

114TH CONGRESS
2D SESSION

H. R. 5992

To amend section 203(b)(5) of the Immigration and Nationality Act to implement new reforms, and to reauthorize the EB–5 Regional Center Program, in order to promote and reform foreign capital investment and job creation in communities in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2016

Mr. GOODLATTE (for himself and Mr. CONYERS) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend section 203(b)(5) of the Immigration and Nationality Act to implement new reforms, and to reauthorize the EB–5 Regional Center Program, in order to promote and reform foreign capital investment and job creation in communities in the United States, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “American Job Creation and Investment Promotion Re-
6 form Act of 2016”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. New EB–5 general provisions.
- Sec. 3. Reauthorization and reform of the Regional Center Program.
- Sec. 4. Other EB–5 visa reforms.
- Sec. 5. Conditional permanent resident status for alien investors, spouses, and children.
- Sec. 6. Procedure for granting immigrant status.
- Sec. 7. Timely processing.
- Sec. 8. Transparency.
- Sec. 9. Reports.

3 **SEC. 2. NEW EB–5 GENERAL PROVISIONS.**

4 (a) IN GENERAL.—Section 203(b)(5) of the Immi-
 5 gration and Nationality Act (8 U.S.C. 1153(b)(5)) is
 6 amended by inserting after subparagraph (C) the fol-
 7 lowing:

8 “(D) SOURCE OF FUNDS.—

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

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

1 “(I) business and tax records, or
2 similar records, including, but not lim-
3 ited to—

4 “(aa) foreign business reg-
5 istration records;

6 “(bb) to the extent such tax
7 returns have been prepared, cor-
8 porate or partnership tax returns
9 (or tax returns of any other enti-
10 ty in any form filed in any coun-
11 try or subdivision of such coun-
12 try), and personal tax returns in-
13 cluding income, franchise, prop-
14 erty (whether real, personal, or
15 intangible), or any other tax re-
16 turns of any kind, filed within 7
17 years, with any taxing jurisdic-
18 tion in or outside the United
19 States by or on behalf of the
20 alien investor; and

21 “(cc) evidence identifying
22 any other source of capital or ad-
23 ministrative fees;

24 “(II) evidence related to mone-
25 tary judgments against the alien in-

1 investor, including certified copies of
2 any judgments, and evidence of all
3 pending governmental civil or criminal
4 actions, governmental administrative
5 proceedings, and any private civil ac-
6 tions (pending or otherwise) involving
7 possible monetary judgments against
8 the alien investor from any court in or
9 outside the United States; and

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

13 “(aa) any funds that are
14 used to meet the capital require-
15 ment under subparagraph (A);
16 and

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

21 “(iii) GIFT RESTRICTIONS.—Gifted
22 funds may be counted toward the min-
23 imum capital investment requirement
24 under subparagraph (B) only if such funds
25 were gifted to the alien investor by the

1 alien investor's spouse, parent, son, or
2 daughter (but not children (as defined in
3 section 101(b)(1))), sibling, or grandparent
4 and such funds were gifted in good faith
5 and not to circumvent any limitations im-
6 posed on permissible sources of capital
7 under this subparagraph. If a significant
8 portion of the capital invested under sub-
9 paragraph (A) was gifted to the alien in-
10 vestor, the Secretary shall require the alien
11 investor's petition under this paragraph to
12 include records described in subclauses (I)
13 and (II) of clause (ii) from the donor.

14 “(iv) LOAN RESTRICTIONS.—Capital
15 derived from indebtedness may be counted
16 toward the minimum capital investment re-
17 quirement under subparagraph (B) only if
18 such capital is—

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

21 “(II) issued by a banking or
22 lending institution that is properly
23 chartered or licensed under the laws
24 of any State, territory, country, or ap-
25 plicable jurisdiction, and that is not

1 sanctioned or restricted, which the
2 Secretary shall determine after con-
3 sulting with relevant commercial or
4 government databases, such as those
5 of the Department of the Treasury's
6 Office of Foreign Assets Control, Of-
7 fice of Terrorist Financing and Fi-
8 nancial Crimes, and Financial Crimes
9 Enforcement Network.

10 “(E) THREATS TO THE NATIONAL INTER-
11 EST.—

12 “(i) DENIAL OR REVOCATION.—The
13 Secretary of Homeland Security shall deny
14 or revoke the approval of a petition, appli-
15 cation, or benefit described in this para-
16 graph, including the documents described
17 in clause (ii), if the Secretary determines
18 that the approval of such petition, applica-
19 tion, or benefit is contrary to the national
20 interest of the United States for reasons
21 relating to threats to public safety or na-
22 tional security.

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

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

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

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

9 “(IV) an application for approval
10 of a business plan in a new commer-
11 cial enterprise under subparagraph
12 (I).

13 “(iii) DEBARMENT.—If a regional
14 center, new commercial enterprise, or job-
15 creating entity has its designation or par-
16 ticipation in the program under this para-
17 graph terminated for reasons relating to
18 public safety or national security, any per-
19 son associated with such regional center,
20 new commercial enterprise, or job-creating
21 entity, including an alien investor, shall be
22 permanently barred from future participa-
23 tion in the program under this paragraph
24 if the Secretary of Homeland Security, in
25 the Secretary’s discretion, determines, by a

1 preponderance of the evidence, that such
2 person was a knowing participant in the
3 conduct that led to the termination.

4 “(iv) NOTICE.—If the Secretary of
5 Homeland Security determines that the ap-
6 proval of a petition, application, or benefit
7 described in this paragraph should be de-
8 nied or revoked pursuant to clause (i), the
9 Secretary shall—

10 “(I) notify the relevant indi-
11 vidual, regional center, or commercial
12 entity of such determination; and

13 “(II) deny or revoke such peti-
14 tion, application, or benefit or termi-
15 nate the permanent resident status of
16 the alien (and the alien spouse and
17 alien children of such immigrant), as
18 provided in clause (i) as of the date of
19 such determination.

20 “(v) JUDICIAL REVIEW.—Notwith-
21 standing any other provision of law (statu-
22 tory or nonstatutory), including section
23 2241 of title 28, United States Code, or
24 any other habeas corpus provision, and
25 sections 1361 and 1651 of such title, no

1 court shall have jurisdiction to review a de-
2 nial or revocation under this subparagraph.
3 Nothing in this clause may be construed as
4 precluding review of constitutional claims
5 or questions of law raised upon a petition
6 for review filed with an appropriate court
7 of appeals in accordance with section 242.

8 “(F) FRAUD, MISREPRESENTATION, AND
9 CRIMINAL MISUSE.—

10 “(i) DENIAL OR REVOCATION.—The
11 Secretary of Homeland Security shall deny
12 or revoke the approval of a petition, appli-
13 cation, or benefit described in this para-
14 graph, including the documents described
15 in subparagraph (E)(ii), if the Secretary
16 determines that such petition, application,
17 or benefit was predicated on or involved
18 fraud, deceit, intentional material mis-
19 representation, or criminal misuse.

20 “(ii) DEBARMENT.—If a regional cen-
21 ter, new commercial enterprise, or job-cre-
22 ating entity has its designation or partici-
23 pation in the program under subparagraph
24 (H) terminated for reasons relating to
25 fraud, intentional material misrepresenta-

1 tion, or criminal misuse, any person associ-
2 ated with such regional center, new com-
3 mercial enterprise, or job-creating entity,
4 including an alien investor, shall be perma-
5 nently barred from future participation in
6 the program under subparagraph (H) if
7 the Secretary of Homeland Security deter-
8 mines, by a preponderance of the evidence,
9 that such person was a knowing partici-
10 pant in the conduct that led to the termi-
11 nation.

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

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

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

1 provided in clause (i) as of the date of
2 such determination.

3 “(G) ADMINISTRATIVE APPELLATE RE-
4 VIEW.—

5 “(i) IN GENERAL.—The Director of
6 U.S. Citizenship and Immigration Services
7 shall provide an opportunity for an admin-
8 istrative appellate review by the Adminis-
9 trative Appeals Office of U.S. Citizenship
10 and Immigration Services of any deter-
11 mination made under this paragraph, in-
12 cluding—

13 “(I) an application for regional
14 center designation or regional center
15 amendment;

16 “(II) an application for approval
17 of a business plan under subpara-
18 graph (I);

19 “(III) a petition by an alien in-
20 vestor for status as an immigrant
21 under this paragraph;

22 “(IV) the termination or suspen-
23 sion of any benefit accorded under
24 this paragraph; and

1 “(V) any sanction imposed by the
2 Secretary of Homeland Security pur-
3 suant to this paragraph.

4 “(ii) JUDICIAL REVIEW.—Subject to
5 section 242(a)(2), and notwithstanding any
6 other provision of law (statutory or non-
7 statutory), including section 2241 of title
8 28, United States Code, or any other ha-
9 beas corpus provision, and sections 1361
10 and 1651 of such title, no court shall have
11 jurisdiction to review a determination
12 under this paragraph until the regional
13 center, its associated entities, or the alien
14 investor has exhausted all administrative
15 appeals.”.

16 (b) EFFECTIVE DATES.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the amendment made by subsection (a)
19 shall be effective at any time after the date of the
20 enactment of this Act, as determined by the Sec-
21 retary, and shall be effective not later than 90 days
22 after such date of enactment.

23 (2) EXCEPTIONS.—Subparagraph (D) of sec-
24 tion 203(b)(5) of the Immigration and Nationality

1 Act (8 U.S.C. 1153(b)(5)), as inserted by subsection
2 (a), shall not apply to a petition that—

3 (A) was filed by an alien investor under
4 such section 203(b)(5) prior to June 1, 2015;

5 (B) was filed by an alien investor under
6 such section 203(b)(5) during the period begin-
7 ning on June 1, 2015, and ending on the date
8 of the enactment of this Act if such beneficiary
9 is investing in the same commercial enterprise
10 concerning the same economic activity as con-
11 tained in an exemplar filed prior to June 1,
12 2015, or approved by the Secretary of Home-
13 land Security at any time prior to the date of
14 enactment of this Act, unless the Secretary de-
15 termines that such approval or filing was based
16 on fraud, misrepresentation in the record of
17 proceeding, or is legally deficient; or

18 (C) is filed under section 216A of such Act
19 (8 U.S.C. 1186b) if the underlying petition filed
20 under section 203(b)(5) of such Act was filed
21 prior to June 1, 2015, or approved before the
22 date of the enactment of this Act.

1 **SEC. 3. REAUTHORIZATION AND REFORM OF THE RE-**
2 **GIONAL CENTER PROGRAM.**

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

7 (b) **AUTHORIZATION.**—Section 203(b)(5) of the Im-
8 migration and Nationality Act (8 U.S.C. 1153(b)(5)), as
9 amended by section 2, is further amended by inserting
10 after subparagraph (G) the following:

11 “(H) **REGIONAL CENTER PROGRAM.**—

12 “(i) **IN GENERAL.**—Visas under this
13 paragraph shall be made available through
14 September 30, 2021, to qualified immi-
15 grants (and the eligible spouses and chil-
16 dren of such immigrants) pooling their in-
17 vestments with one or more additional
18 qualified immigrants participating in a
19 program implementing this paragraph that
20 promotes economic growth, including pro-
21 spective job creation and increased domes-
22 tic capital investment, through regional
23 centers operating within defined geo-
24 graphic areas and designated by the Sec-
25 retary of Homeland Security based upon

1 proposals for concentrating pooled invest-
2 ment within such areas.

