To reauthorize the EB-5 Regional Center Program in order to promote and reform foreign capital investment and job creation in American communities.

IN THE SENATE OF THE UNITED STATES

Mr. Leahy (for himself and Mr. Grassley) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To reauthorize the EB-5 Regional Center Program in order to promote and reform foreign capital investment and job creation in American communities.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Job Creation
and Investment Promotion Reform Act of 2015”.

SEC. 2. REAUTHORIZATION AND REFORM OF THE RE-
GIONAL CENTER PROGRAM.

(a) REPEAL.—Section 610 of the Departments of
Commerce, Justice, and State, the Judiciary, and Related
Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is repealed.

(b) AUTHORIZATION.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended by adding at the end the following:

“(E) REGIONAL CENTER PROGRAM.—

“(i) IN GENERAL.—Visas under this paragraph shall be made available through September 30, 2019, to qualified immigrants (and the eligible spouses and children of such immigrants) participating in a program implementing this paragraph that involves a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment.

“(ii) PROCESSING.—In processing petitions under section 204(a)(1)(H) for classification under this paragraph, the Secretary of Homeland Security—
“(I) may process petitions in a manner and order established by the Secretary; and

“(II) shall deem such petitions to include records previously filed with the Secretary regarding the regional center’s application for approval of the particular commercial enterprise investment offering if the alien petitioner certifies that such records are incorporated by reference into the alien’s petition.

“(iii) Establishment of a Regional Center.—A regional center shall operate within a defined and limited geographic area, which shall be described in the proposal and be consistent with the purpose of concentrating pooled investment within the defined and limited geographic area. The proposal to establish a regional center shall demonstrate that the pooled investment will have a significant economic impact on such geographic area, and shall include—
“(I) reasonable predictions, supported by economically and statistically valid forecasting tools, concerning the amount of investment that will be pooled, the kinds of commercial enterprises that will receive such investments, details of the jobs that will be created directly or indirectly as a result of such investments, and other positive economic effects such investments will have; and

“(II) a description of the policies and procedures in place reasonably designed to monitor new commercial enterprises and job-creating entities to ensure compliance with—

“(aa) all applicable laws, regulations, and executive orders of the United States, including immigration laws (as defined in section 101(a)(17)) and securities laws; and

“(bb) all securities laws of each State in which the regional center operates.
“(iv) INDIRECT JOB CREATION.—The Secretary of Homeland Security shall permit aliens seeking admission under this subparagraph to satisfy only up to 90 percent of the requirement under subparagraph (A)(ii) with jobs that are estimated to be created indirectly through investment under this paragraph in accordance with this subparagraph. An employee of the new commercial enterprise or job-creating entity may be considered to hold a job that has been directly created.

“(v) COMPLIANCE.—

“(I) IN GENERAL.—In determining compliance with subparagraph (A)(ii), the Secretary of Homeland Security shall permit aliens seeking admission under this subparagraph to rely on economically and statistically valid methodologies for determining the number of jobs created by the program, including—

“(aa) jobs estimated to have been created directly, provided that the Secretary may request
additional evidence to verify that
the directly-created jobs satisfy
the requirements under subpara-
graph (A)(ii); and

“(bb) consistent with this
subparagraph, jobs estimated to
have been created indirectly
through revenues generated from
increased exports, improved re-
gegional productivity, job creation,
and increased domestic capital
investment resulting from the
program.

“(II) JOB AND INVESTMENT RE-
QUIREMENTS.—

“(aa) RELOCATED JOBS.—
In determining compliance with
the job creation requirement
under subparagraph (A)(ii), the
Secretary may include jobs esti-
ated to be created under a
methodology whereby jobs are at-
tributable to prospective tenants
occupying commercial real estate
created or improved by capital in-
vestments, but only if the number of such jobs estimated to be created has been determined by an economically and statistically valid methodology and such jobs are not existing jobs that have been relocated.

"(bb) PUBLICLY AVAILABLE BONDS.—Alien investor capital may not be utilized, by a new commercial enterprise or otherwise, to purchase municipal bonds or any other bonds, if such bonds are available to the general public, either as part of a primary offering or from a secondary market.

"(cc) CONSTRUCTION ACTIVITY JOBS.—The length of full-time construction activity jobs that last shorter than 24 months may be aggregated to satisfy the employment creation requirement under subparagraph (A)(ii) for alien investors participating in
the program described in this subparagraph.

“(vi) AMENDMENTS.—The Secretary of Homeland Security shall—

“(I) require regional centers to give advance notice to, and obtain approval from, the Secretary of significant proposed changes to their organizational structure, ownership, or administration, including the sale of such centers or other arrangements in which individuals not previously subject to the requirements under subparagraph (H) become involved with the regional center, before any such proposed changes may take effect;

“(II) approve the changes referred to in subclause (I) only after—

“(aa) notice of any such proposed changes are made publicly available through a publicly accessible website of U.S. Citizenship and Immigration Services for a period of not fewer than 30 days; and
“(bb) the Secretary determines that the regional center would remain compliant with this subparagraph and with subparagraph (H); and

“(III) notwithstanding the pendency of a request for approval of any amendment that has been filed pursuant to subclause (I), adjudicate business plans under subparagraph (F) and petitions under section 204(a)(1)(H).

“(F) BUSINESS PLANS FOR REGIONAL CENTER INVESTMENTS.—

“(i) APPLICATION FOR APPROVAL OF AN INVESTMENT IN A COMMERCIAL ENTERPRISE.—A regional center shall file an application with the Secretary of Homeland Security for each particular investment offering through an associated commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in that offering, which shall include—
“(I) a comprehensive business plan for a specific capital investment project;

“(II) a credible economic analysis regarding estimated job creation that is based upon economically and statistically valid methodologies;

“(III) any documents filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a et seq.) or with the securities regulator of any State, as required by law;

“(IV) any investment and offering documents, including subscription, investment, partnership, and operating agreements, private placement memoranda, term sheets, biographies for management, officers, directors, and any person with similar responsibilities, the description of the business plan to be provided to potential alien investors, and marketing materials used or drafts prepared for use in connection with the offering, which
shall contain references, as appropriate, to any—

“(aa) investment risks associated with the new commercial enterprise and the job-creating entity;

“(bb) conflicts of interest that currently exist or may arise among the regional center, new commercial enterprise, job-creating entity, or the principals or attorneys of the aforementioned entities;

“(cc) pending material litigation or bankruptcy, or adverse judgments or bankruptcy orders issued during the most recent 10-year period, in the United States or abroad, affecting the regional center, new commercial enterprise, job-creating entity, or any other enterprise in which any principal of the aforementioned entities held majority ownership at the time; and
“(dd)(AA) fees, ongoing interest, or other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including to agents, finders, or broker dealers involved in the offering;

“(BB) a description of the services performed, or which will be performed, by such person to entitle the person to such fees, interest, or compensation; and

“(CC) the name and contact information of any such person;

“(V) a description of the policies and procedures, such as those related to internal and external due diligence, reasonably designed to ensure that the regional center, new commercial enterprise, job-creating entity, their agents, employees, advisors, and attorneys, and any persons in active concert or participation with the regional center,
new commercial enterprise or job-creating entity comply, as applicable, with the securities laws of the United States and the laws of the applicable States in connection with the offer, purchase, or sale of their securities;

“(VI) a certification from the regional center and any issuer of securities affiliated with the regional center that their agents, employees, advisors, and attorneys, and any parties associated with the regional center and the issuer of securities affiliated with the regional center are in compliance with the securities laws of the United States and the laws of the applicable States in connection with the offer, purchase, or sale of its securities, to the best of the certifier’s knowledge, after a due diligence investigation; and

“(VII) documentation demonstrating that the regional center consulted with a local economic development agency or municipality re-
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regarding the capital investment project, which shall address—

“(aa) the number and type of jobs anticipated to be created; and

“(bb) whether the project is consistent with the agency or municipality’s plan for economic development in the region.

“(ii) EFFECT OF APPROVAL OF A BUSINESS PLAN FOR AN INVESTMENT IN A REGIONAL CENTER’S COMMERCIAL ENTERPRISE.—The approval of an application under this subparagraph shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same capital investment project through a new commercial enterprise, and of petitions by the same immigrants filed under section 216A, except in the case of fraud, misrepresentation, criminal misuse, a threat to public safety or national security, a material change that affects the program eligibility of the approved eco-
nomic model, other evidence affecting program eligibility that was not disclosed by the applicant during the adjudication process, or a material mistake of law or fact in the prior adjudication.

