

114TH CONGRESS
1ST SESSION

S. _____

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.

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

3 **SECTION 1. SHORT TITLE.**

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

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

8 (a) REPEAL.—Section 610 of the Departments of
9 Commerce, Justice, and State, the Judiciary, and Related

1 Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note)
2 is repealed.

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

6 “(E) REGIONAL CENTER PROGRAM.—

7 “(i) IN GENERAL.—Visas under this
8 paragraph shall be made available through
9 September 30, 2019, to qualified immi-
10 grants (and the eligible spouses and chil-
11 dren of such immigrants) participating in
12 a program implementing this paragraph
13 that involves a regional center in the
14 United States, which has been designated
15 by the Secretary of Homeland Security on
16 the basis of a proposal for the promotion
17 of economic growth, including prospective
18 job creation and increased domestic capital
19 investment.

20 “(ii) PROCESSING.—In processing pe-
21 titions under section 204(a)(1)(H) for clas-
22 sification under this paragraph, the Sec-
23 retary of Homeland Security—

1 “(I) may process petitions in a
2 manner and order established by the
3 Secretary; and

4 “(II) shall deem such petitions to
5 include records previously filed with
6 the Secretary regarding the regional
7 center’s application for approval of
8 the particular commercial enterprise
9 investment offering if the alien peti-
10 tioner certifies that such records are
11 incorporated by reference into the
12 alien’s petition.

13 “(iii) ESTABLISHMENT OF A RE-
14 GIONAL CENTER.—A regional center shall
15 operate within a defined and limited geo-
16 graphic area, which shall be described in
17 the proposal and be consistent with the
18 purpose of concentrating pooled investment
19 within the defined and limited geographic
20 area. The proposal to establish a regional
21 center shall demonstrate that the pooled
22 investment will have a significant economic
23 impact on such geographic area, and shall
24 include—

1 “(I) reasonable predictions, sup-
2 ported by economically and statis-
3 tically valid forecasting tools, con-
4 cerning the amount of investment that
5 will be pooled, the kinds of commer-
6 cial enterprises that will receive such
7 investments, details of the jobs that
8 will be created directly or indirectly as
9 a result of such investments, and
10 other positive economic effects such
11 investments will have; and

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

17 “(aa) all applicable laws,
18 regulations, and executive orders
19 of the United States, including
20 immigration laws (as defined in
21 section 101(a)(17)) and securi-
22 ties laws; and

23 “(bb) all securities laws of
24 each State in which the regional
25 center operates.

1 “(iv) INDIRECT JOB CREATION.—The
2 Secretary of Homeland Security shall per-
3 mit aliens seeking admission under this
4 subparagraph to satisfy only up to 90 per-
5 cent of the requirement under subpara-
6 graph (A)(ii) with jobs that are estimated
7 to be created indirectly through investment
8 under this paragraph in accordance with
9 this subparagraph. An employee of the new
10 commercial enterprise or job-creating enti-
11 ty may be considered to hold a job that
12 has been directly created.

13 “(v) COMPLIANCE.—

14 “(I) IN GENERAL.—In deter-
15 mining compliance with subparagraph
16 (A)(ii), the Secretary of Homeland Se-
17 curity shall permit aliens seeking ad-
18 mission under this subparagraph to
19 rely on economically and statistically
20 valid methodologies for determining
21 the number of jobs created by the pro-
22 gram, including—

23 “(aa) jobs estimated to have
24 been created directly, provided
25 that the Secretary may request

6

1 additional evidence to verify that
2 the directly-created jobs satisfy
3 the requirements under subpara-
4 graph (A)(ii); and

5 “(bb) consistent with this
6 subparagraph, jobs estimated to
7 have been created indirectly
8 through revenues generated from
9 increased exports, improved re-
10 gional productivity, job creation,
11 and increased domestic capital
12 investment resulting from the
13 program.

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

16 “(aa) RELOCATED JOBS.—
17 In determining compliance with
18 the job creation requirement
19 under subparagraph (A)(ii), the
20 Secretary may include jobs esti-
21 mated to be created under a
22 methodology whereby jobs are at-
23 tributable to prospective tenants
24 occupying commercial real estate
25 created or improved by capital in-

1 vestments, but only if the num-
2 ber of such jobs estimated to be
3 created has been determined by
4 an economically and statistically
5 valid methodology and such jobs
6 are not existing jobs that have
7 been relocated.

8 “(bb) PUBLICLY AVAILABLE
9 BONDS.—Alien investor capital
10 may not be utilized, by a new
11 commercial enterprise or other-
12 wise, to purchase municipal
13 bonds or any other bonds, if such
14 bonds are available to the general
15 public, either as part of a pri-
16 mary offering or from a sec-
17 ondary market.

18 “(cc) CONSTRUCTION ACTIV-
19 ITY JOBS.—The length of full-
20 time construction activity jobs
21 that last shorter than 24 months
22 may be aggregated to satisfy the
23 employment creation requirement
24 under subparagraph (A)(ii) for
25 alien investors participating in

1 the program described in this
2 subparagraph.

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

5 “(I) require regional centers to
6 give advance notice to, and obtain ap-
7 proval from, the Secretary of signifi-
8 cant proposed changes to their organi-
9 zational structure, ownership, or ad-
10 ministration, including the sale of
11 such centers or other arrangements in
12 which individuals not previously sub-
13 ject to the requirements under sub-
14 paragraph (H) become involved with
15 the regional center, before any such
16 proposed changes may take effect;

17 “(II) approve the changes re-
18 ferred to in subclause (I) only after—

19 “(aa) notice of any such
20 proposed changes are made pub-
21 licly available through a publicly
22 accessible website of U.S. Citi-
23 zenship and Immigration Services
24 for a period of not fewer than 30
25 days; and

1 “(bb) the Secretary deter-
2 mines that the regional center
3 would remain compliant with this
4 subparagraph and with subpara-
5 graph (H); and

6 “(III) notwithstanding the pend-
7 ency of a request for approval of any
8 amendment that has been filed pursu-
9 ant to subclause (I), adjudicate busi-
10 ness plans under subparagraph (F)
11 and petitions under section
12 204(a)(1)(H).

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

15 “(i) APPLICATION FOR APPROVAL OF
16 AN INVESTMENT IN A COMMERCIAL EN-
17 TERPRISE.—A regional center shall file an
18 application with the Secretary of Home-
19 land Security for each particular invest-
20 ment offering through an associated com-
21 mercial enterprise before any alien files a
22 petition for classification under this para-
23 graph by reason of investment in that of-
24 fering, which shall include—

1 “(I) a comprehensive business
2 plan for a specific capital investment
3 project;

4 “(II) a credible economic analysis
5 regarding estimated job creation that
6 is based upon economically and statis-
7 tically valid methodologies;

8 “(III) any documents filed with
9 the Securities and Exchange Commis-
10 sion under the Securities Act of 1933
11 (15 U.S.C. 77a et seq.) or with the
12 securities regulator of any State, as
13 required by law;

14 “(IV) any investment and offer-
15 ing documents, including subscription,
16 investment, partnership, and oper-
17 ating agreements, private placement
18 memoranda, term sheets, biographies
19 for management, officers, directors,
20 and any person with similar respon-
21 sibilities, the description of the busi-
22 ness plan to be provided to potential
23 alien investors, and marketing mate-
24 rials used or drafts prepared for use
25 in connection with the offering, which

1 shall contain references, as appro-
2 priate, to any—

3 “(aa) investment risks asso-
4 ciated with the new commercial
5 enterprise and the job-creating
6 entity;

7 “(bb) conflicts of interest
8 that currently exist or may arise
9 among the regional center, new
10 commercial enterprise, job-cre-
11 ating entity, or the principals or
12 attorneys of the aforementioned
13 entities;

14 “(cc) pending material liti-
15 gation or bankruptcy, or adverse
16 judgments or bankruptcy orders
17 issued during the most recent 10-
18 year period, in the United States
19 or abroad, affecting the regional
20 center, new commercial enter-
21 prise, job-creating entity, or any
22 other enterprise in which any
23 principal of the aforementioned
24 entities held majority ownership
25 at the time; and

1 new commercial enterprise or job-cre-
2 ating entity comply, as applicable,
3 with the securities laws of the United
4 States and the laws of the applicable
5 States in connection with the offer,
6 purchase, or sale of their securities;

7 “(VI) a certification from the re-
8 gional center and any issuer of securi-
9 ties affiliated with the regional center
10 that their agents, employees, advisors,
11 and attorneys, and any parties associ-
12 ated with the regional center and the
13 issuer of securities affiliated with the
14 regional center are in compliance with
15 the securities laws of the United
16 States and the laws of the applicable
17 States in connection with the offer,
18 purchase, or sale of its securities, to
19 the best of the certifier’s knowledge,
20 after a due diligence investigation;
21 and

22 “(VII) documentation dem-
23 onstrating that the regional center
24 consulted with a local economic devel-
25 opment agency or municipality re-

1 dent status under section
2 216A(e) filed by an alien invest-
3 ing in such investment.

