

114TH CONGRESS  
1ST SESSION

# S. 2415

To implement integrity measures to strengthen the EB–5 Regional Center Program in order to promote and reform foreign capital investment and job creation in American communities.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2015

Mr. FLAKE (for himself, Mr. CORNYN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To implement integrity measures to strengthen the EB–5 Regional Center Program in order to promote and reform foreign capital investment and job creation in American communities.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “EB–5 Integrity Act  
5       of 2015”.

1 **SEC. 2. REFORM OF THE REGIONAL CENTER PROGRAM.**

2 (a) INTEGRITY REFORMS.—Section 203(b)(5) of the  
3 Immigration and Nationality Act (8 U.S.C. 1153(b)(5))  
4 is amended by adding at the end the following:

5 “(E) REGIONAL CENTER PROGRAM.—

6 “(i) PROCESSING.—In processing peti-  
7 tions under section 204(a)(1)(H) for clas-  
8 sification under this paragraph, the Sec-  
9 retary of Homeland Security—

10 “(I) may process petitions in a  
11 manner and order established by the  
12 Secretary; and

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

20 “(ii) ESTABLISHMENT OF A REGIONAL  
21 CENTER.—A regional center shall operate  
22 within a defined and limited geographic  
23 area, which shall be described in the pro-  
24 posal and be consistent with the purpose of  
25 concentrating pooled investment within

1 such area. The proposal to establish a re-  
2 gional center shall—

3 “(I) demonstrate that the pooled  
4 investment will have a significant eco-  
5 nomic impact on such geographic  
6 area;

7 “(II) include reasonable pre-  
8 dictions, supported by economically  
9 and statistically valid forecasting  
10 tools, concerning—

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

13 “(bb) the kinds of commer-  
14 cial enterprises that will receive  
15 such investments;

16 “(cc) the details of the jobs  
17 that will be created directly or in-  
18 directly as a result of such in-  
19 vestments; and

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

23 “(III) include a description of the  
24 policies and procedures in place rea-  
25 sonably designed to monitor new com-

1           merchial enterprises and any affiliated  
2           job-creating entity to ensure compli-  
3           ance with—

4                   “(aa) all applicable laws,  
5                   regulations, and executive orders  
6                   of the United States, including  
7                   immigration laws (as defined in  
8                   section 101(a)(17)) and securi-  
9                   ties 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           “(iii) COMPLIANCE.—

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

1           “(aa) jobs estimated to have  
2           been created directly, which may  
3           be verified using such methodolo-  
4           gies, provided that the Secretary  
5           may request additional evidence  
6           to verify that the directly created  
7           jobs satisfy the requirements  
8           under subparagraph (A)(ii); and

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

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

20           “(aa) RELOCATED JOBS.—  
21          In determining compliance with  
22          the job creation requirement  
23          under subparagraph (A)(ii), the  
24          Secretary may include jobs esti-  
25          mated to be created under a

1 methodology that attributes jobs  
2 to prospective tenants occupying  
3 commercial real estate created or  
4 improved by capital investments  
5 if the number of such jobs esti-  
6 mated to be created has been de-  
7 termined by an economically and  
8 statistically valid methodology  
9 and such jobs are not existing  
10 jobs that have been relocated.

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

21 “(iv) AMENDMENTS.—The Secretary  
22 of Homeland Security shall—

23 “(I) require regional centers to  
24 give advance notice to, and obtain ap-  
25 proval from, the Secretary of signifi-

1 cant proposed changes to their organi-  
2 zational structure, ownership, or ad-  
3 ministration, including the sale of  
4 such centers or other arrangements in  
5 which individuals not previously sub-  
6 ject to the requirements under sub-  
7 paragraph (H) become involved with  
8 the regional center, before any such  
9 proposed changes may take effect un-  
10 less exigent circumstances are present  
11 in which case the regional center shall  
12 provide notice to the Secretary within  
13 5 business days of such change;

14 “(II) approve the changes re-  
15 ferred to in subclause (I) after—

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

22 “(bb) the Secretary deter-  
23 mines that the regional center  
24 would remain compliant with this

1                   subparagraph and subparagraph  
2                   (H); and

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

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

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

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



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

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

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

1           “(aa) any investment risks  
2 associated with the new commer-  
3 cial enterprise and the job-cre-  
4 ating entity;

5           “(bb) any conflicts of inter-  
6 est that currently exist or may  
7 arise among the regional center,  
8 new commercial enterprise, job-  
9 creating entity, or the principals  
10 or attorneys of the aforemen-  
11 tioned entities;

12           “(cc) any pending material  
13 litigation or bankruptcy, or ad-  
14 verse judgments or bankruptcy  
15 orders issued during the most re-  
16 cent 10-year period, in the  
17 United States or abroad, affect-  
18 ing the regional center, new com-  
19 mercial enterprise, any affiliated  
20 job-creating entity, or any other  
21 enterprise in which any principal  
22 of the aforementioned entities  
23 held majority ownership at the  
24 time; and

1           “(dd)(AA) any fees, ongoing  
2 interest, or other compensation  
3 paid or to be paid by regional  
4 center or new commercial enter-  
5 prise to agents, finders, or broker  
6 dealers involved in the offering;

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, including those re-  
16 lated to internal and external due dili-  
17 gence, reasonably designed to cause  
18 the regional center, new commercial  
19 enterprise, and any affiliated job-cre-  
20 ating entity, their agents, employees,  
21 advisors, and attorneys, and any per-  
22 sons in active concert or participation  
23 with the regional center, new commer-  
24 cial enterprise, or any affiliated job-  
25 creating entity 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 its securities; and

5 “(VI) a certification from each of  
6 the regional centers and any issuer of  
7 securities under common control with  
8 the regional center that their respec-  
9 tive employees and any parties associ-  
10 ated with each of the regional centers  
11 and the issuer of securities under  
12 common control with any of the re-  
13 gional centers are in compliance with  
14 the securities laws of the United  
15 States and the laws of the applicable  
16 States in connection with the offer,  
17 purchase, or sale of its securities, to  
18 the best of the certifier’s knowledge,  
19 after a due diligence investigation.