“(iii) SITE VISITS.—United States Citizenship and Immigration Services shall—

“(I) perform site visits to regional centers; and

“(II) perform at least 1 site visit to each new commercial enterprise and job-creating entity, which—

“(aa) shall include a review for evidence of direct job creation in accordance with subparagraph (E)(v)(I); and

“(bb) may occur at any time during the period between the filing of an application for approval of an investment in a commercial enterprise under this subparagraph and the adjudication of the first petition for removal of conditions on lawful permanent resi-
dent status under section 216A(c) filed by an alien investing in such investment.

“(G) **Regional center annual statements.**—

“(i) **In general.**—Each regional center designated under subparagraph (E) shall annually submit a statement to the Director of United States Citizenship and Immigration Services (referred to in this subparagraph as the ‘Director’), in a manner prescribed by the Secretary of Homeland Security, which shall include—

“(I) a certification stating that, to the best of the certifier’s knowledge, after a due diligence investigation, the regional center is in compliance with clauses (i) and (ii) of subparagraph (H);

“(II) a certification described in subparagraph (I)(ii)(II); and

“(III) a certification stating that, to the best of the certifier’s knowledge, after a due diligence investiga-
tion, the regional center is in compliance with subparagraph (K)(iii);

“(IV) a description of any pending material litigation or bankruptcy proceedings, or litigation or bankruptcy proceedings resolved during the preceding fiscal year, involving the regional center, new commercial enterprise, or job-creating entity;

“(V) an accounting of all foreign investor capital invested in the regional center, new commercial enterprise, or job-creating entity;

“(VI) for each new commercial enterprise associated with the regional center—

“(aa) an accounting of the aggregate capital invested in the new commercial enterprise and job-creating entity by alien investors under this paragraph for each capital investment project being undertaken by the new commercial enterprise;
"(bb) a description of how such capital is being used to execute each capital investment project in the filed business plan or plans;

"(cc) evidence that 100 percent of such capital has actually been committed to each capital investment project;

"(dd) detailed evidence of the progress made toward the completion of each capital investment project;

"(ee) an accounting of the aggregate direct jobs created or preserved;

"(ff) to the best of the regional center’s knowledge, for all fees collected from alien investors by any party in connection with the regional center, new commercial enterprise, or job-creating entity, including administrative, loan monitoring, or loan management fees—
“(AA) a description of all fees collected;

“(BB) an accounting of the entities that received such fees, including any fees paid to a promoter, finder, broker-dealer, or other entity used to locate individual investors; and

“(CC) the purpose for which such fees were collected;

“(gg) any documentation referred to in subparagraph (F)(i)(IV) if there has been a material change during the preceding fiscal year; and

“(hh) a certification by the regional center that such statements are accurate, to the best of the certifier’s knowledge, after a due diligence investigation; and

“(VII) a certification that the regional center has policies and procedures in place that are reasonably de-
signed to ensure that the regional center and any associated new commercial enterprises and job-creating entities comply with Federal labor laws.

“(ii) AMENDMENT OF ANNUAL STATEMENTS.—The Director—

“(I) shall require the regional center to amend or supplement an annual statement required under clause (i) if the Director determines that such statement is deficient; and

“(II) may require the regional center to amend or supplement such annual statement if the Director determines that such an amendment or supplement is appropriate.

“(iii) SANCTIONS.—

“(I) EFFECT OF VIOLATION.—

The Director shall sanction any regional center entity in accordance with subclause (II) if the regional center fails to submit an annual statement or if the Director determines that the regional center—
“(aa) knowingly submitted or caused to be submitted a statement, certification, or any information submitted pursuant to this subparagraph that contained an untrue statement of material fact; or

“(bb) is conducting itself in a manner inconsistent with its designation, including any willful, undisclosed, and material deviation by new commercial enterprises from any filed business plan for such commercial enterprises.

“(II) AUTHORIZED SANCTIONS.—The Director shall establish a graduated set of sanctions based on the severity of the violations referred to in subclause (I), including—

“(aa) fines equal to not more than 10 percent of the total capital invested by alien investors in the regional center’s new commercial enterprises or job-cre-
ating entities, the payment of which shall not in any circumstance utilize any of such alien investors’ capital investments, and which shall be deposited into the EB–5 Integrity Fund established under subparagraph (J);

“(bb) temporary suspension from participation in the program described in subparagraph (E), which may be lifted by the Director if the individual or entity cures the alleged violation after being provided such an opportunity by the Director;

“(cc) permanent bar from program participation for 1 or more individuals associated with the regional center or new commercial enterprise or job-creating entity; and

“(dd) termination of regional center designation.
“(H) BONA FIDES OF PERSONS INVOLVED WITH REGIONAL CENTER PROGRAM.—

“(i) IN GENERAL.—No person shall be permitted to be involved with any regional center, new commercial enterprise, or job-creating entity if—

“(I) the person has been found to have committed—

“(aa) a criminal or civil violation involving fraud or deceit within the previous 10 years;

“(bb) a civil violation resulting in a liability in excess of $1,000,000 involving fraud or deceit; or

“(cc) a crime resulting in a conviction with a term of imprisonment of more than 1 year;

“(II) the person is subject to a final order, for the duration of any penalty imposed by such order, of a State securities commission (or an agency or officer of a State who performs similar functions), a State au-

thority that supervises or examines
banks, savings associations, or credit
unions, a State insurance commission
(or an agency of or officer of a State
who performs similar functions), an
appropriate Federal banking agency,
the Commodity Futures Trading
Commission, the Securities and Ex-
change Commission, a financial self-
regulatory organization recognized by
the Securities and Exchange Commiss-
ion, or the National Credit Union
Administration, which is based on a
violation of any law or regulation
that—

"(aa) prohibits fraudulent,
manipulative, or deceptive con-
duct; or

"(bb) bars the person
from—

"(AA) association with
an entity regulated by such
commission, authority, agen-
cy, or officer;
“(BB) engaging in the business of securities, insurance, or banking; or
“(CC) engaging in savings association or credit union activities;
“(III) the person is engaged in, has ever been engaged in, or seeks to engage in—
“(aa) any illicit trafficking in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act);
“(bb) any activity relating to espionage, sabotage, or theft of intellectual property;
“(cc) any activity related to money laundering (as described in 1956 or 1957 of title 18, United States Code);
“(dd) any terrorist activity (as defined in section 212(a)(3)(B));
“(ee) any activity constituting or facilitating human trafficking or a human rights offense;

“(ff) any activity described in section 212(a)(3)(E); or

“(gg) the violation of any statute, regulation, or Executive Order regarding foreign financial transactions or foreign asset control; or

“(IV) the person—

“(aa) is, or during the preceding 10 years has been, included on the Department of Justice’s List of Currently Disciplined Practitioners; or

“(bb) during the preceding 10 years has received a reprimand or otherwise been publicly disciplined for conduct related to fraud or deceit by a State bar association of which the person is or was a member.
(ii) FOREIGN INVOLVEMENT IN REGIONAL CENTER PROGRAM.—

(I) LAWFUL STATUS REQUIRED.—No person may be involved with a regional center unless the person is a national of the United States or an individual who has been lawfully admitted for permanent residence (as defined in paragraphs (20) and (22) of section 101(a).

(II) FOREIGN GOVERNMENTS.—
No foreign government entity may provide capital to, or be directly or indirectly involved with the ownership or administration of, a regional center, a new commercial enterprise, or a job-creating entity.

(iii) INFORMATION REQUIRED.—The Secretary shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation, and shall perform such criminal record checks and other background and database checks with respect to a regional center, new com-
commercial enterprise, and job-creating entity, and persons involved with such entities (as described in clause (v)), in order to determine whether such entities are in compliance with clauses (i), (ii), and (iii). The Secretary may require the information and attestations described in this clause from such entities, and any person involved with such entities, at any time on or after the date of the enactment of the American Job Creation and Investment Promotion Reform Act of 2015.

“(iv) TERMINATION.—

“(I) IN GENERAL.—The Secretary shall suspend or terminate the designation of any regional center, new commercial enterprise, or job-creating entity from the program under this paragraph if the Secretary determines that such entity—

“(aa) knowingly involved a person with such entity in violation of clause (i) or (ii);
“(bb) failed to provide an attestation or information requested by the Secretary; or

“(cc) knowingly provided any false attestation or information under clause (iii).

