to grant any Federal benefit to any immigrant as a result of the various policies referred to in point (a). Potentially, a person who benefited from earlier 2011 and 2012 memos on prosecutorial discretion or deferred action, and who began to work above the table and accumulated Social Security credits, might be prohibited from receiving Social Security benefits based on that work (or if they die, their survivors may be similarly prohibited).

Amendment Two

- **Sponsors:** Blackburn (R-TN)
- **Description:** Overturns DACA, making “DREAMer children” susceptible to deportation again.
  - Specifically, disallows any Federal “agency or instrumentality” from using funds, resources, “or fees” (revised in Committee) to adjudicate a new, renewal, or previous denial of a DACA application.
  - Similar to Blackburn’s H.R. 5272, sec. 1, which passed the House 216-192 on August 1, 2014, after the arrivals of Central American children and families.
    - 11 Republicans broke ranks to vote against that bill:
      - Reps. Cory Gardner (R-Colo.) (now Senator), Jeff Denham (R-Calif.), David Valadao (R-Calif.), Mike Coffman (R-Colo.), Ileana Ros-Lehtinen (R-Fla.), Mario Diaz Balart (R-Fla.), Dave Reichert (R-Wash.), Adam Kinzinger (R-Ill.), Joe Heck (R-Nev.), Mark Amodei (R-Nev.) and Fred Upton (R-Mich.).
    - Four Democrats broke ranks to vote for bill:
      - Reps. John Barrow (D-Ga.), Nick Rahall (D-W.Va.) Mike McIntyre (D-N.C.) and Collin Peterson (D-Minn.).
  - Notably, however, this current amendment does not include prior language in H.R. 5272 that also prohibited use of funding towards work authorizations.

Amendment Three

- **Sponsors:** DeSantis (R-FL), Roby (R-AL)
- **Description:** Essentially prevents ICE from implementing its new memoranda setting immigration enforcement priorities (or prior memos), because those memoranda do not treat those convicted of “domestic violence, sexual abuse, child molestation, or child exploitation” as highest priority (i.e., equivalent to national security threats, murderers, etc.)
  - Does so by prohibiting “funds or fees” to be used to implement, administer, enforce, carry out, and/or promulgate regulations “any policy” relating to apprehension, detention or removal that does not prioritize as such.
  - Would essentially frustrate any reasonable prioritization, and create enforcement chaos, until this particular prioritization is adopted.
• Apparently an unnecessary political amendment designed to accuse those voting against it of supporting child molesters, etc. All these crimes are already within DHS’ priorities:
  o Child molesters, traffickers and exploiters are already DHS’ top priority—i.e. those convicted of “aggravated felony” crimes under immigration law, which already include “sexual abuse of a minor” (8 U.S.C. § 1101(a)(43)(A)), sex trafficking of children (§ 1101(a)(43)(K)), and child pornography crimes (§ 1101(a)(43)(I)). Or, anyone who commits a state felony of any kind.
  o Those convicted of “sexual abuse or exploitation” of anyone, even misdemeanors, are already in DHS’ second priority.
  o Those convicted of “domestic violence,” even misdemeanors, are already in DHS’ second priority.

• But: DHS’ current priorities consider whether victims of domestic violence should be deported, considering victimhood a “mitigating factor”—while this amendment disallows such consideration.
  o Immigrant victims of domestic violence are particularly vulnerable to arrest as well, due to language and cultural barriers, in jurisdictions that automatically arrest both parties when domestic violence is reported.
  o If deportation is at risk, for either party, victims will be less likely to report domestic violence.

Amendment Four

• Sponsors: Salmon (R-AZ), Thompson (R-PA)
• Description: This “sense of the Congress” resolution criticizes a quirk of the interplay between President Obama’s decision to prohibit DACA and DAPA recipients from buying health insurance through Obamacare exchanges (see fact sheet), and the Affordable Care Act (a.k.a. Obamacare).
  o Because President Obama chose to exclude DACA and DAPA recipients from the ACA (unlike other immigration deferred action recipients), those individuals do not count against ACA requirements that employers with more than 50 workers must offer them health insurance or pay a penalty, of approximately $3,000 per worker.
    ▪ Thus, several articles (see Washington Times, Nov. 25) argue that employers have a $3,000 incentive to hire deferred action recipients over other workers.
  o Along these lines, Rep. Lou Barletta (R-PA) offered H.R. 5761 on Nov. 20, 2014 (press release), which would amend U.S. immigration work laws (8 U.S.C. § 1324a(h)(3)) to require admission and lawful presence for work.
    ▪ However, Barletta’s bill is overbroad. It would prohibit all without lawful status from working, including asylum applicants, others who receive deferred action, etc.

Amendment Five

• Sponsors: Schock (R-IL)
Description: This “sense of the Congress” resolution advocates for DHS to “stop putting the interests of” undocumented immigrants over legal immigrants, by “adjudicating petitions and applications for immigration benefits submitted by aliens unlawfully present.”
- It criticizes the “backlog” created by processing DACA petitions, calls it “unfair” to use fees paid by others to cover costs of adjudicating DACA/DAPA petitions, and recommends to use funds to improve services and increase efficiency of the process for legal immigrants, i.e. “aliens abroad” or those “lawfully present.”
- When DACA was initially implemented, the wait times for some legal immigration categories increased because adjudicators were working on DACA applications.
  - But, the implementation of expanded DACA and DAPA is expected to go more smoothly. USCIS should be much better positioned to timely process applications.
    - DACA was implemented very quickly at the same time that new adjudicators were being hired.
    - Those new adjudicators are now on board, and USCIS continues to hire more.
    - USCIS also until May 2015 (180 days after November 20) before DAPA applications will be accepted.