20 “(ii) EFFECT OF APPROVAL OF A  
21 BUSINESS PLAN FOR AN INVESTMENT IN A  
22 REGIONAL CENTER’S COMMERCIAL ENTER-  
23 PRISE.—The approval of an application  
24 under this subparagraph shall be binding  
25 for purposes of the adjudication of subse-

1           quent petitions seeking classification under  
2           this paragraph by immigrants investing in  
3           the same capital investment project  
4           through a new commercial enterprise, and  
5           of petitions by the same immigrants filed  
6           under section 216A, except in the case of  
7           fraud, misrepresentation, criminal misuse,  
8           a threat to public safety or national secu-  
9           rity, a material change that affects the  
10          program eligibility of the approved eco-  
11          nomic model, other evidence affecting pro-  
12          gram eligibility that was not disclosed by  
13          the applicant during the adjudication pro-  
14          cess, or a material mistake of law or fact in  
15          the prior adjudication.

16                 “(iii) SITE VISITS.—The Secretary  
17                 shall—

18                         “(I) perform site visits to re-  
19                         gional centers; and

20                         “(II) perform at least 1 site visit  
21                         to each new commercial enterprise or  
22                         affiliated job-creating entity, which—

23                                 “(aa) shall include a review  
24                                 for evidence of direct job creation

1 in accordance with subparagraph  
2 (E)(v)(I); and

3 “(bb) may occur at any time  
4 during the period between the fil-  
5 ing of an application for approval  
6 of an investment in a commercial  
7 enterprise under this subpara-  
8 graph and the adjudication of the  
9 first petition for removal of con-  
10 ditions on lawful permanent resi-  
11 dent status under section  
12 216A(c) filed by an alien invest-  
13 ing in such investment if the re-  
14 gional center, new commercial  
15 enterprise, or affiliated job-cre-  
16 ating entity, as applicable, is pro-  
17 vided with notice in accordance  
18 with section 274A.

19 “(G) REGIONAL CENTER ANNUAL STATE-  
20 MENTS.—

21 “(i) IN GENERAL.—Each regional cen-  
22 ter designated under subparagraph (E)  
23 shall annually submit a statement to the  
24 Director of U.S. Citizenship and Immigra-  
25 tion Services (referred to in this subpara-

1 graph as the ‘Director’), in a manner pre-  
2 scribed by the Secretary of Homeland Se-  
3 curity, which shall include—

4 “(I) a certification stating that,  
5 to the best of the certifier’s knowl-  
6 edge, after a due diligence investiga-  
7 tion, the regional center, the new com-  
8 mercial enterprise, and any affiliated  
9 job-creating entity is in compliance  
10 with clauses (i) and (ii) of subpara-  
11 graph (H);

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

14 “(III) a certification stating that,  
15 to the best of the certifier’s knowl-  
16 edge, after a due diligence investiga-  
17 tion, the regional center is in compli-  
18 ance with subparagraph (K)(iii);

19 “(IV) a description of any pend-  
20 ing material litigation or bankruptcy  
21 proceedings, or litigation or bank-  
22 ruptcy proceedings resolved during the  
23 preceding fiscal year, involving the re-  
24 gional center, new commercial enter-

1           prise, or any affiliated job-creating en-  
2           tity;

3           “(V) an accounting of all foreign  
4           investor capital invested in the re-  
5           gional center, new commercial enter-  
6           prise, or affiliated job-creating entity;

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

10           “(aa) an accounting of the  
11           aggregate capital invested in the  
12           new commercial enterprise and  
13           job-creating entity by alien inves-  
14           tors under this paragraph for  
15           each capital investment project  
16           being undertaken by the new  
17           commercial enterprise;

18           “(bb) a description of how  
19           the capital described in item (aa)  
20           is being used to execute each  
21           capital investment project in the  
22           filed business plan or plans;

23           “(cc) evidence that 100 per-  
24           cent of the capital described in



1 item (aa) has been committed to  
2 each capital investment project;  
3 “(dd) detailed evidence of  
4 the progress made toward the  
5 completion of each capital invest-  
6 ment project;  
7 “(ee) an accounting of the  
8 aggregate direct jobs created or  
9 preserved;  
10 “(ff) to the best of the re-  
11 gional center’s knowledge, for all  
12 fees, including administrative  
13 fees, loan monitoring fees, loan  
14 management fees, commissions  
15 and similar transaction-based  
16 compensation, collected from  
17 alien investors by the regional  
18 center, new commercial enter-  
19 prise, any affiliated job-creating  
20 entity or issuer of securities  
21 under common control with the  
22 regional center, or any promoter,  
23 finder, broker-dealer or other en-  
24 tity engaged by any of the fore-

1 going to locate individual inves-  
2 tors—

3 “(AA) a description of  
4 all fees collected;

5 “(BB) an accounting of  
6 the entities that received  
7 such fees; and

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

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

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

21 “(VII) a description of the re-  
22 gional center’s policies and procedures  
23 that are designed to enable the re-  
24 gional center to comply with applica-  
25 ble Federal labor laws.

1                   “(ii) AMENDMENT OF ANNUAL STATE-  
2                   MENTS.—The Director—

3                   “(I) shall require the regional  
4                   center to amend or supplement an an-  
5                   nual statement required under clause  
6                   (i) if the Director determines that  
7                   such statement is deficient; and

8                   “(II) may require the regional  
9                   center to amend or supplement such  
10                  annual statement if the Director de-  
11                  termines that such an amendment or  
12                  supplement is appropriate.