“(II) INFORMATION.—The Secretary, after the performance of the criminal record and other background checks described in clause (iii), shall notify a regional center, new commercial enterprise, or job-creating entity whether any person involved with such entities is not in compliance with clause (i) or (ii). If, 30 days after receiving such notification, the regional center, new commercial enterprise, or job-creating entity fails to discontinue the prohibited person’s involvement with the regional center, new commercial enterprise, or job-creating entity, the regional center, new commercial enterprise, or job-creating entity shall be deemed to have knowledge under
subclause (I)(aa) that such person is
in violation of clause (i) or (ii).

“(v) PERSONS INVOLVED WITH A RE-
GIONAL CENTER, NEW COMMERCIAL EN-
TERPRISE, OR JOB-CREATING ENTITY.—
For the purposes of this paragraph, a per-
son is considered to be ‘involved’ with a re-

gional center, a new commercial enterprise,
or a job-creating entity if he or she is the
principal, representative, administrator,
owner, officer, board member, manager,
exutive, general partner, fiduciary, or in
a similar position of substantive authority
for the operations or management of the
regional center, new commercial enterprise,
or job-creating entity, respectively.

“(I) COMPLIANCE WITH SECURITIES
LAWS.—

“(i) JURISDICTION.—

“(I) IN GENERAL.—The United
States has jurisdiction over the pur-
chase or sale of any security offered
or sold by any regional center or any
party associated with a regional cen-
ter for purposes of the securities laws.
Subject matter jurisdiction shall also lie within the United States.

“(II) COMPLIANCE WITH REGULATION S.—Solely for purposes of section 5 of the Securities Act of 1933 (15 U.S.C. 77e), a regional center or any party associated with a regional center is not precluded from offering or selling a security pursuant to Regulation S under the Securities Act of 1933 (15 U.S.C. 77a et seq.) to the extent that such offering or selling otherwise complies with that regulation.

“(ii) REGIONAL CENTER CERTIFICATIONS REQUIRED.—

“(I) INITIAL CERTIFICATION.—The Secretary of Homeland Security may not approve an application for regional center designation or regional center amendment unless the regional center certifies that, to the best of the certifier’s knowledge, after a due diligence investigation, the regional center is in compliance with and has poli-
cies and procedures, such as those related to internal and external due diligence, reasonably designed to ensure, as applicable, that all parties associated with the regional center remain in compliance with the securities laws of the United States and of any State in which the regional center operates in connection with the offer, purchase, or sale of securities or the provision of investment advice by the regional center or parties associated with the regional center.

“(II) Reissue.—A regional center shall annually reissue a certification described in subclause (I) in accordance with subparagraph (G). Annual certifications under this subclause shall also certify compliance with clause (iii) by stating that—

“(aa) the certifier is in a position to have knowledge of the offers, purchases, and sales of securities or the provision of invest-
ment advice by parties associated
with the regional center;

“(bb) to the best of the cer-
tifier’s knowledge, after a due
diligence investigation, all such
offers, purchases, and sales of se-
curities or the provision of invest-
ment advice complied with the se-
curities laws of the United States
and the securities laws of any
State in which the regional cen-
ter operates; and

“(cc) records, data, and in-
formation related to such offers,
purchases, and sales have been
maintained.

“(III) Effect of Noncompliance.—If a regional center, through
its due diligence, discovered during
the previous fiscal year that the re-
gional center or any party associated
with the regional center was not in
compliance with the securities laws of
the United States or the securities
laws of any State in which the re-
regional center operates, the certifier shall—

“(aa) describe the activities that led to noncompliance;

“(bb) describe the actions taken to remedy the noncompliance; and

“(cc) certify that the regional center and all parties associated with the regional center are currently in compliance, to the best of the certifier’s knowledge, after a due diligence investigation.

“(iii) OVERSIGHT REQUIRED.—Each regional center shall monitor and supervise all offers, purchases, and sales of, and non-privileged advice relating to securities made by parties associated with the regional center to ensure compliance with the securities laws of the United States, and maintain records, data, and information relating to all such offers, purchases, sales, and nonprivileged advice during the 5-year period beginning on the date of their cre-
ation. Such records, data, and information shall be made available to the Securities and Exchange Commission and to the Secretary upon request.

“(iv) Suspension or Termination.—In addition to any other authority provided to the Secretary under this paragraph, the Secretary, in the Secretary’s discretion, may suspend or terminate the designation of any regional center or impose other sanctions against the regional center if the regional center, or any parties associated with the regional center that the regional center knew or reasonably should have known—

“(I) are permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the offer, purchase, or sale of a security or the provision of investment advice;

“(II) are subject to any final order of the Securities and Exchange Commission or a State securities regulator that—
“(aa) bars such person from association with an entity regulated by the Securities and Exchange Commission; or

“(bb) constitutes a final order based on a finding of an intentional violation or a violation related to fraud or deceit in connection with the offer, purchase, or sale of, or nonprivileged advice relating to, a security; or

“(III) submitted or caused to be submitted a certification described in clause (ii) that contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

“(v) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to impair or limit the authority of the Securities and Exchange Commission under the Fed-
eral securities laws or any State securities regulator under State securities laws.

“(vi) Defined Term.—In this subparagraph, the term ‘parties associated with a regional center’ means—

“(I) the regional center;

“(II) the new commercial enterprise or job-creating entity associated with the regional center;

“(III) the regional center’s and new commercial enterprise’s owners, officers, directors, managers, partners, agents, employees, promoters and attorneys; and

“(IV) any person in active concert or participation with the regional center or directly or indirectly controlling, controlled by, or under common control with the regional center.

“(J) EB–5 Integrity Fund.—

“(i) Establishment.—There is established in the United States Treasury a special fund, which shall be known as the EB–5 Integrity Fund (referred to in this subparagraph as the ‘Fund’). Amounts de-
posited into the Fund shall be available to the Secretary of Homeland Security until expended for the purposes set forth in clause (iii).

“(ii) FEES.—

“(I) ANNUAL FEE.—The Secretary of Homeland Security shall collect an annual fee of $25,000 for the Fund from each regional center designated under subparagraph (E). The fee shall be $10,000 if a regional center has 20 or fewer total investors in the preceding fiscal year in its new commercial enterprises.

“(II) DUE DATES.—The first fee under this clause shall be due not later than January 1, 2016, and subsequent fees due not later than January 1 of each year thereafter.

“(III) PETITION FEE.—The Secretary shall collect a fee of $1,000 for the Fund with each petition filed under section 204(a)(1)(H) for classification under subparagraph (E).
“(IV) INCREASES.—The Secretary may prescribe regulations, as necessary, to increase the dollar amounts under this clause to ensure the Secretary’s continued ability to carry out the activities specified in clause (iii).

“(iii) PERMISSIBLE USES OF FUND.—

The Secretary shall—

“(I) use not less than 1⁄3 of the amounts deposited into the Fund to conduct audits and site visits (with or without notice);

“(II) use not less than 1⁄3 of the amounts deposited into the Fund for investigations based outside of the United States, including—

“(aa) monitoring and investigating program-related events and promotional activities; and

“(bb) ensuring an alien investor’s compliance with subparagraph (L);

“(III) use amounts deposited into the Fund—
“(aa) to detect and investigate fraud or other crimes; and

“(bb) to determine whether regional centers, new commercial enterprises, job-creating entities, and alien investors (and their alien spouses and alien children, if any) comply with applicable immigration laws;

“(IV) use amounts deposited into the Fund to conduct interviews of the owners, officers, directors, managers, partners, agents, employees, promoters, and attorneys of regional centers, new commercial enterprises, and job-creating entities; and

“(V) otherwise use amounts deposited into the Fund as the Secretary determines to be necessary, including monitoring compliance with the requirements under section 7 of the American Job Creation and Investment Promotion Reform Act of 2015.
“(iv) FAILURE TO PAY FEE.—The Secretary of Homeland Security shall—

“(I) impose a reasonable penalty, which shall be deposited into the Fund, if a regional center does not pay the fee required under clause (ii) within 30 days of the date on which such fee is due under clause (ii); and

“(II) terminate the designation of any regional center that does not pay the fee required under clause (ii) before 90 days after the date on which such fee is due under clause (ii).

“(v) REPORT.—The Secretary shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes how amounts in the Fund were expended during the previous fiscal year.

“(K) DIRECT AND THIRD-PARTY PROMOTERS.—

“(i) RULES AND STANDARDS.—Direct and third party promoters of regional cen-
ters, new commercial enterprises, and jobcreating entities shall comply with the rules and standards prescribed by the Secretary of Homeland Security, in consultation with the Securities and Exchange Commission, to oversee regional center promotion, including—

“(I) registration with U.S. Citizenship and Immigration Services, which the Secretary may make publicly available;

“(II) minimum qualifications;

“(III) guidelines for offering investment opportunities and representing the visa process to foreign investors; and

“(IV) permissible fee arrangements.

