

AMENDMENT NO. _____ Calendar No. _____

Purpose: To permanently authorize and improve the EB-5 Visa Program.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. LEAHY

Viz:

- 1 On page 372, strike lines 13 through 17.
- 2 On page 867, after line 15, add the following:
- 3 **SEC. 4804. PERMANENT AUTHORIZATION OF EB-5 RE-**
4 **GIONAL CENTER PROGRAM.**
- 5 (a) REPEAL.—Section 610 of the Departments of
6 Commerce, Justice, and State, the Judiciary, and Related
7 Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note)
8 is repealed.
- 9 (b) AUTHORIZATION.—Section 203(b)(5) (8 U.S.C.
10 1153(b)(5)) is amended by adding at the end the fol-
11 lowing:

1 “(E) REGIONAL CENTER PROGRAM.—

2 “(i) IN GENERAL.—Visas under this
3 paragraph shall be made available to quali-
4 fied immigrants participating in a program
5 implementing this paragraph that involves
6 a regional center in the United States,
7 which has been designated by the Sec-
8 retary of Homeland Security, in consulta-
9 tion with the Secretary of Commerce, on
10 the basis of a general proposal for the pro-
11 motion of economic growth, including—

12 “(I) increased export sales;

13 “(II) improved regional produc-
14 tivity;

15 “(III) job creation; or

16 “(IV) increased domestic capital
17 investment.

18 “(ii) ESTABLISHMENT OF A REGIONAL
19 CENTER.—A regional center shall have ju-
20 risdiction over a defined geographic area,
21 which shall be described in the proposal
22 and consistent with the purpose of concen-
23 trating pooled investment in defined eco-
24 nomic zones. The establishment of a re-
25 gional center may be based on general pre-

1 ditions, contained in the proposal, con-
2 cerning—

3 “(I) the kinds of commercial en-
4 terprises that will receive investments
5 from aliens;

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

9 “(III) other positive economic ef-
10 fects such investments will have.

11 “(iii) COMPLIANCE.—In determining
12 compliance with subparagraph (A)(ii), the
13 Secretary of Homeland Security shall per-
14 mit aliens admitted under the program de-
15 scribed in this subparagraph to establish
16 reasonable methodologies for determining
17 the number of jobs created by the pro-
18 gram, including jobs estimated to have
19 been created indirectly through—

20 “(I) revenues generated from in-
21 creased exports, improved regional
22 productivity, job creation; or

23 “(II) increased domestic capital
24 investment resulting from the pro-
25 gram, including jobs created outside

1 of the geographic boundary of the re-
2 gional center as a result of the immi-
3 grant's investment in regional center-
4 affiliated commercial enterprises.

5 “(iv) INDIRECT JOB CREATION.—The
6 Secretary shall permit immigrants admit-
7 ted under this paragraph to satisfy the re-
8 quirements under subparagraph (A)(ii)
9 with jobs that are estimated to be created
10 indirectly through investment under this
11 paragraph in accordance with this sub-
12 paragraph.

13 “(F) PREAPPROVAL OF BUSINESS PLANS
14 FOR REGIONAL CENTER INVESTMENTS.—

15 “(i) PETITION.—Before filing a peti-
16 tion under this subparagraph by an alien
17 investor, a commercial enterprise affiliated
18 with a regional center may file a petition
19 with the Secretary of Homeland Security
20 to preapprove a particular investment in
21 the commercial enterprise, as provided
22 in—

23 “(I) a business plan for a specific
24 capital investment project;

1 “(II) investment documents, such
2 as subscription, investment, partner-
3 ship, and operating agreements; and

4 “(III) a credible economic anal-
5 ysis regarding estimated job creation
6 that is based upon reasonable meth-
7 odologies.

8 “(ii) PREAPPROVAL PROCEDURE.—

9 The Secretary shall establish a process to
10 facilitate the preapproval of business plans
11 under this subparagraph related to invest-
12 ment in a regional center commercial en-
13 terprise, which shall include an opportunity
14 for the applicant to address and cure any
15 deficiencies identified by the Secretary in
16 the applicant’s business plan, investment
17 documents, or statement regarding job cre-
18 ation prior to a final determination. The
19 Secretary shall impose a fee for the use of
20 the process described in this clause suffi-
21 cient to recover the costs of its administra-
22 tion.