13                  “(iii) SANCTIONS.—

14                  “(I) EFFECT OF VIOLATION.—  
15                  The Director shall sanction any re-  
16                  gional center in accordance with sub-  
17                  clause (II) if the regional center fails  
18                  to submit an annual statement or if  
19                  the Director determines that the re-  
20                  gional center—

21                  “(aa) knowingly submitted  
22                  or caused to be submitted a  
23                  statement, certification, or any  
24                  information submitted under this  
25                  subparagraph, that contained an

1 untrue statement of material  
2 fact; or

3 “(bb) is conducting itself in  
4 a manner inconsistent with its  
5 designation, including any willful,  
6 undisclosed, and material devi-  
7 ation by new commercial enter-  
8 prises from any filed business  
9 plan for such commercial enter-  
10 prises.

11 “(II) AUTHORIZED SANCTIONS.—  
12 The Director shall establish a grad-  
13 uated set of sanctions based on the  
14 severity of the violations referred to in  
15 subclause (I), including—

16 “(aa) fines equal to not  
17 more than 10 percent of the total  
18 capital invested by alien investors  
19 in the regional center’s new com-  
20 mercial enterprises or job-cre-  
21 ating entities, which—

22 “(AA) may not be paid  
23 from any of such alien inves-  
24 tor’s capital investments;  
25 and

1                   “(BB) shall be depos-  
2                   ited into the EB–5 Integrity  
3                   Fund established under sub-  
4                   paragraph (J);

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

13                  “(cc) permanent bar from  
14                  program participation for 1 or  
15                  more individuals associated with  
16                  the regional center or new com-  
17                  mercial enterprise or job-creating  
18                  entity; and

19                  “(dd) termination of re-  
20                  gional center designation.

21                  “(H) BONA FIDES OF PERSONS INVOLVED  
22                  WITH REGIONAL CENTER PROGRAM.—

23                  “(i) IN GENERAL.—A person may not  
24                  be permitted to be involved with any re-

1 gional center, new commercial enterprise,  
2 or job-creating entity if—

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

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

8 “(bb) a civil violation involv-  
9 ing fraud or deceit that resulted  
10 in a liability in excess of  
11 \$1,000,000; or

12 “(cc) a crime for which the  
13 person was convicted and was  
14 sentenced to a term of imprison-  
15 ment of more than 1 year;

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

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

12 “(aa) prohibits fraudulent,  
13 manipulative, or deceptive con-  
14 duct; or

15 “(bb) bars the person  
16 from—

17 “(AA) association with  
18 an entity regulated by such  
19 commission, authority, agen-  
20 cy, or officer;

21 “(BB) appearing before  
22 such commission, authority,  
23 agency, or officer;

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

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

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

10                   “(aa) any illicit trafficking  
11                   in any controlled substance or in  
12                   any listed chemical (as defined in  
13                   section 102 of the Controlled  
14                   Substances Act (21 U.S.C. 802));

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

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

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



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

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

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

12          “(IV) the person—

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

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

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

3                   “(I) LAWFUL STATUS RE-  
4 QUIRED.—A person may not be in-  
5 volved with a regional center unless  
6 the person is a national of the United  
7 States or an individual who has been  
8 lawfully admitted for permanent resi-  
9 dence (as such terms are defined in  
10 paragraphs (20) and (22) of section  
11 101(a)).

12                   “(II) FOREIGN GOVERNMENTS.—  
13 A foreign government entity may not  
14 provide capital to, or be directly or in-  
15 directly involved with the ownership or  
16 administration of, a regional center.

17                   “(III) RULEMAKING.—Not later  
18 than 180 days after the date of the  
19 enactment of this Act, the Secretary,  
20 in consultation with the Secretary of  
21 the Treasury and the Secretary of  
22 Commerce, shall issue regulations im-  
23 plementing subparagraphs (I) and  
24 (II).

1           “(iii) INFORMATION REQUIRED.—The  
2           Secretary of Homeland Security shall re-  
3           quire such attestations and information,  
4           including the submission of fingerprints or  
5           other biometrics to the Federal Bureau of  
6           Investigation, and shall perform such  
7           criminal record checks and other back-  
8           ground and database checks with respect  
9           to a regional center, new commercial enter-  
10          prise, and any affiliated job-creating entity,  
11          and persons involved with such entities (as  
12          described in clause (v)), to determine  
13          whether such entities are in compliance  
14          with clauses (i) and (ii). The Secretary  
15          may require the information and attesta-  
16          tions described in this clause from the enti-  
17          ties described in this clause and any person  
18          involved with such entities, at any time on  
19          or after the date of the enactment of the  
20          EB–5 Integrity Act of 2015.

21          “(iv) TERMINATION.—

22                 “(I) IN GENERAL.—The Sec-  
23                 retary shall suspend or terminate the  
24                 designation of any regional center, or  
25                 the participation under the program

1 of any new commercial enterprise or  
2 job-creating entity under this para-  
3 graph if the Secretary determines that  
4 such entity—

5 “(aa) knowingly involved a  
6 person with such entity in viola-  
7 tion of clause (i) or (ii);

8 “(bb) failed to provide an  
9 attestation or information re-  
10 quested by the Secretary; or

11 “(cc) knowingly provided  
12 any false attestation or informa-  
13 tion under clause (iii).

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

1 person's involvement with such entity  
2 within 30 days after receiving a notifi-  
3 cation under this subclause, the re-  
4 gional center, new commercial enter-  
5 prise, or job-creating entity shall be  
6 deemed to have knowledge under sub-  
7 clause (I)(aa) that such person is in  
8 violation of clause (i) or (ii).

9 “(v) PERSONS INVOLVED WITH A RE-  
10 GIONAL CENTER, NEW COMMERCIAL EN-  
11 TERPRISE, OR JOB-CREATING ENTITY.—In  
12 this paragraph, a person is involved with a  
13 regional center, a new commercial enter-  
14 prise, any affiliated job-creating entity, or  
15 other job-creating entity, as applicable, if  
16 the person is in a position of substantive  
17 authority to make operational or manage-  
18 rial decisions over any pooling,  
19 securitization, investment, release, accept-  
20 ance, or control of any funding that was  
21 procured under the EB-5 Regional Center  
22 Program. A person may be in a position of  
23 substantive authority if the person serves  
24 as the principal, representative, adminis-  
25 trator, owner, officer, board member, man-

1           ager, executive, or general partner of the  
 2           regional center, new commercial enterprise,  
 3           any affiliated job-creating entity, or other  
 4           job-creating entity, respectively.

