

# IMMIGRATION DRIVING ENTREPRENEURSHIP IN AMERICA (IDEA) ACT OF 2011

## TITLE I. ATTRACTING AND RETAINING INNOVATORS AND JOB CREATORS.

### **Sec. 101. U.S. Graduates in Science, Technology, Engineering and Mathematics.**

(a) **Advanced STEM Graduates.** Allows businesses to attract and retain successful innovators by creating a new “EB-1” green card category for advanced degree holders in Science, Technology, Engineering and Mathematics (STEM) from certain U.S. universities that excel in STEM instruction.

*The Best and the Brightest.* Requires an advanced degree from an accredited public or nonprofit university classified by the National Science Foundation (NSF) as a research institution or as otherwise excelling in STEM instruction.

*Job Offer and Prevailing Wage Required.* Requires a job offer in a field related to the graduate’s degree and that offered wages meet or exceed the “prevailing wage” in that occupation.

(b) **Cap Exemption.** Exempts these advanced STEM degree holders, as well as persons who qualify under the current EB-1 category for “outstanding professors and researchers,” from numerical limits.

(c) **Removing Visa Hurdles for Students.** Addresses a technicality in current law that prevents companies from obtaining green cards for foreign students without first sending them home or putting them on H-1B visas.

*Providing Dual Intent.* Provides students with so-called “dual intent,” allowing employers to recruit foreign students in the U.S. without first requiring an H-1B visa or the student’s departure.

*Extensions in Cases of Lengthy Adjudications.* Expands protections that now exist for H-1B visa holders to persons with F visas (students) and L visas (inter-company transferees). Extends visa status when a green card petition is filed until it is adjudicated.

(d) **Conforming Amendments.** Conforms the Immigration and Nationality Act (INA).

### **Sec. 102. Entrepreneurs who Establish Businesses and Create Jobs in the United States.**

(a) **Start-Up Business and Job Creation Visas.** Incentivizes economic growth and job creation by creating a new green card category for entrepreneurs who establish new start-up businesses and create jobs for American workers. Provides “conditional” green cards to two types of entrepreneurs:

**1. Venture Capital-Backed Start-Up Entrepreneurs.** For entrepreneurs who obtain significant venture capital financing for innovative ideas and products, so that new start-up businesses are formed in the United States, rather than abroad.

*Legitimate Investment Required.* Requires that the entrepreneur be sponsored by a legitimate and established venture capital company, certified angel investor, or qualified employer that has invested at least \$500,000 towards a new commercial enterprise.

*Required Job Creation or Commercial Activity.* Provides a two-year “conditional” green card; the conditions can be removed after two years by showing one of the following:

- the establishment of a new commercial enterprise that has created full-time jobs for at least three U.S. workers;
- the raising of \$1,000,000 in additional capital investment for the commercial enterprise; or
- the establishment of a new commercial enterprise with at least \$1 million in revenue.

**2. Self-Sponsored Start-up Entrepreneurs.** For entrepreneurs who have established new businesses and can already demonstrate job creation in the United States.

*Required Job Creation.* Requires, prior to visa issuance, the creation of a new commercial enterprise that has already created full-time jobs for at least three U.S. workers.

*Required Job Growth.* Provides the entrepreneur with a two-year “conditional” green card; the conditions can be removed after two years if the business can show it created full-time jobs for a total of at least 10 U.S. workers.

Requires the Secretaries of Homeland Security and Commerce to develop reasonable methodologies for calculating direct and indirect job creation by a commercial enterprise.

Defines “full-time employment” as a position that requires at least 35 hours of service per week, and allows an employer to satisfy this requirement on a full-time equivalent (FTE) basis.

Defines “United States worker” as a U.S. citizen, lawful permanent resident, refugee or asylee not including the entrepreneur or the entrepreneur’s spouse or children.

Prohibits any investment that includes assets acquired, directly or indirectly, by unlawful means.

**(b) Procedure for Granting Immigrant Status.** Conforms the INA with respect to the procedure for providing adjustment of status.

**(c) Conditional Permanent Resident Status.** Conforms the INA with respect to granting conditional status, the removal of conditions after two years, and revoking status if requirements are not met.

**(d) Cap Exemption.** Exempts EB-6 entrepreneurs from numerical limits.

### **Sec. 103. Eliminating Green Card Backlogs.**

Addresses employment-based green card backlogs so that American employers can attract and keep needed workers.

**(a) Recapturing Immigrant Visas Lost to Bureaucratic Delay.** “Recaptures” employment-based and family-based green cards that were authorized under current law but went unused due to government delays; also ensures that available visas will no longer go to waste in the future.