3 “(ii) PROCESSING.—In processing pe-
4 titions under section 204(a)(1)(H) for clas-
5 sification pursuant to this subparagraph,
6 the Secretary of Homeland Security—

7 “(I) may process petitions in a
8 manner and order established by the
9 Secretary; and

10 “(II) shall deem such petitions to
11 include records previously filed with
12 the Secretary pursuant to subpara-
13 graph (I) if the alien petitioner cer-
14 tifies that such records are incor-
15 porated by reference into the alien’s
16 petition.

17 “(iii) ESTABLISHMENT OF A RE-
18 GIONAL CENTER.—The manager of a pro-
19 spective regional center shall file a pro-
20 posal, as provided in clause (i), with the
21 Secretary of Homeland Security requesting
22 that the Secretary designate the regional
23 center for purposes of this subparagraph.
24 A regional center shall operate within a de-
25 fined and limited geographic area, which

1 shall be described in the proposal and shall
2 be consistent with the purpose of concen-
3 trating pooled investment within such area.
4 The proposal shall demonstrate that the
5 pooled investment will have a significant
6 economic impact on such area, and shall
7 include—

8 “(I) reasonable predictions, sup-
9 ported by economically and statis-
10 tically valid forecasting tools, con-
11 cerning—

12 “(aa) the amount of invest-
13 ment that will be pooled;

14 “(bb) the kinds of new com-
15 mercial enterprises that will re-
16 ceive such investments;

17 “(cc) details of the jobs that
18 will be created directly or indi-
19 rectly as a result of such invest-
20 ments; and

21 “(dd) other positive eco-
22 nomic effects such investments
23 will have; and

24 “(II) a description of the policies
25 and procedures in place reasonably

1 designed to monitor new commercial
2 enterprises and any affiliated job-cre-
3 ating entity to ensure compliance
4 with—

5 “(aa) all applicable laws,
6 regulations, and Executive orders
7 of the United States, including
8 immigration laws and securities
9 laws; and

10 “(bb) all securities laws of
11 each State in which securities of-
12 ferings will be conducted, invest-
13 ment advice will be rendered, or
14 the offerors or offerees reside.

15 “(iv) INDIRECT JOB CREATION.—The
16 Secretary of Homeland Security shall per-
17 mit aliens seeking admission under this
18 subparagraph to satisfy only up to 90 per-
19 cent of the requirement under subpara-
20 graph (A)(ii) with jobs that are estimated
21 to be created indirectly through investment
22 in accordance with this subparagraph. An
23 employee of the new commercial enterprise
24 or job-creating entity may be considered to
25 hold a job that has been directly created.

1 “(v) COMPLIANCE.—

2 “(I) IN GENERAL.—In deter-
3 mining compliance with subparagraph
4 (A)(ii), the Secretary of Homeland Se-
5 curity shall permit aliens seeking ad-
6 mission under this subparagraph to
7 rely on economically and statistically
8 valid methodologies for determining
9 the number of jobs created by the pro-
10 gram, including—

11 “(aa) jobs estimated to have
12 been created directly, which may
13 be verified using such methodolo-
14 gies, except that the Secretary
15 may request additional evidence
16 to verify that the directly created
17 jobs satisfy the requirements
18 under subparagraph (A)(ii); and

19 “(bb) consistent with this
20 subparagraph, jobs estimated to
21 have been created indirectly
22 through revenues generated from
23 increased exports, improved re-
24 gional productivity, job creation,
25 and increased domestic capital

1 investment resulting from the
2 program.

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

5 “(aa) RELOCATED JOBS.—

6 In determining compliance with
7 the job creation requirement
8 under subparagraph (A)(ii), the
9 Secretary may include jobs esti-
10 mated to be created under a
11 methodology whereby jobs are at-
12 tributable to prospective tenants
13 occupying commercial real estate
14 created or improved by capital in-
15 vestments, but only if the num-
16 ber of such jobs estimated to be
17 created has been determined by
18 an economically and statistically
19 valid methodology and such jobs
20 are not existing jobs that have
21 been relocated.

22 “(bb) PUBLICLY AVAILABLE
23 BONDS.—Alien investor capital
24 may not be utilized, by a new
25 commercial enterprise or other-

1 wise, to purchase municipal
2 bonds or any other bonds, if such
3 bonds are available to the general
4 public, either as part of a pri-
5 mary offering or from a sec-
6 ondary market.

7 “(cc) CONSTRUCTION ACTIV-
8 ITY JOBS.—The length of full-
9 time construction activity jobs
10 that last shorter than 24 months
11 may be aggregated to satisfy the
12 employment creation requirement
13 under subparagraph (A)(ii) for
14 alien investors participating in
15 the program described in this
16 subparagraph. A construction ac-
17 tivity job may be considered a job
18 that is created directly.

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

21 “(I) require a regional center to
22 give advance notice to, and obtain ap-
23 proval from, the Secretary of signifi-
24 cant proposed changes to its organiza-
25 tional structure, ownership, or admin-

1 istration, including the sale of such
2 center or other arrangements in which
3 individuals not previously subject to
4 the requirements under subparagraph
5 (K) become involved with the regional
6 center, before any such proposed
7 changes may take effect unless exi-
8 gent circumstances are present in
9 which case the regional center shall
10 provide notice to the Secretary within
11 5 business days of such change;

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

14 “(aa) notice of any such
15 proposed changes are made pub-
16 licly available through a publicly
17 accessible Web site of U.S. Citi-
18 zenship and Immigration Services
19 for a period of not fewer than 30
20 days; and

21 “(bb) the Secretary deter-
22 mines that the regional center
23 would remain compliant with this
24 subparagraph and with subpara-
25 graph (K); and

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

8 “(I) BUSINESS PLANS FOR REGIONAL CEN-
9 TER INVESTMENTS.—

10 “(i) APPLICATION FOR APPROVAL OF
11 AN INVESTMENT IN A NEW COMMERCIAL
12 ENTERPRISE.—A regional center shall file
13 an application with the Secretary of Home-
14 land Security for each particular invest-
15 ment offering in or through an associated
16 new commercial enterprise before any alien
17 files a petition for classification under this
18 paragraph by reason of investment in that
19 offering, which shall include—

20 “(I) a comprehensive business
21 plan for a specific capital investment
22 project;

23 “(II) a credible economic analysis
24 regarding estimated job creation that

1 is based upon economically and statis-
2 tically valid methodologies;

3 “(III) any documents filed with
4 the Securities and Exchange Commis-
5 sion under the Securities Act of 1933
6 (15 U.S.C. 77a et seq.) or with the
7 securities regulator of any State, as
8 required by law;

9 “(IV) any investment and offer-
10 ing documents, including subscription,
11 investment, partnership, and oper-
12 ating agreements, private placement
13 memoranda, term sheets, biographies
14 for management, officers, directors,
15 and any individual with similar re-
16 sponsibilities, the description of the
17 business plan to be provided to poten-
18 tial alien investors, and marketing
19 materials used or drafts prepared for
20 use in connection with the offering,
21 which shall contain references, as ap-
22 propriate, to any—

23 “(aa) investment risks asso-
24 ciated with the new commercial

1 enterprise and the job-creating
2 entity;

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

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

22 “(dd)(AA) fees, ongoing in-
23 terest, or other compensation
24 that has been paid, or will be
25 paid, to any person in connection

1 with the investment, including
2 agents, finders, or broker dealers
3 involved in the offering, and of
4 which the regional center or new
5 commercial enterprise has knowl-
6 edge;

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

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

14 “(V) a description of the policies
15 and procedures, such as those related
16 to internal and external due diligence,
17 reasonably designed to cause the re-
18 gional center, new commercial enter-
19 prise, and any affiliated job-creating
20 entity, their agents, employees, advi-
21 sors, and attorneys, and any persons
22 in active concert or participation with
23 the regional center, new commercial
24 enterprise, or any affiliated job-cre-
25 ating entity to comply, as applicable,

1 with the securities laws of the United
2 States and the laws of the applicable
3 States in connection with the offer,
4 purchase, or sale of their securities;

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

20 “(VII) documentation demon-
21 strating that the regional center con-
22 sulted with a local economic develop-
23 ment agency or municipality regard-
24 ing the capital investment project,
25 which shall address—

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

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

8 “(ii) EFFECT OF APPROVAL OF A
9 BUSINESS PLAN FOR AN INVESTMENT IN A
10 REGIONAL CENTER’S NEW COMMERCIAL
11 ENTERPRISE.—The approval of an applica-
12 tion under this subparagraph shall be
13 binding for purposes of the adjudication of
14 subsequent petitions seeking classification
15 under this paragraph by immigrants in-
16 vesting in the same capital investment
17 project through a new commercial enter-
18 prise, and of petitions by the same immi-
19 grants filed under section 216A, except in
20 the case of fraud, misrepresentation, crimi-
21 nal misuse, a threat to public safety or na-
22 tional security, a material change that af-
23 fects the program eligibility of the ap-
24 proved economic model, other evidence af-
25 fecting program eligibility that was not dis-

1 closed by the applicant during the adju-
2 dication process, or a material mistake of
3 law or fact in the prior adjudication.

4 “(iii) SITE VISITS.—The Secretary
5 shall—

6 “(I) perform site visits to re-
7 gional centers; and

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

11 “(aa) shall include a review
12 for evidence of direct job creation
13 in accordance with subparagraph
14 (H)(v)(I); and

15 “(bb) may occur at any time
16 during the period between the fil-
17 ing of an application for approval
18 of an investment in a new com-
19 mercial enterprise under this sub-
20 paragraph and the adjudication
21 of the first petition for removal
22 of conditions on lawful perma-
23 nent resident status under sec-
24 tion 216A(c) filed by an alien in-
25 vesting in such investment.

1 “(J) REGIONAL CENTER ANNUAL STATE-
2 MENTS.—

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

11 “(I) a certification stating that,
12 to the best of the certifier’s knowl-
13 edge, after a due diligence investiga-
14 tion, the regional center, the new com-
15 mercial enterprise, and any affiliated
16 job-creating entity, are in compliance
17 with clauses (i) and (ii) of subpara-
18 graph (K);

19 “(II) a certification described in
20 subparagraph (L)(ii)(II);

21 “(III) a certification stating that,
22 to the best of the certifier’s knowl-
23 edge, after a due diligence investiga-
24 tion, the regional center is in compli-
25 ance with subparagraph (N)(iii);

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

9 “(V) an accounting of all alien
10 investor capital invested pursuant to
11 subparagraph (H) in the regional cen-
12 ter, new commercial enterprise, or
13 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, including administrative
20 fees, loan monitoring fees, loan
21 management fees, commissions
22 and similar transaction-based
23 compensation, collected from
24 alien investors by the regional
25 center, new commercial enter-

1 prise, any affiliated job-creating
2 entity, or issuer of securities as-
3 sociated with the regional center,
4 or any promoter, finder, broker-
5 dealer, or other entity engaged by
6 any of the foregoing to locate
7 alien investors investing pursuant
8 to subparagraph (H)—

9 “(AA) a description of
10 all fees collected;

11 “(BB) an accounting of
12 the entities that received
13 such fees; and

14 “(CC) the purpose for
15 which such fees were col-
16 lected;

17 “(gg) any documentation re-
18 ferred to in subparagraph
19 (I)(i)(IV), if there has been a
20 material change during the pre-
21 ceding fiscal year; and

22 “(hh) a certification by the
23 regional center that such state-
24 ments are accurate, to the best of

1 the certifier’s knowledge, after a
2 due diligence investigation; and

3 “(VII) a description of the re-
4 gional center’s policies and procedures
5 that are designed to enable the re-
6 gional center to comply with applica-
7 ble Federal labor laws.