5           “(I) COMPLIANCE WITH SECURITIES  
 6           LAWS.—

7                   “(i) JURISDICTION.—

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

15                           “(II) COMPLIANCE WITH REGU-  
 16                           LATION S.—For purposes of section 5  
 17                           of the Securities Act of 1933 (15  
 18                           U.S.C. 77e), a regional center or any  
 19                           party associated with a regional cen-  
 20                           ter is not precluded from offering or  
 21                           selling a security pursuant to Regula-  
 22                           tion S (17 C.F.R. 230.901 et seq.) to  
 23                           the extent that such offering or selling  
 24                           otherwise complies with such regula-  
 25                           tion. Subparagraph (I) is not intended

1 to modify any existing regulations or  
2 interpretations of the Securities and  
3 Exchange Commission related to the  
4 application of section 15(a) of the Se-  
5 curities Exchange Act of 1934 (15  
6 U.S.C. 78o(a)) to foreign broker deal-  
7 ers.

8 “(ii) REGIONAL CENTER CERTIFI-  
9 CATIONS REQUIRED.—

10 “(I) INITIAL CERTIFICATION.—

11 The Secretary of Homeland Security  
12 may not approve an application for re-  
13 gional center designation or regional  
14 center amendment unless the regional  
15 center certifies that, to the best of the  
16 certifier’s knowledge, after a due dili-  
17 gence investigation, the regional cen-  
18 ter is in compliance with and has poli-  
19 cies and procedures, including those  
20 related to internal and external due  
21 diligence, reasonably designed to con-  
22 firm, as applicable, that all parties as-  
23 sociated with the regional center are  
24 and will remain in compliance with

1 the securities laws of the United  
2 States and of any State in which—

3 “(aa) the offer, purchase, or  
4 sale of securities was conducted;

5 “(bb) the issuer of securities  
6 was located; or

7 “(cc) the investment advice  
8 was provided by the regional cen-  
9 ter or parties associated with the  
10 regional center.

11 “(II) REISSUE.—A regional cen-  
12 ter shall annually reissue a certifi-  
13 cation described in subclause (I), in  
14 accordance with subparagraph (G), to  
15 certify compliance with clause (iii) by  
16 stating that—

17 “(aa) the certifier is in a po-  
18 sition to have knowledge of the  
19 offers, purchases, and sales of se-  
20 curities or the provision of invest-  
21 ment advice by parties associated  
22 with the regional center;

23 “(bb) to the best of the cer-  
24 tifier’s knowledge, after a due  
25 diligence investigation, all such



1 offers, purchases, and sales of se-  
2 curities or the provision of invest-  
3 ment advice complied with the se-  
4 curities laws of the United States  
5 and the securities laws of any  
6 State in which the offer, pur-  
7 chase, or sale of securities was  
8 conducted, the issuer of securities  
9 was located, or the investment  
10 advice was provided; and

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

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

1 party associated with the regional cen-  
2 ter, the certifier shall—

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

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

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

15 “(iii) OVERSIGHT REQUIRED.—Each  
16 regional center shall—

17 “(I) monitor and supervise all of-  
18 fers, purchases, and sales of, and in-  
19 vestment advice relating to securities  
20 made by parties associated with the  
21 regional center to confirm compliance  
22 with the securities laws of the United  
23 States;

24 “(II) maintain records, data, and  
25 information relating to all such offers,

1 purchases, sales, and investment ad-  
2 vice during the 5-year period begin-  
3 ning on the date of their creation; and

4 “(III) make the records, data,  
5 and information described in sub-  
6 clause (II) available to the Secretary  
7 upon request.

8 “(iv) SUSPENSION OR TERMI-  
9 NATION.—In addition to any other author-  
10 ity provided to the Secretary under this  
11 paragraph, the Secretary may suspend or  
12 terminate the designation of any regional  
13 center or impose other sanctions against  
14 the regional center if the regional center,  
15 or any parties associated with the regional  
16 center that the regional center knew or  
17 reasonably should have known—

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

24 “(II) are subject to any final  
25 order of the Securities and Exchange

1 Commission or a State securities reg-  
2 ulator that—

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

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

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

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

4                   “(I) the regional center;

5                   “(II) any new commercial enter-  
6 prise or affiliated job-creating entity  
7 or issuer of securities under common  
8 control with the regional center; and

9                   “(III) the regional center’s and  
10 new commercial enterprise’s principal  
11 owners, officers, directors, managers  
12 and any person vested with the power  
13 to legally bind the regional center or  
14 new commercial enterprise.

15           “(vi) SAVINGS PROVISION.—Nothing  
16 in this subparagraph may be construed to  
17 impair or limit the authority of the Securi-  
18 ties and Exchange Commission under the  
19 Federal securities laws or any State securi-  
20 ties regulator under State securities laws.

21           “(J) EB–5 INTEGRITY FUND.—

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

1           subparagraph as the ‘Fund’). Amounts de-  
2           posited into the Fund shall be available to  
3           the Secretary of Homeland Security until  
4           expended for the purposes set forth in  
5           clause (iii).

6           “(ii) FEES.—

7                   “(I) ANNUAL FEE.—On April 1,  
8                   2016, and on January 1 of each year  
9                   thereafter, the Secretary of Homeland  
10                  Security shall—

11                           “(aa) except as provided in  
12                           item (bb), collect a fee of  
13                           \$20,000 from each regional cen-  
14                           ter designated under subpara-  
15                           graph (E);

16                           “(bb) collect a fee of  
17                           \$10,000 from each regional cen-  
18                           ter designated under subpara-  
19                           graph (E) that has 20 or fewer  
20                           total investors in the preceding  
21                           fiscal year in its new commercial  
22                           enterprises; and

23                           “(cc) deposit the fees col-  
24                           lected pursuant to items (aa) and  
25                           (bb) into the Fund.