4 “(G) REGIONAL CENTER ANNUAL STATE-
5 MENTS.—

6 “(i) IN GENERAL.—Each regional cen-
7 ter designated under subparagraph (E)
8 shall annually submit a statement to the
9 Director of United States Citizenship and
10 Immigration Services (referred to in this
11 subparagraph as the ‘Director’), in a man-
12 ner prescribed by the Secretary of Home-
13 land Security, which shall include—

14 “(I) a certification stating that,
15 to the best of the certifier’s knowl-
16 edge, after a due diligence investiga-
17 tion, the regional center is in compli-
18 ance with clauses (i) and (ii) of sub-
19 paragraph (H);

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

22 “(III) a certification stating that,
23 to the best of the certifier’s knowl-
24 edge, after a due diligence investiga-

1 tion, the regional center is in compli-
2 ance with subparagraph (K)(iii);

3 “(IV) a description of any pend-
4 ing material litigation or bankruptcy
5 proceedings, or litigation or bank-
6 ruptcy proceedings resolved during the
7 preceding fiscal year, involving the re-
8 gional center, new commercial enter-
9 prise, or job-creating entity;

10 “(V) an accounting of all foreign
11 investor capital invested in the re-
12 gional center, new commercial enter-
13 prise, or job-creating entity;

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

17 “(aa) an accounting of the
18 aggregate capital invested in the
19 new commercial enterprise and
20 job-creating entity by alien inves-
21 tors under this paragraph for
22 each capital investment project
23 being undertaken by the new
24 commercial enterprise;

1 “(bb) a description of how
2 such capital is being used to exe-
3 cute each capital investment
4 project in the filed business plan
5 or plans;

6 “(cc) evidence that 100 per-
7 cent of such capital has actually
8 been committed to each capital
9 investment project;

10 “(dd) detailed evidence of
11 the progress made toward the
12 completion of each capital invest-
13 ment project;

14 “(ee) an accounting of the
15 aggregate direct jobs created or
16 preserved;

17 “(ff) to the best of the re-
18 gional center’s knowledge, for all
19 fees collected from alien investors
20 by any party in connection with
21 the regional center, new commer-
22 cial enterprise, or job-creating
23 entity, including administrative,
24 loan monitoring, or loan manage-
25 ment fees—

1 “(AA) a description of
2 all fees collected;

3 “(BB) an accounting of
4 the entities that received
5 such fees, including any fees
6 paid to a promoter, finder,
7 broker-dealer, or other enti-
8 ty used to locate individual
9 investors; and

10 “(CC) the purpose for
11 which such fees were col-
12 lected;

13 “(gg) any documentation re-
14 ferred to in subparagraph
15 (F)(i)(IV) if there has been a
16 material change during the pre-
17 ceding fiscal year; and

18 “(hh) a certification by the
19 regional center that such state-
20 ments are accurate, to the best of
21 the certifier’s knowledge, after a
22 due diligence investigation; and

23 “(VII) a certification that the re-
24 gional center has policies and proce-
25 dures in place that are reasonably de-

1 signed to ensure that the regional cen-
2 ter and any associated new commer-
3 cial enterprises and job-creating enti-
4 ties comply with Federal labor laws.

5 “(ii) AMENDMENT OF ANNUAL STATE-
6 MENTS.—The Director—

7 “(I) shall require the regional
8 center to amend or supplement an an-
9 nual statement required under clause
10 (i) if the Director determines that
11 such statement is deficient; and

12 “(II) may require the regional
13 center to amend or supplement such
14 annual statement if the Director de-
15 termines that such an amendment or
16 supplement is appropriate.

17 “(iii) SANCTIONS.—

18 “(I) EFFECT OF VIOLATION.—
19 The Director shall sanction any re-
20 gional center entity in accordance
21 with subclause (II) if the regional cen-
22 ter fails to submit an annual state-
23 ment or if the Director determines
24 that the regional center—

1 “(aa) knowingly submitted
2 or caused to be submitted a
3 statement, certification, or any
4 information submitted pursuant
5 to this subparagraph that con-
6 tained an untrue statement of
7 material fact; or

8 “(bb) is conducting itself in
9 a manner inconsistent with its
10 designation, including any willful,
11 undisclosed, and material devi-
12 ation by new commercial enter-
13 prises from any filed business
14 plan for such commercial enter-
15 prises.

16 “(II) AUTHORIZED SANCTIONS.—
17 The Director shall establish a grad-
18 uated set of sanctions based on the
19 severity of the violations referred to in
20 subclause (I), including—

21 “(aa) fines equal to not
22 more than 10 percent of the total
23 capital invested by alien investors
24 in the regional center’s new com-
25 mercial enterprises or job-cre-

1 ating entities, the payment of
2 which shall not in any cir-
3 cumstance utilize any of such
4 alien investors' capital invest-
5 ments, and which shall be depos-
6 ited into the EB-5 Integrity
7 Fund established under subpara-
8 graph (J);

9 “(bb) temporary suspension
10 from participation in the pro-
11 gram described in subparagraph
12 (E), which may be lifted by the
13 Director if the individual or enti-
14 ty cures the alleged violation
15 after being provided such an op-
16 portunity by the Director;

17 “(cc) permanent bar from
18 program participation for 1 or
19 more individuals associated with
20 the regional center or new com-
21 mercial enterprise or job-creating
22 entity; and

23 “(dd) termination of re-
24 gional center designation.

1 “(H) BONA FIDES OF PERSONS INVOLVED
2 WITH REGIONAL CENTER PROGRAM.—

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

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

9 “(aa) a criminal or civil vio-
10 lation involving fraud or deceit
11 within the previous 10 years;

12 “(bb) a civil violation result-
13 ing in a liability in excess of
14 \$1,000,000 involving fraud or de-
15 ceit; or

16 “(cc) a crime resulting in a
17 conviction with a term of impris-
18 onment of more than 1 year;

19 “(II) the person is subject to a
20 final order, for the duration of any
21 penalty imposed by such order, of a
22 State securities commission (or an
23 agency or officer of a State who per-
24 forms similar functions), a State au-
25 thority that supervises or examines

1 banks, savings associations, or credit
2 unions, a State insurance commission
3 (or an agency or officer of a State
4 who performs similar functions), an
5 appropriate Federal banking agency,
6 the Commodity Futures Trading
7 Commission, the Securities and Ex-
8 change Commission, a financial self-
9 regulatory organization recognized by
10 the Securities and Exchange Commis-
11 sion, or the National Credit Union
12 Administration, which is based on a
13 violation of any law or regulation
14 that—

15 “(aa) prohibits fraudulent,
16 manipulative, or deceptive con-
17 duct; or

18 “(bb) bars the person
19 from—

20 “(AA) association with
21 an entity regulated by such
22 commission, authority, agen-
23 cy, or officer;

1 “(BB) engaging in the
2 business of securities, insur-
3 ance, or banking; or

4 “(CC) engaging in sav-
5 ings association or credit
6 union activities;

7 “(III) the person is engaged in,
8 has ever been engaged in, or seeks to
9 engage in—

10 “(aa) any illicit trafficking
11 in any controlled substance or in
12 any listed chemical (as defined in
13 section 102 of the Controlled
14 Substances Act);

15 “(bb) any activity relating to
16 espionage, sabotage, or theft of
17 intellectual property;

18 “(cc) any activity related to
19 money laundering (as described
20 in 1956 or 1957 of title 18,
21 United States Code);

22 “(dd) any terrorist activity
23 (as defined in section
24 212(a)(3)(B));

1 “(ee) any activity consti-
2 tuting or facilitating human traf-
3 ficking or a human rights of-
4 fense;

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

7 “(gg) the violation of any
8 statute, regulation, or Executive
9 Order regarding foreign financial
10 transactions or foreign asset con-
11 trol; or

12 “(IV) the person—

13 “(aa) is, or during the pre-
14 ceding 10 years has been, in-
15 cluded on the Department of
16 Justice’s List of Currently Dis-
17 ciplined Practitioners; or

18 “(bb) during the preceding
19 10 years has received a rep-
20 rimand or otherwise been publicly
21 disciplined for conduct related to
22 fraud or deceit by a State bar as-
23 sociation of which the person is
24 or was a member.

1 “(ii) FOREIGN INVOLVEMENT IN RE-
2 REGIONAL CENTER PROGRAM.—

3 “(I) LAWFUL STATUS RE-
4 QUIRED.—No person may be involved
5 with a regional center unless the per-
6 son is a national of the United States
7 or an individual who has been lawfully
8 admitted for permanent residence (as
9 defined in paragraphs (20) and (22)
10 of section 101(a).

11 “(II) FOREIGN GOVERNMENTS.—
12 No foreign government entity may
13 provide capital to, or be directly or in-
14 directly involved with the ownership or
15 administration of, a regional center, a
16 new commercial enterprise, or a job-
17 creating entity.

18 “(iii) INFORMATION REQUIRED.—The
19 Secretary shall require such attestations
20 and information, including the submission
21 of fingerprints or other biometrics to the
22 Federal Bureau of Investigation, and shall
23 perform such criminal record checks and
24 other background and database checks
25 with respect to a regional center, new com-

1 commercial enterprise, and job-creating entity,
2 and persons involved with such entities (as
3 described in clause (v)), in order to deter-
4 mine whether such entities are in compli-
5 ance with clauses (i), (ii), and (iii). The
6 Secretary may require the information and
7 attestations described in this clause from
8 such entities, and any person involved with
9 such entities, at any time on or after the
10 date of the enactment of the American Job
11 Creation and Investment Promotion Re-
12 form Act of 2015.

13 “(iv) TERMINATION.—

14 “(I) IN GENERAL.—The Sec-
15 retary shall suspend or terminate the
16 designation of any regional center,
17 new commercial enterprise, or job-cre-
18 ating entity from the program under
19 this paragraph if the Secretary deter-
20 mines that such entity—

21 “(aa) knowingly involved a
22 person with such entity in viola-
23 tion of clause (i) or (ii);

1 “(bb) failed to provide an
2 attestation or information re-
3 quested by the Secretary; or

4 “(cc) knowingly provided
5 any false attestation or informa-
6 tion under clause (iii).

7 “(II) INFORMATION.—The Sec-
8 retary, after the performance of the
9 criminal record and other background
10 checks described in clause (iii), shall
11 notify a regional center, new commer-
12 cial enterprise, or job-creating entity
13 whether any person involved with such
14 entities is not in compliance with
15 clause (i) or (ii). If, 30 days after re-
16 ceiving such notification, the regional
17 center, new commercial enterprise, or
18 job-creating entity fails to discontinue
19 the prohibited person’s involvement
20 with the regional center, new commer-
21 cial enterprise, or job-creating entity,
22 the regional center, new commercial
23 enterprise, or job-creating entity shall
24 be deemed to have knowledge under

1 subclause (I)(aa) that such person is
2 in violation of clause (i) or (ii).