8 “(ii) AMENDMENT OF ANNUAL STATE-
9 MENTS.—The Director—

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

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

20 “(iii) SANCTIONS.—

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

1 ment or if the Director determines
2 that the regional center—

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

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

18 “(II) AUTHORIZED SANCTIONS.—

19 The Director shall establish a grad-
20 uated set of sanctions based on the
21 severity of the violations referred to in
22 subclause (I), including—

23 “(aa) fines equal to not
24 more than 10 percent of the total
25 capital invested by alien investors

1 in the regional center’s new com-
2 mercial enterprises or job-cre-
3 ating entities, the payment of
4 which shall not in any cir-
5 cumstance utilize any of such
6 alien investors’ capital invest-
7 ments, and which shall be depos-
8 ited into the EB–5 Integrity
9 Fund established under subpara-
10 graph (M);

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

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

1 “(dd) termination of re-
2 gional center designation.

3 “(K) BONA FIDES OF PERSONS INVOLVED
4 WITH REGIONAL CENTER PROGRAM.—

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

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

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

14 “(bb) a civil violation result-
15 ing in a liability in excess of
16 \$1,000,000 involving fraud or de-
17 ceit; or

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

21 “(II) the person is subject to a
22 final order, for the duration of any
23 penalty imposed by such order, of a
24 State securities commission (or an
25 agency or officer of a State who per-

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

17 “(aa) prohibits fraudulent,
18 manipulative, or deceptive con-
19 duct; or

20 “(bb) bars the person
21 from—

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

1 “(BB) appearing before
2 such commission, authority,
3 agency, or officer;

4 “(CC) engaging in the
5 business of securities, insur-
6 ance, or banking; or

7 “(DD) engaging in sav-
8 ings association or credit
9 union activities;

10 “(III) the person is engaged in,
11 has ever been engaged in, or seeks to
12 engage in—

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

18 “(bb) any activity relating to
19 espionage, sabotage, or theft of
20 intellectual property;

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

1 “(dd) any terrorist activity
2 (as defined in section
3 212(a)(3)(B));

4 “(ee) any activity consti-
5 tuting or facilitating human traf-
6 ficking or a human rights of-
7 fense;

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

10 “(gg) the violation of any
11 statute, regulation, or Executive
12 order regarding foreign financial
13 transactions or foreign asset con-
14 trol; or

15 “(IV) the person—

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

21 “(bb) during the preceding
22 10 years has received a rep-
23 rimand or otherwise been publicly
24 disciplined for conduct related to
25 fraud or deceit by a State bar as-

1 sociation of which the person is
2 or was a member.

3 “(ii) FOREIGN INVOLVEMENT IN RE-
4 REGIONAL CENTER PROGRAM.—

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

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

20 “(iii) INFORMATION REQUIRED.—The
21 Secretary shall require such attestations
22 and information, including the submission
23 of fingerprints or other biometrics to the
24 Federal Bureau of Investigation, and shall
25 perform such criminal record checks and

1 other background and database checks
2 with respect to a regional center, new com-
3 mercial enterprise, and any affiliated job-
4 creating entity, and persons involved with
5 such entities (as described in clause (v)),
6 in order to determine whether such entities
7 are in compliance with clauses (i) and (ii).
8 The Secretary may require the information
9 and attestations described in this clause
10 from such entities, and any person involved
11 with such entities, at any time on or after
12 the date of the enactment of the American
13 Job Creation and Investment Promotion
14 Reform Act of 2016 and may perform such
15 checks with respect to any job creating en-
16 tity, and persons involved with such entity.

17 “(iv) TERMINATION.—

18 “(I) IN GENERAL.—The Sec-
19 retary shall suspend or terminate the
20 designation of any regional center, or
21 the participation under the program
22 of any new commercial enterprise or
23 job-creating entity under this para-
24 graph if the Secretary determines that
25 such entity—

1 “(aa) knowingly involved a
2 person with such entity in viola-
3 tion of clause (i) or (ii);

4 “(bb) failed to provide an
5 attestation or information re-
6 quested by the Secretary; or

7 “(cc) knowingly provided
8 any false attestation or informa-
9 tion under clause (iii).

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

1 regional center, new commercial enter-
2 prise, or job-creating entity shall be
3 deemed to have knowledge under sub-
4 clause (I)(aa) that such person is in
5 violation of clause (i) or (ii).

6 “(v) PERSONS INVOLVED WITH A RE-
7 GIONAL CENTER, NEW COMMERCIAL EN-
8 TERPRISE, OR JOB-CREATING ENTITY.—

9 For the purposes of this subparagraph, a
10 person is considered to be ‘involved’ with a
11 regional center, a new commercial enter-
12 prise, any affiliated job-creating entity, or
13 other job-creating entity, as applicable, if
14 he or she is, directly or indirectly, an
15 owner or in a position of substantive au-
16 thority to make operational or managerial
17 decisions over pooling, securitization, in-
18 vestment, release, acceptance, or control of
19 any funding that was procured pursuant to
20 subparagraph (H). An individual may be in
21 a position of substantive authority if he or
22 she serves as a principal, representative,
23 administrator, owner, officer, board mem-
24 ber, manager, executive, general partner,
25 fiduciary, or in a similar position at the re-

1 regional center, new commercial enterprise,
2 any affiliated job-creating entity, or other
3 job-creating entity, respectively.

4 “(L) COMPLIANCE WITH SECURITIES
5 LAWS.—

6 “(i) JURISDICTION.—

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

15 “(II) COMPLIANCE WITH REGU-
16 LATIONS.—Solely for purposes of sec-
17 tion 5 of the Securities Act of 1933
18 (15 U.S.C. 77e), a regional center or
19 any party associated with a regional
20 center is not precluded from offering
21 or selling a security pursuant to Reg-
22 ulation S under the Securities Act of
23 1933 (15 U.S.C. 77a et seq.) to the
24 extent that such offering or selling

1 otherwise complies with that regula-
2 tion.

3 “(ii) REGIONAL CENTER CERTIFI-
4 CATIONS REQUIRED.—

5 “(I) INITIAL CERTIFICATION.—

6 The Secretary of Homeland Security
7 may not approve an application for re-
8 gional center designation or regional
9 center amendment unless the regional
10 center certifies that, to the best of the
11 certifier’s knowledge, after a due dili-
12 gence investigation, the regional cen-
13 ter is in compliance with and has poli-
14 cies and procedures, such as those re-
15 lated to internal and external due dili-
16 gence, reasonably designed to confirm,
17 as applicable, that all parties associ-
18 ated with the regional center are and
19 will remain in compliance with the se-
20 curities laws of the United States and
21 of any State in which the offer, pur-
22 chase, or sale of securities was con-
23 ducted, or the issuer of securities was
24 located, or the investment advice was
25 provided by the regional center or

1 parties associated with the regional
2 center.

3 “(II) REISSUE.—A regional cen-
4 ter shall annually reissue a certifi-
5 cation described in subclause (I) in
6 accordance with subparagraph (J).
7 Annual certifications under this sub-
8 clause shall also certify compliance
9 with clause (iii) by stating that—

10 “(aa) the certifier is in a po-
11 sition to have knowledge of the
12 offers, purchases, and sales of se-
13 curities or the provision of invest-
14 ment advice by parties associated
15 with the regional center;

16 “(bb) to the best of the cer-
17 tifier’s knowledge, after a due
18 diligence investigation, all such
19 offers, purchases, and sales of se-
20 curities or the provision of invest-
21 ment advice complied with the se-
22 curities laws of the United States
23 and the securities laws of any
24 State in which the offer, pur-
25 chase, or sale of securities was

1 conducted, or the issuer of secu-
2 rities was located, or the invest-
3 ment advice was provided; and

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

8 “(III) EFFECT OF NONCOMPLI-
9 ANCE.—If a regional center, through
10 its due diligence, discovered during a
11 previous fiscal year that the regional
12 center or any party associated with
13 the regional center was not in compli-
14 ance with the securities laws of the
15 United States or the securities laws of
16 any State in which the securities ac-
17 tivities were conducted by any party
18 associated with the regional center,
19 the certifier shall—

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

22 “(bb) describe the actions
23 taken to remedy the noncompli-
24 ance; and

1 “(cc) certify that the re-
2 gional center and all parties asso-
3 ciated with the regional center
4 are currently in compliance, to
5 the best of the certifier’s knowl-
6 edge, after a due diligence inves-
7 tigation.

8 “(iii) OVERSIGHT REQUIRED.—Each
9 regional center shall monitor and supervise
10 all offers, purchases, and sales of, and in-
11 vestment advice relating to securities made
12 by parties associated with the regional cen-
13 ter to confirm compliance with the securi-
14 ties laws of the United States, and main-
15 tain records, data, and information relat-
16 ing to all such offers, purchases, sales, and
17 investment advice during the 5-year period
18 beginning on the date of their creation.
19 Such records, data, and information shall
20 be made available to the Secretary upon
21 request.

22 “(iv) SUSPENSION OR TERMI-
23 NATION.—In addition to any other author-
24 ity provided to the Secretary under this
25 paragraph, the Secretary, in the Sec-

1 retary’s discretion, may suspend or termi-
2 nate the designation of any regional center,
3 or impose other sanctions against the re-
4 gional center, if—

5 “(I) the regional center is perma-
6 nently or temporarily enjoined by
7 order, judgment, or decree of any
8 court of competent jurisdiction in con-
9 nection with the offer, purchase, or
10 sale of a security or the provision of
11 investment advice, or any party asso-
12 ciated with the regional center is so
13 enjoined and the regional center knew,
14 or reasonably should have known, that
15 this is the case;

16 “(II) the regional center is sub-
17 ject to any final order of the Securi-
18 ties and Exchange Commission or a
19 State securities regulator, or any
20 party associated with the regional cen-
21 ter is subject to such an order and the
22 regional center knew, or reasonably
23 should have known, that this is the
24 case, if the order—

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

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

13 “(III) the regional center sub-
14 mitted or caused to be submitted a
15 certification described in clause (ii)
16 that contained an untrue statement of
17 a material fact or omitted to state a
18 material fact necessary in order to
19 make the statements made, in light of
20 the circumstances under which they
21 were made, not misleading, or any
22 party associated with the regional cen-
23 ter undertook such an action and the
24 regional center knew, or reasonably

1 should have known, that this is the
2 case.

3 “(v) SAVINGS PROVISION.—Nothing in
4 this subparagraph may be construed to im-
5 pair or limit the authority of the Securities
6 and Exchange Commission under the Fed-
7 eral securities laws or any State securities
8 regulator under State securities laws.

9 “(vi) DEFINED TERM.—In this sub-
10 paragraph, the term ‘party associated with
11 a regional center’ means—

12 “(I) the regional center;

13 “(II) any new commercial enter-
14 prise or affiliated job-creating entity
15 or issuer of securities associated with
16 the regional center;

17 “(III) the regional center’s and
18 new commercial enterprise’s owners,
19 officers, directors, managers, partners,
20 agents, employees, promoters and at-
21 torneys; or

22 “(IV) any person in active con-
23 cert or participation with the regional
24 center or directly or indirectly control-

1 ling, controlled by, or under common
2 control with the regional center.