“(ii) EFFECT OF VIOLATION.—If the Secretary determines that a direct or third-party promoter has violated clause (i), the Secretary shall suspend or permanently bar such individual from participation in the program described in subparagraph (E).
“(iii) COMPLIANCE.—Each regional center shall maintain a written agreement between the regional center, new commercial enterprise, or job-creating entity and each direct or third-party promoter operating on behalf of such regional center, new commercial enterprise, or job-creating entity that outlines the rules and standards prescribed under clause (i).

“(L) SOURCE OF FUNDS.—

“(i) IN GENERAL.—An alien investor shall demonstrate that the capital required under subparagraph (A) and any funds used to pay administrative costs and fees associated with the alien’s investment were obtained from a lawful source and through lawful means.

“(ii) REQUIRED INFORMATION.—The Secretary of Homeland Security shall require, as applicable, that an alien investor’s petition under this paragraph contain—

“(I) business and tax records, in-
“(aa) foreign business registration records;

“(bb) corporate or partnership tax returns (or tax returns of any other entity in any form filed in any country or subdivision of such country), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind, filed within 7 years, with any taxing jurisdiction in or outside the United States by or on behalf of the alien investor; and

“(cc) evidence identifying any other source of capital or administrative fees;

“(II) evidence related to monetary judgments against the alien investor, including certified copies of any judgments, and evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil ac-
tions (pending or otherwise) involving possible monetary judgments against the alien investor from any court in or outside the United States; and

“(III) the identity of all persons who transfer into the United States, on behalf of the investor—

“(aa) any funds that are used to meet the capital requirement under subparagraph (A); and

“(bb) any funds that are used to pay administrative costs and fees associated with the alien’s investment.

“(iii) Gift restrictions.—Gifted funds may be counted toward the minimum capital investment requirement under subparagraph (C) only if such funds were gifted to the alien investor by the alien investor’s spouse, parent, son, or daughter (but not children (as defined in section 101(b)(1)), sibling, or grandparent and such funds were gifted in good faith and not to circumvent any limitations im-
posed on permissible sources of capital under this subparagraph. If a significant portion of the capital invested under subparagraph (A) was gifted to the alien investor, the Secretary shall require the alien investor’s petition under this paragraph to include records described in subclauses (I) and (II) of clause (ii) from the donor.

“(iv) Loan Restrictions.—Capital derived from indebtedness may be counted toward the minimum capital investment requirement under subparagraph (C) only if such capital is—

“(I) secured by assets owned by the alien investor; and

“(II) issued by a banking or lending institution that is properly chartered or licensed under the laws of any State, territory, country, or applicable jurisdiction, and that is not sanctioned or restricted, which the Secretary shall determine after consulting with relevant commercial or government databases, such as those of the Department of Treasury’s Of-

“(M) TREATMENT OF INVESTORS IF A REGIONAL CENTER HAS BEEN TERMINATED.—

“(i) IN GENERAL.—Upon the termination from the program under this paragraph of a regional center, new commercial enterprise, or job-creating entity under this paragraph—

“(I) except as provided in subclause (II), the conditional permanent residence of an alien who has been admitted to the United States pursuant to section 216A(a)(1) based on an investment in a terminated regional center, new commercial enterprise, or job-creating entity shall continue to be authorized, consistent with this subparagraph; and

“(II) if the Secretary has reason to believe the alien was a knowing participant in the conduct that led to the termination of such regional cen-
ter, new commercial enterprise, or job-creating entity, the Secretary shall notify the alien of such belief and, subject to section 216A(b)(2), shall terminate the permanent resident status of the alien (and the alien’s spouse and child) as of the date of such determination.

“(ii) NEW REGIONAL CENTER OR INVESTMENT.—The conditional permanent resident status of an alien described in clause (i)(I) shall be terminated 180 days after the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job creating entity unless—

“(I) in the case of the termination of a regional center—

“(aa) the new commercial enterprise associates with an approved regional center;

“(bb) such alien makes a qualifying investment in another commercial enterprise associated
with an approved regional center; or

“(cc) such alien makes a qualifying investment in another commercial enterprise under this paragraph not associated with a regional center; or

“(II) in the case of the termination of a new commercial enterprise or job-creating entity, such alien invests in another commercial enterprise associated with an approved regional center.

“(iii) Removal of Conditions.—Aliens described in subclauses (I)(bb), (I)(cc), and (II) of clause (ii) shall be eligible to have their conditions removed pursuant to section 216A beginning on the date that is 2 years after the date of the subsequent investment.

“(N) Threats to the National Interest.—

“(i) Denial or Revocation.—The Secretary of Homeland Security shall deny or revoke the approval of a petition, appli-
cation, or benefit described in this para-
graph, including the documents described
in clause (ii), if the Secretary determines
that the approval of such petition, applica-
tion, or benefit is contrary to the national
interest of the United States for reasons
relating to threats to public safety or na-
tional security.

“(ii) DOCUMENTS.—The documents
described in this clause are—

“(I) a certification, designation,
or amendment to the designation of a
regional center;

“(II) a petition seeking classifica-
tion of an alien as an alien investor
under this paragraph;

“(III) a petition to remove condi-
tions under section 216A; or

“(IV) an application for approval
of a business plan in a commercial en-
terprise under subparagraph (F).

“(iii) DEBARMENT.—If a regional
center, new commercial enterprise, or job-
creating entity has its designation or par-
ticipation in the program under this para-
graph terminated for reasons relating to public safety or national security, any person associated with such regional center, new commercial enterprise, or job-creating entity, including an alien investor, shall be permanently barred from future participation in the program under this paragraph if the Secretary of Homeland Security, in the Secretary’s discretion, determines, by a preponderance of the evidence, that such person was a knowing participant in the conduct that led to the termination.

“(iv) NOTICE.—If the Secretary of Homeland Security determines that the approval of a petition, application, or benefit described in this paragraph should be denied or revoked pursuant to clause (i), the Secretary shall—

“(I) notify the relevant individual, regional center, or commercial entity of such determination; and

“(II) deny or revoke such petition, application, or benefit or terminate the permanent resident status of the alien (and the alien spouse and
alien children of such immigrant), as
provided in clause (i) as of the date of
such determination.

“(v) JUDICIAL REVIEW.—Notwith-
standing any other provision of law (statu-
tory or nonstatutory), including section
2241 of title 28, United States Code, or
any other habeas corpus provision, and
sections 1361 and 1651 of such title, no
court shall have jurisdiction to review a de-
nial or revocation under this subparagraph.
Nothing in this clause may be construed as
precluding review of constitutional claims
or questions of law raised upon a petition
for review filed with an appropriate court
of appeals in accordance with section 242.

“(O) FRAUD, MISREPRESENTATION, AND
CRIMINAL MISUSE.—

“(i) DENIAL OR REVOCATION.—The
Secretary of Homeland Security shall deny
or revoke the approval of a petition, appli-
cation, or benefit described in this para-
graph, including the documents described
in subparagraph (N)(ii), if the Secretary
determines that such petition, application,
or benefit was predicated on or involved fraud, deceit, intentional material misrepresentation, or criminal misuse.

“(ii) DEBARMENT.—If a regional center, new commercial enterprise, or job-creating entity has its designation or participation in the program under this paragraph terminated for reasons relating to fraud, intentional material misrepresentation, or criminal misuse, any person associated with such regional center, new commercial enterprise, or job-creating entity, including an alien investor, shall be permanently barred from future participation in the program under this paragraph if the Secretary of Homeland Security determines, by a preponderance of the evidence, that such person was a knowing participant in the conduct that led to the termination.

“(iii) NOTICE.—If the Secretary of Homeland Security determines that the approval of a petition, application, or benefit described in this paragraph should be de-
nied or revoked pursuant to clause (i), the Secretary shall—

“(I) notify the relevant individual, regional center, or commercial entity of such determination; and

“(II) deny or revoke such petition, application, or benefit or terminate the permanent resident status of the alien (and the alien spouse and alien children of such immigrant) as provided in clause (i) as of the date of such determination.

“(P) Administrative appellate review.—

“(i) In general.—The Director of U.S. Citizenship and Immigration Services shall provide an opportunity for an administrative appellate review by the Administrative Appeals Office of U.S. Citizenship and Immigration Services of any determination made under this paragraph, including—

“(I) an application for regional center designation or regional center amendment;
“(II) an application for approval of a business plan under subparagraph (F);

“(III) a petition by an alien investor for status as an immigrant under this paragraph;

“(IV) the termination or suspension of any benefit accorded under this paragraph; and

“(V) any sanction imposed by the Secretary of Homeland Security pursuant to this paragraph.

