

# U.S. Congressmen Introduce Legislation to Make EB-5 Program Permanent

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On January 28, 2015, two U.S. Congressmen introduced a legislative proposal to make permanent the regional center portion of EB-5 law. [The bill is just a proposal and may change considerably before being voted on by the full U.S. Congress. Read more.] Although the non-regional center portion of EB-5 is already permanent, the regional center portion of EB-5 law is currently set to expire on September 30, 2015.

Sponsored by Jared Polis of Colorado and Mark Amodei of Nevada, the proposal is called the “American Entrepreneurship and Investment Act of 2015.” In addition to seeking to make the regional center program permanent, the bill also proposes to streamline and clarify rules for setting up EB-5 regional centers and for determining Targeted Employment Areas (TEAs), among other proposals.

Other parts of the proposal seek to improve the EB-5 program in other ways, including requiring United States Citizenship and Immigration Services (USCIS) to move more quickly when adjudicating EB-5 petitions, including responses to Requests for Additional Evidence (RFE). The bill, if passed into law, would also help to reduce uncertainty in USCIS adjudication of EB-5 petitions by requiring USCIS to defer to prior rulings when making decisions about new related petition.

Perhaps most important for EB-5 investors from China as a group, the bill would also stop counting spouses and children against the annual EB-5 quota of 10,000 per year. This change would nearly triple the number of Chinese citizens eligible to obtain green cards through EB-5 every year.

When considering this proposal, it critical to keep in mind that not every proposal is made into law and also that many proposals can change drastically from the time they are introduced until they are voted on for final approval or rejection. A copy of the bill can be found on our website.



.....  
(Original Signature of Member)

114TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the Immigration and Nationality Act to provide for reforms to the EB-5 immigrant investor program, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. POLIS introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Immigration and Nationality Act to provide for reforms to the EB-5 immigrant investor program, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Entrepre-  
5       neurship and Investment Act of 2015”.

1 **SEC. 2. THE EB-5 EMPLOYMENT-CREATION IMMIGRANT IN-**  
2 **VESTOR PROGRAM.**

3 (a) REFORMING THE EB-5 IMMIGRANT INVESTOR  
4 PROGRAM.—Section 203(b)(5) of the Immigration and  
5 Nationality Act (8 U.S.C. 1153(b)(5)) is amended as fol-  
6 lows:

7 (1) TYPE OF INVESTMENT.—In subparagraph  
8 (A), by inserting “or similar entity” after “including  
9 a limited partnership”.

10 (2) TARGETED EMPLOYMENT AREA.—In sub-  
11 paragraph (B)—

12 (A) by amending clause (i) to read as fol-  
13 lows:

14 “(i) IN GENERAL.—Not fewer than  
15 5,000 of the visas made available under  
16 this paragraph in each fiscal year shall be  
17 reserved for qualified immigrants who in-  
18 vest in a new commercial enterprise de-  
19 scribed in subparagraph (A), which—

20 “(I) is investing such capital in a  
21 targeted employment area; and

22 “(II) will create employment in  
23 such targeted employment area.”; and

24 (B) by inserting after clause (iii) the fol-  
25 lowing:

1           “(iv) STATE DETERMINATIONS.—In a  
2           case in which a geographic area is deter-  
3           mined under clause (ii) to be a targeted  
4           employment area by an delegated State  
5           agency, and such a determination has been  
6           made using acceptable data sources to in-  
7           clude U.S. Census Bureau data (including  
8           data from the American Community Sur-  
9           vey) and data from the Bureau of Labor  
10          Statistics (including data from the Local  
11          Area Unemployment Statistics), The Sec-  
12          retary of Homeland Security or her des-  
13          ignee shall defer to a state’s designation as  
14          conclusive.

15           “(v) EFFECT OF PRIOR DETERMINA-  
16          TION.—In a case in which an area is deter-  
17          mined under clause (ii) to be a targeted  
18          employment area, such determination shall  
19          remain in effect during the 2-year period  
20          beginning on the date of the determination  
21          for purposes of an alien seeking a visa re-  
22          served under this subparagraph.”.

