

# NAR Visa Working Group Final Report

May 10, 2012

## Executive Summary

The Visa Working Group was created to review S. 1746, the VISIT-USA Act (Schumer, D-NY; Lee, R-UT), develop necessary policy recommendations and bring those recommendations back for consideration by the relevant federal policy committees at the 2012 Midyear Meetings. While NAR has existing policy with respect to immigration reforms, that policy does not provide specific guidance on the type of issues raised by S. 1746.<sup>1</sup>

Composed of members of each of the NAR policy committees with a stake in the issue, the working group met on four occasions - February 21st, March 13th, April 9th and April 25th, 2012.

Given a desire to craft policy recommendations that would provide guidance for NAR advocacy efforts in response to the current Schumer-Lee measure and any future visa reform advocacy efforts, the group determined that a set of policy principles is needed to serve as a basis for evaluating real estate-related visa reform measures.

Based on these discussions, a set of three policy recommendations were developed, circulated and vetted by the group on its fourth conference call and affirmed in an email poll following that call

The recommendations set forth below will be considered by the Public Policy Coordinating Committee (PPCC) at the Midyear meetings. A copy of the report will be made available to each of the policy committees that have an interest in the issue (i.e. Business Issues, Federal Taxation, Global Business & Alliances, and Resort and Second Home Real Estate), and their members will be encouraged to attend the PPCC meeting if they have questions or concerns regarding the recommendations and principles. Specific details regarding the Work Group, its structure and activities follow the recommendations.

**The final recommendations of the NAR Visa Working Group are:**

**I. The Visa Working Group recommends the following set of principles to serve as a guide for advocacy efforts with respect to any federal efforts to create a non-immigrant residency visa for foreign nationals who purchase real property in the United States.**

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<sup>1</sup> Given the current state of affairs in Congress, most observers do not expect this legislation or any other bills other than “must-pass” measures (e.g. appropriation, budget, tax extenders, etc.) to advance this year. Moreover, the bill’s sponsors have turned their attention to an alternative visa reform bill. Details on the new measure are provided in the Legislative Outlook section of this report.

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NAR believes that a visa program designed to encourage the purchase of real property in the United States should:

- a. Be available to citizens of as many countries as possible while recognizing the national security issues which must be addressed. The determination of how countries are included should be left to Congress;
- b. Provide reciprocity to foreign nationals whose home countries provide favorable treatment to U.S. citizens who own or purchase real estate in those countries;
- c. Acknowledge the potential for additional demands to be placed on local, state and federal services by new international residents and account for additional revenues needed to provide those services. In addition, the financial and economic benefits that may accrue to the nation as the result of allowing more foreign nationals to purchase real property in the U.S should also be taken into account;
- d. Ensure that the length of time for which a visa is issued is long enough to create the certainty needed for foreign nationals to be confident that they will be able to enjoy property purchased for a time period that justifies the sizeable expenditure made. From a practical perspective, a 5 year timeframe should be the minimum amount of time for which a real-estate related visa should be issued;
- e. Allow visa holders to determine the number of days per year of their stay(s) in the United States up to any legislatively prescribed limit and not mandate a required minimum stay;
- f. Include appropriate thresholds for the value of property purchases to ensure that new visa holders have the financial resources needed to maintain properties purchased and not become a burden on local, state or federal government services;
- g. Use property valuation measures that are appropriate for the purpose intended, which in most cases will be the market-determined sales price;
- h. Avoid imposing arbitrary requirements that would discourage the use of the visa, including the loss of benefits available to foreign nationals from their home countries (e.g. eligibility for home country national health coverage, favorable home country tax treatment, etc.), in order to encourage property purchases; and
- i. Focus on stimulating long term market demand, as opposed to short term market conditions.

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## **II. The Working Group also reaffirms existing NAR policy that:**

- a. opposes unduly burdensome visa rules that create unnecessary barriers to tourism, ownership of US real estate by foreign nationals, and the use of those properties; and
- b. states that “all resident owners of U.S. real estate should be subject to the same set of rules under the U.S. tax system. In addition, any unique reporting and disclosure requirements regarding foreign buyers and/or their agents should be kept to a minimum.”

## **III. The Working Group acknowledges that the complexity of visa issues and the attendant liability that could accrue to a real estate professional who provides incorrect advice will create the need for member education should such a visa program be enacted.**

### **Issue Background**

While NAR has existing policy with respect to immigration reform, that policy statement does not provide guidance of the sort needed to address the specific issues raised by the VISIT-USA Act. As a result, at the November 2011 Annual meetings, the Public Policy Coordinating Committee received three (3) committee reports with action items related to S.1746 as introduced by Senators Schumer and Lee.

S.1746 is a comprehensive bill that amends the Immigration and Nationality Act and the U. S. visa process. The legislation includes a number of visa reforms, including two specific real estate-related visa provisions of interest to the real estate community. Specifically, the bill creates (1) a Canadian retiree visa that would allow Canadians older than 50 years of age who own a U. S. home or have a signed lease for the time of their proposed stay to obtain a non-immigrant resident visa and spend up to 240 days living in the U. S., and (2) a non-immigrant resident visa for foreign nationals who make a cash purchase of a principal residence or a principal residence plus residential rental properties that total at least \$500,000 in the U. S. and agree to live in the U.S. for at least 180 days a year.

The Global Business and Alliances Committee approved an action item supporting in concept the VISIT-USA Act and recommending that NAR form a work group to address the bill's real estate provisions; the Resort and Second Home Committee approved an identical action item supporting the bill in concept and recommending formation of a work group; and the Business Issues Committee presented a motion amending NAR's existing Statement of Immigration Principles policy language that supported the rights of foreign citizens to acquire, own and sell U.S. real property by adding language supporting the creation of a non-immigrant visa for foreign nationals who purchase a U.S. residence. In its

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report, the Business Issues Committee also recommended formation of a work group to address S.1746 as it moved through the legislative process. The motions as presented by the 3 committees are attached to this report as an exhibit.

In light of the 3 committees supporting creation of a work group to address unknown factors related to the bill's real estate provisions, and recognizing that amending NAR's Statement of Immigration Principles may be premature pending the activities of a work group, the PPCC tabled the 3 motions until the 2012 Midyear Meeting and directed the formation of a work group including Business Issues Committee, Global Business and Alliances Committee, Resort and Second Home Real Estate Committee and others as deemed appropriate to evaluate S.1746 and recommend appropriate policy positions for consideration at the 2012 Midyear Meeting.

## **Working Group Structure & Process**

Within the NAR policy committee structure, there are five (5) committees with an interest in the issues inherent in the visa reforms proposed by S. 1746. (In addition to the four committees already mentioned, the Federal Taxation Committee has purview over the inherent tax treatment issues.) Each of the 5 committees submitted the names of committee members whom they recommended to serve on the working group. From that list of names, the Leadership Team appointed 18 individuals to the Visa Working Group.

The chair of the PPCC, Russell Grooms (FL), was enlisted to serve as the chair of the working group. In addition to the 18 appointees, Vice President & Liaison to Government Affairs, Scott Louser (ND); Liaison to the Public and Federal Issues Group, Robert Kulick (CA); and Liaison to the Global, Resort, & Second-Home Real Estate Group, Francisco Angulo (FL), also participated in the group's discussions. The Working Group roster is included as an exhibit to this report.

The Visa Working Group met via conference calls on four occasions - February 21st, March 13th, April 9th and April 25th, 2012. Each call lasted from an hour and a half to two hours.

The group began by reviewing the provisions of S. 1746, the VISIT-USA Act, as introduced. Based on that review, each of the members of the group were asked to submit a list of what they saw to be the bill's pros and cons for consideration on the second call.

Working from that extensive list on its second and third calls, the group considered each item submitted and determined (1) whether or not the issue raised was one that the group needed to consider and (2) how any problems or concerns raised could best be addressed. The group also considered a number of questions that staff had raised in the course of putting together a Q&A document about the bill. A listing of the questions and pros/cons discussed and a summary of the group's deliberations are attached as Exhibits 3 and 4.

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As the discussions evolved, the group determined that it could best serve the Association by developing a set of policy principles that would serve as a basis for evaluating not just the Schumer/Lee bill but future real estate related visa reform measures as well. Such an approach has worked well in a number of other issue areas, e.g. tax reform, health care reform, GSE reform, etc., when multiple pieces of legislation are expected to be considered.

Based on these discussions, a set of three recommendations were developed, circulated and vetted by the group on its fourth conference call. Each of the policy recommendations grew out of the discussion of the pros and cons of the VISIT-USA Act and is reflective of the group consensus on the factors that a visa program would need to take into consideration in order to effectively encourage the purchase of US real property by foreign nationals.