**(b) Spouses and Minor Children.** Exempts spouses and minor children from counting against numerical limits, freeing all employment-based visas for use by needed workers. (Current law authorizes 140,000 employment-based green cards, but less than half are actually available to workers because most are used for the spouses and children of such workers.)

**(c) Eliminating Employment-Based Per Country Levels.** Eliminates employment-based “per-country” levels so that all workers are treated fairly and employers can hire the most skilled workers without regard to national origin; also changes family-based per-country levels from 7% to 10%.

**(d) Country-Specific Offset.** Amends the Chinese Student Protection Act to strike a provision that reduces by 1000 the number of visas available to Chinese nationals.

### **Sec. 104. Immigrant Entrepreneurs and Innovators Present in the United States.**

Permits certain undocumented immigrants who qualify for Start-Up Entrepreneur visas and Advanced STEM Degree visas to obtain such visas if they were present in the U.S. on the date of enactment and have been continuously present since that date.

## **II. INVESTING IN THE NEXT GENERATION OF INNOVATORS AND JOB CREATORS.**

### **Sec. 201. Investing in STEM Education for U.S. Students.**

Establishes a new \$2000 fee for employers who file employment-based green card petitions for foreign workers; deposits these fees into the STEM Education and Training Account. Would raise hundreds of millions of dollars to provide and improve STEM education for American students.

### **Sec. 202. U.S. STEM Education and Training Account.**

Amends an existing INA account to improve STEM education and training of U.S. students, returning military personnel, and unemployed workers. Account funds are distributed as follows:

*60% for STEM Scholarships for U.S. Students.* For a National Science Foundation (NSF) scholarship program that awards higher-education, low-income scholarships to attract and retain U.S. students in STEM fields.

*15% for K-12 STEM Education.* For an NSF direct or matching grant program to improve K-12 STEM education in America, including through private-public partnerships. Program's focus is to support and improve:

- instructional materials and students assessments;
- professional training and development of K-12 STEM teachers;
- efforts to promote gender-equality among students receiving STEM instruction;
- STEM education in rural, economically-disadvantaged regions, including by supporting partnerships with businesses, educational institutions and community organizations;
- externships for students in STEM fields; and
- college preparatory support.

*12% for STEM Capacity-Building at Minority-Serving Institutions.* For an NSF competitive grant program to strengthen STEM education at Historically-Black Colleges and Universities, Hispanic-Serving Institutions, and American Indian-Serving Institutions. Program's focus is to support and improve, including through collaboration with existing institutions:

- activities to improve STEM courses and curriculum;
- efforts to promote gender equality among STEM students;
- faculty development;
- stipend programs for students participating in research; and
- other activities determined by the NSF to improve STEM instruction.

*10% for STEM Job Training.* To provide training and education for former military personnel and unemployed workers seeking to enter STEM fields.

*3% for Administration and Enforcement.* To improve the administration and enforcement of existing programs by the Departments of Homeland Security and Labor.

### **Sec. 203. Access to Student Visas for Students Present in the United States.**

Permits certain undocumented students who are enrolled in a full course of study at an accredited public or non-profit U.S. institution of higher education to apply for temporary student visas if they were present in the U.S. on the date of enactment, have been continuously present since that date, and initially entered the U.S. at 15 years of age or younger.

### **III. REDUCING ADMINISTRATIVE HURDLES TO FOSTER INNOVATION AND JOB CREATION.**

#### **Sec. 301. Streamlining Labor Certifications.**

**(a) In General.** Streamlines the Department of Labor (DOL) “permanent labor certification” process to prevent backlogs and better permit employers to retain needed employees:

*Adjudication timelines to eliminate delays.* Requires DOL to adjudicate labor certification applications within 120 days (or 180 days if an audit is required).

*Technical violations.* Requires DOL to provide notice of technical violations within 30 days, allowing employers to correct such violations without starting over.

*Fee authority.* Sets a \$295 fee for labor certification applications.

*Premium processing.* Sets a voluntary \$1000 fee for expedited “premium processing” under 30 days (or 60 days if an audit is required).

*Prohibition of fee reimbursement.* Prohibits employers from passing any fees to employees.

*Established U.S. Recruiters.* Creates a new “Established U.S. Recruiter” designation for employers who regularly recruit U.S. workers. Requires an employer to show that:

- at least 80% of the employer’s U.S. workforce are U.S. workers;
- at least 80% of the employer’s recent hires are U.S. workers;
- the employer regularly posts job opportunities on a publicly-accessible website; and
- the employer engages in at least three other forms of active recruitment on an annual basis.