23           (3) PERMANENT AUTHORIZATION OF REGIONAL  
24          CENTER PROGRAM.—By adding after subparagraph  
25          (D) the following:

1                   “(E) EMPLOYMENT CREATION REGIONAL  
2                   CENTERS.—  
3                   “(i) IN GENERAL.—Visas under this  
4                   paragraph shall be made available to quali-  
5                   fied immigrants who participate in a pro-  
6                   gram involving a regional center in the  
7                   United States, which has been designated  
8                   by the Secretary of Homeland Security, in  
9                   consultation with the Secretary of Com-  
10                  merce, on the basis of a general proposal,  
11                  for the promotion of economic growth, in-  
12                  cluding increased exports, improved re-  
13                  gional productivity, job creation, and in-  
14                  creased domestic capital investment. A re-  
15                  gional center shall have jurisdiction over a  
16                  specific geographic area, which shall be de-  
17                  scribed in the proposal and consistent with  
18                  the purpose of concentrating pooled invest-  
19                  ment in defined economic zones. The es-  
20                  tablishment of a regional center under this  
21                  subparagraph may be based on general  
22                  predictions, contained in the proposal, con-  
23                  cerning—

1                   “(I) the kinds of new commercial  
2 enterprises that will receive capital  
3 from aliens;

4                   “(II) the jobs that will be created  
5 directly or indirectly as a result of  
6 such investments; and

7                   “(III) other positive economic ef-  
8 fects such investments will have.

9                   “(ii) **METHODOLOGIES.**—In deter-  
10 mining compliance with this subparagraph,  
11 and notwithstanding requirements applica-  
12 ble to investors not involving regional cen-  
13 ters, the Secretary of Homeland Security,  
14 in consultation with the Secretary of Com-  
15 merce, shall recognize reasonable meth-  
16 odologies for determining the number of  
17 jobs created by a designated regional cen-  
18 ter, including such jobs that are estimated  
19 to have been created indirectly through  
20 revenues generated from increased exports,  
21 improved regional productivity, or in-  
22 creased domestic capital investment result-  
23 ing from the regional center.

24                   “(iii) **SPECIAL PROCEDURES.**—

1                   “(I) PREAPPROVAL OF NEW COM-  
2                   MERCIAL ENTERPRISES.—The Sec-  
3                   retary of Homeland Security shall es-  
4                   tablish a preapproval procedure for  
5                   commercial enterprises that—

6                               “(aa) allows a regional cen-  
7                               ter or potential regional center to  
8                               apply to the Secretary for  
9                               preapproval of a new commercial  
10                              enterprise before any alien files a  
11                              petition for classification under  
12                              this paragraph by reason of in-  
13                              vestment in the new commercial  
14                              enterprise;

15                             “(bb) in considering an ap-  
16                             plication under subclause (I)—

17                                       “(AA) allows the appli-  
18                                       cant to address and cure  
19                                       any deficiencies identified by  
20                                       the Secretary in the applica-  
21                                       tion prior to final determina-  
22                                       tion on the application; and

23                                       “(BB) requires that the  
24                                       Secretary make final deci-  
25                                       sions on all issues under this

1 paragraph other than those  
2 issues unique to each indi-  
3 vidual investor in the new  
4 commercial enterprise; and  
5 “(cc) requires that the Sec-  
6 retary eliminate the need for the  
7 repeated submission of docu-  
8 mentation that is common to  
9 multiple petitions for classifica-  
10 tion under this paragraph  
11 through a regional center.

12 “(II) DEFERENCE TO PRIOR  
13 RULINGS.—Except in the case of ma-  
14 terial change, fraud, or legal defi-  
15 ciency, the Secretary of Homeland Se-  
16 curity shall give deference to, and not  
17 revisit, favorable determinations made  
18 pertaining to a commercial enterprise  
19 during the adjudication of—

20 “(aa) petitions filed by im-  
21 migrants investing in the com-  
22 mercial enterprise under this sub-  
23 paragraph; or



1                   “(bb) petitions filed by such  
2                   immigrants under section 216A  
3                   for removal of conditional basis.