3 “(v) PERSONS INVOLVED WITH A RE-
4 GIONAL CENTER, NEW COMMERCIAL EN-
5 TERPRISE, OR JOB-CREATING ENTITY.—
6 For the purposes of this paragraph, a per-
7 son is considered to be ‘involved’ with a re-
8 gional center, a new commercial enterprise,
9 or a job-creating entity if he or she is the
10 principal, representative, administrator,
11 owner, officer, board member, manager,
12 executive, general partner, fiduciary, or in
13 a similar position of substantive authority
14 for the operations or management of the
15 regional center, new commercial enterprise,
16 or job-creating entity, respectively.

17 “(I) COMPLIANCE WITH SECURITIES
18 LAWS.—

19 “(i) JURISDICTION.—

20 “(I) IN GENERAL.—The United
21 States has jurisdiction over the pur-
22 chase or sale of any security offered
23 or sold by any regional center or any
24 party associated with a regional cen-
25 ter for purposes of the securities laws.

1 Subject matter jurisdiction shall also
2 lie within the United States.

3 “(II) COMPLIANCE WITH REGU-
4 LATION S.—Solely for purposes of sec-
5 tion 5 of the Securities Act of 1933
6 (15 U.S.C. 77e), a regional center or
7 any party associated with a regional
8 center is not precluded from offering
9 or selling a security pursuant to Reg-
10 ulation S under the Securities Act of
11 1933 (15 U.S.C. 77a et seq.) to the
12 extent that such offering or selling
13 otherwise complies with that regula-
14 tion.

15 “(ii) REGIONAL CENTER CERTIFI-
16 CATIONS REQUIRED.—

17 “(I) INITIAL CERTIFICATION.—
18 The Secretary of Homeland Security
19 may not approve an application for re-
20 gional center designation or regional
21 center amendment unless the regional
22 center certifies that, to the best of the
23 certifier’s knowledge, after a due dili-
24 gence investigation, the regional cen-
25 ter is in compliance with and has poli-

1 ment advice by parties associated
2 with the regional center;

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

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

17 “(III) EFFECT OF NONCOMPLI-
18 ANCE.—If a regional center, through
19 its due diligence, discovered during
20 the previous fiscal year that the re-
21 gional center or any party associated
22 with the regional center was not in
23 compliance with the securities laws of
24 the United States or the securities
25 laws of any State in which the re-

1 regional center operates, the certifier
2 shall—

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

5 “(bb) describe the actions
6 taken to remedy the noncompli-
7 ance; and

8 “(cc) certify that the re-
9 gional center and all parties asso-
10 ciated with the regional center
11 are currently in compliance, to
12 the best of the certifier’s knowl-
13 edge, after a due diligence inves-
14 tigation.

15 “(iii) OVERSIGHT REQUIRED.—Each
16 regional center shall monitor and supervise
17 all offers, purchases, and sales of, and non-
18 privileged advice relating to securities
19 made by parties associated with the re-
20 gional center to ensure compliance with the
21 securities laws of the United States, and
22 maintain records, data, and information
23 relating to all such offers, purchases, sales,
24 and nonprivileged advice during the 5-year
25 period beginning on the date of their cre-

1 ation. Such records, data, and information
2 shall be made available to the Securities
3 and Exchange Commission and to the Sec-
4 retary upon request.

5 “(iv) SUSPENSION OR TERMI-
6 NATION.—In addition to any other author-
7 ity provided to the Secretary under this
8 paragraph, the Secretary, in the Sec-
9 retary’s discretion, may suspend or termi-
10 nate the designation of any regional center
11 or impose other sanctions against the re-
12 gional center if the regional center, or any
13 parties associated with the regional center
14 that the regional center knew or reason-
15 ably should have known—

16 “(I) are permanently or tempo-
17 rarily enjoined by order, judgment, or
18 decree of any court of competent ju-
19 risdiction in connection with the offer,
20 purchase, or sale of a security or the
21 provision of investment advice;

22 “(II) are subject to any final
23 order of the Securities and Exchange
24 Commission or a State securities reg-
25 ulator that—

1 “(aa) bars such person from
2 association with an entity regu-
3 lated by the Securities and Ex-
4 change Commission; or

5 “(bb) constitutes a final
6 order based on a finding of an in-
7 tentional violation or a violation
8 related to fraud or deceit in con-
9 nection with the offer, purchase,
10 or sale of, or nonprivileged advice
11 relating to, a security; or

12 “(III) submitted or caused to be
13 submitted a certification described in
14 clause (ii) that contained an untrue
15 statement of a material fact or omit-
16 ted to state a material fact necessary
17 in order to make the statements
18 made, in light of the circumstances
19 under which they were made, not mis-
20 leading.

21 “(v) SAVINGS PROVISION.—Nothing in
22 this subparagraph may be construed to im-
23 pair or limit the authority of the Securities
24 and Exchange Commission under the Fed-

1 eral securities laws or any State securities
2 regulator under State securities laws.

3 “(vi) DEFINED TERM.—In this sub-
4 paragraph, the term ‘parties associated
5 with a regional center’ means—

6 “(I) the regional center;

7 “(II) the new commercial enter-
8 prise or job-creating entity associated
9 with the regional center;

10 “(III) the regional center’s and
11 new commercial enterprise’s owners,
12 officers, directors, managers, partners,
13 agents, employees, promoters and at-
14 torneys; and

15 “(IV) any person in active con-
16 cert or participation with the regional
17 center or directly or indirectly control-
18 ling, controlled by, or under common
19 control with the regional center.

20 “(J) EB–5 INTEGRITY FUND.—

21 “(i) ESTABLISHMENT.—There is es-
22 tablished in the United States Treasury a
23 special fund, which shall be known as the
24 EB–5 Integrity Fund (referred to in this
25 subparagraph as the ‘Fund’). Amounts de-

1 posited into the Fund shall be available to
2 the Secretary of Homeland Security until
3 expended for the purposes set forth in
4 clause (iii).

5 “(ii) FEES.—

6 “(I) ANNUAL FEE.—The Sec-
7 retary of Homeland Security shall col-
8 lect an annual fee of \$25,000 for the
9 Fund from each regional center des-
10 ignated under subparagraph (E). The
11 fee shall be \$10,000 if a regional cen-
12 ter has 20 or fewer total investors in
13 the preceding fiscal year in its new
14 commercial enterprises.

15 “(II) DUE DATES.—The first fee
16 under this clause shall be due not
17 later than January 1, 2016, and sub-
18 sequent fees due not later than Janu-
19 ary 1 of each year thereafter.

20 “(III) PETITION FEE.—The Sec-
21 retary shall collect a fee of \$1,000 for
22 the Fund with each petition filed
23 under section 204(a)(1)(H) for classi-
24 fication under subparagraph (E).

1 “(IV) INCREASES.—The Sec-
2 retary may prescribe regulations, as
3 necessary, to increase the dollar
4 amounts under this clause to ensure
5 the Secretary’s continued ability to
6 carry out the activities specified in
7 clause (iii).

8 “(iii) PERMISSIBLE USES OF FUND.—
9 The Secretary shall—

10 “(I) use not less than $\frac{1}{3}$ of the
11 amounts deposited into the Fund to
12 conduct audits and site visits (with or
13 without notice);

14 “(II) use not less than $\frac{1}{3}$ of the
15 amounts deposited into the Fund for
16 investigations based outside of the
17 United States, including—

18 “(aa) monitoring and inves-
19 tigating program-related events
20 and promotional activities; and

21 “(bb) ensuring an alien in-
22 vestor’s compliance with subpara-
23 graph (L);

24 “(III) use amounts deposited into
25 the Fund—

1 “(aa) to detect and inves-
2 tigate fraud or other crimes; and

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

10 “(IV) use amounts deposited into
11 the Fund to conduct interviews of the
12 owners, officers, directors, managers,
13 partners, agents, employees, pro-
14 motors, and attorneys of regional cen-
15 ters, new commercial enterprises, and
16 job-creating entities; and

17 “(V) otherwise use amounts de-
18 posited into the Fund as the Sec-
19 retary determines to be necessary, in-
20 cluding monitoring compliance with
21 the requirements under section 7 of
22 the American Job Creation and In-
23 vestment Promotion Reform Act of
24 2015.

1 “(iv) FAILURE TO PAY FEE.—The
2 Secretary of Homeland Security shall—

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

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

15 “(v) REPORT.—The Secretary shall
16 submit an annual report to the Committee
17 on the Judiciary of the Senate and the
18 Committee on the Judiciary of the House
19 of Representatives that describes how
20 amounts in the Fund were expended dur-
21 ing the previous fiscal year.

22 “(K) DIRECT AND THIRD-PARTY PRO-
23 MOTERS.—

24 “(i) RULES AND STANDARDS.—Direct
25 and third party promoters of regional cen-

1 ters, new commercial enterprises, and job-
2 creating entities shall comply with the
3 rules and standards prescribed by the Sec-
4 retary of Homeland Security, in consulta-
5 tion with the Securities and Exchange
6 Commission, to oversee regional center
7 promotion, including—

8 “(I) registration with U.S. Citi-
9 zenship and Immigration Services,
10 which the Secretary may make pub-
11 licly available;

12 “(II) minimum qualifications;

13 “(III) guidelines for offering in-
14 vestment opportunities and rep-
15 resenting the visa process to foreign
16 investors; and

17 “(IV) permissible fee arrange-
18 ments.

19 “(ii) EFFECT OF VIOLATION.—If the
20 Secretary determines that a direct or
21 third-party promoter has violated clause
22 (i), the Secretary shall suspend or perma-
23 nently bar such individual from participa-
24 tion in the program described in subpara-
25 graph (E).