1           “(II) PETITION FEE.—Beginning  
2           on April 1, 2016, the Secretary shall  
3           collect a fee of \$1,000 with each peti-  
4           tion filed under section 204(a)(1)(H)  
5           for classification under subparagraph  
6           (E) and deposit each fee collected  
7           under this subclause into the Fund.

8           “(III) INCREASES.—The Sec-  
9           retary may prescribe such regulations  
10          as may be necessary to increase the  
11          dollar amounts under this clause to  
12          ensure that the Fund is sufficient to  
13          carry out the purposes set forth 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 the compli-  
5                   ance of alien investors with sub-  
6                   paragraph (L);

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) comply with the immi-  
17                  gration 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) use amounts deposited into  
2           the Fund as the Secretary determines  
3           to be necessary, including to monitor  
4           compliance with the requirements  
5           under section 3 of the EB–5 Integrity  
6           Act of 2015.

7           “(iv) FAILURE TO PAY FEE.—The  
8           Secretary shall—

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

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

20           “(v) REPORT.—The Secretary shall  
21           submit an annual report to the Committee  
22           on the Judiciary of the Senate and the  
23           Committee on the Judiciary of the House  
24           of Representatives that describes how

1 amounts in the Fund were expended dur-  
2 ing the previous fiscal year.

3 “(K) DIRECT AND THIRD-PARTY PRO-  
4 MOTERS.—

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

15 “(I) registration with U.S. Citi-  
16 zenship and Immigration Services,  
17 which—

18 “(aa) may be limited to  
19 identifying and contact informa-  
20 tion of such promoter and con-  
21 firmation of the existence of the  
22 written agreement required under  
23 clause (iii);

24 “(bb) may not include any  
25 requirement that U.S. Citizen-

1 ship and Immigration Services  
2 approve the registration of such  
3 promoter; and

4 “(cc) may permit the list of  
5 such registered promoters to be  
6 made publicly available;

7 “(II) certification by each pro-  
8 moter that such promoter is not ineli-  
9 gible under subparagraph (H)(i);

10 “(III) guidelines for representing  
11 the visa process to foreign investors;  
12 and

13 “(IV) permissible fee arrange-  
14 ments, if applicable.

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

22 “(iii) COMPLIANCE.—Each regional  
23 center shall maintain a written agreement  
24 between the regional center, the new com-  
25 mercial enterprise, any affiliated job-cre-

1           ating entity, or any issuer of securities  
2           under common control with the regional  
3           center, and each direct or third-party pro-  
4           moter operating on behalf of such entities  
5           or issuer that outlines the rules and stand-  
6           ards prescribed under clause (i).

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

20          “(L) SOURCE OF FUNDS.—

21          “(i) IN GENERAL.—An alien investor  
22          shall demonstrate that the capital required  
23          under subparagraph (A) and any amounts  
24          used to pay administrative costs and fees  
25          associated with the alien’s investment were

1           obtained from a lawful source and through  
2           lawful means.

3           “(ii) REQUIRED INFORMATION.—The  
4           Secretary of Homeland Security shall re-  
5           quire that an alien investor’s petition  
6           under this paragraph contain, as applica-  
7           ble—

8                   “(I) business and tax records, in-  
9                   cluding—

10                           “(aa) foreign business reg-  
11                           istration records, if applicable;

12                           “(bb) corporate or partner-  
13                           ship tax returns (or tax returns  
14                           of any other entity in any form  
15                           filed in any country or subdivi-  
16                           sion of such country), and per-  
17                           sonal tax returns including in-  
18                           come, franchise, property (wheth-  
19                           er real, personal, or intangible),  
20                           or any other tax returns of any  
21                           kind, filed during the past 7  
22                           years, or another period to be de-  
23                           termined by the Secretary to en-  
24                           sure that the investment is ob-  
25                           tained from a lawful source of

1 funds, with any taxing jurisdic-  
2 tion in or outside the United  
3 States by or on behalf of the  
4 alien investor, if applicable; and

5 “(cc) evidence identifying  
6 any other source of capital or ad-  
7 ministrative fees;

8 “(II) evidence related to mone-  
9 tary judgments against the alien in-  
10 vestor, including certified copies of  
11 any judgments, and evidence of all  
12 pending governmental civil or criminal  
13 actions, governmental administrative  
14 proceedings, and any private civil ac-  
15 tions involving possible monetary  
16 judgments against the alien investor  
17 from any court in or outside the  
18 United States; and

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

22 “(aa) any funds that are  
23 used to meet the capital require-  
24 ment under subparagraph (A);  
25 and

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

5                   “(iii) GIFT RESTRICTIONS.—Gifted  
6                   funds may be counted toward the min-  
7                   imum capital investment requirement  
8                   under subparagraph (C) only if such funds  
9                   were gifted to the alien investor in good  
10                  faith and not to circumvent any limitations  
11                  imposed on permissible sources of capital  
12                  under this subparagraph. If a significant  
13                  portion of the capital invested under sub-  
14                  paragraph (A) was gifted to the alien in-  
15                  vestor, the Secretary shall require the alien  
16                  investor’s petition under this paragraph to  
17                  include records described in subclauses (I)  
18                  and (II) of clause (ii) from the donor.

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

21                  “(i) IN GENERAL.—Upon the termi-  
22                  nation or debarment, as applicable, from  
23                  the program under this paragraph of a re-  
24                  gional center, new commercial enterprise,

1 or job-creating entity under this para-  
2 graph—

3 “(I) except as provided in sub-  
4 clause (II), an otherwise qualified ap-  
5 proved petition under section  
6 204(a)(1)(H) or the conditional per-  
7 manent residence of an alien who has  
8 been admitted to the United States  
9 pursuant to section 216A(a)(1) based  
10 on an investment in a terminated re-  
11 gional center, new commercial enter-  
12 prise, or job-creating entity shall re-  
13 main valid or continue to be author-  
14 ized, as applicable, consistent with  
15 this subparagraph; and

16 “(II) if the Secretary has reason  
17 to believe the alien was a knowing  
18 participant in the conduct that led to  
19 the termination of such regional cen-  
20 ter, new commercial enterprise, or  
21 job-creating entity, the Secretary shall  
22 notify the alien of such belief and,  
23 subject to section 216A(b)(2), shall  
24 terminate the permanent resident sta-  
25 tus of the alien (and the alien’s



1 spouse and child) as of the date of  
2 such determination.