3 “(M) EB–5 INTEGRITY FUND.—

4 “ (i) ESTABLISHMENT.—There is es-
5 tablished in the United States Treasury a
6 special fund, which shall be known as the
7 ‘EB–5 Integrity Fund’ (referred to in this
8 subparagraph as the ‘Fund’). Amounts de-
9 posited into the Fund shall be available to
10 the Secretary of Homeland Security until
11 expended for the purposes set forth in
12 clause (iii).

13 “(ii) FEES.—

14 “(I) ANNUAL FEE.—Beginning
15 on January 1, 2017, and each year
16 thereafter, the Secretary of Homeland
17 Security shall collect a fee of \$25,000
18 for the Fund from each regional cen-
19 ter designated under subparagraph
20 (H). The fee shall be \$10,000 if a re-
21 gional center has 20 or fewer alien in-
22 vestors investing pursuant to subpara-
23 graph (H) in the immediately pre-
24 ceding fiscal year in its new commer-
25 cial enterprises.

1 “(II) PETITION FEE.—Beginning
2 on October 1, 2016, the Secretary
3 shall collect a fee of \$2,000 for the
4 Fund with each petition filed pursu-
5 ant to section 204(a)(1)(H) for classi-
6 fication under this paragraph pursu-
7 ant to subparagraph (H).

8 “(III) INCREASES.—The Sec-
9 retary may prescribe regulations, as
10 necessary, to increase the dollar
11 amounts under this clause to ensure
12 the Secretary’s continued ability to
13 carry out the activities specified in
14 clause (iii).

15 “(iii) PERMISSIBLE USES OF FUND.—
16 The Secretary shall—

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

21 “(II) use not less than $\frac{1}{3}$ of the
22 amounts deposited into the Fund for
23 investigations based outside of the
24 United States, including—

1 “(aa) monitoring and inves-
2 tigating program-related events
3 and promotional activities; and

4 “(bb) ensuring an alien in-
5 vestor’s compliance with subpara-
6 graph (D);

7 “(III) use amounts deposited into
8 the Fund—

9 “(aa) to detect and inves-
10 tigate fraud or other crimes; and

11 “(bb) to determine whether
12 regional centers, new commercial
13 enterprises, any affiliated job-cre-
14 ating entities, and alien investors
15 (and their alien spouses and alien
16 children, if any) comply with ap-
17 plicable immigration laws;

18 “(IV) use amounts deposited into
19 the Fund to conduct interviews of the
20 owners, officers, directors, managers,
21 partners, agents, employees, pro-
22 moters, and attorneys of regional cen-
23 ters, new commercial enterprises, and
24 job-creating entities; and

1 “(V) otherwise use amounts de-
2 posited into the Fund as the Sec-
3 retary determines to be necessary, in-
4 cluding monitoring compliance with
5 the requirements under section 8 of
6 the American Job Creation and In-
7 vestment Promotion Reform Act of
8 2016.

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

11 “(I) impose a reasonable penalty,
12 which shall be deposited into the
13 Fund, if a regional center does not
14 pay the fee required under clause
15 (ii)(I) within 30 days of the date on
16 which such clause requires the Sec-
17 retary to collect the fee; and

18 “(II) terminate the designation
19 of any regional center that does not
20 pay the fee required under clause
21 (ii)(I) within 90 days of the date on
22 which such clause requires the Sec-
23 retary to collect the fee.

24 “(v) REPORT.—The Secretary shall
25 submit an annual report to the Committee

1 on the Judiciary of the Senate and the
2 Committee on the Judiciary of the House
3 of Representatives that describes how
4 amounts in the Fund were expended dur-
5 ing the immediately preceding fiscal year.

6 “(N) DIRECT AND THIRD-PARTY PRO-
7 MOTERS.—

8 “(i) RULES AND STANDARDS.—Direct
9 and third party promoters of a regional
10 center, any new commercial enterprise, an
11 affiliated job-creating entity, or issuer of
12 securities affiliated with the regional center
13 shall comply with the rules and standards
14 prescribed by the Secretary of Homeland
15 Security and any applicable Federal or
16 State securities laws, to oversee regional
17 center promotion, including—

18 “(I) registration with U.S. Citi-
19 zenship and Immigration Services,
20 which—

21 “(aa) may be limited to
22 identifying and contact informa-
23 tion of such promoter and con-
24 firmation of the existence of the

1 written agreement required by
2 clause (iii); and

3 “(bb) shall not include any
4 requirement that U.S. Citizen-
5 ship and Immigration Services
6 approve the registration of such
7 promoter;

8 “(II) minimum qualifications;

9 “(III) guidelines for offering in-
10 vestment opportunities and rep-
11 resenting the visa process to prospec-
12 tive investors under the program es-
13 tablished under subparagraph (H);
14 and

15 “(IV) permissible fee arrange-
16 ments.

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

24 “(iii) COMPLIANCE.—Each regional
25 center shall maintain a written agreement

1 between the regional center, the new com-
2 mercial enterprise, any affiliated job-cre-
3 ating entity, or any issuer of securities af-
4 filiated with the regional center, and each
5 direct or third-party promoter operating on
6 behalf of such entities or issuer that out-
7 lines the rules and standards prescribed
8 under clause (i).

9 “(iv) DISCLOSURE.—Each petition
10 filed pursuant to section 204(a)(1)(H) for
11 classification under this paragraph pursu-
12 ant to subparagraph (H) shall include a
13 disclosure, signed by the alien investor,
14 that reflects all fees, ongoing interest, and
15 other compensation paid to any person
16 that the regional center or new commercial
17 enterprise knows has received, or will re-
18 ceive, in connection with the investment,
19 including compensation to agents, finders,
20 or broker dealers involved in the offering,
21 to the extent not already specifically identi-
22 fied in the business plan filed under sub-
23 paragraph (I).

1 “(v) PUBLICATION.—The list of such
2 registered promoters may be made publicly
3 available by the Secretary.

4 “(O) TREATMENT OF GOOD FAITH INVES-
5 TORS FOLLOWING PROGRAM NONCOMPLI-
6 ANCE.—

7 “(i) TERMINATION OR DEBARMENT
8 OF EB-5 ENTITY.—Except as provided in
9 clause (v), upon the termination or debar-
10 ment, as applicable, from the program
11 under this paragraph of a regional center,
12 new commercial enterprise, or job-creating
13 entity, an otherwise qualified petition
14 under section 204(a)(1)(H) or the condi-
15 tional permanent residence of an alien who
16 has been admitted to the United States
17 pursuant to section 216A(a)(1) based on
18 an investment in a terminated regional
19 center, new commercial enterprise, or job-
20 creating entity shall remain valid or con-
21 tinue to be authorized, as applicable, con-
22 sistent with this subparagraph.

23 “(ii) NEW REGIONAL CENTER OR IN-
24 VESTMENT.—The petition under section
25 204(a)(1)(H) of an alien described in

1 clause (i) and the conditional permanent
2 resident status of an alien described in
3 clause (i) shall be terminated 180 days
4 after the termination from the program
5 under this paragraph of a regional center,
6 a new commercial enterprise, or a job cre-
7 ating entity unless—

8 “(I) in the case of the termi-
9 nation of a regional center—

10 “(aa) the new commercial
11 enterprise associates with an ap-
12 proved regional center;

13 “(bb) such alien makes a
14 qualifying investment in another
15 new commercial enterprise associ-
16 ated with an approved regional
17 center; or

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

23 “(II) in the case of the debar-
24 ment of a new commercial enterprise
25 or job-creating entity, such alien in-

1 vests in another new commercial en-
2 terprise associated with an approved
3 regional center.

4 “(iii) REMOVAL OF CONDITIONS.—
5 Aliens described in subclause (I)(bb),
6 (I)(cc), or (II) of clause (ii) shall be eligi-
7 ble to have their conditions removed pursu-
8 ant to section 216A beginning on the date
9 that is 2 years after the date of the subse-
10 quent investment.

11 “(iv) IN CASE OF ENFORCEMENT AC-
12 TION.—Except as provided in clause (v), if
13 the Secretary, the Attorney General, or the
14 Securities and Exchange Commission files
15 a criminal or civil enforcement action in
16 any United States District Court con-
17 taining allegations that a regional center,
18 new commercial enterprise, job-creating en-
19 tity, or any person involved with the fore-
20 going entities, committed fraud which af-
21 fected an alien’s investment capital under
22 subparagraph (A), or if a State authority
23 or agency files such an action in a State
24 court—

1 “(I) for all related petitions for
2 classification under this paragraph
3 and petitions for removal of conditions
4 described in section 216A—

5 “(aa) the Secretary may
6 hold such petitions in abeyance
7 unless ordered to take action by
8 the United States District Court
9 overseeing such action, if applica-
10 ble; and

11 “(bb) the United States Dis-
12 trict Court overseeing such ac-
13 tion, if applicable, may enter an
14 order extending any deadlines ap-
15 plicable under this paragraph
16 and to prevent age-out of deriva-
17 tive beneficiaries;

18 “(II) the alien investor may—

19 “(aa) petition to amend the
20 alien’s underlying petition for
21 classification under this para-
22 graph or the petition for removal
23 of conditions described in section
24 216A(c) without such facts un-

1 derlying the amendment being
2 deemed a material change; and

3 “(bb) retain the immigrant
4 visa priority date related to the
5 original petition; and

6 “(III) any funds obtained or re-
7 covered by an alien investor, directly
8 or indirectly, from claims against
9 third parties, including insurance pro-
10 ceeds, or any additional investment
11 capital provided by the alien after the
12 enforcement action described in this
13 clause is filed, may be deemed to be
14 such alien’s investment capital for the
15 purposes of subparagraph (A) if such
16 investment otherwise complies with
17 the requirements of this paragraph
18 and section 216A.

19 “(v) EXCEPTION.—If the Secretary
20 has reason to believe an alien was a know-
21 ing participant in the conduct that led to
22 the termination of a regional center, new
23 commercial enterprise, or job-creating enti-
24 ty, as described in clause (i), or was a
25 knowing participant in the alleged wrong-

1 doing that led to an enforcement action de-
2 scribed in clause (iv)—

3 “(I) the alien shall not be ac-
4 corded any benefit under this sub-
5 paragraph; and

6 “(II) the Secretary shall notify
7 the alien of such belief and, subject to
8 section 216A(b)(2), shall deny or ini-
9 tiate proceedings to revoke the ap-
10 proval of such alien’s petition, applica-
11 tion, or benefit (and that of any
12 spouse or child, if applicable) de-
13 scribed in this paragraph.

14 “(P) ACCOUNT TRANSPARENCY REQUIRE-
15 MENT.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in clause (iii), a new commercial en-
18 terprise shall deposit and maintain the
19 capital investment of each alien investor in
20 a separate account as described in this
21 subparagraph, including funds held in es-
22 crow.

23 “(ii) REQUIREMENTS FOR SEPARATE
24 ACCOUNTS.—

1 “(I) REQUIRED INFORMATION.—
2 Prior to, or within one business day
3 of, the deposit of an alien investor’s
4 capital investment in a separate ac-
5 count, the new commercial enterprise
6 shall provide the following information
7 to the alien investor whose capital in-
8 vestment will be or has been deposited
9 into the separate account, the regional
10 center associated with the new com-
11 mercial enterprise, and the Director of
12 U.S. Citizenship and Immigration
13 Services:

14 “(aa) The name, address,
15 and other contact information of
16 the bank or other financial insti-
17 tution where the separate ac-
18 count is or will be maintained
19 and the name of the authorized
20 signatory required under sub-
21 clause (II).