A review of the summary of the group's discussion of the pros/cons provides the best overview of the group's thought process and rationales. The principle recommendations are reflective of those discussions and were approved unanimously by those responding to the email poll.

## **Legislative Outlook for S. 1746**

The group's decision to develop policy principles was driven in part by developments concerning the sponsors' plans for S. 1746, the VISIT-USA Act. Following introduction of the bill in October 2011, attracting a bipartisan group of cosponsors to the bill proved difficult. As of December 2011, S. 1746 had only 4 additional cosponsors - all of whom were Democrats. No additional cosponsors signed on to the bill in the first three months of this year.

As a result, in late March 2012, Senators Schumer and Lee introduced S. 2233, the "Jobs Originated through Launching Travel Act" (JOLI). This bill was the subject of a March hearing in the Judiciary Committee's Immigration, Refugees and Border Security Subcommittee chaired by Senator Schumer.

Cosponsored by Schumer, Lee, Blumenthal (D-CT), Blunt (R-MO), Coons (D-DE), Heller (R-NV), Kirk (R-IL), Klobuchar (D-MN), Kohn (D-WS), Manchin (D-WV), Mikulski (D-MD), and Rubio (R-FL), S. 2233 contains some, but not all, of the components intended to make travel to the US for business or tourism purposes easier than had been included in the VISIT USA bill. In some cases, these provisions of S. 1746 have been modified significantly or dropped thus indicating that the original provisions of the VISIT-USA Act may have been unpopular with some of the Senators who subsequently signed on to the new bill as cosponsors. For example, the 5-year Chinese visa provisions of VISIT are replaced by provisions encouraging the State Department to issue visas longer than one year.

Of particular interest to NAR, changes were also made to the real estate-related provisions of the earlier bill. The new bill includes provisions to allow Canadians over 50 years of age to

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stay in the US for 60 days longer than is now the case. However, the new bill does not include the S. 1746 provision that would create a new non-immigrant visa for foreign nationals of any country who make a cash purchase of a principal residence or a principal residence plus residential rental properties that total at least \$500,000 in the U. S. and agree to live in the U.S. for at least 180 days a year.

The Judiciary Subcommittee hearing indicated that concerns with the more modest JOLT bill are shared by key members of the Judiciary Committee which must approve the measure before it can move forward. Senators Feinstein (D-CA) and Sessions (R-AL) both shared concerns that any visa expansions need to be tied to/preceded by a more robust exit system that would allow for better enforcement of current laws. Senator Feinstein comes at the issue from her role on the Select Intelligence Committee, and as such will be a key vote in order for the bill to move. Mr. Sessions will also be a key member since his concerns will be shared by many Republicans.

While Senator Schumer has said publically that he remains optimistic that S. 2233 will be considered by the Senate, the Judiciary Committee and Senate leaders have not given any indication that they will take up the measure. According to Congressional Quarterly, "Even if it gets through the [Senate}, the measure - which is backed by the Obama administration - is likely to meet resistance from the Republican-led House."

Exhibit 1

## Working Group Members

**Chair:** Russell Grooms, FL  
**Liaison:** Bob Kulick, CA  
**Staff Executive:** Marcia Salkin, DC  
**Federal Issues Liaison:** Bob Kulick, CA  
**Global/Resort Liaison:** Francisco Angulo, FL

**Members:**

**Public Policy:**

Russell Grooms, FL  
Stan Sieron, IL  
John Yen Wong, CA

**Federal Taxation:**

Ben Blaire, KS  
Mike Owen, FL  
Toby Bradley, CA

**Resort & Second Home:**

George Harvey, CO  
Brett Brown, FL  
Jim Wright, HI

**Business Issues:**

Iona Harrison, MD  
Bob Moline, MN  
Mark Woodruff, TX  
Wendell Bullard, NC

**Global Business:**

Teresa King-Kinney, FL  
Ken Libby, VT  
Carlos Fuentes, FL

**GAD:**

John Sebree, FL

## Text of Committee Motions/Actions- 2011 Annual

### Business Issues Committee Motion

**That principle #3 of the NAR Statement of Immigration Principles be amended as follows:**

“We support the rights of foreign citizens to acquire, own and sell U.S. real property and obtain a non-immigrant resident visa, as well as the right of U.S. citizens to acquire property outside the U.S. We also support the free flow of international capital for real estate and oppose laws and regulations that impede that flow.”

**Rationale:** The current U.S. visa system does not include a visa category that encourages citizens of foreign countries to purchase real property in the United States and allows them to spend extended periods of time in the U.S. without regularly returning to their home country. Legislation to create a non-immigrant resident visa for those individuals who purchase a residence and investment properties in the U.S. has been introduced. Such a residency visa would encourage new investment in U.S real estate, increase consumer spending, contribute to federal and local tax revenues and help to stabilize troubled real estate markets.

### Global Business & Alliances Committee/Resorts & Second Homes Real Estate Recommendations

The Committee discussed S. 1746, the VISIT-USA Act sponsored by Senators Charles Schumer (D-NY) and Michael Lee (R-UT). S.1746 is a comprehensive bill that amends the Immigration and Nationality Act and the U. S. visa process. The legislation includes two specific real estate-related visa provisions: (1) the bill creates a Canadian retiree visa that would allow Canadians older than 50 years of age who own a U. S. home or have a signed lease for the time of their proposed stay to obtain a non-immigrant resident visa and spend up to 240 days living in the U. S., and (2) the bill also creates a non-immigrant visa for those individuals who expend at least \$500,000 making a cash purchase of single-family homes in the U. S. and allow the visa holder to live in the U.S. at least 180 days. The bill's sponsors have asked NAR to support S.1746. **The Committee supports the bill in concept and recommended creation of a work group to address unknown factors related to the bill's real estate provisions.**



### Exhibit 3

## VERBATIM QUESTIONS & PRO/CON COMMENTS RE: S. 1746, THE VISIT-USA ACT

Received February 21, 2012 12 Noon EDT; **Revised as of May 10, 2012**

Questions and comments listed below are pulled directly from the emails from working group participants in response the chair's two requests that members submit a list of pros and cons to staff.

Questions listed as a pro or con by the writer were included in those sections. Questions not designated by the writer as a pro or con are listed in the Question/General Comment section following the pros and cons.

### PROS

#### 1. **Could Stimulate Additional Demand For Real Estate:**

- Could encourage some to invest in the U.S. (#1)
- It will help sell some additional homes. (#2)
- Offers outright tourist visa incentive for purchase of real estate in the USA (#5)

Background Note: The longer allowed stays and/or the ability to reside in the U.S. will attract those who have seen the limited length of stay as a barrier and are unconcerned with the tax consequences and other considerations involved.

#### 2. **Tax Treatment Limits Likelihood that Uncompensated Demands are Placed on Public Services**

- The buyers won't put additional burdens on public services.

Background Note: To the extent that buyer are subject to federal, state and local taxes paid by other residents of their communities, they would be contributing to the cost of public goods and services.

#### 3. **Bill's Tax Treatment in Line with Current NAR Policy**

- This bill maintains the current NAR Policy on Tax Treatment of Resident Owners of US Real Estate.

Background Note: The current NAR Tax Policy states:

“We believe all resident owners of U.S. real estate should be subject to the same set of rules under the U.S tax system. In addition, any unique reporting and disclosure requirements regarding foreign buyers and/or their agents should be kept to a minimum.”

#### 4. **Improved Access & Reduced Costs for Applicants in China, Brazil and India**

- Offers telecommunication interview to expedite process and make it less burdensome for the interviewee when from China, Brazil or India.

Background Note: The bill proposes creation of a pilot program by the State Department. Recently, the Administration announced an initiative that is aimed at reducing waiting times and eliminating interviews for low-risk visa applicants and those who have previously gone through the interview process. Processing times in Brazil and China have been significantly reduced.

## CONS

### 1. Tax on World-Wide Income a Deterrent to Use

- What foreign national would want to pay US taxes on their worldwide income? Doesn't seem likely. (#1)
- While from the tax ramifications of the bill, nothing seems objectionable but very few foreign nationals would use it. (#13)
- The Bill does not solve the 2009 Harris International survey primary obstacles to purchasing a retirement home in the U.S. (Tax consequences of staying more than 180 days in the U.S.) (#22)

**WG Action:** The working group agreed that any bill should allow visa holders to stay the extended time proposed by the VISIT-USA Act but should not impose a minimum length of stay that would require them to pay tax on their world-wide income. The decision regarding length of stay should be left to the visa holder. The point was made that the group was not challenging the notion that resident visa holders who stay longer than the 180 day threshold should be subject to taxation as is currently the practices. (4-9-12)

#### 3-30-12 Comments

On its March 13<sup>th</sup> call, the tax ramifications of the bill were discussed. The group agreed via voice vote that the bill should allow visa holders to stay the extended time but not impose a minimum length of stay that would require them to pay tax on their world-wide income.