1 “(iii) COMPLIANCE.—Each regional
2 center shall maintain a written agreement
3 between the regional center, new commer-
4 cial enterprise, or job-creating entity and
5 each direct or third-party promoter oper-
6 ating on behalf of such regional center,
7 new commercial enterprise, or job-creating
8 entity that outlines the rules and stand-
9 ards prescribed under clause (i).

10 “(L) SOURCE OF FUNDS.—

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

18 “(ii) REQUIRED INFORMATION.—The
19 Secretary of Homeland Security shall re-
20 quire, as applicable, that an alien inves-
21 tor’s petition under this paragraph con-
22 tain—

23 “(I) business and tax records, in-
24 cluding—

1 “(aa) foreign business reg-
2 istration records;

3 “(bb) corporate or partner-
4 ship tax returns (or tax returns
5 of any other entity in any form
6 filed in any country or subdivi-
7 sion of such country), and per-
8 sonal tax returns including in-
9 come, franchise, property (wheth-
10 er real, personal, or intangible),
11 or any other tax returns of any
12 kind, filed within 7 years, with
13 any taxing jurisdiction in or out-
14 side the United States by or on
15 behalf of the alien investor; and

16 “(cc) evidence identifying
17 any other source of capital or ad-
18 ministrative fees;

19 “(II) evidence related to mone-
20 tary judgments against the alien in-
21 vestor, including certified copies of
22 any judgments, and evidence of all
23 pending governmental civil or criminal
24 actions, governmental administrative
25 proceedings, and any private civil ac-

1 tions (pending or otherwise) involving
2 possible monetary judgments against
3 the alien investor from any court in or
4 outside the United States; and

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

8 “(aa) any funds that are
9 used to meet the capital require-
10 ment under subparagraph (A);
11 and

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

16 “(iii) GIFT RESTRICTIONS.—Gifted
17 funds may be counted toward the min-
18 imum capital investment requirement
19 under subparagraph (C) only if such funds
20 were gifted to the alien investor by the
21 alien investor’s spouse, parent, son, or
22 daughter (but not children (as defined in
23 section 101(b)(1)), sibling, or grandparent
24 and such funds were gifted in good faith
25 and not to circumvent any limitations im-

1 posed on permissible sources of capital
2 under this subparagraph. If a significant
3 portion of the capital invested under sub-
4 paragraph (A) was gifted to the alien in-
5 vestor, the Secretary shall require the alien
6 investor's petition under this paragraph to
7 include records described in subclauses (I)
8 and (II) of clause (ii) from the donor.

9 “(iv) LOAN RESTRICTIONS.—Capital
10 derived from indebtedness may be counted
11 toward the minimum capital investment re-
12 quirement under subparagraph (C) only if
13 such capital is—

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

16 “(II) issued by a banking or
17 lending institution that is properly
18 chartered or licensed under the laws
19 of any State, territory, country, or ap-
20 plicable jurisdiction, and that is not
21 sanctioned or restricted, which the
22 Secretary shall determine after con-
23 sulting with relevant commercial or
24 government databases, such as those
25 of the Department of Treasury's Of-

1 fice of Foreign Assets Control, Office
2 of Terrorist Financing and Financial
3 Crimes, and Financial Crimes En-
4 forcement Network.

5 “(M) TREATMENT OF INVESTORS IF A RE-
6 GIONAL CENTER HAS BEEN TERMINATED.—

7 “(i) IN GENERAL.—Upon the termi-
8 nation from the program under this para-
9 graph of a regional center, new commercial
10 enterprise, or job-creating entity under this
11 paragraph—

12 “(I) except as provided in sub-
13 clause (II), the conditional permanent
14 residence of an alien who has been ad-
15 mitted to the United States pursuant
16 to section 216A(a)(1) based on an in-
17 vestment in a terminated regional cen-
18 ter, new commercial enterprise, or
19 job-creating entity shall continue to be
20 authorized, consistent with this sub-
21 paragraph; and

22 “(II) if the Secretary has reason
23 to believe the alien was a knowing
24 participant in the conduct that led to
25 the termination of such regional cen-

1 ter, new commercial enterprise, or
2 job-creating entity, the Secretary shall
3 notify the alien of such belief and,
4 subject to section 216A(b)(2), shall
5 terminate the permanent resident sta-
6 tus of the alien (and the alien’s
7 spouse and child) as of the date of
8 such determination.

9 “(ii) NEW REGIONAL CENTER OR IN-
10 VESTMENT.—The conditional permanent
11 resident status of an alien described in
12 clause (i)(I) shall be terminated 180 days
13 after the termination from the program
14 under this paragraph of a regional center,
15 a new commercial enterprise, or a job cre-
16 ating entity unless—

17 “(I) in the case of the termi-
18 nation of a regional center—

19 “(aa) the new commercial
20 enterprise associates with an ap-
21 proved regional center;

22 “(bb) such alien makes a
23 qualifying investment in another
24 commercial enterprise associated

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1 with an approved regional center;

2 or

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

8 “(II) in the case of the termi-
9 nation of a new commercial enterprise
10 or job-creating entity, such alien in-
11 vests in another commercial enterprise
12 associated with an approved regional
13 center.

14 “(iii) REMOVAL OF CONDITIONS.—
15 Aliens described in subclauses (I)(bb),
16 (I)(cc), and (II) of clause (ii) shall be eligi-
17 ble to have their conditions removed pursu-
18 ant to section 216A beginning on the date
19 that is 2 years after the date of the subse-
20 quent investment.

21 “(N) THREATS TO THE NATIONAL INTER-
22 EST.—

23 “(i) DENIAL OR REVOCATION.—The
24 Secretary of Homeland Security shall deny
25 or revoke the approval of a petition, appli-

1 cation, or benefit described in this para-
2 graph, including the documents described
3 in clause (ii), if the Secretary determines
4 that the approval of such petition, applica-
5 tion, or benefit is contrary to the national
6 interest of the United States for reasons
7 relating to threats to public safety or na-
8 tional security.

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

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

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

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

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

22 “(iii) DEPARTMENT.—If a regional
23 center, new commercial enterprise, or job-
24 creating entity has its designation or par-
25 ticipation in the program under this para-

1 graph terminated for reasons relating to
2 public safety or national security, any per-
3 son associated with such regional center,
4 new commercial enterprise, or job-creating
5 entity, including an alien investor, shall be
6 permanently barred from future participa-
7 tion in the program under this paragraph
8 if the Secretary of Homeland Security, in
9 the Secretary’s discretion, determines, by a
10 preponderance of the evidence, that such
11 person was a knowing participant in the
12 conduct that led to the termination.

13 “(iv) NOTICE.—If the Secretary of
14 Homeland Security determines that the ap-
15 proval of a petition, application, or benefit
16 described in this paragraph should be de-
17 nied or revoked pursuant to clause (i), the
18 Secretary shall—

19 “(I) notify the relevant indi-
20 vidual, regional center, or commercial
21 entity of such determination; and

22 “(II) deny or revoke such peti-
23 tion, application, or benefit or termi-
24 nate the permanent resident status of
25 the alien (and the alien spouse and

1 alien children of such immigrant), as
2 provided in clause (i) as of the date of
3 such determination.

4 “(v) JUDICIAL REVIEW.—Notwith-
5 standing any other provision of law (statu-
6 tory or nonstatutory), including section
7 2241 of title 28, United States Code, or
8 any other habeas corpus provision, and
9 sections 1361 and 1651 of such title, no
10 court shall have jurisdiction to review a de-
11 nial or revocation under this subparagraph.
12 Nothing in this clause may be construed as
13 precluding review of constitutional claims
14 or questions of law raised upon a petition
15 for review filed with an appropriate court
16 of appeals in accordance with section 242.

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

19 “(i) DENIAL OR REVOCATION.—The
20 Secretary of Homeland Security shall deny
21 or revoke the approval of a petition, appli-
22 cation, or benefit described in this para-
23 graph, including the documents described
24 in subparagraph (N)(ii), if the Secretary
25 determines that such petition, application,

1 or benefit was predicated on or involved
2 fraud, deceit, intentional material mis-
3 representation, or criminal misuse.

4 “(ii) DEBARMENT.—If a regional cen-
5 ter, new commercial enterprise, or job-cre-
6 ating entity has its designation or partici-
7 pation in the program under this para-
8 graph terminated for reasons relating to
9 fraud, intentional material misrepresenta-
10 tion, or criminal misuse, any person associ-
11 ated with such regional center, new com-
12 mercial enterprise, or job-creating entity,
13 including an alien investor, shall be perma-
14 nently barred from future participation in
15 the program under this paragraph if the
16 Secretary of Homeland Security deter-
17 mines, by a preponderance of the evidence,
18 that such person was a knowing partici-
19 pant in the conduct that led to the termi-
20 nation.

21 “(iii) NOTICE.—If the Secretary of
22 Homeland Security determines that the ap-
23 proval of a petition, application, or benefit
24 described in this paragraph should be de-

1 nied or revoked pursuant to clause (i), the
2 Secretary shall—

3 “(I) notify the relevant indi-
4 vidual, regional center, or commercial
5 entity of such determination; and

6 “(II) deny or revoke such peti-
7 tion, application, or benefit or termi-
8 nate the permanent resident status of
9 the alien (and the alien spouse and
10 alien children of such immigrant) as
11 provided in clause (i) as of the date of
12 such determination.