3 “(ii) NEW REGIONAL CENTER OR IN-  
4 VESTMENT.—The petition under section  
5 204(a)(1)(H) of an alien described in  
6 clause (i)(I) shall be denied or revoked or  
7 the conditional permanent resident status  
8 of an alien described in clause (i)(I) shall  
9 be terminated 180 days after the termi-  
10 nation from the program under this para-  
11 graph of a regional center, a new commer-  
12 cial enterprise, or a job creating entity un-  
13 less—

14 “(I) in the case of the termi-  
15 nation of a regional center—

16 “(aa) the new commercial  
17 enterprise associates with an ap-  
18 proved regional center, regardless  
19 of the geography of its designa-  
20 tion;

21 “(bb) the alien makes a  
22 qualifying investment in another  
23 commercial enterprise associated  
24 with an approved regional center;  
25 or

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

6                   “(II) in the case of the debar-  
7                   ment of a new commercial enterprise  
8                   or job-creating entity, the alien invests  
9                   in another commercial enterprise asso-  
10                  ciated with an approved regional cen-  
11                  ter.

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

19                  “(N) THREATS TO THE NATIONAL INTER-  
20                  EST.—

21                  “(i) DENIAL OR REVOCATION.—The  
22                  Secretary of Homeland Security shall deny  
23                  or revoke the approval of a petition, appli-  
24                  cation, or benefit described in this para-  
25                  graph, including the documents described

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

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

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

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

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

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

20 “(iii) DEBARMENT.—If a regional  
21 center, new commercial enterprise, or job-  
22 creating entity has its designation or par-  
23 ticipation in the program under this para-  
24 graph terminated for reasons relating to  
25 public safety or national security, any per-

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

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

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

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

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

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

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

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

17          “(iii) NOTICE.—If the Secretary de-  
18          termines that the approval of a petition,  
19          application, or benefit described in this  
20          paragraph should be denied or revoked  
21          pursuant to clause (i), the Secretary  
22          shall—

23                  “(I) notify the relevant indi-  
24                  vidual, regional center, or commercial  
25                  entity of such determination; and

1                   “(II) deny or revoke such peti-  
2                   tion, application, or benefit or termi-  
3                   nate the permanent resident status of  
4                   the alien (and the alien spouse and  
5                   alien children of such immigrant) as  
6                   of the date of such determination.

7                   “(P) ADMINISTRATIVE APPELLATE RE-  
8                   VIEW.—

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

17                         “(I) an application for regional  
18                         center designation or regional center  
19                         amendment;

20                         “(II) an application for approval  
21                         of a business plan under subpara-  
22                         graph (F);

23                         “(III) a petition by an alien in-  
24                         vestor for status as an immigrant  
25                         under this paragraph;

1                   “(IV) the termination or suspen-  
2                   sion of any benefit accorded under  
3                   this paragraph; and

4                   “(V) any sanction imposed by the  
5                   Secretary of Homeland Security under  
6                   this paragraph.

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

18                  (b) EFFECTIVE DATES.—

19                   (1) IN GENERAL.—Except as otherwise pro-  
20                   vided in this section, this section, and the amend-  
21                   ments made by this section, shall take effect on the  
22                   date that is 90 days after the date of the enactment  
23                   of this Act.

24                   (2) EXCEPTIONS.—Clause (iv) of subparagraph  
25                   (E) and subparagraph (L) of section 203(b)(5) of



1 the Immigration and Nationality Act (8 U.S.C.  
2 1153(b)(5)) shall not apply to a petition that—

3 (A) was filed by an alien investor under  
4 such section 203(b)(5) before the date of the  
5 enactment of this Act; or

6 (B) is filed under section 216A of such Act  
7 (8 U.S.C. 1186b) if the underlying petition filed  
8 under section 203(b)(5) of such Act was filed  
9 before the date of the enactment of this Act.

10 (c) GAO REPORT.—Not later than December 31,  
11 2018, 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 U.S. Citi-  
19 zenship and Immigration Services to verify job cre-  
20 ation;

21 (2) the extent to which U.S. Citizenship and  
22 Immigration Services ensures compliance by regional  
23 center participants with their obligations under the  
24 immigrant investor program;

1           (3) the extent to which U.S. Citizenship and  
2 Immigration Services has maintained records of re-  
3 gional centers and associated commercial enter-  
4 prises, including annual statements and certifi-  
5 cations;

6           (4) the steps taken by U.S. Citizenship and Im-  
7 migration Services to verify the source of funds, as  
8 required under section 203(b)(5)(L) of the Immigra-  
9 tion and Nationality Act, as added by subsection (a);

10          (5) the extent to which U.S. Citizenship and  
11 Immigration Services collaborates with other Federal  
12 and law enforcement agencies, particularly to detect  
13 illegal activity and threats to national security re-  
14 lated to the regional center program;

15          (6) the extent to which U.S. Citizenship and  
16 Immigration Services has prevented fraud and abuse  
17 in regional center activities, including the designa-  
18 tion of targeted employment areas in areas that oth-  
19 erwise have high employment;

20          (7) the extent to which U.S. Citizenship and  
21 Immigration Services has used its authority to sanc-  
22 tion, suspend, bar, or terminate regional centers or  
23 individuals affiliated with regional centers;

24          (8) the steps taken to oversee direct and third-  
25 party promoters under section 203(b)(5)(K) of the

1 Immigration and Nationality Act, as added by sub-  
2 section (a);

3 (9) the extent to which employees of the De-  
4 partment of Homeland Security have complied with  
5 the ethical standards and transparency requirements  
6 set forth in section 3; and

7 (10) the amounts expended from the EB-5 In-  
8 tegrity Fund established under section 203(b)(5)(J)  
9 of the Immigration and Nationality Act, as added by  
10 subsection (a).