Such a position is not at odds with NAR's current tax policy which was focused on ensuring that resident foreign nationals were not afforded more favorable tax treatment than other residents of the U.S.

Background Note: The results of the Harris Interactive polling done for NAR among pre-retirees and retirees in France, Britain, Germany, Italy, Canada and Mexico indicated that taxation of world-wide income was the #2 obstacle perceived by those with an interest in retiring in the U.S.

It should also be noted, however, that this is the current tax treatment for all residents of the U.S., including foreign nationals who reside in the U.S.

## 2. Loss of Benefits a Deterrent to Use

- Canadians losing health benefits potentially a big deal.

**WG Action:** The group agreed that the loss of home country benefits for citizen of any country (not just Canada) would deter foreign nationals from taking advantage of a proposed resident visa. As such, it was the sense of the group that any legislation should be designed to avoid the loss of benefits. (4-9-12)

### 3-30-12 Comments

The issue was discussed but my notes do not indicate that any final assessment of this factor was made.

- One member presented anecdotal evidence that the barriers to entry for Canadians were few and that there were easy ways around the 180 day limit; it was also mentioned that while loss of medical benefits was not a concern for some, taxation on world-wide income was a concern.
- One Canadian professional who reviewed the draft has commented that with respect to any concerns about Canadians losing benefits (health care or otherwise) if they are out of Canada longer than 180 days, that “it would be prudent to ensure members disclose this to Canadians wishing to be involved in this special visa to avoid potential liability for “non-disclosure” since this would be considered a “material fact” disclosure and an obligation to “clients” in a fiduciary capacity.”

Background Note 1: Schumer’s staff indicated that this issue is one that would need to be addressed but is one that would require working with the Canadian government to solve.

Background Note 2: One Canadian professional who reviewed the draft has commented that with respect to any concerns about Canadians losing benefits (health care or otherwise) if they are out of Canada longer than 180 days, that “it would be prudent to ensure members disclose this to Canadians wishing to be involved in this special visa to avoid potential liability for “non-disclosure” since this would be considered a “material fact” disclosure and an obligation to “clients” in a fiduciary capacity.”

## 3. Little Likelihood of Passage

- Congress cannot pass a bill declaring what time of day it is this year! (#3)
- Does the bill have a chance for passage? (#9)
- Bill is awkward and unwieldy and probably doesn’t have much chance of passing. (#12)
- The bill is so badly drafted by people who don’t really understand how sales transactions occur that I’d never want us to waste too many of our political bullets on it (and I think almost no one will use it). (#15)

**WG Action:** Discussed by the WG; comments were made that likelihood of passage was not a consideration at should be discussed at this point in the discussion. (2-21-12)

#### 4. Self-Serving Appearance of Support

- Is it, or does it appear to be, self-serving to Realtors? (#4)

**WG Action:** Discussed by the WG and discounted. (2-21-12)

#### 5. Concerns with NAR Involvement in Immigration Issues

- It is an amendment to the Immigration Act, should NAR ever be involved with Immigration laws? (#5)

**WG Action:** Discussed by the WG and discounted. (2-21-12)

#### 6. Creation of Future Obligations

- Will someone in Congress come back in a few years and ask NAR for help on other immigration issues? (#6)

**WG Action:** Discussed by the WG and discounted. (2-21-12)

#### 7. Discriminatory Treatment of Friendly Nations

- Is it discriminatory to other friendly countries that are not included in this bill? (#7)

**WG Action:** The group agreed that any resident visa program should be available to as many nations as possible. The determination of what countries are included should be left to Congress. (4-9-12)

#### 3-30-12 Comments

The opinion was expressed that what countries should be involved should not be our issue. There was no dissent expressed with the comment when it was made.

Background Note: While the retiree and Chinese visa provisions are targeted, most of the other provisions are not limited in their application.

#### 8. Complex Transactions & Licensee Liability:

- Will the 10% deduction required to be withhold from closing proceeds with foreign national sellers apply as per IRS code 1445? If so will a buyer's financial advisor suggest he buy under these circumstances understanding the property could possibly lose value? (#8)
- Could our members end up facing lawsuits if they didn't know enough to advise foreign clients to get income tax advice on how to hold properties and how to sell them from a person familiar with specific foreign tax laws and US laws pertaining to such eventual sales and not just send them to your neighborhood H&R Block or TurboTax tax preparer to get advice? (#16)

**WG Action:** It was noted that if this bill were to pass, there would be a need to remind Realtors that they should (a) inform the potential purchaser about the withholding rules that will apply when they later sell the property and (b) recommend that potential purchasers should be advised that they should consult their tax and financial advisors about the consequences of buying, owning and selling US real property. (3-30-12)

Background Note: Since the bill does not change existing tax law, the FIRPTA withholding will apply as it does now to foreign sellers.

If the non-US seller is subject to withholding, that individual may file a US tax return for the year of the sale and seek a refund. The IRS will refund the withheld amount, minus any tax due on the sale. Generally these sales would be taxed at capital gains rates. Sellers are not subject to withholding if they provide a so-called I-TIN at settlement. (An I-TIN is an International Tax Identification Number. It can be secured before the sale or by filling out an I-TIN request at settlement.)

#### **9. Short Timeframe and Uncertainty Likely to Discourage Use**

- Three year time frame without assurances of renewal creates uncertainty that will discourage buyers. (#10)
- The short timeline of the right to get and keep the visa will make very few retirees want to put \$500,000 or more out there using this bill. (#11)

**WG Action:** The working group agreed that no less than 5 years should be the limit for the length of any visa created for foreign nationals purchasing a home in the US. The 3 year time frame included in the VISIT-USA bill is too short from a practical standpoint to stimulate purchases. A 3 year limit creates too much uncertainty as to a buyer's ability to enjoy the property. The required investment is sizeable enough that those with the resources to make such a purchase will want some assurances that they will be able to make use of the home for some time. (4-9-12)

#### 3-30-12 Comments

The question was raised as to what the length of a resident visa needed to be in order to attract buyers. My notes indicate that the consensus (6-3) on the first call was that a 3 year timeframe with the option to renew for another 3 years would suffice. Notes from the second call also mention this timeframe but I would appreciate any input to confirm that this is the group's recommendation.

Background Note: Many nonimmigrant visas have short limited time frames.

#### **10. Impact of Minor Children on Public Education Resources**

- How the minor children of those purchasers will actually be handled needs to be clarified; are we really not going to let them go to our public schools; will they become State residents and so eligible for reduced tuition in our public

college systems—if the answers to the two questions are “yes” then our gov’t will be assuming financial burdens that need to be taken into account.

**WG Action:** The working group recognized that minor children of a new resident visa holder will place additional demands on local public education resources since current law allows dependents of those with nonimmigrant resident visas to attend public schools without charge. This includes primary school, adult education and other public institutions. However, the group also concluded that those same families will also be contributing to the local tax bases of the communities in which they locate since they will (1) pay local property taxes which fund education programs, (2) generate additional demand for local goods and services that will result in additional sales tax revenues for local and state governments, and (3) potentially pay income taxes at the local, state and federal level if they choose to stay in the U.S. for more than 180+ days. (4-9-12)

### 3-30-12 Comments

The group briefly discussed the issues raised. No vote was taken on the matter but it appeared that the group was comfortable with dismissing the issue since it raises a much larger set of immigration reform issues.

Background Note: Currently, dependents of those with nonimmigrant resident visas are allowed to attend public schools without charge. This includes primary school, adult education and other public institutions.

## **11. Sunset Provision Needed to Avoid Competing with American Families in Normal Markets**

- There should be a sunset provision in the bill (at least in the part concerning our real estate issues). We might, once the economy gets better, not want to allow foreign nationals to compete so readily with US citizens for what could again become a scarce commodity—housing.

**WG Action:** Discussed by the group and dismissed. (2-21-12)

Background Note: One of the points often raised in comments on articles that have covered the Schumer-Lee bill deals with this same concern with forcing U.S. homebuyers, especially those of more modest means and first time buyers, to compete with foreign buyers during one of the few periods in recent history when affordability has been high.

## **12. Extraordinary Power Granted to Federal Agencies**

- Homeland Security, or the State Department, is given carte blanche to decide who is admitted to the [visa] waiver program and who doesn’t, or when the plan will be implemented and when it won’t. Bill needs checks and balances. (#18)

**WG Action:** Discussed by the group and dismissed. (2-21-12)

Background Note: Currently, the State Department, and ultimately HHS, has the ability to determine what countries are admitted to the visa waiver program. The bill's provisions to allow these agencies to determine if individuals from a non-VWP country can enter via the VWP would seem to be simply an extension of their existing authority.