13 “(P) ADMINISTRATIVE APPELLATE RE-
14 VIEW.—

15 “(i) IN GENERAL.—The Director of
16 U.S. Citizenship and Immigration Services
17 shall provide an opportunity for an admin-
18 istrative appellate review by the Adminis-
19 trative Appeals Office of U.S. Citizenship
20 and Immigration Services of any deter-
21 mination made under this paragraph, in-
22 cluding—

23 “(I) an application for regional
24 center designation or regional center
25 amendment;

1 “(II) an application for approval
2 of a business plan under subpara-
3 graph (F);

4 “(III) a petition by an alien in-
5 vestor for status as an immigrant
6 under this paragraph;

7 “(IV) the termination or suspen-
8 sion of any benefit accorded under
9 this paragraph; and

10 “(V) any sanction imposed by the
11 Secretary of Homeland Security pur-
12 suant to this paragraph.

13 “(ii) JUDICIAL REVIEW.—Subject to
14 section 242(a)(2), and notwithstanding any
15 other provision of law (statutory or non-
16 statutory), including section 2241 of title
17 28, United States Code, or any other ha-
18 beas corpus provision, and sections 1361
19 and 1651 of such title, no court shall have
20 jurisdiction to review a determination
21 under this paragraph until the regional
22 center, its associated entities, or the alien
23 investor has exhausted all administrative
24 appeals.”.

25 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this section, the amendments made by this
3 section shall be effective at any time after the date
4 of the enactment of this Act, as determined by the
5 Secretary, and shall be effective not later than 90
6 days after such date of enactment.

7 (2) EXCEPTIONS.—Clauses (iv) and (v) of sub-
8 paragraph (E) and subparagraph (L) of section
9 203(b)(5) of the Immigration and Nationality Act (8
10 U.S.C. 1153(b)(5)) shall not apply to a petition
11 that—

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

14 (B) is filed under section 216A of such Act
15 (8 U.S.C. 1186b) if the underlying petition filed
16 under section 203(b)(5) of such Act was filed
17 before the date of the enactment of this Act.

18 (d) GAO REPORT.—Not later than December 31,
19 2018, the Comptroller General of the United States shall
20 submit a report to the Committee on the Judiciary of the
21 Senate and the Committee on the Judiciary of the House
22 of Representatives that describes—

23 (1) the economic benefits of the regional center
24 program established under section 203(b)(5) of the
25 Immigration and Nationality Act (8 U.S.C.

1 1153(b)(5)), including the steps taken by United
2 States Citizenship and Immigration Services to
3 verify job creation;

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

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

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

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

24 (6) the extent to which United States Citizen-
25 ship and Immigration Services has prevented fraud

1 and abuse in regional center activities, including the
2 designation of targeted employment areas in areas
3 that otherwise have high employment;

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

8 (8) the steps that have been taken to oversee
9 direct and third-party promoters under section
10 203(b)(5)(K) of the Immigration and Nationality
11 Act, as added by subsection (b);

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

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

20 (e) INSPECTOR GENERAL REPORT.—Not later than
21 December 31, 2018, the Inspector General of the Intel-
22 ligence Community, in coordination with the Inspector
23 General of the Department of Homeland Security and
24 after consultation with relevant Federal agencies, includ-
25 ing United States Immigration and Customs Enforce-

1 ment, shall submit a report to the Committee on the Judi-
2 ciary of the Senate and the Committee on the Judiciary
3 of the House of Representatives concerning the immigrant
4 visa program set forth in section 203(b)(5) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1153(b)(5)) that
6 describes—

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

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

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

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

16 (5) the actual or potential use of the program
17 to facilitate terrorist activity, including funding ter-
18 rorist activity or laundering terrorist funds.

19 (f) REVIEW OF JOB CREATION METHODOLOGIES.—

20 Not later than 12 months after the date of the enactment
21 of this Act, the Secretary of Homeland Security, in con-
22 sultation with the Bureau of Economic Analysis of the De-
23 partment of Commerce, or another component within the
24 Department of Commerce, as determined by the Secretary
25 of Commerce, shall publish regulations to determine eco-

1 nomically and statistically valid general economic meth-
2 odologies that are in compliance with section
3 203(b)(5)(A)(ii) of the Immigration and Nationality Act
4 (8 U.S.C. 1153(b)(5)(A)(ii)).

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

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

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

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

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

16 “(1) CONDITIONAL BASIS FOR STATUS.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), an alien investor, alien
19 spouse, and alien child shall be considered, at
20 the time of obtaining status of an alien lawfully
21 admitted for permanent residence, to have ob-
22 tained such status on a conditional basis sub-
23 ject to the provisions of this section.

24 “(B) EXCEPTION.—An alien investor (and
25 his or her alien spouse or alien child) whose pe-

1 tition under subsection (f) is approved before
2 the alien investor is lawfully admitted for per-
3 manent residence shall be granted the status of
4 an alien lawfully admitted for permanent resi-
5 dence without conditions.”;

6 (4) in subsection (b)—

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

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

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

14 (5) in subsection (c)—

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

17 (B) in paragraph (1)—

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

22 (ii) in subparagraph (A)—

23 (I) by striking “must” and in-
24 serting “shall”; and

1 (II) by striking “, and” and in-
2 serting a semicolon;

3 (iii) in subparagraph (B)—

4 (I) by striking “must” and in-
5 serting “shall”;

6 (II) by striking “Service” and in-
7 serting “Department of Homeland Se-
8 curity”; and

9 (III) by striking the period at the
10 end and inserting “; and”; and

11 (iv) by adding at the end the fol-
12 lowing:

13 “(C) the Secretary shall have performed a
14 site visit to the new commercial enterprise and
15 job-creating entity in which the alien investor
16 invested capital under subparagraph (A) of sec-
17 tion 203(b)(5) pursuant to subparagraph
18 (F)(iii) of such section.”; and

19 (C) in paragraph (3)—

20 (i) in subparagraph (A), in the undes-
21 ignated matter following clause (ii), by
22 striking “the” before “such filing”; and

23 (ii) by amending subparagraph (B) to
24 read as follows:

1 “(B) REMOVAL OR EXTENSION OF CONDI-
2 TIONAL BASIS.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), if the Secretary deter-
5 mines that the facts and information con-
6 tained in a petition submitted under para-
7 graph (1)(A) are true, including dem-
8 onstrating that the alien complied with sec-
9 tion (d)(1)(B)(i), the Secretary shall—

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

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

17 “(ii) EXCEPTION.—If the petition
18 demonstrates that the facts and informa-
19 tion are true and that the alien is in com-
20 pliance with section (d)(1)(B)(ii)—

21 “(I) the Secretary, in the Sec-
22 retary’s discretion, may provide one 1-
23 year extension of the alien’s condi-
24 tional status; and

1 “(II)(aa) if the alien files a peti-
2 tion not later than 30 days after the
3 third anniversary of the alien’s lawful
4 admission for permanent residence
5 demonstrating that the alien complied
6 with section (d)(1)(B)(i), the Sec-
7 retary shall remove the conditional
8 basis of the alien’s status effective as
9 of such third anniversary; or

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

14 (6) in subsection (d)—

15 (A) in paragraph (1)—

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

18 “(A) invested the requisite capital;”;

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

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

23 “(B)(i) created the employment required
24 under section 203(b)(5)(A)(ii); or

1 “(ii) is actively in the process of creating
2 the employment required under section
3 203(b)(5)(A)(ii) and will create such employ-
4 ment before the third anniversary of the alien’s
5 lawful admission for permanent residence;
6 and”;

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

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

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

18 “(ii) EXCEPTION.—Aliens described in
19 subclauses (I)(bb) and (II) of section
20 203(b)(5)(M)(ii) shall file a petition under
21 subsection (c)(1)(A) during the 90-day pe-
22 riod before the second anniversary of the
23 subsequent investment.”; and

24 (C) in paragraph (3)—

1 (i) by striking “The interview” and
2 inserting the following:

3 “(A) IN GENERAL.—The interview”;

4 (ii) by striking “Service” and insert-
5 ing “Department of Homeland Security”;
6 and

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

9 “(B) WAIVER.—The Secretary of Home-
10 land Security, in the Secretary’s discretion, may
11 waive the deadline for such an interview or the
12 requirement for such an interview according to
13 criteria developed by United States Citizenship
14 and Immigration Services in consultation with
15 its Fraud Detection and National Security Di-
16 rectorate, and United States Immigration and
17 Customs Enforcement, provided that such cri-
18 teria shall not include reduction of case proc-
19 essing times or the allocation of adjudicatory
20 resources. A waiver may not be granted under
21 this subparagraph if the alien to be inter-
22 viewed—

23 “(i) invested in a regional center, new
24 commercial enterprise, or job-creating enti-

1 ty that was sanctioned under section
2 203(b)(5); or

3 “(ii) is in a class of aliens determined
4 by the Secretary to be threats to public
5 safety or national security.”;

6 (7) by redesignating subsection (f) as sub-
7 section (g);

8 (8) by inserting after subsection (e) the fol-
9 lowing:

10 “(f) PETITION FROM QUALIFIED ALIEN INVES-
11 TOR.—An alien investor who invested the requisite capital
12 and created the employment required under section
13 203(b)(5)(A)(ii) at least 24 months before admission, and
14 is otherwise conforming to the requirements under section
15 203(b)(5), may file a petition, before admission for perma-
16 nent residence, to be considered, at the time of obtaining
17 status of an alien lawfully admitted for permanent resi-
18 dence, to obtain such status without conditions.”; and

19 (9) in subsection (g)(3), as redesignated, by
20 striking “a limited partnership” and inserting “any
21 entity formed for the purpose of doing for-profit
22 business”.

23 (b) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided under
25 paragraph (2), the amendments made by subsection

1 (a) shall take effect on the date of the enactment of
2 this Act.

3 (2) EXCEPTIONS.—

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

8 (B) PETITION BENEFICIARIES.—The
9 amendments made by subsection (a) shall not
10 apply to the beneficiary of a petition that is
11 filed under section 216A of the Immigration
12 and Nationality Act (8 U.S.C. 1186b) if the un-
13 derlying petition filed under section 203(b)(5)
14 of such Act (8 U.S.C. 1153(b)(5)) was ap-
15 proved before the date of the enactment of this
16 Act.