23 “(iii) EFFECT OF PREAPPROVAL OF
24 BUSINESS PLAN FOR INVESTMENT IN RE-
25 GIONAL CENTER COMMERCIAL ENTER-

1 PRISE.—The preapproval of a petition
2 under this subparagraph shall be binding
3 for purposes of the adjudication of peti-
4 tions filed under this subparagraph by im-
5 migrants investing in the commercial en-
6 terprise unless the Secretary determines
7 that there is evidence of fraud, misrepre-
8 sentation, criminal misuse, a threat to na-
9 tional security, or other evidence affecting
10 program eligibility that was not disclosed
11 by the petitioner during the preapproval
12 process.

13 “(iv) EXPEDITED PROCESSING OPTION
14 FOR ALIEN INVESTOR PETITIONS AFFILI-
15 ATED WITH PREAPPROVED BUSINESS
16 PLANS.—The Secretary may establish a
17 premium processing option for alien inves-
18 tors who are investing in a commercial en-
19 terprise that has received preapproval
20 under this subparagraph and may impose
21 a fee for the use of that option sufficient
22 to recover all costs of the option.

23 “(v) CONSIDERATION OF CRIMINAL
24 ACTIVITY IN ESTABLISHING ELIGIBILITY
25 CRITERIA.—The Secretary shall consider

1 the potential for fraud, misrepresentation,
2 criminal misuse, and threats to national
3 security in establishing eligibility criteria
4 for any program the Secretary may estab-
5 lish under this subparagraph.

6 “(G) REGIONAL CENTER FINANCIAL
7 STATEMENTS.—

8 “(i) IN GENERAL.—Each regional cen-
9 ter designated under subparagraph (E)
10 shall annually submit, to the Director of
11 U.S. Citizenship and Immigration Services
12 (referred to in this subparagraph as the
13 ‘Director’), in a manner prescribed by the
14 Secretary of Homeland Security, financial
15 statements, including—

16 “(I) an accounting of all foreign
17 investor money invested through the
18 regional center; and

19 “(II) for each capital investment
20 project—

21 “(aa) an accounting of the
22 aggregate capital invested
23 through the regional center or af-
24 filiated commercial enterprises by

1 immigrants under this para-
2 graph;

3 “(bb) a description of how
4 such funds are being used to exe-
5 cute the approved business plan;

6 “(cc) evidence that 100 per-
7 cent of such investor funds have
8 been dedicated to the project;

9 “(dd) detailed evidence of
10 the progress made toward the
11 completion of the project;

12 “(ee) an accounting of the
13 aggregate direct and indirect jobs
14 created or preserved; and

15 “(ff) a certification by the
16 regional center that such state-
17 ments are accurate.

18 “(ii) AMENDMENT OF FINANCIAL
19 STATEMENTS.—If the Director determines
20 that a financial statement required under
21 clause (i) is deficient, the Director may re-
22 quire the regional center to amend or sup-
23 plement such financial statement.

24 “(iii) SANCTIONS.—

1 “(I) EFFECT OF VIOLATION.—If
2 the Director determines, after review-
3 ing the financial statements submitted
4 under clause (i), that a regional cen-
5 ter, director, or other individual in-
6 volved with a regional center (other
7 than an alien investor) has violated
8 any requirement under clause (i) or
9 that the regional center is conducting
10 itself in a manner inconsistent with its
11 designation, the Director may sanc-
12 tion the violating entity or individual
13 under subclause (II).