22 “(bb) Sufficient information
23 to enable the alien investor whose
24 capital investment will be or has
25 been deposited into the separate

1 account, the regional center asso-
2 ciated with the new commercial
3 enterprise, and the Director to
4 view online the balance in the
5 separate account on an ongoing
6 basis.

7 “(II) AUTHORIZED SIGNATO-
8 RIES.—At least one of the authorized
9 signatories to the separate account
10 shall be an individual who is—

11 “(aa) independent of, and
12 not directly or indirectly related
13 to, the new commercial enter-
14 prise, the regional center associ-
15 ated with the new commercial en-
16 terprise, the job creating entity,
17 or any of the principals or man-
18 agers of such entities; and

19 “(bb) an officer at the bank
20 or other financial institution
21 where the separate account is
22 maintained; licensed, active, and
23 in good standing as an attorney,
24 certified public accountant, or
25 broker-dealer; or otherwise au-

1 thorized by the Director to serve
2 as a signatory.

3 “(iii) TRANSFERS FROM A SEPARATE
4 ACCOUNT.—

5 “(I) IN GENERAL.—The funds in
6 a separate account may be transferred
7 only—

8 “(aa) to the alien investor
9 who contributed the funds held in
10 the separate account as a refund
11 of that investor’s capital invest-
12 ment if otherwise permitted
13 under this paragraph, to another
14 separate account, or to a job cre-
15 ating entity or otherwise deployed
16 into the capital investment
17 project for which the funds were
18 intended; and

19 “(bb) after at least one of
20 the authorized signatories de-
21 scribed in clause (ii)(II) has pro-
22 vided written consent for the pro-
23 posed transfer.

24 “(II) NOTICE.—Prior to, or with-
25 in one business day of, funds being

1 transferred from a separate account,
2 the new commercial enterprise shall
3 provide notice to the alien investor
4 whose capital investment has been or
5 will be transferred from the separate
6 account, the regional center associated
7 with the new commercial enterprise,
8 and the Director, including—

9 “(aa) the amount of the
10 funds that are to be or were
11 transferred; and

12 “(bb) the destination of the
13 transferred funds, including
14 whether the funds are trans-
15 ferred to another separate ac-
16 count, or transferred directly to a
17 job creating entity or otherwise
18 deployed into the capital invest-
19 ment project for which the funds
20 were intended.

21 “(III) TRANSFER OF FUNDS.—In
22 the case of a transfer of funds from a
23 separate account maintained by a new
24 commercial enterprise to an affiliated
25 job creating entity, the affiliated job

1 creating entity shall maintain the
2 funds in a separate account that
3 meets the requirements of this section
4 until the funds are deployed into the
5 capital investment project for which
6 they were intended. Within 30 days of
7 the deployment of the funds into the
8 capital investment project for which
9 they were intended, an individual who
10 is licensed, active, and in good stand-
11 ing as an attorney, certified public ac-
12 countant, or broker-dealer, or an indi-
13 vidual otherwise authorized by the Di-
14 rector to serve as a signatory, shall
15 verify that the funds were deployed
16 into the capital investment project for
17 which they were intended and shall so
18 notify the alien investor whose capital
19 investment was invested, the regional
20 center associated with the capital in-
21 vestment project, and the Director.

22 “(iv) ELECTRONIC MAIL AUTHOR-
23 IZED.—Any notice or information to be
24 provided under this section may be given
25 via electronic mail.

1 “(v) DEFINITIONS.—In this subpara-
2 graph:

3 “(I) The term ‘financial institu-
4 tion’ has the meaning given such term
5 by section 20 of title 18, United
6 States Code.

7 “(II) The term ‘separate account’
8 means an account—

9 “(aa) maintained in the
10 United States by a new commer-
11 cial enterprise at a federally reg-
12 ulated bank or at another finan-
13 cial institution in the United
14 States that is insured; and

15 “(bb) that contains only the
16 pooled investment funds of alien
17 investors in a new commercial
18 enterprise with respect to a sin-
19 gle capital investment project.”.

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendments made by this section
23 shall be effective at any time after the date of the
24 enactment of this Act, as determined by the Sec-

1 retary, and shall be effective not later than 90 days
2 after such date of enactment.

3 (2) EXCEPTIONS.—

4 (A) Clauses (iv) and (v) of subparagraph
5 (H) of section 203(b)(5) of the Immigration
6 and Nationality Act (8 U.S.C. 1153(b)(5)), as
7 inserted by subsection (b), shall not apply to a
8 petition that—

9 (i) was filed by an alien investor
10 under such section 203(b)(5) prior to June
11 1, 2015;

12 (ii) was filed by an alien investor
13 under such section 203(b)(5) during the
14 period beginning on June 1, 2015, and
15 ending on the date of the enactment of this
16 Act if such beneficiary is investing in the
17 same commercial enterprise concerning the
18 same economic activity as contained in an
19 exemplar filed prior to June 1, 2015, or
20 approved by the Secretary of Homeland
21 Security at any time prior to the date of
22 enactment of this Act, unless the Secretary
23 determines that such approval or filing was
24 based on fraud, misrepresentation in the

1 record of proceeding, or is legally deficient;

2 or

3 (iii) is filed under section 216A of
4 such Act (8 U.S.C. 1186b) if the under-
5 lying petition filed under section 203(b)(5)
6 of such Act was filed prior to June 1,
7 2015, or approved before the date of the
8 enactment of this Act.

9 (B) Subparagraph (P) of section 203(b)(5)
10 of the Immigration and Nationality Act (8
11 U.S.C. 1153(b)(5)), as inserted by subsection
12 (b), shall take effect 1 year after the date of the
13 enactment of this Act and shall apply to any
14 application filed by a regional center for ap-
15 proval of an investment under subparagraph (I)
16 of such section 203(b)(5), as so inserted, filed
17 on or after such date.

18 **SEC. 4. OTHER EB-5 VISA REFORMS.**

19 (a) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
20 the Immigration and Nationality Act (8 U.S.C.
21 1153(b)(5)(A)), is amended—

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

1 (2) in clause (i), by striking “(C),” and insert-
2 ing “(B), and which is expected to remain invested
3 for not less than 2 years;”; and

4 (3) in clause (ii)—

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

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

9 (b) TARGETED EMPLOYMENT AREAS.—Section
10 203(b)(5)(B) of the Immigration and Nationality Act (8
11 U.S.C. 1153(b)(5)(B)) is amended to read as follows:

12 “(B) VISA SET-ASIDES AND AREA DES-
13 IGNATIONS.—

14 “(i) RESERVED VISAS.—

15 “(I) IN GENERAL.—Of the visas
16 made available under this paragraph
17 in each fiscal year—

18 “(aa) 2,000 shall be re-
19 served for immigrants who invest
20 in rural areas; and

21 “(bb) 2,000 shall be re-
22 served for immigrants who invest
23 in priority urban investment
24 areas.

1 “(II) UNUSED VISAS.—At the
2 end of each fiscal year, any unused
3 visa within each category described in
4 subclause (I) shall remain available
5 within the same category for subse-
6 quent fiscal years.

7 “(ii) ELIGIBILITY.—The Secretary of
8 Homeland Security shall determine eligi-
9 bility for designation as a targeted employ-
10 ment area and shall not be bound by the
11 determination of any other governmental
12 or nongovernmental entity.

13 “(iii) DESIGNATION OF INFRASTRUC-
14 TURE PROJECT, MANUFACTURING
15 PROJECT, AND TARGETED EMPLOYMENT
16 AREA.—

17 “(I) INFRASTRUCTURE PROJECT
18 OR MANUFACTURING PROJECT.—The
19 designation of an infrastructure
20 project or manufacturing project shall
21 be made at the time of the invest-
22 ment.

23 “(II) TARGETED EMPLOYMENT
24 AREA.—The designation of a targeted
25 employment area—

1 “(aa) may be made at the
2 time of the investment or at the
3 time an application is filed under
4 subparagraph (I); and

5 “(bb) shall be valid for a 2-
6 year period.

7 “(III) DESIGNATIONS AND RE-
8 NEWALS.—The Secretary shall estab-
9 lish a process by which regional cen-
10 ters may request a designation under
11 subclause (I) or (II). A designation
12 under either such subclause shall be
13 issued not later than 60 days after a
14 request by a regional center and a
15 designation under subclause (II) may
16 be renewed for additional 2-year peri-
17 ods if the area continues to meet the
18 definition of a targeted employment
19 area. An alien investor who has made
20 the required amount of investment in
21 such an area during its period of des-
22 ignation shall not be required to in-
23 crease the amount of investment
24 based upon expiration of the designa-
25 tion. The Secretary shall establish a

1 fee for the adjudication of a designa-
2 tion request at a level that is suffi-
3 cient to ensure the full recovery of the
4 costs of providing such adjudication
5 within the required timeframe. Noth-
6 ing in this clause shall be deemed to
7 prohibit an investor from filing a peti-
8 tion before such designation is
9 made.”.

10 (c) ADJUSTMENT OF MINIMUM INVESTMENT
11 AMOUNT.—

12 (1) IN GENERAL.—Section 203(b)(5)(C) of such
13 Act (8 U.S.C. 1153(b)(5)(C)) is amended—

14 (A) by redesignating clause (iii) as clause
15 (iv);

16 (B) by striking clauses (i) and (ii) and in-
17 serting the following:

18 “(i) MINIMUM INVESTMENT
19 AMOUNTS.—Except as otherwise provided
20 in this subparagraph, the amount of cap-
21 ital required under subparagraph (A) shall
22 be—

23 “(I) \$1,200,000 (except as pro-
24 vided in subclause (II)); or

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

6 “(ii) AUTHORITY TO INCREASE IN-
7 VESTMENT AMOUNTS.—The Secretary may
8 periodically prescribe regulations increas-
9 ing the dollar amount specified under
10 clause (i) if any such increase simulta-
11 neously affects each category of investment
12 under clause (i) by the same percentage.
13 The Secretary shall publish a notice in the
14 Federal Register no later than the date
15 that is 60 days prior to the date upon
16 which the increase will take effect.

17 “(iii) AUTOMATIC ADJUSTMENT OF
18 MINIMUM INVESTMENT AMOUNTS.—Begin-
19 ning on January 1, 2022, and on every
20 fifth subsequent January 1, after notice in
21 the Federal Register is published for not
22 less than 60 days, the Secretary shall ad-
23 just each of the minimum amounts speci-
24 fied in clause (i) as follows:

1 “(I) NO INCREASES IN PREVIOUS
2 5 FISCAL YEARS.—If the Secretary did
3 not increase the minimum amount
4 during the 5 prior fiscal years con-
5 cluding with the fiscal year ending on
6 September 30 of the prior calendar
7 year, the amounts specified in clause
8 (i) shall automatically be adjusted by
9 the amount of the cumulative percent-
10 age change in the Consumer Price
11 Index (CPI–U) for the previous 5 fis-
12 cal years, rounded to the nearest mul-
13 tiple of \$10,000.

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

1 prescribed by the Secretary by regula-
2 tions, rounded to the nearest multiple
3 of \$10,000.