17 **SEC. 4. EB-5 VISA REFORMS.**

18 (a) TARGETED EMPLOYMENT AREAS.—Section
19 203(b)(5)(B) of the Immigration and Nationality Act (8
20 U.S.C. 1153(b)(5)(B)) is amended to read as follows:

21 “(B) VISA SET-ASIDES AND AREA DES-
22 IGNATIONS.—

23 “(i) RESERVED VISAS.—Beginning on
24 October 1, 2016, of the visas made avail-
25 able under this paragraph in each fiscal

1 year, 2,000 shall be reserved for immi-
2 grants who invest in rural areas and 2,000
3 shall be reserved for immigrants who in-
4 vest in priority urban investment areas. At
5 the end of each fiscal year, any unused
6 visa within either category shall remain
7 available within the same category for the
8 following fiscal year. If such visa remains
9 available following the second fiscal year, it
10 shall be made generally available to alien
11 investors under this paragraph.

12 “(ii) ELIGIBILITY.—The Secretary of
13 Homeland Security shall determine eligi-
14 bility for designation as a targeted employ-
15 ment area and shall not be bound by the
16 determination of any other governmental
17 or nongovernmental entity.

18 “(iii) DESIGNATION OF INFRASTRUC-
19 TURE PROJECT, MANUFACTURING
20 PROJECT, AND TARGETED EMPLOYMENT
21 AREA.—

22 “(I) INFRASTRUCTURE PROJECT
23 OR MANUFACTURING PROJECT.—The
24 designation of an infrastructure
25 project or manufacturing project shall

1 be made at the time of the invest-
2 ment.

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

9 “(III) RENEWALS.—A designa-
10 tion under subclause (II) may be re-
11 newed for additional 2-year periods if
12 the area continues to meet the defini-
13 tion of a targeted employment area.
14 An investor who has made the re-
15 quired amount of investment in such
16 an area during its period of designa-
17 tion shall not be required to increase
18 the amount of investment based upon
19 expiration of the designation.”.

20 (b) ADJUSTMENT OF MINIMUM INVESTMENT
21 AMOUNT.—Section 203(b)(5)(C) of such Act (8 U.S.C.
22 1153(b)(5)(C)) is amended—

23 (1) by redesignating clause (iii) as clause (iv);
24 (2) by striking clauses (i) and (ii) and inserting
25 the following:

1 “(i) MINIMUM INVESTMENT
2 AMOUNTS.—Except as otherwise provided
3 in this subparagraph, the amount of cap-
4 ital required under subparagraph (A) shall
5 be—

6 “(I) \$1,000,000 (except as pro-
7 vided in subclause (II)); or

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

13 “(ii) AUTHORITY TO INCREASE IN-
14 VESTMENT AMOUNTS.—The Secretary may
15 periodically prescribe regulations increas-
16 ing the dollar amount specified under
17 clause (i), provided that any such increase
18 simultaneously affects each category of in-
19 vestment under clause (i) by the same per-
20 centage.

21 “(iii) AUTOMATIC ADJUSTMENT OF
22 MINIMUM INVESTMENT AMOUNTS.—Begin-
23 ning on January 1, 2021, and on every
24 fifth subsequent January 1, the Secretary

1 shall adjust each of the minimum amounts
2 specified in clause (i) as follows:

3 “(I) NO INCREASES IN PREVIOUS
4 5 FISCAL YEARS.—If the Secretary did
5 not increase the minimum amount
6 during the 5 prior fiscal years con-
7 cluding with the fiscal year ending on
8 September 30 of the prior calendar
9 year, the amounts specified in clause
10 (i) shall automatically be adjusted by
11 the amount of the cumulative percent-
12 age change in the Consumer Price
13 Index (CPI–U) for the previous 5 fis-
14 cal years.

15 “(II) INCREASES BELOW CPI–U
16 DURING PREVIOUS 5 FISCAL YEARS.—
17 If the Secretary increased the min-
18 imum amount during the previous 5
19 fiscal years by an amount that is less
20 than the cumulative percentage
21 change in the CPI–U during the pre-
22 vious 5 fiscal years, the amounts spec-
23 ified in clause (i) shall automatically
24 be adjusted by the amount of such cu-
25 mulative percentage change for such

1 period minus any increase previously
2 prescribed by the Secretary by regula-
3 tions.

4 “(III) INCREASES ABOVE CPI–U
5 DURING PREVIOUS 5 FISCAL YEARS.—
6 If the Secretary increased the min-
7 imum amount during the previous 5
8 fiscal years by an amount that is
9 greater than the cumulative percent-
10 age change in the CPI–U during the
11 previous 5 fiscal years, the amounts
12 specified in clause (i) shall not be in-
13 creased.”; and

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

16 (c) DEFINITIONS.—

17 (1) IN GENERAL.—Section 203(b)(5) of such
18 Act (8 U.S.C. 1153(b)(5)), as amended by sub-
19 sections (a) and (b) and by section 2, is further
20 amended by striking subparagraph (D) and inserting
21 the following:

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

23 “(i) CAPITAL.—The term ‘capital’—

24 “(I) means cash and all real, per-
25 sonal, or mixed tangible assets owned

1 and controlled by the alien investor,
2 or held in trust for the benefit of the
3 alien and to which the alien has unre-
4 stricted access;

5 “(II) shall be valued at fair mar-
6 ket value in United States dollars, in
7 accordance with Generally Accepted
8 Accounting Principles or other stand-
9 ard accounting practice adopted by
10 the Securities and Exchange Commis-
11 sion, at the time it is invested under
12 this paragraph; and

13 “(III) shall not include assets ac-
14 quired, directly or indirectly, by un-
15 lawful means, including any cash pro-
16 ceeds of indebtedness secured by such
17 assets.

18 “(ii) CERTIFIER.—The term ‘certifier’
19 means a person in a position of substantive
20 authority for the management or oper-
21 ations of a regional center, new commercial
22 enterprise, or job-creating entity, such as a
23 principal executive officer or principal fi-
24 nancial officer, with knowledge of such en-
25 tities’ policies and procedures related to

1 compliance with the requirements of this
2 paragraph.

3 “(iii) FULL-TIME EMPLOYMENT.—The
4 term ‘full-time employment’ means employ-
5 ment in a position that requires at least 35
6 hours of service per week for at least a 24-
7 month period, regardless of who fills the
8 position. A position or job that is filled by
9 more than 1 employee may be considered
10 full-time employment for purposes of sub-
11 paragraph (A)(ii).

12 “(iv) INFRASTRUCTURE PROJECT.—
13 The term ‘infrastructure project’ means a
14 capital investment project in an approved
15 business plan, which is administered by a
16 governmental entity, such as a Federal,
17 State, or local agency or authority, in
18 which the entity contracts with a regional
19 center, new commercial enterprise, or job-
20 creating entity to receive capital invest-
21 ment from investors or the new commercial
22 enterprise as financing for maintaining,
23 improving, or constructing a public works
24 project.

1 “(v) JOB-CREATING ENTITY.—The
2 term ‘job-creating entity’ means any orga-
3 nization formed in the United States for
4 the ongoing conduct of lawful business, in-
5 cluding a partnership (whether limited or
6 general), corporation, limited liability com-
7 pany, or other entity that receives, or is es-
8 tablished to receive, capital investment
9 from alien investors or a new commercial
10 enterprise under the regional center pro-
11 gram described in subparagraph (E) and
12 which is most closely responsible for the
13 job creation.

14 “(vi) MANUFACTURING PROJECT.—
15 The term ‘manufacturing project’ means a
16 capital investment project in an approved
17 business plan, the purpose of which is to
18 improve, construct, or operate a plant, fac-
19 tory, or mill, which primarily exists in
20 order to produce or assemble a product in
21 the United States.

22 “(vii) NEW COMMERCIAL ENTER-
23 PRISE.—The term ‘new commercial enter-
24 prise’ means any for-profit organization
25 formed in the United States for the ongo-

1 ing conduct of lawful business, including a
2 partnership (whether limited or general),
3 corporation, limited liability company, or
4 other entity that receives, or is established
5 to receive, capital investment from inves-
6 tors under this paragraph.

7 “(viii) PRIORITY URBAN INVESTMENT
8 AREA.—The term ‘priority urban invest-
9 ment area’ means an area consisting of a
10 census tract or contiguous census tracts,
11 each of which is in a metropolitan statis-
12 tical area and, using the most recent cen-
13 sus data available, has—

14 “(I) an unemployment rate that
15 is at least 150 percent of the national
16 average unemployment rate, which
17 may also include any census tract or
18 tracts contiguous to 1 or more of the
19 tracts that have the requisite unem-
20 ployment rate;

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

23 “(III) a median family income
24 that is not more than 80 percent of
25 the greater of the statewide median

1 family income or the metropolitan sta-
2 tistical area median family income.

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

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

10 “(II)(aa) is outside of a metro-
11 politan statistical area; or

12 “(bb) is within an outlying coun-
13 ty of a metropolitan statistical area.

14 “(x) SPECIAL INVESTMENT ZONE.—
15 The term ‘special investment zone’ means
16 an area, consisting of a census tract or not
17 more than 12 contiguous census tracts
18 (which shall include each census tract con-
19 tiguous to the census tract where the
20 project is physically located other than cen-
21 sus tracts described in subclause (II))
22 that—

23 “(I) has an unemployment rate
24 that is at least 150 percent of the na-
25 tional average unemployment rate

1 using the most recent census data
2 available; and

3 “(II) may not include any census
4 tract or tracts that encompass special
5 land use census tracts or cover bodies
6 of water unless the project is phys-
7 ically located in such census tract.