“(ii) JUDICIAL REVIEW.—Subject to section 242(a)(2), and notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a determination under this paragraph until the regional center, its associated entities, or the alien investor has exhausted all administrative appeals.”.

(e) EFFECTIVE DATES.—
(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section shall be effective at any time after the date of the enactment of this Act, as determined by the Secretary, and shall be effective not later than 90 days after such date of enactment.

(2) EXCEPTIONS.—Clauses (iv) and (v) of subparagraph (E) and subparagraph (L) of section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) shall not apply to a petition that—

(A) was filed under such section 203(b)(5) before the date of the enactment of this Act; or

(B) is filed under section 216A of such Act (8 U.S.C. 1186b) if the underlying petition filed under section 203(b)(5) of such Act was filed before the date of the enactment of this Act.

(d) GAO REPORT.—Not later than December 31, 2018, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes—

(1) the economic benefits of the regional center program established under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) shall not apply to a petition that—

(A) was filed under such section 203(b)(5) before the date of the enactment of this Act; or

(B) is filed under section 216A of such Act (8 U.S.C. 1186b) if the underlying petition filed under section 203(b)(5) of such Act was filed before the date of the enactment of this Act.

(d) GAO REPORT.—Not later than December 31, 2018, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes—

(1) the economic benefits of the regional center program established under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C.
1153(b)(5)), including the steps taken by United
States Citizenship and Immigration Services to
verify job creation;

(2) the extent to which United States Citizen-
ship and Immigration Services ensures compliance
by regional center participants with their obligations
under the immigrant investor program;

(3) the extent to which United States Citizen-
ship and Immigration Services has maintained
records of regional centers and associated commer-
cial enterprises, including annual statements and
certifications;

(4) the steps taken by United States Citizen-
ship and Immigration Services to verify the source
of funds, as required under section 203(b)(5)(L) of
the Immigration and Nationality Act, as added by
subsection (b);

(5) the extent to which United States Citizen-
ship and Immigration Services collaborates with
other Federal and law enforcement agencies, par-
ticularly to detect illegal activity and threats to na-
tional security related to the regional center pro-
gram;

(6) the extent to which United States Citizen-
ship and Immigration Services has prevented fraud
and abuse in regional center activities, including the
designation of targeted employment areas in areas
that otherwise have high employment;

(7) the extent to which United States Citizenship
and Immigration Services has used its authority
to sanction, suspend, bar, or terminate regional cen-
ters or individuals affiliated with regional centers;

(8) the steps that have been taken to oversee
direct and third-party promoters under section
203(b)(5)(K) of the Immigration and Nationality
Act, as added by subsection (b);

(9) the extent to which employees of the De-
partment of Homeland Security have complied with
the ethical standards and transparency requirements
under section 7; and

(10) an accounting of the expenditure of
amounts from the EB–5 Integrity Fund established
under section 203(b)(5)(J) of the Immigration and
Nationality Act, as added by subsection (b).

(e) INSPECTOR GENERAL REPORT.—Not later than
December 31, 2018, the Inspector General of the Intel-
ligence Community, in coordination with the Inspector
General of the Department of Homeland Security and
after consultation with relevant Federal agencies, includ-
ing United States Immigration and Customs Enforce-
ment, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives concerning the immigrant visa program set forth in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) that describes—

(1) the vulnerabilities within the program that may undermine the national security of the United States;

(2) the actual or potential use of the program to facilitate export of sensitive technology;

(3) the actual or potential use of the program to facilitate economic espionage;

(4) the actual or potential use of the program by foreign government agents; and

(5) the actual or potential use of the program to facilitate terrorist activity, including funding terrorist activity or laundering terrorist funds.

(f) **Review of Job Creation Methodologies.**—Not later than 12 months after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Bureau of Economic Analysis of the Department of Commerce, or another component within the Department of Commerce, as determined by the Secretary of Commerce, shall publish regulations to determine eco-
nomically and statistically valid general economic methodologies that are in compliance with section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIEN INVESTORS, SPOUSES, AND CHILDREN.

(a) IN GENERAL.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—

(1) by striking “Attorney General” each place such term appears (except in subsection (d)(2)(C)) and inserting “Secretary of Homeland Security”;

(2) by striking “entrepreneur” each place such term appears and inserting “investor”;

(3) in subsection (a), by amending paragraph (1) to read as follows:

“(1) CONDITIONAL BASIS FOR STATUS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an alien investor, alien spouse, and alien child shall be considered, at the time of obtaining status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

“(B) EXCEPTION.—An alien investor (and his or her alien spouse or alien child) whose pe-
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tition under subsection (f) is approved before
the alien investor is lawfully admitted for per-
manent residence shall be granted the status of
an alien lawfully admitted for permanent resi-
dence without conditions.”;

(4) in subsection (b)—

(A) in the heading, by striking “ENTRE-
PRENEURSHIP” and inserting “INVESTMENT”;
and

(B) by amending paragraph (1)(B) to read
as follows:

“(B) the alien did not invest the requisite
capital; or”;

(5) in subsection (e)—

(A) in the heading, by striking “OF TIME-
LY PETITION AND INTERVIEW”;

(B) in paragraph (1)—

(i) in the matter preceding subpara-
graph (A), by striking “In order” and in-
serting “Except as provided in paragraph
(3)(D), in order”;

(ii) in subparagraph (A)—

(I) by striking “must” and in-
serting “shall”; and
(II) by striking ‘‘, and’’ and inserting a semicolon;

(iii) in subparagraph (B)—

(I) by striking ‘‘must’’ and inserting ‘‘shall’’;

(II) by striking ‘‘Service’’ and inserting ‘‘Department of Homeland Security’’; and

(III) by striking the period at the end and inserting ‘‘; and’’; and

(iv) by adding at the end the following:

‘‘(C) the Secretary shall have performed a site visit to the new commercial enterprise and job-creating entity in which the alien investor invested capital under subparagraph (A) of section 203(b)(5) pursuant to subparagraph (F)(iii) of such section.’’; and

(C) in paragraph (3)—

(i) in subparagraph (A), in the undesignated matter following clause (ii), by striking ‘‘the’’ before ‘‘such filing’’; and

(ii) by amending subparagraph (B) to read as follows:
“(B) Removal or Extension of Conditional Basis.—

“(i) In general.—Except as provided in clause (ii), if the Secretary determines that the facts and information contained in a petition submitted under paragraph (1)(A) are true, including demonstrating that the alien complied with section (d)(1)(B)(i), the Secretary shall—

“(I) notify the alien involved of such determination; and

“(II) remove the conditional basis of the alien’s status effective as of the second anniversary of the alien’s lawful admission for permanent residence.

“(ii) Exception.—If the petition demonstrates that the facts and information are true and that the alien is in compliance with section (d)(1)(B)(ii)—

“(I) the Secretary, in the Secretary’s discretion, may provide one 1-year extension of the alien’s conditional status; and
“(II)(aa) if the alien files a petition not later than 30 days after the third anniversary of the alien’s lawful admission for permanent residence demonstrating that the alien complied with section (d)(1)(B)(i), the Secretary shall remove the conditional basis of the alien’s status effective as of such third anniversary; or

“(bb) if the alien does not file the petition described in item (aa), the conditional status shall terminate at the end of such additional year.”;

(6) in subsection (d)—

(A) in paragraph (1)—

(i) by amending subparagraph (A) to read as follows:

“(A) invested the requisite capital;”;

(ii) by redesignating subparagraph (B) as subparagraph (C); and

(iii) by inserting after subparagraph (A) the following:

“(B)(i) created the employment required under section 203(b)(5)(A)(ii); or
“(ii) is actively in the process of creating
the employment required under section 203(b)(5)(A)(ii) and will create such employ-
ment before the third anniversary of the alien’s lawful admission for permanent residence;
and’’;

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

“(A) 90-DAY PERIOD BEFORE SECOND AN-
NIVERSARY.—

“(i) IN GENERAL.—Except as pro-
vided in clause (ii) and subparagraph (B), a petition under subsection (c)(1)(A) shall be filed during the 90-day period before the second anniversary of the alien inves-
tor’s lawful admission for permanent resi-
dence.