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

17 (2) REDESIGNATIONS.—Section 203(b)(5) of
18 such Act (8 U.S.C. 1153(b)(5)) is amended—

19 (A) by redesignating subparagraph (B), as
20 amended by subsection (b), as subparagraph
21 (C);

22 (B) by redesignating the second subpara-
23 graph (C), as amended by paragraph (1), as
24 subparagraph (B); and

1 (C) by moving subparagraph (B), as so re-
2 designated, so that it appears after subpara-
3 graph (A).

4 (d) REQUIRED CHECKS.—Section 203(b)(5) of the
5 Immigration and Nationality Act, as amended by sections
6 2 and 3, is further amended by inserting after subpara-
7 graph (O) the following:

8 “(P) REQUIRED CHECKS.—An alien inves-
9 tor, alien spouse, or alien child may not be
10 granted the status of an alien lawfully admitted
11 for permanent residence under this paragraph
12 unless the Secretary of Homeland Security has
13 determined that such alien is not on the De-
14 partment of the Treasury’s Office of Foreign
15 Assets Control Specially Designated Nationals
16 List.”.

17 (e) DEFINITIONS.—

18 (1) IN GENERAL.—Section 203(b)(5) of such
19 Act (8 U.S.C. 1153(b)(5)), as amended by sections
20 2 and 3 of this Act, is further amended by striking
21 the second subparagraph (D) (relating to defini-
22 tions) and inserting the following:

23 “(Q) DEFINITIONS.—In this paragraph:

24 “(i) AFFILIATED JOB-CREATING ENTI-
25 TY.—The term ‘affiliated job-creating enti-

1 ty' means any job-creating entity that is
2 directly or indirectly controlled, managed,
3 or owned by any of the persons involved
4 with the regional center or new commercial
5 enterprise under section 203(b)(5)(K)(v).

6 “(ii) CAPITAL.—The term ‘capital’—

7 “(I) means cash and all real, per-
8 sonal, or mixed tangible assets owned
9 and controlled by the alien investor,
10 or held in trust for the benefit of the
11 alien and to which the alien has unre-
12 stricted access;

13 “(II) shall be valued at fair mar-
14 ket value in United States dollars, in
15 accordance with Generally Accepted
16 Accounting Principles or other stand-
17 ard accounting practice adopted by
18 the Securities and Exchange Commis-
19 sion, at the time it is invested under
20 this paragraph; and

21 “(III) shall not include assets ac-
22 quired, directly or indirectly, by un-
23 lawful means, including any cash pro-
24 ceeds of indebtedness secured by such
25 assets.

1 “(iii) CERTIFIER.—The term ‘cer-
2 tifier’ means a person in a position of sub-
3 stantive authority for the management or
4 operations of a regional center, new com-
5 mercial enterprise, affiliated job-creating
6 entity, or issuer of securities, such as a
7 principal executive officer or principal fi-
8 nancial officer, with knowledge of such en-
9 tity’s policies and procedures related to
10 compliance with the requirements of this
11 paragraph.

12 “(iv) FULL-TIME EMPLOYMENT.—The
13 term ‘full-time employment’ means employ-
14 ment in a position that requires at least 35
15 hours of service per week for at least a 24-
16 month period, regardless of who fills the
17 position. A position or job that is filled by
18 more than 1 employee may be considered
19 full-time employment for purposes of sub-
20 paragraph (A)(ii).

21 “(v) INFRASTRUCTURE PROJECT.—
22 The term ‘infrastructure project’ means a
23 capital investment project in a filed or ap-
24 proved business plan, which is adminis-
25 tered by a governmental entity, such as a

1 Federal, State, or local agency or author-
2 ity, in which the entity contracts with a re-
3 gional center, new commercial enterprise,
4 or job-creating entity to receive capital in-
5 vestment under the regional center pro-
6 gram described in subparagraph (H) from
7 alien investors or the new commercial en-
8 terprise as financing for maintaining, im-
9 proving, or constructing a public works
10 project.

11 “(vi) **JOB-CREATING ENTITY.**—The
12 term ‘job-creating entity’ means any orga-
13 nization formed in the United States for
14 the ongoing conduct of lawful business, in-
15 cluding a partnership (whether limited or
16 general), corporation, limited liability com-
17 pany, or other entity that receives, or is es-
18 tablished to receive, capital investment
19 from alien investors or a new commercial
20 enterprise under the regional center pro-
21 gram described in subparagraph (H) and
22 which is responsible for creating jobs to
23 satisfy the requirement under subpara-
24 graph (A)(ii).

1 “(vii) MANUFACTURING PROJECT.—

2 The term ‘manufacturing project’ means a
3 capital investment project in a filed or ap-
4 proved business plan, the purpose of which
5 is to improve, construct, or operate a
6 plant, factory, or mill, which primarily ex-
7 ists in order to produce or assemble a
8 product in the United States.

9 “(viii) NEW COMMERCIAL ENTER-
10 PRISE.—The term ‘new commercial enter-
11 prise’ means any for-profit organization
12 formed in the United States for the ongo-
13 ing conduct of lawful business, including a
14 partnership (whether limited or general),
15 corporation, limited liability company, or
16 other entity that receives, or is established
17 to receive, capital investment from alien in-
18 vestors under subparagraph (H).

19 “(ix) PRIORITY URBAN INVESTMENT
20 AREA.—The term ‘priority urban invest-
21 ment area’ means an area consisting of a
22 census tract or tracts, each of which is in
23 a metropolitan statistical area and, using
24 the most recent census data available, each
25 of which has—

1 “(I) an unemployment rate that
2 is at least 150 percent of the national
3 average unemployment rate;

4 “(II) a poverty rate that is at
5 least 30 percent; or

6 “(III) a median family income
7 that is not more than 60 percent of
8 the greater of the statewide median
9 family income or the metropolitan sta-
10 tistical area median family income.

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

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

18 “(II) is—

19 “(aa) outside of a metropoli-
20 tan statistical area;

21 “(bb) within an outlying
22 county of a metropolitan statis-
23 tical area; or

24 “(cc) within any census
25 tract that is greater than 100

1 square miles in area and has a
2 population density of fewer than
3 100 people per square mile.

4 “(xi) TARGETED EMPLOYMENT
5 AREA.—The term ‘targeted employment
6 area’ means—

7 “(I) a priority urban investment
8 area;

9 “(II) a rural area;

10 “(III) any area within the geo-
11 graphic boundaries of any military in-
12 stallation that was closed, during the
13 25-year period immediately preceding
14 the filing of an application under sub-
15 paragraph (F) based upon a rec-
16 ommendation by the Defense Base
17 Closure and Realignment Commission;
18 or

19 “(IV) an area consisting of a
20 census tract or contiguous census
21 tracts, each of which, using the most
22 recent census data available—

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

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

7 (2) RULEMAKING.—The Secretary of Homeland
8 Security shall issue appropriate regulations to ac-
9 count for the modified definition of targeted employ-
10 ment area in section 203(b)(5)(Q)(xi) of the Immi-
11 gration and Nationality Act, as added by paragraph
12 (1), within 180 days of the enactment of this Act.

13 (f) AGE DETERMINATION FOR CHILDREN OF ALIEN
14 INVESTORS.—Section 203(h) of such Act (8 U.S.C.
15 1153(h)) is amended by adding at the end the following:

16 “(5) AGE DETERMINATION FOR CHILDREN OF
17 ALIEN INVESTORS.—An alien who has reached 21
18 years of age and has been admitted under subsection
19 (d) as a lawful permanent resident on a conditional
20 basis as the child of an alien lawfully admitted for
21 permanent residence under subsection (b)(5), whose
22 lawful permanent resident status on a conditional
23 basis is terminated under section 216A or subpara-
24 graph (O) of subsection (b)(5), shall continue to be
25 considered a child of the principal alien for the pur-

1 pose of a subsequent immigrant petition by the prin-
2 ciple alien under subsection (b)(5) if the alien who
3 was a child of the principle alien remains unmarried
4 and the subsequent petition is filed by the principal
5 alien not later than 1 year after the termination of
6 conditional lawful permanent resident status. No
7 alien shall be considered a child under this para-
8 graph with respect to more than 1 petition filed
9 after the alien reaches 21 years of age.”.

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

18 (h) CONCURRENT FILING OF EB–5 PETITIONS AND
19 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
20 245 of the Immigration and Nationality Act (8 U.S.C.
21 1255) is amended—

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

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

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

8 (i) CONFORMING CHANGES.—

9 (1) Section 201(d)(1) is amended by—

10 (A) striking the period at the end of sub-
11 paragraph (B) and inserting “, plus”; and

12 (B) inserting the following new subpara-
13 graph (C) at the end—

14 “(C) the number of unused visas computed
15 under section 203(b)(5)(C)(i)(II) (which num-
16 ber shall be allocated pursuant to such sec-
17 tion).”.

18 (2) Section 203(b)(1) of the Immigration and
19 Nationality Act is amended by inserting “, subject to
20 section 203(b)(5)(C)(i),” after “classes specified in
21 paragraphs (4) and (5)”.

22 (3) Section 203(b)(5)(A) of the Immigration
23 and Nationality Act is amended by striking “Visas
24 shall be made available” and inserting “Subject to

1 section 203(b)(5)(C)(i), visas shall be made avail-
2 able”.

3 (j) EFFECTIVE DATES.—

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

8 (2) EXCEPTIONS.—

9 (A) IN GENERAL.—The amendments made
10 by subparagraphs (A) and (B) of subsection
11 (c)(1) and subsection (e)(1) shall not apply to
12 a beneficiary of a petition that—

13 (i) was filed by an alien investor
14 under section 203(b)(5) of the Immigra-
15 tion and Nationality Act (8 U.S.C.
16 1153(b)(5)) prior to June 1, 2015;

17 (ii) was filed by an alien investor
18 under such section 203(b)(5) during the
19 period beginning on June 1, 2015, and
20 ending on the date of the enactment of this
21 Act if such beneficiary is investing in the
22 same commercial enterprise concerning the
23 same economic activity as contained in an
24 exemplar filed prior to June 1, 2015, or
25 approved by the Secretary of Homeland

1 Security at any time prior to the date of
2 enactment of this Act, unless the Secretary
3 determines that such approval or filing was
4 based on fraud, misrepresentation in the
5 record of proceeding, or is legally deficient;
6 or

7 (iii) is filed under section 216A of
8 such Act (8 U.S.C. 1186b) if the under-
9 lying petition filed under section 203(b)(5)
10 of such Act was filed prior to June 1,
11 2015, or approved before the date of the
12 enactment of this Act.

13 (B) RESERVED VISAS.—Items (aa) and
14 (bb) of section 203(b)(5)(C)(i)(I) of the Immi-
15 gration and Nationality Act (8 U.S.C.
16 1153(b)(5)(C)(i)(I)), as added by this section,
17 shall take effect beginning on October 1, 2016.

18 (3) REDESIGNATION.—

19 (A) PETITION AMENDMENT.—Petitioners
20 described in paragraph (2)(A) may apply to
21 amend their petition to redesignate the targeted
22 employment area upon which such petition was
23 based to conform to the targeted employment
24 area criteria described in section 203(b)(5)(Q)
25 of the Immigration and Nationality Act (8

1 U.S.C. 1153(b)(5)(Q)), as amended by sub-
2 section (e), if such application for amendment
3 is filed with the Secretary prior to October 1,
4 2017.

5 (B) RETENTION OF PRIORITY DATE.—If a
6 petitioner applies to amend a petition in accord-
7 ance with subparagraph (A)—

8 (i) the immigrant visa priority date
9 related to the original petition shall be re-
10 tained;

11 (ii) changes made in the amended pe-
12 tition to redesignate such area shall not be
13 deemed a material change; and

14 (iii) the minimum investment amount
15 such petitioner is required to make shall
16 not be affected by any such redesignation.