8 “(xi) TARGETED EMPLOYMENT
9 AREA.—The term ‘targeted employment
10 area’ means—

11 “(I) a priority urban investment
12 area;

13 “(II) a rural area;

14 “(III) a special investment zone;

15 “(IV) any area within the geo-
16 graphic boundaries of any military in-
17 stallation that was closed, during the
18 20-year period immediately preceding
19 the filing of an application under sub-
20 paragraph (F) based upon a rec-
21 ommendation by the Defense Base
22 Closure and Realignment Commission;
23 or

24 “(V) an area consisting of a cen-
25 sus tract or contiguous census tracts,

1 each of which, using the most recent
2 census data available—

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

5 “(bb) has a poverty rate
6 that is at least 20 percent or a
7 median family income that is not
8 more than 80 percent of the
9 statewide median family in-
10 come.”.

11 (2) RULEMAKING.—The Secretary of Homeland
12 Security, in consultation with the Secretary of De-
13 fense, shall issue appropriate regulations to account
14 for the modified definition of targeted employment
15 area in section 203(b)(5)(D)(xi)(IV) of the Immigra-
16 tion and Nationality Act, as added by paragraph (1).

17 (d) AGE DETERMINATION FOR CHILDREN OF ALIEN
18 INVESTORS.—Section 203(h) of such Act (8 U.S.C.
19 1153(h)) is amended by adding at the end the following:

20 “(5) AGE DETERMINATION FOR CHILDREN OF
21 ALIEN INVESTORS.—An alien who has reached 21
22 years of age and has been admitted under subsection
23 (d) as a lawful permanent resident on a conditional
24 basis as the child of an alien lawfully admitted for
25 permanent residence under subsection (b)(5), whose

1 lawful permanent resident status on a conditional
2 basis is terminated under section 216A or subpara-
3 graph (M) of subsection (b)(5), shall continue to be
4 considered a child of the principal alien for the pur-
5 pose of a subsequent immigrant petition by such
6 alien under subsection (b)(5) if the alien remains
7 unmarried and the subsequent petition is filed by
8 the principal alien not later than 1 year after the
9 termination of conditional lawful permanent resident
10 status. No alien shall be considered a child under
11 this paragraph with respect to more than 1 petition
12 filed after the alien reaches 21 years of age.”.

13 (e) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
14 EMPLOYEES ADMINISTERING THE EMPLOYMENT CRE-
15 ATION PROGRAM.—The Secretary of Homeland Security
16 may establish, fix the compensation of, and appoint indi-
17 viduals to designated critical, technical, and professional
18 positions needed to administer sections 203(b)(5) and
19 216A of the Immigration and Nationality Act (8 U.S.C.
20 1153(b)(5) and 1186b)).

21 (f) CONCURRENT FILING OF EB–5 PETITIONS AND
22 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
23 245 of the Immigration and Nationality Act (8 U.S.C.
24 1255) is amended—

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

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

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

12 (g) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1153(b)(5)(A)), is amended—

15 (1) in the matter preceding clause (i), by strik-
16 ing “(including a limited partnership)”;

17 (2) in clause (i), by inserting “and which is ex-
18 pected to remain invested for not less than 2 years”
19 after “(C),”; and

20 (3) in clause (ii)—

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

23 (B) by inserting “, United States nation-
24 als,” after “citizens”.

1 (h) REQUIRED CHECKS.—Section 203(b)(5) of such
2 Act, as amended by this section and section 2, is further
3 amended by adding at the end the following:

4 “(Q) REQUIRED CHECKS.—An alien inves-
5 tor, alien spouse, or alien child may not be
6 granted status of an alien lawfully admitted for
7 permanent residence under this paragraph un-
8 less the Secretary of Homeland Security has de-
9 termined that such alien is not on the Depart-
10 ment of Treasury’s Office of Foreign Assets
11 Control Specially Designated Nationals List.”.

12 (i) EFFECTIVE DATES.—

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

17 (2) EXCEPTIONS.—The amendments made by
18 subsections (b)(1) and (c)(1) shall not apply to a
19 beneficiary of a petition that—

20 (A) was filed under section 203(b)(5) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1153(b)(5)) before the date of the enactment of
23 this Act; or

24 (B) is filed under section 216A of such Act
25 (8 U.S.C. 1186b), if the underlying petition

1 filed under section 203(b)(5) of such Act was
2 filed before the date of the enactment of this
3 Act.

4 **SEC. 5. PROCEDURE FOR GRANTING IMMIGRANT STATUS.**

5 (a) **FILING ORDER.**—Section 204(a)(1)(H) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1154(a)(1)(H)) is amended to read as follows:

8 “(H) An alien desiring to be classified under section
9 203(b)(5) may file a petition with the Secretary of Home-
10 land Security. An alien petitioning for classification pursu-
11 ant to section 203(b)(5)(E) may file a petition with the
12 Secretary after filing an application for approval of an in-
13 vestment under section 203(b)(5)(F).”.

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

16 (1) shall take effect on the date of the enact-
17 ment of this Act; and

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

23 **SEC. 6. TIMELY PROCESSING.**

24 (a) **FEE STUDY.**—Not later than 30 days after the
25 date of the enactment of this Act, the Director of United

1 States Citizenship and Immigration Service shall initiate
2 a study of fees charged in the administration of the pro-
3 gram described in sections 203(b)(5) and 216A of the Im-
4 migration and Nationality Act (8 U.S.C. 1153(b)(5) and
5 1186b).

6 (b) ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT
7 PROCESSING.—Notwithstanding section 286(m) of the
8 Immigration and Nationality Act (8 U.S.C. 1356(m)), and
9 except as provided under subsection (c), the Director shall
10 set fees for services provided pursuant to section
11 203(b)(5) and 216A of such Act at a level sufficient to
12 ensure the full recovery only of the costs of providing such
13 services, including the cost of attaining the goal of com-
14 pleting adjudications, on average, not later than—

15 (1) 120 days after receiving a proposal for the
16 establishment of a regional center described in sec-
17 tion 203(b)(5)(E);

18 (2) 120 days after receiving an application for
19 approval of investment in a commercial enterprise
20 described in section 203(b)(5)(F);

21 (3) 150 days after receiving a petition from an
22 alien desiring to be classified under section
23 203(b)(5)(E); and

1 (4) 180 days after receiving a petition from an
2 alien for removal of conditions described in section
3 216A(c).

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

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

15 (2) in an amount that is not greater than 1
16 percent of the fee for filing a petition under section
17 203(b)(5) of the Immigration and Nationality Act (8
18 U.S.C. 1153(b)(5)), to make improvements to the
19 information technology systems used by the Sec-
20 retary to process, adjudicate, and archive applica-
21 tions and petitions under such section, including the
22 conversion to electronic format of documents filed by
23 petitioners and applicants for benefits under such
24 section.

1 (d) PREMIUM PROCESSING OF EB-5 PETITIONS AND
2 APPLICATIONS.—

3 (1) MODIFICATION OF EXISTING PREMIUM
4 PROCESSING PROVISION.—Section 286(u) of the Im-
5 migration and Nationality Act (8 U.S.C. 1356(u)) is
6 amended to read as follows:

7 “(u) PREMIUM FEE FOR EMPLOYMENT-BASED PETI-
8 TIONS AND APPLICATIONS.—

9 “(1) IN GENERAL.—The Secretary of Homeland
10 Security is authorized to establish and collect a pre-
11 mium fee for employment-based petitions and appli-
12 cations. The fee under this paragraph shall be used
13 to provide certain premium-processing services to
14 business customers and to make infrastructure im-
15 provements in the adjudications and customer-serv-
16 ice processes. For approval of the benefit applied
17 for, the petitioner or applicant shall meet the legal
18 criteria for such benefit. Except as provided under
19 paragraph (2), the fee under this paragraph shall be
20 set at \$1,000, shall be paid in addition to any nor-
21 mal petition or application fee that may be applica-
22 ble, and shall be deposited as offsetting collections in
23 the Immigration Examinations Fee Account. The
24 Secretary may adjust the fee under this paragraph

1 in proportion to changes in the Consumer Price
2 Index.

3 “(2) IMMIGRANT INVESTOR PETITIONS AND AP-
4 PPLICATIONS.—The Secretary shall establish and col-
5 lect a premium fee for expeditious processing of ap-
6 plications for regional center designation or regional
7 center amendment under section 203(b)(5)(E), peti-
8 tions under section 203(b)(5), petitions for removal
9 of conditions on lawful permanent residence under
10 section 216A(c), and applications under section
11 203(b)(5)(F) related to investment in a regional cen-
12 ter commercial enterprise. A petitioner or applicant
13 shall be permitted an opportunity to provide addi-
14 tional evidence identified by the Secretary in any
15 such petition or application prior to a final deter-
16 mination. The premium fee for each such application
17 or petition shall be set at an amount sufficient to
18 adjudicate such application or petition within $\frac{1}{2}$ of
19 the relevant period set forth in section 6(b) of the
20 American Job Creation and Investment Promotion
21 Reform Act of 2015, and shall otherwise only be
22 used to recover the costs of such processing, includ-
23 ing the hiring of additional adjudicatory staff, shall
24 be paid in addition to any normal petition or appli-
25 cation fee that may be applicable, and shall be de-

1 posited as offsetting collections in the Immigration
2 Examinations Fee Account.”.

3 (2) ESTABLISHMENT OF EB-5 PREMIUM PROC-
4 ESSING.—Not later than 180 days after the date of
5 the enactment of this Act, the Secretary of Home-
6 land Security shall establish the premium processing
7 of immigrant investor petitions and applications, as
8 described in section 286(u) of the Immigration and
9 Nationality Act (8 U.S.C. 1356(u)).

10 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion may be construed to require any modification of fees
12 before the completion of—

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

15 (2) regulations promulgated by the Secretary of
16 Homeland Security, in accordance with subchapter
17 II of chapter 5 and chapter 7 of title 5, United
18 States Code (commonly known as the “Administra-
19 tive Procedures Act”), to carry out subsections (b)
20 and (c).