“(ii) EXCEPTION.—Aliens described in subclauses (I)(bb) and (II) of section 203(b)(5)(M)(ii) shall file a petition under subsection (c)(1)(A) during the 90-day pe-
riod before the second anniversary of the subsequent investment.”; and

(C) in paragraph (3)—
(i) by striking “The interview” and inserting the following:

“(A) IN GENERAL.—The interview”;

(ii) by striking “Service” and inserting “Department of Homeland Security”;

and

(iii) by striking the last sentence and inserting the following:

“(B) WAIVER.—The Secretary of Homeland Security, in the Secretary’s discretion, may waive the deadline for such an interview or the requirement for such an interview according to criteria developed by United States Citizenship and Immigration Services in consultation with its Fraud Detection and National Security Directorate, and United States Immigration and Customs Enforcement, provided that such criteria shall not include reduction of case processing times or the allocation of adjudicatory resources. A waiver may not be granted under this subparagraph if the alien to be interviewed—

“(i) invested in a regional center, new commercial enterprise, or job-creating enti-
ty that was sanctioned under section 203(b)(5); or
“(ii) is in a class of aliens determined by the Secretary to be threats to public safety or national security.”;
(7) by redesignating subsection (f) as subsection (g);
(8) by inserting after subsection (e) the following:
“(f) Petition From Qualified Alien Investor.—An alien investor who invested the requisite capital and created the employment required under section 203(b)(5)(A)(ii) at least 24 months before admission, and is otherwise conforming to the requirements under section 203(b)(5), may file a petition, before admission for permanent residence, to be considered, at the time of obtaining status of an alien lawfully admitted for permanent residence, to obtain such status without conditions.”; and
(9) in subsection (g)(3), as redesignated, by striking “a limited partnership” and inserting “any entity formed for the purpose of doing for-profit business”.
(b) Effective Dates.—
(1) In General.—Except as provided under paragraph (2), the amendments made by subsection
(a) shall take effect on the date of the enactment of this Act.

(2) EXCEPTIONS.—

(A) SITE VISITS.—The amendment made by subsection (a)(5)(B)(iv) shall take effect not later than 2 years after the date of the enactment of this Act.

(B) PETITION BENEFICIARIES.—The amendments made by subsection (a) shall not apply to the beneficiary of a petition that is filed under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) if the underlying petition filed under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) was approved before the date of the enactment of this Act.

SEC. 4. EB–5 VISA REFORMS.

(a) TARGETED EMPLOYMENT AREAS.—Section 203(b)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended to read as follows:

“(B) VISA SET-ASIDES AND AREA DESIGNATIONS.—

“(i) RESERVED VISAS.—Beginning on October 1, 2016, of the visas made available under this paragraph in each fiscal
year, 2,000 shall be reserved for immigrants who invest in rural areas and 2,000 shall be reserved for immigrants who invest in priority urban investment areas. At the end of each fiscal year, any unused visa within either category shall remain available within the same category for the following fiscal year. If such visa remains available following the second fiscal year, it shall be made generally available to alien investors under this paragraph.

“(ii) Eligibility.—The Secretary of Homeland Security shall determine eligibility for designation as a targeted employment area and shall not be bound by the determination of any other governmental or nongovernmental entity.

“(iii) Designation of infrastructure project, manufacturing project, and targeted employment area.—

“(I) Infrastructure project or manufacturing project.—The designation of an infrastructure project or manufacturing project shall
be made at the time of the investment.

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(II) TARGETED EMPLOYMENT AREA.—The designation of a targeted employment area shall be made at the time of the investment and shall be valid for the 2-year period beginning on the date of the investment.

(III) RENEWALS.—A designation under subclause (II) may be renewed for additional 2-year periods if the area continues to meet the definition of a targeted employment area. An investor who has made the required amount of investment in such an area during its period of designation shall not be required to increase the amount of investment based upon expiration of the designation.”
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(b) ADJUSTMENT OF MINIMUM INVESTMENT AMOUNT.—Section 203(b)(5)(C) of such Act (8 U.S.C. 1153(b)(5)(C)) is amended—

(1) by redesignating clause (iii) as clause (iv);

(2) by striking clauses (i) and (ii) and inserting the following:
“(i) Minimum Investment Amounts.—Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be—

“(I) $1,000,000 (except as provided in subclause (II)); or

“(II) $800,000 in the case of an investment in an infrastructure project, a manufacturing project, or a project that is physically located in a targeted employment area.

“(ii) Authority to Increase Investment Amounts.—The Secretary may periodically prescribe regulations increasing the dollar amount specified under clause (i), provided that any such increase simultaneously affects each category of investment under clause (i) by the same percentage.

“(iii) Automatic Adjustment of Minimum Investment Amounts.—Beginning on January 1, 2021, and on every fifth subsequent January 1, the Secretary
shall adjust each of the minimum amounts
specified in clause (i) as follows:

“(I) No increases in previous
5 fiscal years.—If the Secretary did
not increase the minimum amount
during the 5 prior fiscal years con-
cluding with the fiscal year ending on
September 30 of the prior calendar
year, the amounts specified in clause
(i) shall automatically be adjusted by
the amount of the cumulative percent-
age change in the Consumer Price
Index (CPI–U) for the previous 5 fis-
cal years.

“(II) Increases below CPI–U
during previous 5 fiscal years.—
If the Secretary increased the min-
imum amount during the previous 5
fiscal years by an amount that is less
than the cumulative percentage
change in the CPI–U during the pre-
vious 5 fiscal years, the amounts spec-
ified in clause (i) shall automatically
be adjusted by the amount of such cu-
mulative percentage change for such
period minus any increase previously prescribed by the Secretary by regulations.

“(III) Increases above CPI-U during previous 5 fiscal years.—If the Secretary increased the minimum amount during the previous 5 fiscal years by an amount that is greater than the cumulative percentage change in the CPI–U during the previous 5 fiscal years, the amounts specified in clause (i) shall not be increased.”; and

(3) in clause (iv), as redesignated, by striking “Attorney General” and inserting “Secretary”.

(e) Definitions.—

(1) In general.—Section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), as amended by subsections (a) and (b) and by section 2, is further amended by striking subparagraph (D) and inserting the following:

“(D) Definitions.—In this paragraph:

“(i) Capital.—The term ‘capital’—

“(I) means cash and all real, personal, or mixed tangible assets owned
and controlled by the alien investor, or held in trust for the benefit of the alien and to which the alien has unrestricted access;

“(II) shall be valued at fair market value in United States dollars, in accordance with Generally Accepted Accounting Principles or other standard accounting practice adopted by the Securities and Exchange Commission, at the time it is invested under this paragraph; and

“(III) shall not include assets acquired, directly or indirectly, by unlawful means, including any cash proceeds of indebtedness secured by such assets.

“(ii) CERTIFIER.—The term ‘certifier’ means a person in a position of substantive authority for the management or operations of a regional center, new commercial enterprise, or job-creating entity, such as a principal executive officer or principal financial officer, with knowledge of such entities’ policies and procedures related to
compliance with the requirements of this paragraph.

“(iii) FULL-TIME EMPLOYMENT.—The term ‘full-time employment’ means employment in a position that requires at least 35 hours of service per week for at least a 24-month period, regardless of who fills the position. A position or job that is filled by more than 1 employee may be considered full-time employment for purposes of subparagraph (A)(ii).

“(iv) INFRASTRUCTURE PROJECT.—The term ‘infrastructure project’ means a capital investment project in an approved business plan, which is administered by a governmental entity, such as a Federal, State, or local agency or authority, in which the entity contracts with a regional center, new commercial enterprise, or job-creating entity to receive capital investment from investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project.
“(v) JOB-CREATING ENTITY.—The term ‘job-creating entity’ means any organization formed in the United States for the ongoing conduct of lawful business, including a partnership (whether limited or general), corporation, limited liability company, or other entity that receives, or is established to receive, capital investment from alien investors or a new commercial enterprise under the regional center program described in subparagraph (E) and which is most closely responsible for the job creation.

“(vi) MANUFACTURING PROJECT.—The term ‘manufacturing project’ means a capital investment project in an approved business plan, the purpose of which is to improve, construct, or operate a plant, factory, or mill, which primarily exists in order to produce or assemble a product in the United States.

“(vii) NEW COMMERCIAL ENTERPRISE.—The term ‘new commercial enterprise’ means any for-profit organization formed in the United States for the ongo-
ing conduct of lawful business, including a partnership (whether limited or general), corporation, limited liability company, or other entity that receives, or is established to receive, capital investment from investors under this paragraph.