17 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
18 **ALIEN INVESTORS, SPOUSES, AND CHILDREN.**

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

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

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

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

3 “(1) **CONDITIONAL BASIS FOR STATUS.**—

4 “(A) **IN GENERAL.**—Except as provided in
5 subparagraph (B), an alien investor, alien
6 spouse, and alien child shall be considered, at
7 the time of obtaining status of an alien lawfully
8 admitted for permanent residence, to have ob-
9 tained such status on a conditional basis sub-
10 ject to the provisions of this section.

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

18 (4) in subsection (b)—

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

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

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

1 (5) in subsection (c)—

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

4 (B) in paragraph (1)—

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

9 (ii) in subparagraph (A)—

10 (I) by striking “must” and in-
11 serting “shall”; and

12 (II) by striking “, and” and in-
13 serting a semicolon;

14 (iii) in subparagraph (B)—

15 (I) by striking “must” and in-
16 serting “shall”;

17 (II) by striking “Service” and in-
18 serting “Department of Homeland Se-
19 curity”; and

20 (III) by striking the period at the
21 end and inserting “; and”; and

22 (iv) by adding at the end the fol-
23 lowing:

24 “(C) the Secretary shall have performed a
25 site visit to the new commercial enterprise and

1 job-creating entity in which the alien investor
2 invested capital under subparagraph (A) of sec-
3 tion 203(b)(5) pursuant to subparagraph (I)(iii)
4 of such section.”; and

5 (C) in paragraph (3)—

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

9 (ii) by amending subparagraph (B) to
10 read as follows:

11 “(B) REMOVAL OR EXTENSION OF CONDI-
12 TIONAL BASIS.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in clause (ii), if the Secretary deter-
15 mines that the facts and information con-
16 tained in a petition submitted under para-
17 graph (1)(A) are true, including dem-
18 onstrating that the alien complied with
19 subsection (d)(1)(B)(i), the Secretary
20 shall—

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

23 “(II) remove the conditional
24 basis of the alien’s status effective as
25 of the second anniversary of the

1 alien's lawful admission for permanent
2 residence.

3 “(ii) EXCEPTION.—If the petition
4 demonstrates that the facts and informa-
5 tion are true and that the alien is in com-
6 pliance with subsection (d)(1)(B)(ii)—

7 “(I) the Secretary, in the Sec-
8 retary's discretion, may provide one 1-
9 year extension of the alien's condi-
10 tional status; and

11 “(II)(aa) if the alien files a peti-
12 tion not later than 30 days after the
13 third anniversary of the alien's lawful
14 admission for permanent residence
15 demonstrating that the alien complied
16 with subsection (d)(1)(B)(i), the Sec-
17 retary shall remove the conditional
18 basis of the alien's status effective as
19 of such third anniversary; or

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

24 (6) in subsection (d)—

25 (A) in paragraph (1)—

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

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

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

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

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

10 “(ii) is actively in the process of creating
11 the employment required under section
12 203(b)(5)(A)(ii) and will create such employ-
13 ment before the third anniversary of the alien’s
14 lawful admission for permanent residence;
15 and”;

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

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

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii) and subparagraph (B),
22 a petition under subsection (c)(1)(A) shall
23 be filed during the 90-day period before
24 the second anniversary of the alien inves-

1 tor's lawful admission for permanent resi-
2 dence.

3 “(ii) EXCEPTION.—Aliens described in
4 subclauses (I)(bb), (I)(cc), and (II) of sec-
5 tion 203(b)(5)(O)(ii) shall file a petition
6 under subsection (c)(1)(A) during the 90-
7 day period before the second anniversary
8 of the subsequent investment.”; and
9 (C) in paragraph (3)—

10 (i) by striking “The interview” and
11 inserting the following:

12 “(A) IN GENERAL.—The interview”;

13 (ii) by striking “Service” and insert-
14 ing “Department of Homeland Security”;
15 and

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

18 “(B) WAIVER.—The Secretary of Home-
19 land Security, in the Secretary's discretion, may
20 waive the deadline for such an interview or the
21 requirement for such an interview according to
22 criteria developed by United States Citizenship
23 and Immigration Services in consultation with
24 its Fraud Detection and National Security Di-
25 rectorate, and United States Immigration and

1 Customs Enforcement, except that such criteria
2 shall not include reduction of case processing
3 times or the allocation of adjudicatory re-
4 sources. A waiver may not be granted under
5 this subparagraph if the alien to be inter-
6 viewed—

7 “(i) invested in a regional center, new
8 commercial enterprise, or job-creating enti-
9 ty that was sanctioned under section
10 203(b)(5); or

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

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

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

18 “(f) PETITION FROM QUALIFIED ALIEN INVES-
19 TOR.—An alien investor who invested the requisite capital
20 and created the employment required under section
21 203(b)(5)(A)(ii) at least 24 months before admission, and
22 is otherwise conforming to the requirements under section
23 203(b)(5), may file a petition, before admission for perma-
24 nent residence, to be considered, at the time of obtaining

1 status of an alien lawfully admitted for permanent resi-
2 dence, to obtain such status without conditions.”; and

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

7 (b) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided under
9 paragraph (2), the amendments made by subsection
10 (a) shall take effect on the date of the enactment of
11 this Act.

12 (2) EXCEPTIONS.—

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

17 (B) PETITION BENEFICIARIES.—The
18 amendments made by subsection (a) shall not
19 apply to the beneficiary of a petition that is
20 filed under section 216A of the Immigration
21 and Nationality Act (8 U.S.C. 1186b) if the un-
22 derlying petition filed pursuant to section
23 204(a)(1)(H) of such Act (8 U.S.C.
24 1154(a)(1)(H)) was approved before the date of
25 the enactment of this Act.

1 **SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.**

2 (a) **FILING ORDER AND ELIGIBILITY.**—Section
3 204(a)(1)(H) of the Immigration and Nationality Act (8
4 U.S.C. 1154(a)(1)(H)) is amended to read as follows:

5 “(H)(i) An alien desiring to be classified
6 under section 203(b)(5) may file a petition with
7 the Secretary of Homeland Security, but only if
8 the alien is not under 18 years of age at the
9 time of filing. An alien who seeks to pool the
10 alien’s investment with one or more additional
11 aliens seeking classification under section
12 203(b)(5) shall file for classification pursuant
13 to section 203(b)(5)(H). An alien petitioning
14 for classification pursuant to section
15 203(b)(5)(H) may only file a petition with the
16 Secretary after the regional center has filed an
17 application for approval of an investment under
18 section 203(b)(5)(I).

19 “(ii) A petitioner shall establish eligibility
20 at the time the alien files for classification
21 under section 203(b)(5) and, if not eligible at
22 the time of filing, shall be denied such classi-
23 fication even if the petitioner later becomes eli-
24 gible under materially different facts or cir-
25 cumstances. Aliens asserting eligibility under a
26 materially different set of facts that did not

1 exist when the petition was filed shall file a new
2 petition. A petitioner shall continue to be eligi-
3 ble for classification at the time such petition is
4 adjudicated.”.

5 (b) EFFECTIVE DATES.—

6 (1) IN GENERAL.—The amendments made by
7 subsection (a) shall take effect on the date of the en-
8 actment of this Act.

9 (2) APPLICABILITY TO PETITIONS.—

10 (A) FILING.—Clause (i) of section
11 204(a)(1)(H) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1154(a)(1)(H)), as added
13 by subsection (a), shall apply to any petition for
14 classification pursuant to section 203(b)(5)(H)
15 of such Act (8 U.S.C. 1153(b)(5)(H)) that is
16 filed with the Secretary of Homeland Security
17 on or after the date of the enactment of this
18 Act.

19 (B) ELIGIBILITY.—Clause (ii) of section
20 204(a)(1)(H) of such Act, as added by sub-
21 section (a), shall apply to any petition for clas-
22 sification pursuant to section 203(b)(5)(H) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1153(b)(5)(E)) filed with the Secretary of
25 Homeland Security at any time.

1 **SEC. 7. TIMELY PROCESSING.**

2 (a) **FEE STUDY.**—Not later than 180 days after the
3 date of the enactment of this Act, the Director of United
4 States Citizenship and Immigration Services shall com-
5 plete a study of fees charged in the administration of the
6 program described in sections 203(b)(5) and 216A of the
7 Immigration and Nationality Act (8 U.S.C. 1153(b)(5)
8 and 1186b).

9 (b) **ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT**
10 **PROCESSING.**—Notwithstanding section 286(m) of the
11 Immigration and Nationality Act (8 U.S.C. 1356(m)), and
12 except as provided under subsection (c), the Director shall
13 set fees for services provided pursuant to section
14 203(b)(5) and 216A of such Act (8 U.S.C. 1153(b)(5) and
15 1186b), as amended by this Act, and for adjudicating peti-
16 tions filed pursuant to section 204(a)(1)(H) of such Act
17 (8 U.S.C. 1154(a)(1)(H)), as amended by this Act, at a
18 level sufficient to ensure the full recovery only of the costs
19 of providing such services, including the cost of attaining
20 the goal of completing adjudications, on average, not later
21 than—

22 (1) 120 days after receiving a proposal for the
23 establishment of a regional center described in sec-
24 tion 203(b)(5)(H);

1 (2) 120 days after receiving an application for
2 approval of investment in a commercial enterprise
3 described in section 203(b)(5)(I);

4 (3) 150 days after receiving a petition from an
5 alien desiring to be classified under section
6 203(b)(5)(H); and

7 (4) 180 days after receiving a petition from an
8 alien for removal of conditions described in section
9 216A(e).

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

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

21 (2) in an amount that is not greater than 1
22 percent of the fee for filing a petition pursuant to
23 section 204(a)(1)(H) of the Immigration and Na-
24 tionality Act (8 U.S.C. 1154(a)(1)(H)), to make im-
25 provements to the information technology systems

1 used by the Secretary to process, adjudicate, and ar-
2 chive applications and petitions under such section,
3 including the conversion to electronic format of doc-
4 uments filed by petitioners and applicants for bene-
5 fits under such section.

6 (d) PREMIUM PROCESSING OF EB-5 PETITIONS AND
7 APPLICATIONS.—

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

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

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

1 mal petition or application fee that may be applica-
2 ble, and shall be deposited as offsetting collections in
3 the Immigration Examinations Fee Account. The
4 Secretary may adjust the fee under this paragraph
5 in proportion to changes in the Consumer Price
6 Index.

7 “(2) ALIEN INVESTOR PETITIONS AND APPLICA-
8 TIONS.—The Secretary shall establish and collect a
9 premium fee for expeditious processing of applica-
10 tions for regional center designation or regional cen-
11 ter amendment under section 203(b)(5)(H), peti-
12 tions under section 203(b)(5), petitions for removal
13 of conditions on lawful permanent residence under
14 section 216A(c), and applications under section
15 203(b)(5)(I) related to investment in a new commer-
16 cial enterprise (as defined in section 203(b)(5)(Q)).
17 A petitioner or applicant shall be permitted an op-
18 portunity to provide additional evidence identified by
19 the Secretary in any such petition or application
20 prior to a final determination. The premium fee for
21 each such application or petition shall be set at an
22 amount sufficient to adjudicate such application or
23 petition within $\frac{1}{2}$ of the relevant period set forth in
24 section 6(b) of the American Job Creation and In-
25 vestment Promotion Reform Act of 2016, and shall

1 otherwise only be used to recover the costs of such
2 processing, including the hiring of additional adju-
3 dicatory staff, shall be paid in addition to any nor-
4 mal petition or application fee that may be applica-
5 ble, and shall be deposited as offsetting collections in
6 the Immigration Examinations Fee Account.”.