14 “(II) AUTHORIZED SANCTIONS.—
15 The Director shall establish a grad-
16 uated set of sanctions for violations
17 referred to in subclause (I), includ-
18 ing—

19 “(aa) fines equal to not
20 more than 5 percent of the total
21 capital invested by immigrant in-
22 vestors in the commercial enter-
23 prise’s approved business plan;
24 and

1 “(bb) temporary suspension
2 from participation in the pro-
3 gram described in subparagraph
4 (E), which may be lifted by the
5 Director if the individual or enti-
6 ty cures the alleged violation
7 after provided such an oppor-
8 tunity by the Director;

9 “(cc) permanent bar from
10 program participation for 1 or
11 more individuals affiliated with
12 the regional center; and

13 “(dd) termination of re-
14 gional center status.

15 “(H) BONA FIDES OF PERSONS INVOLVED
16 IN REGIONAL CENTERS.—

17 “(i) IN GENERAL.—No person shall be
18 permitted by any regional center to be in-
19 volved with the regional center as its prin-
20 cipal, representative, administrator, owner,
21 officer, board member, manager, executive,
22 general partner, fiduciary, marketer, pro-
23 moter, or other similar position of sub-
24 stantive authority for the operations, man-
25 agement or promotion of the regional cen-

1 ter if the Secretary of Homeland Secu-
2 rity—

3 “(I) determines such person has
4 been found liable within the previous
5 5 years for any criminal or civil viola-
6 tion of any law relating to fraud or
7 deceit, or at any time if such violation
8 involved a criminal conviction with a
9 term of imprisonment of at least 1
10 year or a criminal or civil violation of
11 any law or agency regulation in con-
12 nection with the purchase or sale of a
13 security; or

14 “(II) knows or has reasonable
15 cause to believe that the person is en-
16 gaged in, has ever been engaged in, or
17 seeks to engage in any—

18 “(aa) illicit trafficking in
19 any controlled substance;

20 “(bb) activity relating to es-
21 pionage or sabotage;

22 “(cc) activity related to
23 money laundering (as described
24 in section 1956 or 1957 of title
25 18, United States Code);

1 “(dd) terrorist activity (as
2 defined in clauses (iii) and (iv) of
3 section 212(a)(3)(B));

4 “(ee) human trafficking or
5 human rights offense; or

6 “(ff) violation of any stat-
7 ute, regulation, or Executive
8 Order regarding foreign financial
9 transactions or foreign asset con-
10 trol.

11 “(ii) INFORMATION REQUIRED.—The
12 Secretary shall require such attestations
13 and information, including, the submission
14 of fingerprints to the Federal Bureau of
15 Investigation, and shall perform such
16 criminal record checks and other back-
17 ground checks with respect to a regional
18 center, and persons involved in a regional
19 center as described in clause (i), as the
20 Secretary considers appropriate to deter-
21 mine whether the regional center is in com-
22 pliance with clause (i). The Secretary may
23 require the information and attestations
24 described in this clause from such regional
25 center, and any person involved in the re-

1 gional center, at any time on or after the
2 date of the enactment of the Border Secu-
3 rity, Economic Opportunity, and Immigra-
4 tion Modernization Act.

5 “(iii) TERMINATION.—The Secretary
6 is authorized, in his or her unreviewable
7 discretion, to terminate any regional center
8 from the program under this paragraph if
9 he or she determines that—

10 “(I) the regional center is in vio-
11 lation of clause (i);

12 “(II) the regional center or any
13 person involved with the regional cen-
14 ter has provided any false attestation
15 or information under clause (ii);

16 “(III) the regional center or any
17 person involved with the regional cen-
18 ter fails to provide an attestation or
19 information requested by the Sec-
20 retary under clause (ii); or

21 “(IV) the regional center or any
22 person involved with the regional cen-
23 ter is engaged in fraud, misrepresen-
24 tation, criminal misuse, or threats to
25 national security.

1 “(I) REGIONAL CENTER COMPLIANCE
2 WITH SECURITIES LAWS.—

3 “(i) CERTIFICATION REQUIRED.—The
4 Secretary of Homeland Security shall not
5 approve an application for regional center
6 designation or regional center amendment
7 that does not certify that the regional cen-
8 ter and, to the best knowledge of the appli-
9 cant, all parties to the regional center are
10 in, and will maintain, compliance with the
11 securities laws of the United States.