4                   “(iv) PROCESSING TIMES.—The Sec-  
5                   retary of Homeland Security shall make  
6                   determinations on a proposal under clause  
7                   (i) or an application under clause (iii) not  
8                   later than 180 days after the date on  
9                   which the proposal or application is filed.  
10                  In the event that additional information or  
11                  documentation is requested by the Sec-  
12                  retary, the Secretary shall adjudicate the  
13                  proposal or application not later than 30  
14                  days after the receipt of such information  
15                  or documentation. The filing party shall be  
16                  notified in writing within 30 days of the  
17                  date of filing if the filing does not meet the  
18                  standards for approval. If the filing does  
19                  not meet such standards, the notice shall  
20                  include the reasons therefore and the Sec-  
21                  retary shall provide an opportunity for the  
22                  prompt resubmission of a modified filing.”.

23                  (4) PREVENTING FRAUD IN THE REGIONAL  
24                  CENTER PROGRAM.—In subparagraph (E) (as added

1 by paragraph (5)), by inserting after clause (iii) the  
2 following:

3 “(v) BONA FIDES OF REGIONAL CEN-  
4 TER PRINCIPALS.—No person may serve as  
5 an owner, director or officer of a regional  
6 center, or hold other positions of sub-  
7 stantive authority for the operations, man-  
8 agement or promotion of a regional center,  
9 if the Secretary of Homeland Security de-  
10 termines based on substantial evidence  
11 that the person—

12 “(I) has been found liable within  
13 the previous 5 years for any criminal  
14 or civil violation of any law relating to  
15 fraud or deceit;

16 “(II) has been found liable at  
17 any time for any such criminal or civil  
18 violation if such violation involved—

19 “(aa) a criminal conviction  
20 with a term of imprisonment of  
21 at least 1 year; or

22 “(bb) any law or agency reg-  
23 ulation in connection with the  
24 purchase or sale of a security; or

1 “(III) is engaged in, has ever  
2 been engaged in, or seeks to engage in  
3 any—

4 “(aa) terrorist activity (as  
5 defined in clauses (iii) and (iv) of  
6 section 212(a)(3)(B));

7 “(bb) activity relating to es-  
8 pionage or sabotage;

9 “(cc) illicit trafficking in any  
10 controlled substance;

11 “(dd) activity related to  
12 money laundering (as described  
13 in section 1956 or 1957 of title  
14 18, United States Code);

15 “(ee) violation of any stat-  
16 ute, regulation or Executive  
17 Order regarding foreign financial  
18 transactions or foreign asset con-  
19 trol; or

20 “(ff) human trafficking or  
21 any other human rights offense.

22 The Secretary of Homeland Security shall  
23 require such attestations and information  
24 (including fingerprints) and shall perform  
25 such background checks as the Secretary

1 in the Secretary's discretion considers ap-  
2 appropriate to determine whether a regional  
3 center is in compliance with this clause.  
4 The Secretary may terminate any regional  
5 center from the program under this section  
6 if the Secretary determines that the re-  
7 gional center is violation of this clause, the  
8 regional center fails to provide such attes-  
9 tations and information requested by the  
10 Secretary under this clause, or the regional  
11 center or any person described in this  
12 clause is engaged in fraud, misrepresenta-  
13 tion, criminal misuse, or threats to na-  
14 tional security. The Secretary shall provide  
15 for procedures for the appeal and review of  
16 such a termination, and any determina-  
17 tions pertaining to such termination shall  
18 be subject to review under chapter 7 of  
19 title 5, United States Code.

20 “(vi) FEE FOR REGIONAL CENTER  
21 DESIGNATION.—In addition to any other  
22 fees authorized by law, the Secretary of  
23 Homeland Security shall impose—

1                   “(I) a fee to apply for designa-  
2                   tion as a regional center under this  
3                   subparagraph; and

4                   “(II) a fee for preapproval of a  
5                   new commercial enterprise as provided  
6                   under clause (iii)(I).”.

