

Frequently Asked Questions

S. 1746, The VISIT-USA Act

OVERVIEW

Q. 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 that amends the Immigration and Nationality Act and the U.S. visa process. Introduced on October 20, 2011 by Senators Charles Schumer (D-NY) and Michael Lee (R-UT); to date, the bill has no additional cosponsors. It is reported that Representatives David Dreier (R-CA) and Mazie Hirono (D-HI) have introduced a similar bill in the House of Representatives.

Q. 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 in the states.

Q. 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.

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REAL ESTATE PROVISIONS

Q. 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.

Q. 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. 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.

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

It is unclear. 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

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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.

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

It is unclear. 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.

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

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

Q. 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.

Q. 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.

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TAX TREATMENT

Q. 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.

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

Possibly. 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.

RESIDENCY VISA TERMS

Q. 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.

Q. 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.

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

It is unclear. 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.

Q. 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 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.

Q. 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.

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Q. 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.

Q. 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.

Q. 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.

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

Q. 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.

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Q. 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.

Q. 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](#).

Q. 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.

OTHER REAL ESTATE PRACTICE CONSIDERATIONS

Q. 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.

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Q. 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

Q. 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.

Q. 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.

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Chinese 5-year visa: Currently, Chinese nationals must apply for a new U.S. visa every year while travelers from other countries can receive multi-year visas. The bill would allow Chinese tourists access to 5-year multiple-entry visitor 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 have sought answers to the following questions:

1. What has changed that eliminates whatever reasons existed for the short time frame?
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?
3. Who is currently required to use the ESTA and what safeguards does that add to the process?

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?
2. 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?

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 raised with the proposal?

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?

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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?
2. Is there a public list of countries' visa overstay rates?
3. What's the average overstay rate for countries currently participating in the visa waiver program?

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?

General question: We have sought answers to the following questions:

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