“(viii) PRIORITY URBAN INVESTMENT AREA.—The term ‘priority urban investment area’ means an area consisting of a census tract or contiguous census tracts, each of which is in a metropolitan statistical area and, using the most recent census data available, has—

“(I) an unemployment rate that is at least 150 percent of the national average unemployment rate, which may also include any census tract or tracts contiguous to 1 or more of the tracts that have the requisite unemployment rate;

“(II) a poverty rate that is at least 20 percent; or

“(III) a median family income that is not more than 80 percent of the greater of the statewide median
family income or the metropolitan statistical area median family income.

“(ix) RURAL AREA.—The term ‘rural area’ means an area that—

“(I) is outside of the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States); and

“(II)(aa) is outside of a metropolitan statistical area; or

“(bb) is within an outlying county of a metropolitan statistical area.

“(x) SPECIAL INVESTMENT ZONE.—The term ‘special investment zone’ means an area, consisting of a census tract or not more than 12 contiguous census tracts (which shall include each census tract contiguous to the census tract where the project is physically located other than census tracts described in subclause (II)) that—

“(I) has an unemployment rate that is at least 150 percent of the national average unemployment rate
using the most recent census data available; and

“(II) may not include any census tract or tracts that encompass special land use census tracts or cover bodies of water unless the project is physically located in such census tract.

“(xi) Targeted Employment Area.—The term ‘targeted employment area’ means—

“(I) a priority urban investment area;

“(II) a rural area;

“(III) a special investment zone;

“(IV) any area within the geographic boundaries of any military installation that was closed, during the 20-year period immediately preceding the filing of an application under subparagraph (F) based upon a recommendation by the Defense Base Closure and Realignment Commission;

or

“(V) an area consisting of a census tract or contiguous census tracts,
each of which, using the most recent census data available—

“(aa) is not located within a metropolitan statistical area; and

“(bb) has a poverty rate that is at least 20 percent or a median family income that is not more than 80 percent of the statewide median family income.”.

(2) RULEMAKING.—The Secretary of Homeland Security, in consultation with the Secretary of Defense, shall issue appropriate regulations to account for the modified definition of targeted employment area in section 203(b)(5)(D)(xi)(IV) of the Immigration and Nationality Act, as added by paragraph (1).

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

“(5) AGE DETERMINATION FOR CHILDREN OF ALIEN INVESTORS.—An alien who has reached 21 years of age and has been admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose
lawful permanent resident status on a conditional basis is terminated under section 216A or subpara-
paragraph (M) of subsection (b)(5), shall continue to be considered a child of the principal alien for the pur-
pose of a subsequent immigrant petition by such alien under subsection (b)(5) if the alien remains unmarried and the subsequent petition is filed by the principal alien not later than 1 year after the termination of conditional lawful permanent resident status. No alien shall be considered a child under this paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.”.

(e) Enhanced Pay Scale for Certain Federal Employees Administering the Employment Creation Program.—The Secretary of Homeland Security may establish, fix the compensation of, and appoint individuals to designated critical, technical, and professional positions needed to administer sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b)).

(f) Concurrent Filing of EB–5 Petitions and Applications for Adjustment of Status.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—
(1) in subsection (k), in the matter preceding paragraph (1), by striking “or (3)” and inserting “(3), or (5)”; and

(2) by adding at the end the following:

“(n) If the approval of a petition for classification under section 203(b)(5) would make a visa immediately available to the alien beneficiary, the alien beneficiary’s application for adjustment of status under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition.”.

(g) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)), is amended—

(1) in the matter preceding clause (i), by striking “(including a limited partnership)”;

(2) in clause (i), by inserting “and which is expected to remain invested for not less than 2 years” after “(C),”; and

(3) in clause (ii)—

(A) by striking “and create” and inserting “by creating”; and

(B) by inserting “, United States nationals,” after “citizens”.
(h) **REQUIRED CHECKS.**—Section 203(b)(5) of such Act, as amended by this section and section 2, is further amended by adding at the end the following:

“(Q) **REQUIRED CHECKS.**—An alien investor, alien spouse, or alien child may not be granted status of an alien lawfully admitted for permanent residence under this paragraph unless the Secretary of Homeland Security has determined that such alien is not on the Department of Treasury's Office of Foreign Assets Control Specially Designated Nationals List.”.

(i) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided under paragraph (2), the amendments made by this section shall be effective upon the date of the enactment of this Act.

(2) **EXCEPTIONS.**—The amendments made by subsections (b)(1) and (e)(1) shall not apply to a beneficiary of a petition that—

(A) was filed under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) before the date of the enactment of this Act; or

(B) is filed under section 216A of such Act (8 U.S.C. 1186b), if the underlying petition
filed before the date of the enactment of this Act.

SEC. 5. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) FILING ORDER.—Section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) is amended to read as follows:

“(H) An alien desiring to be classified under section 203(b)(5) may file a petition with the Secretary of Homeland Security. An alien petitioning for classification pursuant to section 203(b)(5)(E) may file a petition with the Secretary after filing an application for approval of an investment under section 203(b)(5)(F).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) shall take effect on the date of the enactment of this Act; and

(2) shall apply to any petition for classification pursuant to section 203(b)(5)(E) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(E)) that is filed with the Secretary of Homeland Security on or after the date of the enactment of this Act.

SEC. 6. TIMELY PROCESSING.

(a) FEE STUDY.—Not later than 30 days after the date of the enactment of this Act, the Director of United
States Citizenship and Immigration Service shall initiate a study of fees charged in the administration of the program described in sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

(b) ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT PROCESSING.—Notwithstanding section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), and except as provided under subsection (c), the Director shall set fees for services provided pursuant to section 203(b)(5) and 216A of such Act at a level sufficient to ensure the full recovery only of the costs of providing such services, including the cost of attaining the goal of completing adjudications, on average, not later than—

(1) 120 days after receiving a proposal for the establishment of a regional center described in section 203(b)(5)(E);

(2) 120 days after receiving an application for approval of investment in a commercial enterprise described in section 203(b)(5)(F);

(3) 150 days after receiving a petition from an alien desiring to be classified under section 203(b)(5)(E); and
(4) 180 days after receiving a petition from an
alien for removal of conditions described in section
216A(c).

(c) ADDITIONAL FEES.—Additional fees in excess of
the fee levels described in subsection (b) may be charged
only to contribute—

(1) in an amount that is equal to the amount
paid by all other classes of fee-paying applicants for
immigration-related benefits, to the coverage or re-
duction of the costs of processing or adjudicating
classes of immigration benefit applications that Con-
gress, or the Secretary in the case of asylum applica-
tions, has authorized to be processed or adjudicated
at no cost or at a reduced cost to the applicant; and

(2) in an amount that is not greater than 1
percent of the fee for filing a petition under section
203(b)(5) of the Immigration and Nationality Act (8
U.S.C. 1153(b)(5)), to make improvements to the
information technology systems used by the Sec-
retary to process, adjudicate, and archive applica-
tions and petitions under such section, including the
conversion to electronic format of documents filed by
petitioners and applicants for benefits under such
section.
(d) PREMIUM PROCESSING OF EB-5 PETITIONS AND APPLICATIONS.—

(1) MODIFICATION OF EXISTING PREMIUM PROCESSING PROVISION.—Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) is amended to read as follows:

“(u) PREMIUM FEE FOR EMPLOYMENT-BASED PETITIONS AND APPLICATIONS.—

“(1) IN GENERAL.—The Secretary of Homeland Security is authorized to establish and collect a premium fee for employment-based petitions and applications. The fee under this paragraph shall be used to provide certain premium-processing services to business customers and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner or applicant shall meet the legal criteria for such benefit. Except as provided under paragraph (2), the fee under this paragraph shall be set at $1,000, shall be paid in addition to any normal petition or application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Secretary may adjust the fee under this paragraph
in proportion to changes in the Consumer Price Index.

“(2) IMMIGRANT INVESTOR PETITIONS AND APPLICATIONS.—The Secretary shall establish and collect a premium fee for expeditious processing of applications for regional center designation or regional center amendment under section 203(b)(5)(E), petitions under section 203(b)(5), petitions for removal of conditions on lawful permanent residence under section 216A(c), and applications under section 203(b)(5)(F) related to investment in a regional center commercial enterprise. A petitioner or applicant shall be permitted an opportunity to provide additional evidence identified by the Secretary in any such petition or application prior to a final determination. The premium fee for each such application or petition shall be set at an amount sufficient to adjudicate such application or petition within ⅓ of the relevant period set forth in section 6(b) of the American Job Creation and Investment Promotion Reform Act of 2015, and shall otherwise only be used to recover the costs of such processing, including the hiring of additional adjudicatory staff, shall be paid in addition to any normal petition or application fee that may be applicable, and shall be de-
posited as offsetting collections in the Immigration Examinations Fee Account.”.