12 “(ii) TERMINATION OR SUSPEN-
13 SION.—The Secretary shall terminate the
14 designation of any regional center that
15 does not provide the certification described
16 in subclause (i) on an annual basis. In ad-
17 dition to any other authority provided to
18 the Secretary regarding the regional center
19 program described in subparagraph (E),
20 the Secretary may, in his or her
21 unreviewable discretion, suspend or termi-
22 nate the designation of any regional center
23 if he or she determines that the regional
24 center or any party to the regional cen-
25 ter—

1 “(I) is permanently or tempo-
2 rarily enjoined by order, judgment, or
3 decree of any court of competent ju-
4 risdiction in connection with the pur-
5 chase or sale of a security;

6 “(II) is subject to any final order
7 of the Securities and Exchange Com-
8 mission that—

9 “(aa) bars such person from
10 association with an entity regu-
11 lated by the Securities and Ex-
12 change Commission; or

13 “(bb) constitutes a final
14 order based on violations in con-
15 nection with the purchase or sale
16 of a security; or

17 “(III) knowingly submitted or
18 caused to be submitted a certification
19 described in clause (i) that contained
20 an untrue statement of a material fact
21 or omitted to state a material fact
22 necessary in order to make the state-
23 ments made, in the light of the cir-
24 cumstances under which they were
25 made, not misleading.

1 “(iii) SAVINGS PROVISION.—Nothing
2 in this subparagraph may be construed to
3 impair or limit the authority of the Securi-
4 ties and Exchange Commission under the
5 Federal securities laws.

6 “(iv) DEFINED TERM.—For the pur-
7 pose of this subparagraph, the term ‘party
8 to the regional center’ shall include the re-
9 gional center, its agents, employees, and
10 attorneys, and any persons in active con-
11 cert or participation with the regional cen-
12 ter.

13 “(J) DENIAL OR REVOCATION.—If the Sec-
14 retary of Homeland Security determines, in his
15 or her unreviewable discretion, that the ap-
16 proval of a petition, application, or benefit de-
17 scribed in this subparagraph is contrary to the
18 national interest of the United States for rea-
19 sons relating to fraud, misrepresentation, crimi-
20 nal misuse, or threats to national security, the
21 Secretary may deny or revoke the approval of—

22 “(i) a petition seeking classification of
23 an alien as an alien investor under this
24 paragraph;

1 “(ii) a petition to remove conditions
2 under section 216A before granting lawful
3 permanent resident status or any other pe-
4 tition, application, or benefit based upon
5 the previous or concurrent filing or ap-
6 proval of a petition for classification of an
7 alien under this paragraph; or
8 “(iii) an application for designation as
9 a regional center.”.

10 (c) ASSISTANCE BY SECRETARY OF COMMERCE.—

11 (1) IN GENERAL.—The Secretary of Commerce,
12 upon the request of the Secretary, shall provide con-
13 sultation assistance for determining whether—

14 (A) a proposed regional center should be
15 designated, terminated, or subject to other ad-
16 judicative action; and

17 (B) whether a petitioner or applicant for a
18 benefit under section 203(b)(5) of the Immigra-
19 tion and Nationality Act, as amended by sub-
20 section (b), has met the requirements under
21 such paragraph with respect to job creation.

22 (2) RULEMAKING.—The Secretary and the Sec-
23 retary of Commerce may each adopt such rules and
24 regulations as are necessary to carry out the con-
25 sultation process provided for in paragraph (1).

1 (3) SAVINGS PROVISION.—Nothing in this sub-
2 section shall be construed to require consultation
3 with the Secretary of Commerce to continue the des-
4 ignation of a regional center approved before the
5 date of the enactment of this Act.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section—

8 (1) shall be effective upon enactment of this
9 Act; and

10 (2) shall apply to—

11 (A) any application to designate a regional
12 center, and any person involved with the re-
13 gional center, that is pending or approved on or
14 after the date of the enactment of this Act; and

15 (B) any regional center approved before
16 the date of enactment of this Act, on or after
17 a delayed effective date that is 1 year after
18 such date of enactment with respect to any per-
19 son involved in the regional center on or after
20 such delayed effective date.