11 (d) INSPECTOR GENERAL REPORT.—Not later than  
12 December 31, 2018, the Inspector General of the Intel-  
13 ligence Community, in coordination with the Inspector  
14 General of the Department of Homeland Security and  
15 after consultation with relevant Federal agencies, includ-  
16 ing U.S. Immigration and Customs Enforcement, shall  
17 submit a report to the Committee on the Judiciary of the  
18 Senate and the Committee on the Judiciary of the House  
19 of Representatives regarding the immigrant visa program  
20 set forth in section 203(b)(5) of the Immigration and Na-  
21 tionality Act (8 U.S.C. 1153(b)(5)) that describes—

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

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

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

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

7           (5) the actual or potential use of the program  
8           to facilitate terrorist activity, including funding ter-  
9           rorist activity or laundering terrorist funds.

10          (e) REVIEW OF JOB CREATION METHODOLOGIES.—

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

21          (f) TECHNICAL AMENDMENT.—Section  
22 203(b)(5)(C)(iii) of the Immigration and Nationality Act  
23 (8 U.S.C. 1153(b)(5)(C)(iii)) is amended by striking “At-  
24 torney General” and inserting “Secretary of Homeland  
25 Security”.

1 (g) DEFINITIONS.—

2 (1) IN GENERAL.—Section 203(b)(5)(D) of the  
3 Immigration and Nationality Act (8 U.S.C.  
4 1153(b)(5)(D)) is amended to read as follows:

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

6 “(i) AFFILIATED JOB-CREATING ENTI-  
7 TY.—The term ‘affiliated job-creating enti-  
8 ty’ means any job-creating entity that is  
9 controlled, managed, or owned by any of  
10 the persons involved with the regional cen-  
11 ter or new commercial enterprise under  
12 subparagraph (H)(v).

13 “(ii) CAPITAL.—The term ‘capital’—

14 “(I) means cash (including the  
15 cash proceeds of indebtedness) and all  
16 real, personal, or mixed tangible as-  
17 sets owned and controlled by the alien  
18 investor, or held in trust for the ben-  
19 efit of the alien and to which the alien  
20 has unrestricted access;

21 “(II) shall be valued at fair mar-  
22 ket value in United States dollars, in  
23 accordance with Generally Accepted  
24 Accounting Principles or other stand-  
25 ard accounting practice adopted by

1 the Securities and Exchange Commis-  
2 sion, at the time such capital is in-  
3 vested under this paragraph; and

4 “(III) shall not include assets ac-  
5 quired, directly or indirectly, by un-  
6 lawful means, including any cash pro-  
7 ceeds of indebtedness secured by such  
8 assets.

9 “(iii) CERTIFIER.—The term ‘cer-  
10 tifier’ means a person in a position of sub-  
11 stantive authority for the management or  
12 operations of a regional center, new com-  
13 mercial enterprise, affiliated job-creating  
14 entity, or issuer of securities under com-  
15 mon control with any of such entities, such  
16 as a principal executive officer or principal  
17 financial officer, with knowledge of such  
18 entities’ policies and procedures related to  
19 compliance with the requirements under  
20 this paragraph.

21 “(iv) FULL-TIME EMPLOYMENT.—The  
22 term ‘full-time employment’ means employ-  
23 ment in a position that requires at least 35  
24 hours of service per week at any time, re-  
25 gardless of who fills the position.

1           “(v) JOB-CREATING ENTITY.—The  
2 term ‘job-creating entity’ means any orga-  
3 nization that—

4                   “(I) is formed in the United  
5 States for the ongoing conduct of law-  
6 ful business, including a partnership  
7 (whether limited or general), corpora-  
8 tion, limited liability company, or  
9 other entity that receives, or is estab-  
10 lished to receive, capital investment  
11 from alien investors or a new commer-  
12 cial enterprise under the regional cen-  
13 ter program described in subpara-  
14 graph (E); and

15                   “(II) is responsible for creating  
16 jobs to satisfy the requirement under  
17 subparagraph (A)(ii).

18           “(vi) NEW COMMERCIAL ENTER-  
19 PRISE.—The term ‘new commercial enter-  
20 prise’ means any for-profit organization  
21 formed in the United States for the ongo-  
22 ing conduct of lawful business, including a  
23 partnership (whether limited or general),  
24 corporation, limited liability company, or  
25 other entity that receives, or is established

1           to receive, capital investment from inves-  
2           tors under this paragraph.”.

3           (2) EFFECTIVE DATES.—The amendments  
4           made by this subsection shall take effect on the date  
5           of the enactment of this Act.

6 **SEC. 3. TRANSPARENCY.**

7           (a) IN GENERAL.—Employees of the Department of  
8           Homeland Security, including the Secretary of Homeland  
9           Security, the Secretary’s counselors, the Assistant Sec-  
10          retary for the Private Sector, the Director of U.S. Citizen-  
11          ship and Immigration Services, counselors to such Direc-  
12          tor, and the Chief of Immigrant Investor Programs at  
13          U.S. Citizenship and Immigration Services, shall act im-  
14          partially and may not give preferential treatment to any  
15          entity, organization, or individual in connection with any  
16          aspect of the immigrant visa program described in section  
17          203(b)(5) of the Immigration and Nationality Act (8  
18          U.S.C. 1153(b)(5)).