### **13. Differential Treatment of Foreign Countries & Political Ramifications**

- The bill is clearly meant to have political ramifications in our relationships with foreign countries— if we like you, you're in; if you cross us, you're out, that would make me reluctant as an individual to support the whole bill. (#19)
- Has differential treatment and benefits among nationalities. (#28)

**WG Action:** Discussed by the group and determined not to be a real estate issue. (2-21-12)

### **14. Impact on Short Term Market Inventory**

- It is unlikely that the “bill's intent to generate new sales that would help to absorb the current inventory of unsold homes” would have any meaningful, positive, short term effect on the market. It appears to be bad legislation.

**WG Action:** The working group concluded that any bill should be designed to have a positive long term impact on market inventory, as opposed to a more limited short term focus. (4-9-12)

#### **3-30-12 Comments**

My notes indicate that this was to be merged. However, it is a more generic statement that speaks to the sheer numbers of potential buyers even with no barriers exist. The cons that mention limited demand, i.e, #1, specifically call out the unfavorable tax treatment.

### **15. Fails to Allow All Foreign Owners of US To Freely Come and Go**

- This Bill does not solve the “fundamental” issue of allowing foreign citizens who own a home in the United States to use that home on a full-time basis and/or enter and exit the U.S. without restriction.

**WG Action:** The working group recognized that the decision to apply for a non-immigrant visa, as opposed to a green card, appropriately comes with some limitations on the holder's ability to enter the U.S., i.e. property ownership does not convey the same rights as citizenship. The group did feel, however, that the affirmative act of investing a significant amount in the U.S. should provide some basis for limiting restrictions that would interfere with the enjoyment of that home purchase. (4-9-12)

#### **3-30-12 Comments**

The point was raised and discussed. Meeting notes indicate that it should be combined with #22 as another obstacle limiting the measure's effectiveness. [Note: #22 has been combined with #1 which speaks to the potential barrier that the bill's tax treatment presents.] Further discussion of the group's opinions on this statement as a principle would be helpful to framing the eventual policy statement.

Background Note: The right to live in the U.S. on a full-time basis and to come and go freely historically has been limited to citizens of the U.S. Over time, initiatives to reunite families, address the labor needs of U.S. firms, create new jobs for U.S. citizens or meet humanitarian goals have been approved.

#### **16. Assessed Value an Incorrect Measure of Value**

- The Bill places a difficult measure and unrealistic measure and restriction on the purchase of property vs. 100% of the most recent assessed value. Let \$500,000 or greater stand alone as adequate measure and avoid the other appraisals, BPOs and measures. (#23)

**WG Action:** On the March 13 call, the group once again discussed what the appropriate measure of value would be. As was the case on the first call, the group's discussion centered on sales price and appraised value.

While the group understood the concerns that Mr. Lee had had with the potential for money laundering if sales price was used as the indicator or value, they agreed that the most straightforward, cost efficient and workable option was sales price. Requiring an appraisal would add costs, time and potential problems given the challenges the industry is having with appraisals.

#### **17. Bill Lacks a Grandfather Clause**

- The Bill does not contain a "Grandfathering Clause" which would include any \$500,000 or greater purchases since introduction of the bill, October 20, 2011, or earlier and therefore may delay any such purchases while this idea is floating around. (#24)

**WG Action:** This issue was discussed by the group which voted not to pursue a grandfather clause. While one WG member noted that press coverage of this bill has led some foreign buyers to adopt a "wait and see" approach, it was also pointed out that passage of this bill could take "years" and to include a grandfather clause would complicate transactions and consideration of the bill.

Background Note: The working group may want to consider whether any proposals should include provisions that would provide access to the new visa's for those who purchase a home since the bill's introduction?

#### **18. Arbitrary and Too High Investment Threshold**

- The \$500,000 or greater amount seems arbitrary and too high. (#25)



**WG Action:** Discussed by the group who voted not to address or challenge.

Background Note: The sponsors intended the high dollar threshold to ensure that those who take advantage of the new visa have the resources to avoid becoming a burden on the U.S., especially given that the visa allows holders to reside in the U. S. year-round. In general, U.S. immigration law excludes those who are “likely at any time to become a public charge.” Factors routinely taken into account for all visa categories include assets, resource and financial status.

#### **19. Non-Real Estate Related Issues Comingled with Real Estate Provisions**

- There are major non-real estate-related issues in the Bill which should be considered on their own merits rather than comingling with the real estate related visas in Sections 5 and 6.

**WG Action:** The working group felt that NAR should focus on the real estate-related provision of the bill where the Association has expertise. (4-9-12)

#### **3-30-12 Comments**

The group did not reach a conclusion of this point. While some felt that NAR should focus only on the real estate-related provisions of the bill where the Association has expertise, others argued that the visa reforms that would allow more travelers to more easily visit the US are real estate-related since they would attract more foreign buyers and visitors to the US.

Background Note: The working group could choose to bifurcate the more general visa provisions from the more directly real estate related ones if it chooses to do so.

#### **20. Automatic Citizenship for Minor Children Born in the US**

- The issue of any children born in the U.S. automatically becoming U.S. citizens should be addressed/corrected and should not apply to citizens of other countries visiting on visa or temporary work or visitation or illegal status. (#27)

**WG Action:** Discussed by the group who chose not to consider or challenge.

Background Note: Longstanding U.S. immigration policy/law provides that children born in the United States are U.S. citizens with all of the rights, duties and privileges accorded.

#### **21. Access to Retiree Visa Limited to Canadians**

- Only caters to Canadians for retirement incentive to purchase real estate in the USA

**WG Action:** The working group discussed the country-specific nature of the retiree visa provisions, i.e. limitation to Canadians. While the group agreed that optimally any future bill should be more broadly crafted, it did understand that there could be concerns that would lead the authors to adopt a phased-in approach. (4-9-12)

### 3-30-12 Comments

It was suggested that this point be deleted. Since the limitation is a legitimate concern with the scope of the bill's provision and by this time in the discussion many had left the call, it would be good to revisit the discussion to see if everyone is comfortable with this approach.

## **QUESTIONS/GENERAL COMMENTS**

1. **Q:** In Section 8: For the non-immigrant visa holder, is the 180 day residency requirement consecutive?

**A:** No.

2. **Q:** Why has Mexico not been included in this bill? As one of our largest trading partners and employment centers to the South, strong consideration should be afforded this country to increase US Tourism.

**A:** Sponsor's staff indicated that they wanted to start with a near friendly neighbor. Obviously, Mexico meets that definition but our sense was that Canada was seen as less of a political target for some members of Congress.

A question as to whether or not Mexico is an overstay country was asked. While no published current data on overstays is available, overstay estimates from the 90's estimated Mexico's overstay rate at 4.1-4.3%. Mexico's visa refusal rate for B visas is 32.5%.

3. **Q:** Assessed value is not the appropriated value indicator.

**A:** NAR staff have pointed out that assessed value is not an appropriate indicator of value due to the wide variations in assessment practices and frequency of reassessment.

4. **Q:** .... why would a purchaser pay more than 100% of an appraised value for a residence or investment property? That infers a visa ownership penalty, and artificially inflating the value of the property. This violates US private property rights afforded naturalized citizens.

**A:** Point covered in Question #3 responses above.

5. **Q:** Will nonimmigrant foreign national visa holders spending \$500,000 or more on properties be required to report their purchases to their host countries? Will the IRS use these visas as tracking mechanisms to report back to host countries?

**A:** The group felt that this issue was not one that should cause concern. It was noted that the bill does not make such a requirement. However, the U.S. government as a part of its efforts to ensure tax compliance on the part of U.S.

taxpayers has been working to institute data sharing agreements with foreign countries that do involve two way exchanges of financial data.

6. **Q:** If 3 year renewal not granted, what happens to property purchased by visa holder? Should the property be sold, is the US entitled to any fees recapture during period of ownership? Can the visa denial be appealed?

**A:** If the visa is not renewed, the owner would still own the property and could use it making use of a B tourist visa. There is no recapture of any fees. Foreign sellers of US properties do have to comply with the FIRPTA and would be subject to withholding but withheld funds are returned once a tax return is filed. Visa denials can be appealed.

7. **Q:** What other countries will be included in future visa ownership and occupancy exclusions?

**A:** No countries are excluded from participating in the residential visa programs. Any future decisions to exclude a country from participation cannot be foretold.

