



Comparison of House EB-5 Bills

The chart below represents summary comparison of the key features in the three EB-5 bills currently in play in the House of Representatives. The comparisons are not intended to comprehensively capture the referenced provisions nor their nuanced distinctions across the bills. Also, some provisions are not clear in meaning or effect as drafted. Accordingly, as interpreted, the chart may not reflect the drafters' intent in some areas. *By Carolyn Lee**

	HR 616	HR 3370	HR 2131 (from 113th Congress)
Integrity Measures	<ul style="list-style-type: none"> Prevent fraud by requiring bona fides of regional center principals, excluding any found liable for violation relating to fraud or deceit in last 5 years; liable for violation related to sale of security; would be inadmissible under U.S. immigration laws. Requires attestations and background checks including biometrics. Terminations of regional centers for failure to provide information or for engagement in fraud or threats to national security. Terminations are subject to judicial review. Applies Foreign Corrupt Practices Act to any petition. 	<ul style="list-style-type: none"> Based almost entirely on S. 1501 and S. 744. Sanctions based on S. 744 and HR 2131. Regional center terminations in "unreviewable discretion" for securities-related determinations. 	<ul style="list-style-type: none"> No person who would be inadmissible may be involved in a regional center, nor may such person have violated a fraud provision of Securities and Exchange Act. DHS may require attestations and information including biometrics to determine compliance. DHS may terminate a regional center for violation. Includes new commercial enterprises as well as job creating entities. DHS may "immediately terminate" a regional center for failure to certify compliance with Federal securities laws. Suspension or termination for securities-related judgments, violations, misrepresentations.
TEA	<ul style="list-style-type: none"> Deference to state designations as conclusive long as uses US census bureau and US BLS statistics. Determination in effect for 2 year period following determination. 	<ul style="list-style-type: none"> Introduces a scheme of tranches for different types of TEAs: rural, high unemployment, state/federal EZs, Renewal Communities, closed military bases. High unemployment defined as one or more census tracts within one Core Based Statistical Area using most recent census date. No state designation or federal agency mentioned. 	<ul style="list-style-type: none"> Secretary of Labor determines high unemployment TEAs, unless superseded by a later determination. Secretary of Labor to determine methodology and has discretion to determine. DHS shall not be bound by any other entity's determination.
Investment Amount adjustment	---	<ul style="list-style-type: none"> Initial adjustment to \$2M for first fiscal year beginning more than 6 months after enactment. Applies to petitions filed on or after the effective date unless grandfathered by preapproval before effective date (start of next fiscal year). Subsequent adjustments every 3rd year by the percentage change between the CPI for June from CPI for June 3 years prior. Applies to petitions filed on or after the effective date grandfathered by preapproval before effective date (3rd fiscal year after initial adjustment). 	<ul style="list-style-type: none"> Initial adjustment based on the percentage increase by which the CPI index for the month before the enactment date exceeds the same month in 1990. Applies to petitions filed on or after enactment date. Starting first fiscal year beginning more than 6 months after enactment and each FY thereafter, increased by percentage increase in CPI for the month of June before the effective date exceeds the CPI for the previous June. Applies to petitions filed on or after the effective date of increase.

	HR 616	HR 3370	HR 2131 (from 113th Congress)
Effective dates	<ul style="list-style-type: none"> • 6 months after enactment. • Special rules for per country visa ceilings; effective 1 year after enactment. 	---	<ul style="list-style-type: none"> • Upon enactment to petitioners filing on or after enactment; regional centers (and involved individuals) designated before, on or after enactment; any application to designate regional center pending upon enactment. <p><i>Note: two carve-outs, but effect unclear because seemingly contradictory.</i></p>
Preapprovals	<ul style="list-style-type: none"> • Optional. • Requires adjudication of all issues other than investor-related. • Requires elimination of repeated submission of project documents. • Deference to prior determinations unless material change, fraud, or legal deficiency. • Requires processing time of 180 days + 30 days for RFE response adjudication. 	<ul style="list-style-type: none"> • Mostly follows HR 616 but omits deference. 	---
Procedural changes/ fixes	<ul style="list-style-type: none"> • Petition processing times of 180 days + 30 days for RFE response adjudication. • Locking in the “child” status of a dependent whose parent’s residency is terminated for one additional petition as long as unmarried and filed not later than 1 year after termination. • Enhanced pay scale for EB-5 examiners. • Delegation to US Dept. of Commerce (DOC) for authority and responsibility for determinations. • Regulations by DHS and DOC. • Concurrent filings; inclusion in 245(k) • Regulations within 180 days of effective date. 	<ul style="list-style-type: none"> • Requires random site visits to not less than 5% of all projects each FY. • Delegation to DOC for authority and responsibility for determinations per HR 616. • Regulations by DHS and DOC per HR 616. • Length of investment “not less than 2 years”. • Reports: DHS report on job creating methodology, promoting EB-5; annual site visit report; biennial report measuring the economic impact. • Rulemaking within 120 days of enactment. • Concurrent filings; inclusion in 245(k); premium processing for \$5,000 but only for I-526s. • Additional 10,000 visas if initial visa cap is reached. 	<ul style="list-style-type: none"> • Extends CPR for 1 additional year if needed.

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