21 **SEC. 7. TRANSPARENCY.**

22 (a) IN GENERAL.—Employees of the Department of
23 Homeland Security, including the Secretary of Homeland
24 Security, the Secretary’s counselors, the Assistant Sec-
25 retary for the Private Sector, the Director of United

1 States Citizenship and Immigration Services, counselors
2 to such Director, and the Chief of Immigrant Investor
3 Programs at United States Citizenship and Immigration
4 Services, shall act impartially and may not give pref-
5 erential treatment to any entity, organization, or indi-
6 vidual in connection with any aspect of the immigrant visa
7 program described in section 203(b)(5) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1153(b)(5)).

9 (b) IMPROPER ACTIVITIES.—Activities that con-
10 stitute preferential treatment under subsection (a) shall
11 include—

12 (1) working on, or in any way attempting to ex-
13 pedite or otherwise influence, in a manner not avail-
14 able to or accorded to all other petitioners, appli-
15 cants, and seekers of benefits under the immigrant
16 visa program described in section 203(b)(5) of the
17 Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5)), the standard processing of an applica-
19 tion, petition, or benefit for—

20 (A) a regional center;

21 (B) a new commercial enterprise;

22 (C) a job-creating entity; or

23 (D) any person or entity associated with
24 such regional center, new commercial enter-
25 prise, or job-creating entity; and

1 (2) meeting or communicating with persons as-
2 sociated with the entities described in paragraph (1),
3 at the request of such persons, in a manner not
4 available to or accorded to all other petitioners, ap-
5 plicants, and seekers of benefits under such immi-
6 grant visa program.

7 (c) REPORTING OF COMMUNICATIONS.—

8 (1) WRITTEN COMMUNICATION.—Employees of
9 the Department of Homeland Security, including the
10 officials listed in subsection (a), shall include, in the
11 record of proceeding for a case under section
12 203(b)(5) of the Immigration and Nationality Act,
13 actual or electronic copies of all case-specific written
14 communication, including e-mails from government
15 and private accounts, with non-Department persons
16 or entities advocating for regional center applica-
17 tions or individual petitions under such section that
18 are pending on or after the date of the enactment
19 of this Act (other than routine communications with
20 other agencies of the Federal Government regarding
21 the case, including communications involving back-
22 ground checks and litigation defense).

23 (2) ORAL COMMUNICATION.—If substantive oral
24 communication, including telephonic communication,
25 virtual communication, and in-person meetings,

1 takes place between officials of the Department of
2 Homeland Security and non-Department persons or
3 entities advocating for regional center applications
4 or individual petitions under section 203(b)(5) of the
5 Immigration and Nationality Act that are pending
6 on or after the date of the enactment of this Act
7 (other than routine communications with other agen-
8 cies of the Federal Government regarding the case,
9 including communications involving background
10 checks and litigation defense)—

11 (A) the conversation shall be recorded; or

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

14 (3) NOTIFICATION.—

15 (A) IN GENERAL.—If the Secretary, in the
16 course of written or oral communication de-
17 scribed in this subsection, receives evidence
18 about a specific case from anyone other than an
19 affected party or his or her representative (ex-
20 cluding Federal Government or law enforcement
21 sources), such information may not be made
22 part of the record of proceeding and may not
23 be considered in adjudicative proceedings un-
24 less—

1 (i) the affected party has been given
2 notice of such evidence; and

3 (ii) if such evidence is derogatory, the
4 affected party has been given an oppor-
5 tunity to respond to the evidence.

6 (B) INFORMATION FROM LAW ENFORCE-
7 MENT, INTELLIGENCE AGENCIES, OR CON-
8 FIDENTIAL SOURCES.—

9 (i) LAW ENFORCEMENT OR INTEL-
10 LIGENCE AGENCIES.—Evidence received
11 from law enforcement or intelligence agen-
12 cies may not be made part of the record of
13 proceeding without the consent of the rel-
14 evant agency or law enforcement entity.

15 (ii) WHISTLEBLOWERS, CONFIDEN-
16 TIAL SOURCES, OR INTELLIGENCE AGEN-
17 CIES.—Evidence received from whistle-
18 blowers, other confidential sources, or the
19 intelligence community that is included in
20 the record of proceeding and considered in
21 adjudicative proceedings shall be handled
22 in a manner that does not reveal the iden-
23 tity of the whistleblower or confidential
24 source, or reveal classified information.

25 (d) CONSIDERATION OF EVIDENCE.—

1 (1) IN GENERAL.—No case-specific communica-
2 tion with persons or entities that are not part of the
3 Department of Homeland Security may be consid-
4 ered in the adjudication of an application or petition
5 under section 203(b)(5) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1153(b)(5)) unless the com-
7 munication is included in the record of proceeding of
8 the case.

9 (2) WAIVER.—The Secretary of Homeland Se-
10 curity may waive the requirement under paragraph
11 (1) only in the interests of national security or for
12 investigative or law enforcement purposes.

13 (e) CHANNELS OF COMMUNICATION.—

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

19 (A) with inquiries regarding specific peti-
20 tions or applications under the immigrant visa
21 program described in section 203(b)(5) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1153(b)(5)); or

1 (B) seeking non-case-specific information
2 about the immigrant visa program described in
3 such section 203(b)(5).

4 (2) COMMUNICATION ONLY THROUGH APPRO-
5 PRIATE CHANNELS OR OFFICES.—

6 (A) ANNOUNCEMENT OF APPROPRIATE
7 CHANNELS OF COMMUNICATION.—Not later
8 than 40 days after the date of the enactment of
9 this Act, the Director of United States Citizen-
10 ship and Immigration Services shall announce
11 that the only channels or offices by which in-
12 dustry stakeholders, petitioners, applicants, and
13 seekers of benefits under the immigrant visa
14 program described in section 203(b)(5) of the
15 Immigration and Nationality Act (8 U.S.C.
16 1153(b)(5)) may communicate with the Depart-
17 ment of Homeland Security regarding specific
18 cases under such section (except for commu-
19 nication made by applicants and petitioners
20 pursuant to regular adjudicatory procedures),
21 or non-case-specific information about the visa
22 program applicable to certain cases under such
23 section, are through—

24 (i) the e-mail address or equivalent
25 channel described in paragraph (1);

1 (ii) the United States Citizenship and
2 Immigration Services National Customer
3 Service Center, or any successor to that
4 Center; or

5 (iii) the United States Citizenship and
6 Immigration Services Office of Public En-
7 gagement, Immigrant Investor Program
8 Office, Stakeholder Engagement Branch,
9 or any successors to those Offices or
10 Branch.

11 (B) DIRECTION OF INCOMING COMMUNICA-
12 TIONS.—

13 (i) IN GENERAL.—Employees of the
14 Department of Homeland Security shall di-
15 rect communications described in subpara-
16 graph (A) to the channels of communica-
17 tion or offices listed in subparagraph (A).

18 (ii) RULE OF CONSTRUCTION.—Noth-
19 ing in this subparagraph may be construed
20 to prevent—

21 (I) any person from commu-
22 nicating with the Ombudsman of
23 United States Citizenship and Immi-
24 gration Services regarding the immi-
25 grant investor program under section

1 203(b)(5) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1153(b)(5));
3 or

4 (II) the Ombudsman from resolv-
5 ing problems regarding such immi-
6 grant investor program pursuant to
7 the authority granted under section
8 452 of the Homeland Security Act of
9 2002 (6 U.S.C. 272).

10 (C) LOG.—

11 (i) IN GENERAL.—The Director of
12 United States Citizenship and Immigration
13 Services shall maintain a written or elec-
14 tronic log of—

15 (I) all communications described
16 in subparagraph (A) and communica-
17 tions from members of Congress,
18 which shall reference the date, time,
19 and subject of the communication,
20 and the identity of the Department of-
21 ficial, if any, to whom the inquiry was
22 forwarded;

23 (II) with respect to written com-
24 munications described in subsection
25 (c)(1), the date the communication

1 was received, the identities of the
2 sender and addressee, and the subject
3 of the communication; and

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

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

16 (3) PUBLICATION OF INFORMATION.—If, as a
17 result of a communication with an official of the De-
18 partment of Homeland Security, a person or entity
19 inquiring about a specific case or generally about the
20 immigrant visa program described in section
21 203(b)(5) of the Immigration and Nationality Act (8
22 U.S.C. 1153(b)(5)) received generally applicable and
23 non-case specific information about program require-
24 ments or administration that has not been made
25 publicly available by the Department, the Director of

1 United States Citizenship and Immigration Services,
2 not later than 30 days after the communication of
3 such information to such person or entity, shall pub-
4 lish such information on the United States Citizen-
5 ship and Immigration Services website as an update
6 to the relevant Frequently Asked Questions page or
7 by some other comparable mechanism.

8 (f) PENALTY.—

9 (1) IN GENERAL.—Any person who inten-
10 tionally violates the prohibition on preferential treat-
11 ment under this section or intentionally violates the
12 reporting requirements under subsection (c) shall be
13 disciplined in accordance with paragraph (2).

14 (2) SANCTIONS.—Not later than 90 days after
15 the date of the enactment of this Act, the Secretary
16 of Homeland Security shall establish a graduated set
17 of sanctions based on the severity of the violation re-
18 ferred to in paragraph (1), which may include, in
19 addition to any criminal or civil penalties that may
20 be imposed, written reprimand, suspension, demo-
21 tion, or removal.

22 (g) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion may be construed to modify any law, regulation, or
24 policy regarding the handling or disclosure of classified in-
25 formation.

1 (h) NO CREATION OF PRIVATE RIGHT OF ACTION.—

2 Nothing in this section may be construed to create or au-

3 thorize a private right of action to challenge a decision

4 of an employee of the Department of Homeland Security.

5 (i) EFFECTIVE DATE.—The amendments made by

6 this section shall take effect on the date of the enactment

7 of this Act.