



The American Entrepreneurship and Investment Act of 2015 (H.R. 616) Summary of Key Provisions

Background:

The EB-5 Regional Center Pilot Program was created by Congress in 1992 to attract investments from qualified foreign investors to spur job creation and economic development in the U.S. Since 2005, the EB-5 Program has resulted in the investment of billions in qualified U.S. projects, creating hundreds of thousands of American jobs. The program provides a green card to foreign national investor-entrepreneurs who invest at least \$1 million in certain qualified American businesses, or invest \$500K in a Targeted Employment Areas (TEA) - a rural area or area of high unemployment - and create a minimum of 10 American jobs. EB-5 investors must submit to the same national security and background checks as applicants in other visas categories and are subject to the same requirements to become U.S. citizens as other visa holders.

H.R. 616 makes the EB-5 program, which is set to expire on September 30, 2015, permanent to provide certainty to businesses and investors. The bill also reforms the program to make it more efficient, effective, accountable, and user and business friendly.

- *Improved Definition of Targeted Employment Area (TEA) designations:* Codifies the current TEA designation authority, which leaves such designations up to the states, which are best equipped to determine local employment needs. This is consistent with USCIS's May 30, 2013 "EB-5 Adjudications Policy (PM-602-0083).
- *Permanent authorization of EB-5 Regional Center Program:* Provides for the permanent authorization of the EB-5 program to provide investors and businesses with certainty and predictability and help the program grow.
- *Project preapprovals:* Increases efficiency in the EB-5 program by requiring the Secretary of Homeland Security to establish a preapproval procedure by which a regional center may ask USCIS to preapprove a business plan before attracting investors to the project. The bill also allows the applicant to correct any deficiencies identified by the Secretary prior to final determination.
- *Deference to Prior Rulings:* Currently, USCIS is not required to defer to its own rulings as they pertain to certain EB-5 requirements, which adds an additional level of unpredictability to the approval process. This bill requires USCIS to defer to its prior rulings except in the case of material change, fraud or legal deficiency.
- *Strong Fraud and Abuse Deterrence and Securities Compliance in Regional Centers:* Enhances transparency and accountability within the EB-5 program by requiring investors to comply with certain additional enforceable regulations and

laws, including federal securities laws.

- *EB-5 Petition Processing Times:* Current USCIS processing times for 1-924 or 1-526 filings can take 12-18 months for approval, which creates business uncertainty and jeopardizes the EB-5 projects and jobs they create. The Secretary would also be required to adjudicate petitions in 180 days. If a request for additional information is sent, the Secretary would be required to process the additional information within 30 days.
- *Conditional Permanent Resident Status for Immigrant Investors and Entrepreneurs:* Amends section 216A of the Immigration and Nationality Act as it pertains to EB-5 and immigrant investors, providing:
- *Age determinations for children of EB-5 investors:* Protects the child of a principal investor if between the period of conditional permanent residence and removal of conditions, the child "ages out," and allows that child to still be considered an immediate family member and eligible to be an EB-5 petitioner;
- *Allows concurrent filings of EB-5 petitions:* Eliminates the requirement for immediate family members to file separate petitions from the principal investor's petition to remove conditions for lawful permanent residence status. By only requiring approval of the Investor's petition to remove conditions for their immediate family members, efficiency and fairness in the program will be enhanced.

EB-5 Visa Reforms

Derivative Family Members eliminated from the Visa Quota: Provides that the qualified immediate family of an EB-5 immigrant investor is not subject to the numerical cap for that category.

Numerical Limitation on Individual Foreign States: Eliminates the per country quotas for EB5 immigrant visas. This reform is of particular importance to alleviate the backlog in the Chinese visa category.

Applicability of Foreign Corrupt Practices: Clarifies that the Foreign Corrupt Practices Act shall apply to EB-5 petitions.

Consultation and Ability to Delegate Authority to and with the Secretary of Commerce: Allows the Secretary of Homeland Security to consult with the Secretary of Commerce.