21 **SEC. 4805. CONDITIONAL PERMANENT RESIDENT STATUS**
22 **FOR EMPLOYMENT-BASED IMMIGRANTS,**
23 **SPOUSES, AND CHILDREN.**

24 (a) IN GENERAL.—Section 216A (8 U.S.C. 1186b)
25 is amended—

1 (1) in the section heading, by striking “ALIEN
2 ENTREPRENEURS” and inserting “EMPLOYMENT-
3 BASED IMMIGRANTS”;

4 (2) by striking “alien entrepreneur” each place
5 such term appears and inserting “employment-based
6 immigrant”;

7 (3) by striking “such an entrepreneur” each
8 place such term appears and inserting “such an im-
9 migrant”;

10 (4) by striking “Attorney General” each place
11 such term appears (except for subsection (d)(2)(C))
12 and inserting “Secretary of Homeland Security”;

13 (5) in subsection (b)(1), by amending subpara-
14 graph (C) to read as follows:

15 “(C) subject to the exception in subsection
16 (d)(4), the alien was otherwise not conforming
17 to the requirements under section 203(b)(5)”.

18 (6) in subsection (c)(1)—

19 (A) by redesignating subparagraphs (A)
20 and (B) as clauses (i) and (ii), respectively;

21 (B) by striking “In order” and inserting
22 the following:

23 “(A) PETITION AND INTERVIEW.—Except
24 as provided in paragraph (3)(D), in order”;

1 (C) in subparagraph (A)(ii), as redesignig-
2 nated, by striking “Service” and inserting “De-
3 partment of Homeland Security”; and

4 (D) by adding at the end the following:

5 “(B) SEPARATE PETITION NOT RE-
6 QUIRED.—An alien spouse or alien child shall
7 not be required to file separate petitions under
8 subparagraph (A)(i) if the employment-based
9 immigrant’s petition includes such alien spouse
10 or alien child.

11 “(C) EFFECT ON SPOUSE OR CHILD.—If
12 the alien spouse or alien child obtains perma-
13 nent residence on a conditional basis after the
14 employment-based immigrant files a petition
15 under subparagraph (A)(i)—

16 “(i) the conditional basis of the per-
17 manent residence of the alien spouse or
18 alien child shall be removed upon approval
19 of the employment-based immigrant’s peti-
20 tion under this subsection;

21 “(ii) the permanent residence of the
22 alien spouse or alien child shall be uncon-
23 ditional if—

24 “(I) the employment-based immi-
25 grant’s petition is approved before the

21

1 date on which the spouse or child ob-
2 tains permanent residence; or

3 “(II) the employment-based im-
4 migrant dies after the approval of a
5 petition under section 203(b)(5); and

6 “(iii) the alien child shall not be
7 deemed ineligible for approval under sec-
8 tion 203(b)(5) or removal of conditions
9 under this section if the alien child reaches
10 21 years of age during—

11 “(I) the pendency of the employ-
12 ment-based immigrant’s petition
13 under section 203(b)(5); or

14 “(II) conditional residency under
15 such section.

16 “(D) ADDITIONAL FEE.—Notwithstanding
17 any other provision under this section, the Sec-
18 retary may require the employment-based immi-
19 grant to pay an additional fee for a petition
20 filed under subparagraph (A)(i) that includes
21 the alien’s spouse and child or children.”;

22 (7) in subsection (c)(3)(A), striking “the” be-
23 fore “such filing”;

24 (8) in subsection (d)—

1 (A) in paragraph (1), by amending sub-
2 paragraph (B) to read as follows:

3 “(B) except as provided in paragraph (4),
4 is otherwise conforming to the requirements
5 under section 203(b)(5).”;

6 (B) in paragraph (3), by striking “Service”
7 and inserting “Department of Homeland Secu-
8 rity”; and

9 (C) by adding at the end the following:

10 “(4) SPECIAL RULE FOR ALIEN INVESTORS IN
11 A REGIONAL CENTER.—Each petition under sub-
12 section (c)(1)(A) filed by an alien investor who in-
13 vests in accordance with section 203(b)(5)(E) shall
14 contain facts and information demonstrating that
15 the alien is complying with the requirements under
16 section 203(b)(5), except—

17 “(A) the alien shall not be subject to the
18 requirements under section 203(b)(5)(A)(ii);
19 and

20 “(B) the petition shall contain the most re-
21 cent financial statement filed by the regional
22 center in which the alien has invested in accord-
23 ance with section 203(b)(5)(G)”;

24 (9) by redesignating subsection (f) as sub-
25 section (g); and

(10) by inserting after subsection (e) the following:

3 “(f) FRAUD, MISREPRESENTATION, CRIMINAL MIS-
4 USE, OR THREATS TO THE PUBLIC SAFETY OR NATIONAL
5 SECURITY.—If the Secretary of Homeland Security deter-
6 mines, in his or her sole and unreviewable discretion, that
7 the conditional permanent resident status granted to an
8 employment-based immigrant under subsection (a) is con-
9 trary to the national interest of the United States for rea-
10 sons relating to fraud, misrepresentation, criminal misuse,
11 or threats to national security, the Secretary shall—

12 “(1) notify the immigrant involved of such de-
13 termination; and

14 “(2) terminate the permanent resident status of
15 the immigrant involved as of the date of such deter-
16 mination.”.

(b) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 216A and inserting the following:

“Sec. 216A. Conditional permanent resident status for certain employment-based immigrants, spouses, and children.”.

20 SEC. 4806. EB-5 VISA REFORMS.

(a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
LIMITATION.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)),
as amended by sections 2103(c)(2), 2212(d)(2), 2307(b),

1 and 2402, is further amended by adding at the end the
2 following:

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

6 (b) TECHNICAL AMENDMENT.—Section 203(b)(5), as
7 amended by this Act, is further amended by striking “At-
8 torney General” each place it appears and inserting “Sec-
9 retary of Homeland Security”.

10 (c) TARGETED EMPLOYMENT AREAS.—

11 (1) IN GENERAL.—Section 203(b)(5)(B) (8
12 U.S.C. 1153(b)(5)(B)) is amended to read as fol-
13 lows:

14 “(B) SET-ASIDE FOR TARGETED EMPLOY-
15 MENT AREAS.—

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

22 “(I) is investing such capital in a
23 targeted employment area; and

24 “(II) will create employment in
25 such targeted employment area.

1 “(ii) DURATION OF HIGH UNEMPLOY-
2 MENT AND POVERTY AREA DESIGNA-
3 TION.—A designation of a high unemploy-
4 ment or poverty area as a targeted employ-
5 ment area shall be valid for 5 years and
6 may be renewed for additional 5-year peri-
7 ods if the area continues to meet the defi-
8 nition of a high unemployment or poverty
9 area. An investor who has made the re-
10 quired amount of investment in such a tar-
11 geted employment area during its period of
12 designation shall not be required to in-
13 crease the amount of investment based
14 upon expiration of the designation.”.

15 (d) ADJUSTMENT OF MINIMUM EB–5 INVESTMENT
16 AMOUNT.—Section 203(b)(5)(C)(i) (8 U.S.C.
17 1153(b)(5)(C)(i)) is amended—

18 (1) by striking “The Attorney General” and in-
19 serting “The Secretary of Commerce”;

20 (2) by striking “Secretary of State” and insert-
21 ing “Secretary of Homeland Security”; and

22 (3) by adding at the end the following: “Unless
23 adjusted by the Secretary of Commerce, the amount
24 specified in this clause shall automatically adjust, on
25 January 1, 2016, by the percentage change in the

1 Consumer Price Index (CPI-U) during fiscal year
2 2015, and on every fifth subsequent January 1 by
3 the cumulative percentage change in the CPI-U dur-
4 ing the previous five fiscal years, for any petition
5 filed to classify an alien under this paragraph on or
6 after the date of each automatic adjustment.”.