7                   (5) EB-5 PETITIONS.—By adding after sub-  
8                   paragraph (E) (as amended by paragraph (6)) the  
9                   following:

10                   “(F) EB-5 PETITIONS.—

11                   “(i) PROCESSING TIMES.—The Sec-  
12                   retary of Homeland Security shall adju-  
13                   dicate a petition filed pursuant to this  
14                   paragraph not later than 180 days after  
15                   the date on which the petition is filed. In  
16                   the event that additional information or  
17                   documentation is requested by the Sec-  
18                   retary, the Secretary shall adjudicate the  
19                   petition not later than 30 days after the  
20                   receipt of such information or documenta-  
21                   tion. The filing party shall be notified in  
22                   writing within 30 days of the date of filing  
23                   if the filing does not meet the standards  
24                   for approval. If the filing does not meet  
25                   such standards, the notice shall include the

1 reasons therefore and the Secretary shall  
2 provide an opportunity for the prompt re-  
3 submission of a modified filing.

4 “(ii) FRAUD.—The Secretary of  
5 Homeland Security, in consultation with  
6 the Commissioner of the Securities and  
7 Exchange Commission, shall develop a  
8 strategy to review securities-related mate-  
9 rials included in any immigration petition  
10 under this paragraph, or a petition under  
11 section 216A for removal of conditional  
12 basis, when there is evidence of fraud.”.

13 (b) CONFORMING AMENDMENT.—Section 610 of the  
14 Departments of Commerce, Justice, and State, the Judici-  
15 ary, and Related Agencies Appropriations Act, 1993 (8  
16 U.S.C. 1153 note) is repealed.

17 **SEC. 3. EB-5 VISA REFORMS.**

18 (a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL  
19 LIMITATION.—Section 201(b)(1) of the Immigration and  
20 Nationality Act (8 U.S.C. 1151(b)(1)) is amended by add-  
21 ing at the end the following:

22 “(P) Aliens who are the spouse or a child  
23 of an alien admitted as an employment-based  
24 immigrant under section 203(b)(5).”.

1 (b) AGE DETERMINATION FOR CHILDREN OF ALIEN  
2 INVESTORS.—Section 203(h) of the Immigration and Na-  
3 tionality Act (8 U.S.C. 1153(h)) is amended by adding  
4 at the end the following:

5 “(5) AGE DETERMINATION FOR CHILDREN OF  
6 ALIEN INVESTORS.—An alien admitted under sub-  
7 section (d) as a lawful permanent resident on a con-  
8 ditional basis as the child of an alien lawfully admit-  
9 ted for permanent residence under subsection (b)(5),  
10 whose lawful permanent resident status on a condi-  
11 tional basis is terminated under section 216A, shall  
12 continue to be considered a child of the principal  
13 alien for the purpose of a subsequent immigrant pe-  
14 tition by such alien under subsection (b)(5) if the  
15 alien remains unmarried and the subsequent petition  
16 is filed by the principal alien not later than 1 year  
17 after the termination of conditional lawful perma-  
18 nent resident status. No alien shall be considered a  
19 child under this paragraph with respect to more  
20 than 1 petition filed after the alien’s 21st birth-  
21 day.”.

22 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL  
23 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The  
24 Secretary may establish, fix the compensation of, and ap-  
25 point individuals to, designated critical administrative,

1 technical, and professional positions needed to administer  
2 sections 203(b)(5) and 216A of the Immigration and Na-  
3 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

4 (d) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

5 (1) IN GENERAL.—The Secretary of Homeland  
6 Security may delegate to the Secretary of Commerce  
7 authority and responsibility for determinations  
8 under sections 203(b)(5) and 216A (with respect to  
9 alien entrepreneurs) of the Immigration and Nation-  
10 ality Act (8 U.S.C. 1153(b)(5) and 1186a), includ-  
11 ing determining whether an alien has met employ-  
12 ment creation requirements.

13 (2) REGULATIONS.—The Secretary of Home-  
14 land Security and the Secretary of Commerce may  
15 each adopt such rules and regulations as are nec-  
16 essary to carry out the delegation authorized under  
17 paragraph (1), including regulations governing the  
18 eligibility criteria for obtaining benefits pursuant to  
19 the amendments made by this section.

20 (3) USE OF FEES.—Adjudication fees described  
21 in section 286(m) of the Immigration and Nation-  
22 ality Act (8 U.S.C. 1356(m)) shall remain available  
23 until expended to reimburse the Secretary of Com-  
24 merce for the costs of any determinations made by  
25 the Secretary of Commerce under paragraph (1).