8. **Q:** Regarding Canadians, what are the requirements/restrictions, now, for visits or visas that allow Canadians, singles or parents and minor children, who lease or own a home, to come to the US? Incrementally, what does this BILL allow them to do that they cannot already do? Why a limit on 240 days? Why not other countries besides Canadians also?

**A:** Like most foreign nationals, Canadians can currently spend up to 180 days in the U.S. According to the State Department, a visa is not required of Canadians unless they want to remain in the US for more than 90 days at any one time. But like others, Canadian visitors must demonstrate sufficient ties to Canada to satisfy customs agents at the border that they intend to return to Canada. The length of any particular stay is subject to reasonableness for the stated purpose of the trip test. The bill allows them to stay a total of an additional 60 days per year.

It was noted on the first call that there is any number of ways around the current regulations. Consequently, travel to the U.S. by Canadians is relatively unencumbered.

9. **Q:** Given that there are tens or hundreds of thousands of Canadians owning property vacation or retirement homes in the US, why is Section 5 thought to be necessary?

**A:** Schumer's staff indicated our first meeting that they had been hearing that extending the length of stay would encourage more purchased in the US.

10. **Q:** First, regarding a qualifying purchase of real estate in the U.S., would or will the qualifying purchase of real estate be retroactive to some established date and what

are the qualifications? The Act is specific for China and Canada but there are many more countries purchasing real estate in the USA.

**A:** To clarify, the Act's \$500K visa is not limited to only China or Canada citizens. There is no retroactive date in the bill. Any desire to have the bill be retroactive would need to be addressed.

11. **Q:** Second, as part of NAR policy shouldn't we be working to be inclusive of all 60+ Countries with bilateral agreements, i.e. the United Kingdom, with NAR to promote the same benefits of a tourist visa within the VISIT USA Act? Obviously we will take what we can get regarding current legislation. However at some point it seems that we need to take a country by country approach to addressing the consequences for each Nationality and spell out the benefits as was done with Canada and China.

**A:** The bill's visa provisions are not limited to Canada or China except with respect to the retiree and 5 year Chinese visa provisions.

12. **Q:** In conversations with Realtors®, few understand the Act and more misquote the benefits of the Act. It would be beneficial to publish a brief talking point bulletin for the Act.

**A:** An issue summary paper and the FAQ document have been posted since October to Realtor.org and available to associations to reproduce as they see fit.

## Exhibit 4

# S. 1746, VISIT-USA Frequently Asked Questions – Working Group Annotated Version

## OVERVIEW

### Q1. What is the VISIT-USA Act?

The “Visa Improvements to Stimulate International Tourism to the United States of America” Act, aka the VISIT-USA Act, is a comprehensive bill, introduced on October 20, 2011 by Senators Charles Schumer (D-NY) and Michael Lee (R-UT), that amends the Immigration and Nationality Act and the U.S. visa process. Representatives David Dreier (R-CA) and Mazie Hirono (D-HI) have introduced a companion bill in the House of Representatives, H.R. 3341.

### Q2. Why is the Act of interest to the real estate industry?

In addition to broad general visa reforms, the bill creates two real estate-related visas.

- Section 5 of the bill creates a Canadian retiree visa that would allow Canadians older than 50 years of age who own a U.S. home or have a signed lease for the time of their proposed stay to obtain a non-immigrant resident visa. The visa would allow the retiree, their spouse and minor children to spend up to 240 days, which need not be consecutive days, living in the U.S.
- Section 8 creates a non-immigrant visa for those individuals who expend at least \$500,000 making a cash purchase of a residence in the United States. This visa would allow the individual, their spouse and minor children to live in the U.S.; the bill does require the visa holder to spend at least 180 days per year in the U.S.

### Q3. Does the bill provide holders of either visa a path to citizenship?

No. There is no path to citizenship in the bill for either visa.

It should be noted, however, that any minor children born in the U.S. to families who hold either type of visa would automatically be U.S. citizens. As such, those children would be eligible for all benefits and rights accruing to U.S. citizens.

## REAL ESTATE PROVISIONS

### Q4. What property must be purchased in order to qualify for the \$500,000 purchase visa?

In the case of the new \$500,000 purchase visa, a foreign national must buy a minimum of \$500,000 worth of U.S. housing stock. The purchase must include either a principal residence worth \$500,000 or a principal residence worth at least \$250,000 and other rental housing stock

which together with the principal residence total at least \$500,000. The housing units could be either existing units or new construction.

**Q5. Does the bill use the home's sales price to determine the market value of homes purchased?**

No. The bill requires homes to be bought for more than 100 percent of the most recent assessed value. NAR members have pointed out that every state – and in some cases, every county or community within a state – have different assessment practices that make assessments a poor measure of market value. For example, members report that some jurisdictions only appraise a property every 7 years; some set the assessed value as a percentage of current market value. Given these practices, it may be prudent to replace assessed value with a more appropriate measure of value, i.e. sales price, appraised value, BPOs, and/or some other measure of value, to ensure that visa holders are helping to build market value rather than contributing to further downward pressure on values.

**Question for the WG:** What is the appropriate measure of value?

**Working Group Discussion:** On the March 13 call, the group once again discussed what the appropriate measure of value would be. The group's discussion centered on sales price and appraised value. While the group understood the concerns that Mr. Lee had had with the potential for money laundering if sales price was used as the indicator or value, they agreed that the most straightforward, cost efficient and workable option was sales price. Requiring an appraisal would add costs, time and potential problems given the challenges the industry is having with appraisals. However, they agreed that if there was pushback because of concerns with the potential for money laundering that NAR's fallback position would be to advocate for the higher of sales price or appraised value.

**Q6. What types of housing units would meet the bill's requirement in the case of the Canadian retiree visa?**

As drafted the bill simply refers to an individual who "owns a residence or has signed a rental agreement for accommodations." When asked if residence would refer to the traditional 1-4 unit definition of single family, Senate staff hadn't thought of the need to define the terminology. They indicated that the 1-4 unit property could apply for both owned residence and any rental properties. Since the bill is silent on the matter, the residences could be either existing units or new construction. NAR staff has asked for additional clarification as to the eligibility of coop, condo, and/or condotel units.

In the rental context, it would appear that hotel/motel rooms and rental homes are obviously eligible accommodations. Again, because the bill is silent, on the matter, both existing and new units would be eligible accommodations. Additional analysis has raised additional questions as to the eligibility of timeshares, mobile homes, boats, RVs rentals, and RV park space rentals. It would seem that additional bill language is needed to clarify the drafter's intent.

**Question for the WG:** Since Congressional staff has not considered the definition of what would constitute an acceptable unit for purchase or rental accommodation and indicated their willingness to leave the issue to the regulators, providing suggested language that identifies the types of acceptable rental accommodations would be the most productive way to precede. Possible types of permissible units to consider are listed below.

**Working Group Discussion:** The group discussed and determined that the types of accommodations listed below that are struck-out should not be considered eligible units.

Canadian Owner

Single family 1-4  
Townhouse unit  
Condo  
Coop  
Condotel unit  
Manufactured home  
Mobile home on foundation  
(private lot)  
Mobile home on foundation  
(mobile home park)  
Apartment building  
Hotel/motel/resort unit  
~~Timeshare unit~~  
~~Boats~~  
~~RV-condo-park space~~

Canadian Renter

Single family 1-4  
Townhouse units  
Condos (subject to by-laws)  
Coops (subject to by-laws)  
Condotel units  
Manufactured home  
Mobile home on foundation  
(private lot)  
Mobile home on foundation  
(mobile home park)  
Apartments unit  
~~Timeshare unit~~  
~~Boats~~  
~~RV-condo-park space~~

**Q7. What types of housing units could be purchased to meet the \$500,000 visa requirements?**

As drafted the bill simply refers to “residences” but does not define the term. No definition is provided. Since the bill is silent on the matter, these residences could be either existing units or new construction.

NAR staff has asked for additional clarification as to the eligibility of the traditional 1-4 unit single family unit, coops, condos, mobile homes, condotel or timeshare units. Further analysis indicates that clarification for mobile homes that may or may not be tied to a permanent foundation may also be needed. In all cases, additional bill language is needed to clarify the drafter’s intent.

**Question for the WG consideration:** Providing the authors’ staff with amendment language that identifies the types of acceptable units for purchase would be the most productive way to proceed.

**Working Group Discussion:** The group discussed and determined that the types of accommodations listed below that are struck-out should not be considered eligible units.

Single family 1-4 units  
Townhouse units

Condos  
Coops  
Condotel units  
~~Timeshare units~~  
Apartment building – owners unit  
Manufactured homes  
Mobile homes on foundations (private lots & mobile home parks)  
~~Boats~~  
~~RV space condo~~

**Q8. Can the home purchases associated with the Canadian retiree visa be financed with a mortgage?**

Yes. The bill sets out no limitations on how Canadian retirees can purchase a home.