7 (e) DEFINITIONS.—

8 (1) IN GENERAL.—Section 203(b)(5) (8 U.S.C.
9 1153(b)(5)), as amended by subsections (b) and (c)
10 and section 4804, is further amended—

11 (A) by striking subparagraph (D) and in-
12 serting following:

13 “(D) CALCULATION OF FULL-TIME EM-
14 PLOYMENT.—Job creation under this paragraph
15 may consist of employment measured in full-
16 time equivalents, such as intermittent or sea-
17 sonal employment opportunities and construc-
18 tion jobs. A full-time employment position is
19 not a requirement for indirect job creation.”;
20 and

21 (B) by adding at the end the following:

22 “(K) DEFINITIONS.—In this paragraph:

23 “(i) The term ‘capital’ means all real,
24 personal, or mixed assets, whether tangible
25 or intangible, owned or controlled by the

1 investor, or held in trust for the benefit of
2 the investor, to which the investor has un-
3 restricted access, which shall be valued at
4 fair market value in United States dollars,
5 in accordance with Generally Accepted Ac-
6 counting Principles, at the time it is in-
7 vested under this paragraph.

8 “(ii) The term ‘full-time employment’
9 means employment in a position that re-
10 quires at least 35 hours of service per
11 week, regardless of how many employees
12 fill the position.

13 “(iii) The term ‘high unemployment
14 and poverty area’ means—

15 “(I) an area consisting of a cen-
16 sus tract or contiguous census tracts
17 that has an unemployment rate that
18 is at least 150 percent of the national
19 average unemployment rate and in-
20 cludes at least one census tract with
21 20 percent of its residents living below
22 the poverty level as determined by the
23 Bureau of the Census; or

24 “(II) an area that is within the
25 boundaries established for purposes of

1 a Federal or State economic develop-
2 ment incentive program, including
3 areas defined as Enterprise Zones,
4 Renewal Communities, Promise
5 Zones, and Empowerment Zones.

6 “(iv) The term ‘rural area’ means—

7 “(I) any area other than an area
8 within a metropolitan statistical area
9 or within the outer boundary of any
10 city or town having a population of
11 20,000 or more (based on the most
12 recent decennial census of the United
13 States); or

14 “(II) any city or town having a
15 population of fewer than 20,000
16 (based on the most recent decennial
17 census of the United States) that is
18 located within a State having a popu-
19 lation of fewer than 1,500,000 (based
20 on the most recent decennial census of
21 the United States).

22 “(v) The term ‘targeted employment
23 area’ means a rural area or a high unem-
24 ployment and poverty area.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall apply to any application for
3 a visa under section 203(b)(5) of the Immigration
4 and Nationality Act that is filed on or after the date
5 that is 1 year after the date of the enactment of this
6 Act.

7 (f) AGE DETERMINATION FOR CHILDREN OF ALIEN
8 INVESTORS.—Section 203(h) (8 U.S.C. 1153(h)) is
9 amended by adding at the end the following:

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

1 than 1 petition filed after the alien's 21st birth-
2 day.''.
3

4 (g) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
5 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The
6 Secretary may establish, fix the compensation of, and ap-
7 point individuals to, designated critical administrative,
8 technical, and professional positions needed to administer
9 sections 203(b)(5) and 216A of the Immigration and Na-
10 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

11 (h) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

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

20 (2) REGULATIONS.—The Secretary of Home-
21 land Security and the Secretary of Commerce may
22 each adopt such rules and regulations as are nec-
23 essary to carry out the delegation authorized under
24 paragraph (1), including regulations governing the
25 eligibility criteria for obtaining benefits pursuant to
26 the amendments made by this section.

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

7 (i) CONCURRENT FILING OF EB-5 PETITIONS AND
8 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
9 245 (8 U.S.C. 1255) is amended—

10 (1) in subsection (k), in the matter preceding
11 paragraph (1), by striking “or (3)” and inserting
12 “(3), (5), or (7)”; and

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

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