(2) Establishment of EB-5 Premium Processing.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish the premium processing of immigrant investor petitions and applications, as described in section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)).

(e) Rule of Construction.—Nothing in this section may be construed to require any modification of fees before the completion of—

(1) the fee study described in subsection (a); and

(2) regulations promulgated by the Secretary of Homeland Security, in accordance with subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly known as the “Administrative Procedures Act”), to carry out subsections (b) and (e).

SEC. 7. TRANSPARENCY.

(a) In General.—Employees of the Department of Homeland Security, including the Secretary of Homeland Security, the Secretary’s counselors, the Assistant Secretary for the Private Sector, the Director of United
States Citizenship and Immigration Services, counselors to such Director, and the Chief of Immigrant Investor Programs at United States Citizenship and Immigration Services, shall act impartially and may not give preferential treatment to any entity, organization, or individual in connection with any aspect of the immigrant visa program described in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) IMPROPER ACTIVITIES.—Activities that constitute preferential treatment under subsection (a) shall include—

(1) working on, or in any way attempting to expedite or otherwise influence, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under the immigrant visa program described in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the standard processing of an application, petition, or benefit for—

(A) a regional center;

(B) a new commercial enterprise;

(C) a job-creating entity; or

(D) any person or entity associated with such regional center, new commercial enterprise, or job-creating entity; and
(2) meeting or communicating with persons associated with the entities described in paragraph (1), at the request of such persons, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under such immigrant visa program.

(e) REPORTING OF COMMUNICATIONS.—

(1) WRITTEN COMMUNICATION.—Employees of the Department of Homeland Security, including the officials listed in subsection (a), shall include, in the record of proceeding for a case under section 203(b)(5) of the Immigration and Nationality Act, actual or electronic copies of all case-specific written communication, including e-mails from government and private accounts, with non-Department persons or entities advocating for regional center applications or individual petitions under such section that are pending on or after the date of the enactment of this Act (other than routine communications with other agencies of the Federal Government regarding the case, including communications involving background checks and litigation defense).

(2) ORAL COMMUNICATION.—If substantive oral communication, including telephonic communication, virtual communication, and in-person meetings,
takes place between officials of the Department of Homeland Security and non-Department persons or entities advocating for regional center applications or individual petitions under section 203(b)(5) of the Immigration and Nationality Act that are pending on or after the date of the enactment of this Act (other than routine communications with other agencies of the Federal Government regarding the case, including communications involving background checks and litigation defense)—

(A) the conversation shall be recorded; or

(B) detailed minutes of the session shall be taken and included in the record of proceeding.

(3) NOTIFICATION.—

(A) IN GENERAL.—If the Secretary, in the course of written or oral communication described in this subsection, receives evidence about a specific case from anyone other than an affected party or his or her representative (excluding Federal Government or law enforcement sources), such information may not be made part of the record of proceeding and may not be considered in adjudicative proceedings unless—
(i) the affected party has been given notice of such evidence; and

(ii) if such evidence is derogatory, the affected party has been given an opportunity to respond to the evidence.

(B) INFORMATION FROM LAW ENFORCEMENT, INTELLIGENCE AGENCIES, OR CONFIDENTIAL SOURCES.—

(i) LAW ENFORCEMENT OR INTELLIGENCE AGENCIES.—Evidence received from law enforcement or intelligence agencies may not be made part of the record of proceeding without the consent of the relevant agency or law enforcement entity.

(ii) WHISTLEBLOWERS, CONFIDENTIAL SOURCES, OR INTELLIGENCE AGENCIES.—Evidence received from whistleblowers, other confidential sources, or the intelligence community that is included in the record of proceeding and considered in adjudicative proceedings shall be handled in a manner that does not reveal the identity of the whistleblower or confidential source, or reveal classified information.

(d) CONSIDERATION OF EVIDENCE.—
(1) IN GENERAL.—No case-specific communication with persons or entities that are not part of the Department of Homeland Security may be considered in the adjudication of an application or petition under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) unless the communication is included in the record of proceeding of the case.

(2) WAIVER.—The Secretary of Homeland Security may waive the requirement under paragraph (1) only in the interests of national security or for investigative or law enforcement purposes.

(e) CHANNELS OF COMMUNICATION.—

(1) E-MAIL ADDRESS OR EQUIVALENT.—The Director of United States Citizenship and Immigration Services shall maintain an e-mail account (or equivalent means of communication) for persons or entities—

(A) with inquiries regarding specific petitions or applications under the immigrant visa program described in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)); or
(B) seeking non-case-specific information about the immigrant visa program described in such section 203(b)(5).

(2) **COMMUNICATION ONLY THROUGH APPROPRIATE CHANNELS OR OFFICES.**—

(A) **ANNOUNCEMENT OF APPROPRIATE CHANNELS OF COMMUNICATION.**—Not later than 40 days after the date of the enactment of this Act, the Director of United States Citizenship and Immigration Services shall announce that the only channels or offices by which industry stakeholders, petitioners, applicants, and seekers of benefits under the immigrant visa program described in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) may communicate with the Department of Homeland Security regarding specific cases under such section (except for communication made by applicants and petitioners pursuant to regular adjudicatory procedures), or non-case-specific information about the visa program applicable to certain cases under such section, are through—

(i) the e-mail address or equivalent channel described in paragraph (1);
(ii) the United States Citizenship and Immigration Services National Customer Service Center, or any successor to that Center; or

(iii) the United States Citizenship and Immigration Services Office of Public Engagement, Immigrant Investor Program Office, Stakeholder Engagement Branch, or any successors to those Offices or Branch.

(B) DIRECTION OF INCOMING COMMUNICATIONS.—

(i) IN GENERAL.—Employees of the Department of Homeland Security shall direct communications described in subparagraph (A) to the channels of communication or offices listed in subparagraph (A).

(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph may be construed to prevent—

(I) any person from communicating with the Ombudsman of United States Citizenship and Immigration Services regarding the immigrant investor program under section
203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5));
or

(II) the Ombudsman from resolving problems regarding such immigrant investor program pursuant to

(C) Log.—

(i) IN GENERAL.—The Director of United States Citizenship and Immigration Services shall maintain a written or electronic log of—

(I) all communications described in subparagraph (A) and communications from members of Congress, which shall reference the date, time, and subject of the communication, and the identity of the Department official, if any, to whom the inquiry was forwarded;

(II) with respect to written communications described in subsection (c)(1), the date the communication
was received, the identities of the
sender and addressee, and the subject
of the communication; and

(III) with respect to oral commu-
nications described in subsection
(c)(2), the date on which the commu-
nication occurred, the participants in
the conversation or meeting, and the
subject of the communication.

(ii) TRANSPARENCY.—The log of com-
munications described in clause (i) shall be
made publicly available in accordance with
section 552 of title 5, United States Code
(commonly known as the “Freedom of In-
formation Act”).

(3) PUBLICATION OF INFORMATION.—If, as a
result of a communication with an official of the De-
partment of Homeland Security, a person or entity
inquiring about a specific case or generally about the
immigrant visa program described in section
203(b)(5) of the Immigration and Nationality Act (8
U.S.C. 1153(b)(5)) received generally applicable and
non-case specific information about program require-
ments or administration that has not been made
publicly available by the Department, the Director of
United States Citizenship and Immigration Services, not later than 30 days after the communication of such information to such person or entity, shall publish such information on the United States Citizenship and Immigration Services website as an update to the relevant Frequently Asked Questions page or by some other comparable mechanism.

(f) PENALTY.—

(1) IN GENERAL.—Any person who intentionally violates the prohibition on preferential treatment under this section or intentionally violates the reporting requirements under subsection (e) shall be disciplined in accordance with paragraph (2).

(2) SANCTIONS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish a graduated set of sanctions based on the severity of the violation referred to in paragraph (1), which may include, in addition to any criminal or civil penalties that may be imposed, written reprimand, suspension, demotion, or removal.

(g) RULE OF CONSTRUCTION.—Nothing in this section may be construed to modify any law, regulation, or policy regarding the handling or disclosure of classified information.
(h) *No Creation of Private Right of Action.*—

Nothing in this section may be construed to create or authorize a private right of action to challenge a decision of an employee of the Department of Homeland Security.

(i) *Effective Date.*—The amendments made by this section shall take effect on the date of the enactment of this Act.