**Q9. Can the purchases required by the \$500,000 visa be financed with a mortgage?**

No. The bill requires all home purchases associated with the \$500,000 visa to be made with all cash.

**Question for the Working Group:** Providing the authors' staff with amendment language that identifies NAR's preferred approach would be the most productive way to proceed. Possibilities include:

1. Purchases whose purchase price exceeds the \$500K threshold should be allowed to be financed for that portion of the purchase price that exceeds the threshold.
2. Require a more modest total cash investment requirement.
3. Other possibilities?

**Working Group Discussion:** On April 9<sup>th</sup>, the group agreed that financing the amount of a purchase above \$500K should be allowed. On March 13<sup>th</sup>, the group agreed that the \$500K threshold was acceptable. The group chose to consider no additional possibilities.

**Q10. Is there a limit on the amount rental property that a foreign national can purchase in order to qualify for the \$500,000 visa?**

No. There is no limit to the amount of rental property a foreign national is allowed to buy under this visa.

**TAX TREATMENT**

**Q11. Will these visa holders have to pay taxes here?**



Yes. No special tax treatment is given to visa holders, so as drafted, current law will continue to apply to these visa holders. The \$500,000 purchase visa requires visa holders to reside in the U.S. 180 days per year. To the extent that they are in the US for more than 180 days, they would be required to pay federal income tax on their world-wide income. In addition, any rental income earned from any additional residential properties bought in order to qualify for the resident visa would be subject to US tax, no matter how many days the owner was present. If a Canadian retiree spends more than the 180 days in the U.S. that they are currently allowed to stay each year, they too would be required to pay U.S. federal income taxes on their worldwide income.

**Q12. Will the requirement to pay federal income taxes on their worldwide income lessen interest in these new visas?**

In a 2009 Harris International survey of foreign retirees and pre-retirees done for NAR, the tax consequences of staying more than 180 days in the U.S. was cited as one of the two primary perceived obstacles to purchasing a retirement home in the U.S.

**Working Group Discussion:** During the first call, the question was raised as to whether the 180 requirement was a necessary provision since it would subject foreign buyers to US taxation of their worldwide income. In the initial meeting with Schumer's office, staff indicated that if the taxation consequences became an issue they could be reconsidered. Implied but not stated was the point that preferential tax treatment could weaken support for the measure among those Members of Congress concerned about the budgetary shortfalls and the issue of "free riders".

On the March 13<sup>th</sup> call, the group agreed that any measure should not require a minimum 180+ day stay. Buyers should be given the option of staying the length of time that suits their needs.

**RESIDENCY VISA TERMS**

**Q13. Could the border agent reviewing a visa holder's paperwork when they enter the U.S. decide to not admit them or limit the length of their stay? If so, on what basis could the border agent refuse entry?**

The bill is silent on this matter. We have presented the Senate staff this question but have not yet heard back.

Note: In the initial meeting with Schumer's office, staff also indicated that all of the requirements currently in place used to determine visa eligibility would continue to apply. Border custom agents can refuse to allow visa holder entry and can limit the length of stay allowed to a time that is less than the time allowed by the foreign national's visa. The following paragraph is pulled from the State Department's website and confirms this policy.

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State Department - Entering the U.S. - Port of Entry

A visa allows a foreign citizen coming from abroad, to travel to the United States port-of entry and request permission to enter the U.S. Applicants should be aware that a visa does not guarantee entry into the United States. The Department of Homeland Security, U.S. Customs and Border Protection (CBP) officials have authority to permit or deny admission to the United States. If you are allowed to enter the U.S., the CBP official will determine the length of your visit on the Arrival-Departure Record (Form I-94). Since Form I-94 documents your authorized stay in the U.S., it's very important to keep in your passport. In advance of travel, prospective travelers should review important information about Admissions/Entry requirements, as well as information related to restrictions about bringing food, agricultural products or other restricted/prohibited goods explained on the Department of Homeland Security, Customs and Border Protection website. Upon arrival (at an international airport, seaport or land border crossing), you will be enrolled in the US-VISIT entry-exit program.

**Question for WG consideration:** If there is a desire to provide more certainty for either visa holder, what amendments should be suggested?

1. No discretion allowed to custom agent
2. Same discretion allowed in the case of a green card or other resident visa holder

**Working Group Discussion:** On its April 9<sup>th</sup> call, the group decided it had no position/preference re: discretion granted to border agents.

#### **Q14. How long are the visas good for and can they be renewed?**

- 3 years. Both types of visas are good for 3 years and can be renewed for another 3 years at the end of each 3 year period. In the case of the \$500,000 visa, the visa holder must continue to own the housing stock (or maintain an equivalent value of housing stock in order to renew their visa for the additional 3 year periods.

**Question for WG consideration:** Should the timeframe for the visa be longer assuming that the holder continues to meet the criteria intended to protect national security or public safety. If so, for how long?

1. As long as they hold the property
2. As long as they hold the property subject to a cap, 5, 7, 10 years
3. Other?

#### **Working Group Discussion:**

- On the April 9<sup>th</sup> call, members indicated that 3 years was too short a time from a practical standpoint, i.e. few buyers would be comfortable making such a large purchase without assurances that they would be able to use the property for more than 3 years. Sentiment was that the longest timeframe would be best but that 5 years was seen as a more acceptable minimum if a minimum was to be spelled out.

- On both the February and March calls, members were polled on the 3 year timeframe and indicated satisfaction with the 3 year timeframe when accompanied by an assurance of renewal if the visa holder continues to meet the requirements for access to the US.

**Q15. Is renewal of either visa at the end of any 3 year period guaranteed?**

No. The bill is silent on the matter of whether a visa holder would be guaranteed a renewal. Obviously, if the visa holder was found to be inadmissible to the U.S. upon renewal on any grounds, then the visa would not be renewed. The likelihood that the visa would be extended would obviously be a consideration that a buyer would take into consideration.

**Question for WG consideration:** Should language spelling out that the visa would be renewable unless there were changes in circumstances found at the time of renewal that would have caused the visa application to be denied if they had existed at that time, i.e. explicitly state that a change in circumstances is necessary and that simply having spent the maximum amount of time allowed in the US during the first visa would not be reason enough to deny a renewal?

**Working Group Discussion:** On the April 9<sup>th</sup> call, whether a guaranteed renewal language was needed was not discussed due to time constraints.

**Q16. In the case of the Canadian retiree visa, what comes first, the ‘chicken or the egg’, i.e. the signed rental agreement/house purchase or the visa approval?**

It is unclear. The bill is silent on how either of these two visas would be processed. In the case of those Canadian retirees who already own a home, determining eligibility for the visa would seem straightforward. For those who rent, however, the process is unclear. Given that a signed agreement would require a sizeable, non-refundable deposit, it is unlikely that a retiree would commit to a long term rental without assurances that that the visa would be granted. But without the signed agreement, the visa would not be valid. Answers to these questions are needed.

There is also a need to clarify what would the process would be once the visa was issued to a retiree in years 2 or 3. Would the official at the border review any subsequent rental agreement and make the decision whether or not to allow entry? What would be required to ensure that the rental agreement is acceptable to Custom's? We have submitted these questions to Senate staff.

**Question for WG consideration:** In the case of the visa applicant who is renting in the US, what would be the optimal set of requirements for this visa type? From a practitioner's standpoint, what would work?

Note: This question was not discussed and will be revisited pending further research into existing visa laws.

**Q17. Would the \$500,000 visa applicant buy the house and then apply for the visa, or get a provisional visa pending the purchase of a home?**

It is unclear. As drafted, the bill is silent on how the process would work. Senate staff indicated that they would leave that to be determined by the regulators. They believe that the EB-5 program provides some examples of how this version of the “chicken and the egg” problem could be solved. In the EB-5 program, funds that would be used to start up a new business are placed in escrow and held pending the processing of the visa. Additional work would be necessary to determine if or how this approach would work for a residential purchase transaction.

**Question for WG consideration:** Would requiring the funds necessary for the purchase to be escrowed and then released at the time of purchase create problems for the purchase transaction? From a practitioner’s standpoint, what would work best?

Note: This question was not discussed and will be revisited pending further research into existing visa laws.

**Q18. Does the bill permit foreign nationals who obtain either residency visa to work here?**

No. A Canadian retiree or a foreign national who purchases a home here cannot work unless they qualify for, apply for and are granted one of the other U.S. visas which allow non-immigrant resident aliens to work in the U.S.