1 (e) CONCURRENT FILING OF EB-5 PETITIONS AND  
2 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section  
3 245 (8 U.S.C. 1255) of the Immigration and Nationality  
4 Act is amended—

5 (1) in subsection (k), in the matter preceding  
6 paragraph (1), by striking “or (3)” and inserting  
7 “(3), or (5)”; and

8 (2) by adding at the end the following:

9 “(n) At the time a petition is filed for classification  
10 under section 203(b)(5), if the approval of such petition  
11 would make a visa immediately available to the alien bene-  
12 ficiary, the alien beneficiary’s application for adjustment  
13 of status under this section shall be considered to be prop-  
14 erly filed whether the application is submitted concur-  
15 rently with, or subsequent to, the visa petition.”

16 (f) TECHNICAL AMENDMENT.—Section 203(b)(5) of  
17 the Immigration and Nationality Act (8 U.S.C.  
18 1153(b)(5)), as amended by this Act, is further amended  
19 by striking “Attorney General” each place it appears and  
20 inserting “Secretary of Homeland Security”.

21 **SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**  
22 **EIGN STATES.**

23 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-  
24 EIGN STATE.—Section 202(a)(2) of the Immigration and  
25 Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

1 (1) in the paragraph heading, by striking “and  
2 employment- based”;

3 (2) by striking “(3), (4), and (5),” and insert-  
4 ing “(3) and (4),”;

5 (3) by striking “subsections (a) and (b) of sec-  
6 tion 203” and inserting “section 203(a)”;

7 (4) by striking “7” and inserting “15”; and

8 (5) by striking “such subsections” and inserting  
9 “such section”.

10 (b) CONFORMING AMENDMENTS.—Section 202 of the  
11 Immigration and Nationality Act (8 U.S.C. 1152) is  
12 amended—

13 (1) in subsection (a)—

14 (A) in paragraph (3), by striking “both  
15 subsections (a) and (b) of section 203” and in-  
16 serting “section 203(a)”;

17 (B) by striking paragraph (5); and

18 (2) by amending subsection (e) to read as fol-  
19 lows:

20 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

21 If it is determined that the total number of immigrant  
22 visas made available under section 202(a) to natives of  
23 any single foreign state or dependent area will exceed the  
24 numerical limitation specified in subsection (a)(2) in any  
25 fiscal year, in determining the allotment of immigrant visa

1 numbers to natives under section 203(a), visa numbers  
2 with respect to natives of that state or area shall be allo-  
3 cated (to the extent practicable and otherwise consistent  
4 with this section and section 203) in a manner so that,  
5 except as provided in subsection (a)(4), the proportion of  
6 the visa numbers made available under each of paragraphs  
7 (1) through (4) of section 203(a) is equal to the ratio of  
8 the total number of visas made available under the respec-  
9 tive paragraph to the total number of visas made available  
10 under section 203(a).”.

11 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the  
12 Chinese Student Protection Act of 1992 (8 U. S .C. 1255  
13 note) is amended—

14 (1) in subsection (a), by striking “subsection  
15 (e)” and inserting “subsection (d)”; and

16 (2) by striking subsection (d) and redesignating  
17 subsection (e) as subsection (d).

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall take effect 1 year after the date of the  
20 enactment of this Act.

21 **SEC. 5. APPLICABILITY OF FOREIGN CORRUPT PRACTICES**  
22 **ACT.**

23 The Foreign Corrupt Practices Act (15 U.S.C. 78a  
24 et seq.) shall apply to any petition under section  
25 203(b)(5).

1 **SEC. 6. REGULATIONS.**

2 Not later than 180 days after the effective date of  
3 this subtitle, the Secretary of Homeland Security shall  
4 make rules to carry out this Act and the amendments  
5 made by this Act.

6 **SEC. 7. CONSULTATION WITH SECRETARY OF COMMERCE.**

7 The Secretary of Homeland Security may consult  
8 with the Secretary of commerce in carrying out this Act  
9 and the amendments made by this Act.

10 **SEC. 8. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall  
12 take effect beginning on the date that is 6 months after  
13 the date of enactment of this Act.