7 (2) ESTABLISHMENT OF EB-5 PREMIUM PROC-
8 ESSING.—Not later than 180 days after the date of
9 the enactment of this Act, the Secretary of Home-
10 land Security shall establish the premium processing
11 of immigrant investor petitions and applications, as
12 described in section 286(u) of the Immigration and
13 Nationality Act (8 U.S.C. 1356(u)), as amended by
14 paragraph (1).

15 (e) DELAY IN ADJUDICATION.—Nothing in this Act
16 may be construed to limit the authority of the Secretary
17 of Homeland Security to suspend the adjudication of any
18 application or petition under section 203(b)(5) or 216A
19 of the Immigration and Nationality Act (8 U.S.C.
20 1153(b)(5) and 1186b) or related petition under section
21 204(a)(1)(H) of such Act (8 U.S.C. 1154(a)(1)(H)) pend-
22 ing the completion of a national security or law enforce-
23 ment investigation relating to such application or petition.

24 (f) EXEMPTION FROM PAPERWORK REDUCTION
25 ACT.—For a period of one year after the date of the enact-

1 ment of this Act, the requirements of chapter 35 of title
2 44, United States Code, shall not apply to any collection
3 of information required under this Act, under any amend-
4 ment made by this Act, or under any rule promulgated
5 by the Secretary of Homeland Security to implement this
6 Act or the amendments made by this Act, to the extent
7 the Secretary determines that compliance with such re-
8 quirements would impede the expeditious implementation
9 of this Act or the amendments made by this Act.

10 (g) **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 Procedure Act”), to carry out subsections (b)
20 and (c).

21 **SEC. 8. 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 in-
13 fluence, in a manner not available to or accorded to
14 all other petitioners, applicants, and seekers of bene-
15 fits under the immigrant visa program described in
16 section 203(b)(5) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1153(b)(5)), as amended by this
18 Act, the standard processing of an application, peti-
19 tion, or benefit for—

20 (A) a regional center established under
21 subparagraph (H) of such section;

22 (B) a new commercial enterprise (as de-
23 fined in subparagraph (Q) of such section);

24 (C) a job-creating entity (as so defined); or

1 (D) any person or entity associated with
2 such regional center, new commercial enter-
3 prise, or job-creating entity; and

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

10 (c) REPORTING OF COMMUNICATIONS.—

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

1 (2) ORAL COMMUNICATION.—If substantive oral
2 communication, including telephonic communication,
3 virtual communication, and in-person meetings,
4 takes place between officials of the Department of
5 Homeland Security and non-Department persons or
6 entities advocating for regional center applications
7 or individual petitions under section 203(b)(5) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1153(b)(5)) that are pending on or after the date of
10 the enactment of this Act (other than routine com-
11 munications with other agencies of the Federal Gov-
12 ernment regarding the case, including communica-
13 tions involving background checks and litigation de-
14 fense)—

15 (A) the conversation shall be recorded; or

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

18 (3) NOTIFICATION.—

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

1 part of the record of proceeding and may not
2 be considered in adjudicative proceedings un-
3 less—

4 (i) the affected party has been given
5 notice of such evidence; and

6 (ii) if such evidence is derogatory, the
7 affected party has been given an oppor-
8 tunity to respond to the evidence.

9 (B) INFORMATION FROM LAW ENFORCE-
10 MENT, INTELLIGENCE AGENCIES, OR CON-
11 FIDENTIAL SOURCES.—

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

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

1 tity of the whistleblower or confidential
2 source, or reveal classified information.

3 (d) CONSIDERATION OF EVIDENCE.—

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

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

16 (e) CHANNELS OF COMMUNICATION.—

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

22 (A) with inquiries regarding specific peti-
23 tions or applications under the immigrant visa
24 program described in section 203(b)(5) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1153(b)(5)); or

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

6 (2) COMMUNICATION ONLY THROUGH APPRO-
7 PRIATE CHANNELS OR OFFICES.—

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

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

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

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

13 (B) DIRECTION OF INCOMING COMMUNICA-
14 TIONS.—

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

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

23 (I) any person from commu-
24 nicating with the Ombudsman of
25 United States Citizenship and Immi-

1 migration Services regarding the immi-
2 grant investor program under section
3 203(b)(5) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1153(b)(5));
5 or

6 (II) the Ombudsman from resolv-
7 ing problems regarding such immi-
8 grant investor program pursuant to
9 the authority granted under section
10 452 of the Homeland Security Act of
11 2002 (6 U.S.C. 272).

12 (C) LOG.—

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

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

1 (II) with respect to written com-
2 munications described in subsection
3 (c)(1), the date the communication
4 was received, the identities of the
5 sender and addressee, and the subject
6 of the communication; and

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

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

19 (3) PUBLICATION OF INFORMATION.—If, as a
20 result of a communication with an official of the De-
21 partment of Homeland Security, a person or entity
22 inquiring about a specific case or generally about the
23 immigrant visa program described in section
24 203(b)(5) of the Immigration and Nationality Act (8
25 U.S.C. 1153(b)(5)) received generally applicable and

1 non-case specific information about program require-
2 ments or administration that has not been made
3 publicly available by the Department, the Director of
4 United States Citizenship and Immigration Services,
5 not later than 30 days after the communication of
6 such information to such person or entity, shall pub-
7 lish such information on the United States Citizen-
8 ship and Immigration Services Web site as an up-
9 date to the relevant Frequently Asked Questions
10 page or by some other comparable mechanism.

11 (f) PENALTY.—

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

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

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

5 (h) NO CREATION OF PRIVATE RIGHT OF ACTION.—
6 Nothing in this section may be construed to create or au-
7 thorize a private right of action to challenge a decision
8 of an employee of the Department of Homeland Security.

9 **SEC. 9. REPORTS.**

10 (a) GAO REPORT.—Not later than December 31,
11 2019, the Comptroller General of the United States shall
12 submit a report to the Committee on the Judiciary of the
13 Senate and the Committee on the Judiciary of the House
14 of Representatives that describes—

15 (1) the economic benefits of the regional center
16 program established under section 203(b)(5) of the
17 Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5)), including the steps taken by United
19 States Citizenship and Immigration Services to
20 verify job creation;

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

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

6 (4) the steps taken by United States Citizen-
7 ship and Immigration Services to verify the source
8 of funds, as required under section 203(b)(5)(D) of
9 the Immigration and Nationality Act, as added by
10 section 2 of this Act;

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

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

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

1 (8) the steps that have been taken to oversee
2 direct and third-party promoters under section
3 203(b)(5)(N) of the Immigration and Nationality
4 Act, as added by section 3 of this Act;

5 (9) the extent to which employees of the De-
6 partment of Homeland Security have complied with
7 the ethical standards and transparency requirements
8 under section 8 of this Act; and

9 (10) an accounting of the expenditure of
10 amounts from the EB–5 Integrity Fund established
11 under section 203(b)(5)(M) of the Immigration and
12 Nationality Act, as added by section 3 of this Act.

13 (b) INSPECTOR GENERAL REPORT.—Not later than
14 December 31, 2019, the Inspector General of the Intel-
15 ligence Community, in coordination with the Inspector
16 General of the Department of Homeland Security and
17 after consultation with relevant Federal agencies, includ-
18 ing United States Immigration and Customs Enforce-
19 ment, shall submit a report to the Committee on the Judi-
20 ciary of the Senate and the Committee on the Judiciary
21 of the House of Representatives concerning the immigrant
22 visa program set forth in section 203(b)(5) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1153(b)(5)) that
24 describes—

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

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

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

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

10 (5) the actual or potential use of the program
11 to facilitate terrorist activity, including funding ter-
12 rorist activity or laundering terrorist funds.

13 (c) REVIEW OF JOB CREATION METHODOLOGIES.—

14 Not later than 1 year after the date of the enactment of
15 this Act, the Secretary of Homeland Security, in consulta-
16 tion with the Bureau of Economic Analysis of the Depart-
17 ment of Commerce, or another component within the De-
18 partment of Commerce, as determined by the Secretary
19 of Commerce, shall publish regulations to determine eco-
20 nomically and statistically valid general economic meth-
21 odologies that are in compliance with section
22 203(b)(5)(A)(ii) of the Immigration and Nationality Act
23 (8 U.S.C. 1153(b)(5)(A)(ii)).

24 (d) REPORT.—

1 (1) IN GENERAL.—Not later than 3 years after
2 the date of the enactment of this Act, the Secretary
3 of Homeland Security, in coordination with the Sec-
4 retary of Commerce and after consultation with rel-
5 evant Federal agencies, shall submit a report to the
6 Committee on the Judiciary of the Senate and the
7 Committee on the Judiciary of the House of Rep-
8 resentatives that describes, with respect to the pro-
9 gram under section 203(b)(5) of the Immigration
10 and Nationality Act (8 U.S.C. 1153(b)(5))—

11 (A) the percentage of completed and pend-
12 ing capital investment projects and the number
13 of alien investors investing pursuant to such
14 program in the States, metropolitan and
15 micropolitan statistical areas, and counties in
16 which such projects occurred in each fiscal year,
17 within the scope of business plans filed pursu-
18 ant to section 203(b)(5)(I) of the Immigration
19 and Nationality Act (8 U.S.C. 1153(b)(5)(I)),
20 as added by this Act, both approved and await-
21 ing approval—

22 (i) in rural areas;

23 (ii) in rural areas where the median
24 family income is 125 percent or more than
25 the national average;

1 (iii) in priority urban investment
2 areas;

3 (iv) for infrastructure projects;

4 (v) for manufacturing projects; and

5 (vi) in areas that are not described in
6 any of the clauses (i) through (v);

7 (B) whether other Federal financial assist-
8 ance and tax incentive programs, such as eco-
9 nomic development programs administered by
10 the Department of Agriculture, the Department
11 of Housing and Urban Development, or the
12 Community Development Financial Institutions
13 Fund, are also used or available for use by
14 projects described in subparagraph (A);

15 (C)(i) what data is available to assess com-
16 muting patterns from high unemployment cen-
17 sus tracts to project locations;

18 (ii) whether the consideration of such com-
19 muting patterns may be an appropriate factor
20 for targeted employment area designations; and

21 (iii) whether such data can be used to as-
22 sess job creation in high unemployment census
23 tracts;

24 (D) whether market demands to approve
25 projects described in subparagraph (A) exceed

1 the number of visas allowed under section
2 203(b)(5) of the Immigration and Nationality
3 Act (8 U.S.C. 1153(b)(5));

4 (E) whether other metrics or Federal data
5 sets are available that capture underserved or
6 undercapitalized communities that may provide
7 an appropriate factor for targeted employment
8 area designations; and

9 (F) what data is available to assess the
10 percentage of jobs created through the investor
11 visa program that are held by persons who re-
12 side in census tracts that have an unemploy-
13 ment rate of at least 150 percent of the na-
14 tional average.

15 (2) PUBLIC INPUT.—Not later than 60 days be-
16 fore the submission of the report required under
17 paragraph (1), the Secretary of Homeland Security
18 shall provide the public with notice and an oppor-
19 tunity to comment on the draft report.

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