**Question for WG consideration:** *Is there the need to clarify that an individual can continue to be self-employed or employed by their current employer in their current capacity if they have the ability to work remotely and otherwise meet the bill’s requirements?*

Note: This question was not discussed and will be revisited pending further research into existing visa laws.

**Q19. What safeguards will there be to ensure that these individuals do not work while in the U.S.?**

The bill contains no specific provisions for compliance monitoring and provides no additional resources to cover the cost of enforcement. Senate staff has indicated that the existing employment income reporting system, i.e. the required filing of 1099’s, W-2s, etc., and the requirement that these individuals pay federal income tax on their worldwide income would provide a means of tracking employment abuses.

**Q20. Does the bill permit foreign nationals who obtain either residency visa to receive government benefits?**

No. According to the sponsor’s staff, holders of either visa will not be able to receive government benefits, including welfare, TANF, unemployment, social security, Medicare, Medicaid, or any other taxpayer monies. However, U.S. law does require that emergency health

care not be denied to anyone so it would be possible that a visa holder may receive treatment for which they may not have any or sufficient health insurance coverage. Any children born in the U.S. would be U.S. citizens and eligible for any and all benefits and rights accruing to U.S. citizens.

With respect to access to local or state benefits, local and state laws would apply.

Note: On our first call, it was asked if dependents of the new visa could attend public schools. Currently, dependents of those with a non-immigrant resident visas are allowed to attend public schools without charge. This includes primary school, adult education and other public institutions. According to the State Department's website:

“Dependents of a nonimmigrant visa holder of any type, including F-1, are not prohibited from attendance at either a public primary school, an adult education program, or another public educational institution, as appropriate.”

**Q21. Does the bill require these non-working visa holders to prove that they have health insurance coverage sufficient to ensure that they have the resources necessary to deal with the cost of any accidents or health emergencies?**

No. The bill has no requirement of this sort.

Some have suggested that these visa holders should be required to demonstrate that they have adequate health care insurance to cover any medical needs. Should this be considered? And if so what level of coverage would be appropriate?

**Q22. Would Canadian retirees who take advantage of the retiree visa lose their Canadian government health care benefits?**

Yes. NAR members have indicated that Canadians would lose some of their benefits as Canadian citizens if they were to remain in the U.S. for more than 180 days. Senate staff indicated that under current Canadian law, those citizens who spend more than 180 days outside of Canada in any given year lose their health care benefits, as well “some others.” Senate staff is aware of this issue and are hopeful that a work-around to this problem can be found.

**Q23. Does the bill include any retroactive provisions for sales completed after the bill's announcement but prior to its enactment?**

No. REALTORS® have pointed out that the news of the \$500,000 visa proposal has the potential of bringing sales to international buyers to a halt as they wait for the bill to pass.

**Question for WG consideration:** Should the bill include provisions that would provide access to the new visa's for those who purchase a home since the bill's introduction?

**Working Group Discussion:** On the March 13<sup>th</sup> call, the working group considered the issue of grandfathering and agreed not to pursue a grandfathering provision due to the added complexity such a move would generate.

**Q24. Does the bill include any provisions that would allow those foreign nationals who already own homes that would have qualified for the \$500,000 residency visa at the time of purchase to be grandfathered?**

No. The bill's intent is to generate new sales that would help to absorb the current inventory of unsold homes.

**Question for WG consideration:** Given the bill's purpose is stimulate new sales and absorb existing excess inventory, is such a provision appropriate and/or desired?

**Working Group Discussion:** On the March 13<sup>th</sup> call, the working group considered the issue of grandfathering and agreed not to pursue a grandfathering provision due to the added complexity such a move would generate.

## **OTHER REAL ESTATE PRACTICE CONSIDERATIONS**

**Q25. Would the bill create new anti-money laundering responsibilities for real estate professionals?**

Possibly. To date, Treasury has not required real estate professionals to develop specific anti-money laundering programs. There is increasing pressure being placed on Treasury by at least one key Senate office to implement federal anti-money laundering regulations for the real estate sales industry. The Treasury Department has identified cash sales and those where the purchase price is in excess of market value as two money laundering risk indicators. The bill's requirement that home purchases be cash purchases at market values could help to make the case for additional client vetting responsibilities if the bill's language is not carefully crafted.

**Q26. Will the new visas attract foreign buyers or tourists to all states?**

Both new visas allow the holders to locate where they want.

NAR's survey of purchases by foreign nationals has historically indicated that some states have proven more attractive than others. For example, in 2011, four states—Arizona, California, Florida, and Texas—accounted for 58 percent of reported transactions. In 2009, the same four states accounted for 54% of transactions. These results also correspond with those of a 2009 survey conducted for NAR by Harris International of retirees and pre-retirees in Germany, Britain, France, Italy, Canada and Mexico.

The bill sponsor's office points out that the \$500,000 visa program would allow a foreign national to purchase both a primary residence and rental property. Accordingly, if the foreign

national deems that rental property is attractive in any state, they are permitted to purchase property in that state even if it is not in their state of residence.

## **OTHER QUESTIONS**

### **Q27. Will this bill allow drug dealers and terrorists to enter the U.S.?**

Like all visa applicants, applicants for these visas will be fingerprinted and screened against every applicable criminal and terrorist watch-list.

### **Q28. What are the other non-real estate-related provisions included in the bill?**

In addition to the real estate related provisions, the Act would (1) permit Chinese nationals to have 5-year multiple entry tourism and business traveler visas; (2) create a premium visa processing system for expedited travel to the United States; (3) expand the visa waiver program to allow countries whose nationals have low overstay rates to participate in the visa waiver program; (4) reduce visa fees for visits to the U.S. during low-peak seasons; and (5) permit Customs and Border Protection to add important foreign dignitaries to the global entry program on a “case-by-case” basis if they are employed by an organization that maintains a strong working relationship with the US and do not pose security risks.

**Chinese 5-year visa:** Currently, Chinese nationals must apply for a new U.S. tourist visa every year while travelers from some other countries can receive multi-year tourist visas. (The length of time a visa to travel in the U.S. is good for any foreign national is a function of the length of time that a foreign nation allows U.S. citizens to travel on a visa in that particular country. This is known as a reciprocity-based system.) The bill would allow Chinese tourists access to 5-year multiple-entry tourist visas. To address security concerns, Chinese tourists with 5-year visas would also be required to use the Electronic System for Travel Authorization (ESTA). We sought answers to the following questions:

#### **1. What has changed that eliminates whatever reasons existed for the short time frame?**

A. Since the current visa rules were put in place, U.S. relations with China have improved. In addition, reforms in China and the rising levels of wealth have allowed Chinese citizens to travel more widely.

#### **2. Would there be a maximum number of days per year – or for the 5 year period in total - that a Chinese national could stay under the new 5-year visa? Is this a change from current practice under the one-year visa process?**

A. Currently, most Chinese applicants for a B-1 or B-2 visa will be issued a combined B-1/B-2 visa valid for multiple entries during a one year period (for P.R.C. nationals only). As is the case for all countries, the length of the visa period is based reciprocity, i.e. the length of time that a visa to travel to China is good for in the case of an American citizen.

A B-1/B-2 visa allows for stays by Chinese nationals of up to 6 months per year, as they do for most foreign nationals.

**3. Who is currently required to use the ESTA and what safeguards does that add to the process?**

A. ESTA is required for those individuals who are citizens of country's participating in the visa waiver program (VWP). A list of participating countries is attached to the end of this document.

**Expedited visa fee:** The VISIT-USA Act will allow the State Department to charge an extra fee to expedite the processing of a visa with a 3-day timeframe, absent compelling security concerns. The fees charged will be in an amount sufficient to recover the costs incurred.

**1. What are the estimates of what that fee would need to be to cover those costs?**

The press release at the time the bill was introduced mentioned that the US Citizenship and Immigration Service currently charges a fee to expedite the processing of nonimmigrant visas. How much is that charge? And since it is used to expedite other non-immigrant visas, how would that differ from what is being proposed since the new visa categories are non-immigrant visas?

A. We could find no information indicating that the USCIS charges an additional fee to expedite the processing of a nonimmigrant visa. An expedited process is offered on an as available basis but no guarantees are made for expediting.

**Videoconference pilot program:** The VISIT-USA Act authorizes the Secretary of State to conduct a videoconference pilot program as a method for conducting visa interviews of foreign national applicants. We have sought answers to the following questions:

**1. What, if any, concerns has the State Department had with the proposal?**

A. To date, the State Department has not commented on the proposal. The department has announced a series of visa initiatives to speed up the processing of visas, especially in those countries with a large backlog of applications.