Establishes the process for granting and revoking a designation; sets the fee for designation at \$500; and provides that a designation shall be valid for three years, unless revoked.

Provides that a designated employer may retain an immigrant if there are no “equally qualified” (rather than “minimally qualified”) U.S. workers.

**(b) Establishment of Account and Use of Fees.** Establishes an INA account for fees collected through the labor certification process, and requires that such fees be used for labor certification activities and making infrastructure improvements related to such activities.

#### **Sec. 302. Streamlining Petitions for Established Employers.**

Requires the Secretary of Homeland Security to create a “pre-certification procedure” for employers who file multiple employment-based petitions, so that such employers can avoid the repeated filing of the same information over multiple petitions.

#### **Sec. 303. Premium Processing.**

Amends the INA to require that “premium processing” be made available with respect to all employment-based immigrant petitions and applications, including any administrative appeal on any such petition or application.

#### IV. PROTECTING AMERICAN WORKERS.

##### **Sec. 401. Strengthening the Prevailing Wage System to Protect American Workers.**

Amends the current “prevailing wage” system to prevent employers from using foreign workers to undercut U.S. workers. Specifically, the bill replaces the current 4-level prevailing wage calculation with a new, more balanced 3-level wage formula, as follows:

<b>Current Formula (4 Levels)</b>	<b>New Formula (3 Levels)</b>
Level 1 = mean of bottom 1/3 of wages.	Level 1 = mean of bottom 2/3 of wages (but no less than 80% of Level 2).
Level 2 = just under mean of bottom 2/3 of wages.	Level 2 = mean of all wages.
Level 3 = just under mean of all wages.	Level 3 = mean of top 2/3 of wages.
Level 4 = mean of top 2/3 of wages.	

This new formula effectively eliminates the lowest wage level under the current system and upwardly adjusts wages in the remaining levels. This section also retains special rules that currently exist in the INA for institutions of higher education, related entities, and professional athletes.

##### **Sec. 402. Reforming the H-1B Program to Protect American Workers.**

**(a) Strengthening Wage Protections.** Requires that if more H-1B applications are filed than H-1B visas remain on a given date, applications that offer the highest wage levels are considered first, applications that offer the next highest wage levels are considered second, and any remaining applications are considered last.

**(b) Prohibiting Displacement of U.S. Workers.** Prohibits all H-1B employers, including third-party employers, from using H-1B workers to displace U.S. workers; improves definition of “displacement” to account for real-world hiring conditions, providing safe harbors for employers where needed.

**(c) Strengthening Recruitment Requirements.** Reforms H-1B recruitment requirements to better protect U.S. workers *and* improve the ability of employers to retain needed workers. Under current law, H-1B employers may hire H-1B workers without first recruiting U.S. workers, but they must later recruit if they want to retain the H-1B employee on a green card. To fix this, the bill moves recruitment from the back end to the front end of the H-1B process:

*Requiring Recruitment of U.S. Workers.* Generally requires employers to recruit U.S. workers before hiring an H-1B worker. “H-1B Dependent” employers—those employers who have more than 50 employees and more than 50% of such employees are temporary foreign workers—are required to comply with supervised recruitment activities as specified by DOL if the wage they are offering is less than the level 2 wage in the new prevailing wage formula.

*Exception for Employers who Pay Increased Wages.* Incentivizes the payment of higher wages by exempting employers from recruitment if they are designated as “Established U.S. Recruiters” and offer wages that meet or exceed the mean wage for the job in the area of intended employment.

*Eliminating Redundant Testing of Labor Market.* Waives additional recruitment on the back end of the H-1B process (when an employer seeks a green card for a needed worker), so long as the employer files the green card petition for the H-1B employee within 18 months of hire.

**(d) Improving Protections for U.S. Workers.** Simplifies current H-1B enforcement provisions to give more discretion to DOL, including the authority to investigate H-1B employers and to collect back wages on behalf of a worker to remedy a violation of the H-1B program. Requires that DOL audit at least 5% of employers who file H-1B applications in a given year. Prohibits discrimination or retaliation against H-1B employees or U.S. workers who file complaints. Prohibits benching of H-1B employees and reimbursement of fees required to be paid by employers.

**(e) Eliminating H-1B Extensions for Exclusively-Temporary Workers.** Reduces H-1B status from a maximum of 6 years to a maximum of 3 years.

**(f) Increased Portability for H-1B Employees.**

*Grace Period.* Provides 60-day grace period for an H-1B employee who is fired or laid off to find work with another H-1B employer.

*Allowing Promotions.* Amends current law to allow H-1B employees to advance within the same area of employment, thus avoiding what is known as “wage freeze.” (Currently, H-1B workers cannot accept promotions without risking visa status, squandering their potential.)

*Retention of Priority Date.* Allows an H-1B worker who takes a job with a different employer to retain the “priority date” of a green card petition filed by the first employer.

*Employment of Spouses.* Allows the spouses of H-1B employees to obtain work authorization.

**(g) Elimination of H-1B Classification for Fashion Models.** Moves fashion models from the H-1B visa program to the “P” visa program.

### **Sec. 403. Reforming the L Visa Program to Protect American Workers.**

**(a) Requiring Prevailing Wage for Certain L-1B Nonimmigrants.** Generally requires an employer to pay the prevailing wage in an occupation if the employer seeks to bring in an L-1B “specialized knowledge” worker for longer than 18 months over a 3-year period.

*Third-Party Worksites.* If a worker is to be stationed primarily with another employer, then the prevailing wage must be paid if the worker will be in the U.S. for more than 90 days.

*Alternative to Prevailing Wage.* Allows an employer to keep an L-1B worker on a foreign payroll if the employer can show that the worker’s total compensation (including benefits, employer-provided housing and automobiles, and other benefits) meets or exceeds the total compensation provided to similarly-situated U.S. workers.

**(b) Investigation and Disposition of Complaints Against L-1 Employers.** Provides DOL with authority similar to that in the H-1B program to investigate violations of the L visa program (current law has no enforcement provisions for the L visa).

**(c) Technical Amendment.** Provides a technical, conforming amendment to the INA.

**(d) Report on L-1 Nonimmigrants.** Amends a current reporting requirement in the INA to include information on the number of L-1 visas issued pursuant to approved “blanket” petitions.

**(e) Report on L-1 Blanket Petition Process.** Requires the DHS Inspector General, in cooperation with the State Dep’t Inspector General, to conduct a study and issue a report on the L visa blanket petition process.

## V. PROMOTING INVESTMENT IN THE AMERICAN ECONOMY.

### **Sec. 501. EB-5 Employment Creation Investor Program.**

Simplifies the current EB-5 Employment Creation Investor Program to attract additional foreign investment and create even more new jobs in the United States.

**(a) Authorization of EB-5 Employment Creation Regional Center Program.** Makes the existing EB-5 Regional Center pilot program permanent, providing additional certainty to investors.

*Set-Aside for Employment Creation Regional Centers.* Sets aside 5,000 of the available 10,000 EB-5 visas for regional center use.

*Methodologies.* Requires that DHS and Commerce develop reasonable methodologies for calculating direct and indirect job creation; allows up to 50% of job creation requirements to be satisfied by jobs created outside the regional center area.

*Preapproval of New Commercial Enterprises.* Requires DHS to establish a preapproval procedure that allows for the adjudication of questions related to a proposed business plan before individual petitions are submitted; provides additional certainty to potential investors by allowing DHS to make final decisions on all issues other than those unique to each individual investor; and eliminates the need for the repeated submission of information common to multiple petitions.

*Fee for Regional Center Designation.* Authorizes a fee for regional center designation.

**(b) Targeted Employment Areas.** Reforms the “Targeted Employment Area” (TEA) concept to better incentivize investment in rural areas, areas with high unemployment, areas with large declines in population, and certain designated economic development areas. Provides that TEA designations shall remain in effect for at least 2 years, giving additional certainty to investors.

**(c) Calculating Job Creation.** Reforms the definition of “full-time employment” to allow the use of full-time equivalent (FTE) calculations to capture both full-time and part-time jobs.

**(d) Capital.** Defines the term “capital” to prohibit any investment that includes assets acquired, directly or indirectly, by unlawful means.

**(e) Type of Investment.** Clarifies that a commercial enterprise may include a limited partnership or similar entity.

**(f) Extension.** Provides investors with up to 2 additional years to meet program requirements when unexpected delays occur. An investor must show that delays were based on circumstances outside of his or her control and that such circumstances will be resolved within the additional time period.

**(g) Study.** Requires DHS and Commerce to study the EB-5 program, including job creation methodologies, and to issue biennial reports measuring the economic impact of the EB-5 program.

### **Sec. 502. Concurrent Filing; Adjustment of Status.**

Amends the INA to allow for adjustment of status for persons applying for EB-5 and EB-6 visas.

### **Sec. 503. Fees; Premium Processing.**

Establishes an INA account for fees collected through the EB-5 and EB-6 programs, requiring that such fees be used to administer and operate those programs; establishes a “premium processing” fee of \$2500 for expedited processing of EB-5 and EB-6 petitions within 60 days.