One of the initiatives will include a pilot program that will eliminate the need for interviews for low-risk individuals who are applying for a renewal of an existing visa and who were interviewed for that first visa. Since September 11th, the United States has implemented an intensive, multi-layered visa screening process, including multiple biographic and biometric checks. The White House has said the United States performs these checks on every visa applicant, without exception. Under this initiative, select circumstances may allow qualified foreign visitors who were interviewed and thoroughly screened as part of a prior visa application to renew their visas without undergoing another interview.



**Encouraging travel during low season:** The bill permits the State Department to lower visa application fees during off-peak seasons to give travelers the incentive to apply for visas when demand is lower. We have sought answers to the following questions:

**1. The sponsors' press release stated that the bill would give State Department the right to lower visa application fees during off-peak season. How much are the typical visa application fees now? Do they vary by country?**

A. Currently, the standard visa application processing fee for non-petition-based visas is \$140. A separate visa issuance fee is also required for most non-immigrant visas and does vary by country.

**Expedite visa for countries aiding in the fight against Al Qaeda:** The Visa Waiver program gives citizens of selected countries the ability to travel to the US under the ESTA program, rather than go through the more lengthy and complicated US Tourist Visa application process, but it's not available to all U.S. allies. The VISIT-USA Act amends the Immigration and Nationality Act regarding the visa waiver program to: (1) authorize the Secretary of Homeland Security (DHS), in consultation with the Secretary of State, to designate program countries; (2) adjust the criteria for visa refusal rates to permit entry into the program if a country has a low visa overstay rate; (3) set a maximum 3% visa overstay rate for program countries; and (4) revise probationary status and program termination provisions. We have sought answers to the following questions:

**1. How are the countries participating in the visa waiver program currently determined?**

A. Currently 36 countries participate in the visa waiver program (VWP). The criteria for designation are specified in Section 217(c) of the Immigration and Nationality Act.

Countries chosen to participate in the VWP must meet various security and other requirements, such as enhanced law enforcement and security-related data sharing with the US and timely reporting of both blank and issued lost and stolen passports. VWP members are also required to maintain high counterterrorism, law enforcement, border control and document security standards. Designation as a VWP country is at the discretion of the US government.

**2. Is there a public list of countries' visa overstay rates?**

A. No. While DHS is required to submit an annual report to Congress on overstay rates, no such report has been submitted or published. The last time that any estimates of overstays was released was 1997.

**3. What's the average overstay rate for countries currently participating in the visa waiver program?**

A. Since overstay rates are not currently available, the average rate is unknown. Countries participating in the visa waiver program must maintain a visa refusal rate of less than 3%. A visa refusal rate is the percent of total visa applications that are denied.

**Expedited entry for priority visitors:** The global entry program is a U.S. Customs and Border Protection (CBP) program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. At the moment, U.S. Customs and Border Protection lacks the ability to add specific foreign nationals to the global-entry prescreening system if they are not nationals of one of the “participating countries” that the United States has a reciprocal agreement with. This creates problems for certain high-priority visitors with decision-making capacity to bring important international events—such as the Olympics, the World Cup, conventions, etc.—to the United States. This section would permit Customs and Border Protection to add important foreign dignitaries to the global entry program on a “case-by-case” basis if they are employed by an organization that maintains a strong working relationship with the United States and do not pose security risks. We have sought answers to the following questions:

**1. What countries are participants currently in the Global Entry program and what types of individuals are typically processed by the system?**

A. Currently, the Global Entry Program is open to U.S. citizens, lawful permanent residents, Dutch citizens, and Mexican nationals. Canadian citizens and residents may enjoy Global Entry benefits through membership in the NEXUS program. It is operational at 19 U.S. airports.

At these airports, program participants proceed to Global Entry kiosks, present their machine-readable passport or U.S. permanent resident card, place their fingertips on the scanner for fingerprint verification, and make a customs declaration. The kiosk issues the traveler a transaction receipt and directs the traveler to baggage claim and the exit.

Travelers must be pre-approved for the Global Entry program. All applicants undergo a rigorous background check and interview before enrollment.

Applicants may not qualify for participation in the Global Entry program if they:

- Provide false or incomplete information on the application;
- Have been convicted of any criminal offense or have pending criminal charges or outstanding warrants;
- Have been found in violation of any customs, immigration or agriculture regulations or laws in any country;
- Are subjects of an ongoing investigation by any federal, state or local law enforcement agency;
- Are inadmissible to the United States under immigration regulation, including applicants with approved waivers of inadmissibility or parole documentation;
- Cannot satisfy CBP of their low-risk status (e.g. CBP has intelligence that indicates that the applicant is not low risk; CBP cannot determine an applicant's criminal, residence or employment history).

**General questions:** We sought answers to the following questions:

**1. What objections have been raised to date about the proposals by other Senate offices?**

A. When we inquired about the response the Schumer staff had heard from other Senate offices, we were told that many of the offices that they had reached out to had declined to sign onto the bill as a cosponsor at that time. The common response reported was that they would be interested in hearing more if and when the bill had attracted additional cosponsors or if an opportunity to move the bill occurred. We asked if they had reached out to Senator Isakson's office and what his response had been. Staff indicated that they had reached out to the Senator's office but had received this same type of response there.

Since then, we have received only one call from a Senate office about the bill. They indicated that while anything is possible, they did not see the bill as likely to attract additional cosponsors or moving this year. We shared with them that a working group had been created to examine the proposal and report its recommendations to the Board of Directors in May.

Note: Two requests to meet with Senator Lee's office about this bill have gone unanswered. The New York Association was in DC last week. New York state leadership was briefed on the bill and the status of the Working Group's discussion. Senator Schumer did not mention the bill during his meeting with the leadership.

**Legislative Update:** Since this document was first circulated, Senators Schumer and Lee have introduced a new visa reform bill, S. 2233, the Jobs Originated through Launching Travel (JOLT) Act, is not yet in print but a summary outline posted to Schumer's website is included below. [Note: Since this document was released, S. 2233 has been published.]

Cosponsored by Schumer, Lee, Blunt, Coons, Kirk, Klobuchar, Mikulski, and Rubio, the bill is focused on many of the same components designed to make travel to the US for business or tourism purposes included in the VISIT USA bill. It does include provisions to allow Canadians over 50 years of age to stay in the US for 60 days longer than is now the case, but it does not include the \$500K purchase visa provisions.

While many of the other provisions look very similar to the VISIT provisions, some have been tweaked. For example, the 5 year Chinese visa provisions of VISIT are replaced by provision encouraging the State Department to issue visas longer than one year. From the remarks made, the new bill incorporates ideas that were part of bills introduced/developed by Senators Mikulski and Kirk, as well as a bill that Senator Klobuchar had introduced.

Mr. Schumer stated that he would be trying to move the bill but did acknowledge that floor time constraints would require there to be consensus.

In his comments, it was clear that Senator Sessions was not convinced that the bill was ready for prime time. Feinstein and Sessions both shared a concern that any visa expansions need to be tied to/preceded by a more robust exit system that would allow ICE to know who has overstayed their visas.

- Feinstein comes at the issue from her intelligence committee perspective and called the visa waiver program the “soft underbelly” of the US homeland security system. While she make remarks that did seem to indicate that she was willing to work with the sponsors, her comments concerning the issues that need to be addressed did seem at odds with her more supportive remarks.
- In his remarks, Mr. Sessions was focused on the implementation of biometric (photo + fingerprint) exit system. Mr. Schumer didn’t disagree but pointed out that to do that requires a lot of expense that would need to be paid for.

Witnesses testifying in support of the bill included Donohue from the Chamber and Roger Dow with the US Travel Association. Rebecca Gambler with the GAO also testified. The Chamber and USTA comments were what you would expect. The GAO witness did a good job in laying out the facts and the issues that currently limit the ability to estimate overstays.

### **Addendum: Visa Waiver Program Countries**

Citizens or nationals of the following countries are currently eligible to travel to the United States under the VWP:

Andorra	Iceland	Norway
Australia	Ireland	Portugal
Austria	Italy	San Marino
Belgium	Japan	Singapore
Brunei	Republic of Korea	Slovakia
Czech Republic	Latvia	Slovenia
Denmark	Liechtenstein	Spain
Estonia	Lithuania	Sweden
Finland	Luxembourg	Switzerland
France	Malta	United Kingdom
Germany	Monaco	
Greece	The Netherlands	
Hungary	New Zealand	

NOTE: The new countries of Curacao, Bonaire, St Eustatius, Saba and St Maarten (from the former Netherland Antilles) are not eligible to travel to the United States under the Visa Waiver Program if they are applying for admission with the passports from these countries.

\*British citizens only with the unrestricted right of permanent abode in England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man.