19          (b) IMPROPER ACTIVITIES.—Activities that con-  
20          stitute preferential treatment under subsection (a) shall  
21          include—

22               (1) working on, or in any way attempting to in-  
23               fluence, in a manner not available to or accorded to  
24               all other petitioners, applicants, and seekers of bene-  
25               fits under the immigrant visa program described in



1 section 203(b)(5) of the Immigration and Nation-  
2 ality Act (8 U.S.C. 1153(b)(5)), the standard proc-  
3 essing of an application, petition, or benefit for—

4 (A) a regional center;

5 (B) a new commercial enterprise;

6 (C) a job-creating entity; or

7 (D) any person or entity associated with  
8 such regional center, new commercial enter-  
9 prise, or job-creating entity; and

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

16 (c) REPORTING OF COMMUNICATIONS.—

17 (1) WRITTEN COMMUNICATION.—Employees of  
18 the Department of Homeland Security, including the  
19 officials listed in subsection (a), shall include, in the  
20 record of proceeding for a case under section  
21 203(b)(5) of the Immigration and Nationality Act (8  
22 U.S.C. 1153(b)(5)), actual or electronic copies of all  
23 case-specific written communication, including e-  
24 mails from government and private accounts, with  
25 non-Department persons or entities advocating for

1 regional center applications or individual petitions  
2 under such section that are pending on or after the  
3 date of the enactment of this Act (other than rou-  
4 tine communications with other agencies of the Fed-  
5 eral Government regarding the case, including com-  
6 munications involving background checks and litiga-  
7 tion defense).

8 (2) ORAL COMMUNICATION.—If substantive oral  
9 communication, including telephonic communication,  
10 virtual communication, and in-person meetings,  
11 takes place between officials of the Department of  
12 Homeland Security and non-Department persons or  
13 entities advocating for regional center applications  
14 or individual petitions under section 203(b)(5) of the  
15 Immigration and Nationality Act (8 U.S.C.  
16 1153(b)(5)) that are pending on or after the date of  
17 the enactment of this Act (other than routine com-  
18 munications with other agencies of the Federal Gov-  
19 ernment regarding the case, including communica-  
20 tions involving background checks and litigation de-  
21 fense)—

22 (A) the conversation shall be recorded; or

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

25 (3) NOTIFICATION.—

1 (A) IN GENERAL.—If the Secretary of  
2 Homeland Security, in the course of written or  
3 oral communication described in this sub-  
4 section, receives evidence about a specific case  
5 from anyone other than an affected party or his  
6 or her representative (excluding Federal Gov-  
7 ernment or law enforcement sources), such in-  
8 formation may not be made part of the record  
9 of proceeding and may not be considered in ad-  
10 judicative proceedings unless—

11 (i) the affected party has been given  
12 notice of such evidence; and

13 (ii) if such evidence is derogatory, the  
14 affected party has been given an oppor-  
15 tunity to respond to the evidence.

16 (B) INFORMATION FROM LAW ENFORCE-  
17 MENT, INTELLIGENCE AGENCIES, OR CON-  
18 FIDENTIAL SOURCES.—

19 (i) LAW ENFORCEMENT OR INTEL-  
20 LIGENCE AGENCIES.—Evidence received  
21 from law enforcement or intelligence agen-  
22 cies may not be made part of the record of  
23 proceeding without the consent of the rel-  
24 evant agency or law enforcement entity.

1                   (ii) WHISTLEBLOWERS, CONFIDEN-  
2                   TIAL SOURCES, OR INTELLIGENCE AGEN-  
3                   CIES.—Evidence received from whistle-  
4                   blowers, other confidential sources, or the  
5                   intelligence community that is included in  
6                   the record of proceeding and considered in  
7                   adjudicative proceedings shall be handled  
8                   in a manner that does not reveal the iden-  
9                   tity of the whistleblower or confidential  
10                  source, or reveal classified information.

11               (d) CONSIDERATION OF EVIDENCE.—

12                   (1) IN GENERAL.—Case-specific communication  
13                   with persons or entities that are not part of the De-  
14                   partment of Homeland Security may not be consid-  
15                   ered in the adjudication of an application or petition  
16                   under section 203(b)(5) of the Immigration and Na-  
17                   tionality Act (8 U.S.C. 1153(b)(5)) unless the com-  
18                   munication is included in the record of proceeding of  
19                   the case.

20                   (2) WAIVER.—The Secretary of Homeland Se-  
21                   curity may waive the application of paragraph (1)  
22                   only in the interests of national security or for inves-  
23                   tigative or law enforcement purposes.

24               (e) CHANNELS OF COMMUNICATION.—

1           (1) E-MAIL ADDRESS OR EQUIVALENT.—The  
2 Director of U.S. Citizenship and Immigration Serv-  
3 ices shall maintain an e-mail account (or equivalent  
4 means of communication) for persons or entities—

5           (A) with inquiries regarding specific peti-  
6 tions or applications under the immigrant visa  
7 program described in section 203(b)(5) of the  
8 Immigration and Nationality Act (8 U.S.C.  
9 1153(b)(5)); or

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

13           (2) COMMUNICATION ONLY THROUGH APPRO-  
14 PRIATE CHANNELS OR OFFICES.—

15           (A) ANNOUNCEMENT OF APPROPRIATE  
16 CHANNELS OF COMMUNICATION.—Not later  
17 than 40 days after the date of the enactment of  
18 this Act, the Director of U.S. Citizenship and  
19 Immigration Services shall announce that the  
20 only channels or offices by which industry  
21 stakeholders, petitioners, applicants, and seek-  
22 ers of benefits under the immigrant visa pro-  
23 gram described in section 203(b)(5) of the Im-  
24 migration and Nationality Act (8 U.S.C.  
25 1153(b)(5)) may communicate with the Depart-

1           ment of Homeland Security regarding specific  
2           cases under such section (except for commu-  
3           nication made by applicants and petitioners  
4           pursuant to regular adjudicatory procedures),  
5           or non-case-specific information about the visa  
6           program applicable to certain cases under such  
7           section, are through—

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

10                   (ii) the National Customer Service  
11                   Center of U.S. Citizenship and Immigra-  
12                   tion Services, or any successor to that Cen-  
13                   ter; or

14                   (iii) the Customer Service and Public  
15                   Engagement Directorate, the Immigrant  
16                   Investor Program Office, or any successor  
17                   agencies.

18           (B) DIRECTION OF INCOMING COMMUNICA-  
19           TIONS.—

20                   (i) IN GENERAL.—Employees of the  
21                   Department of Homeland Security shall di-  
22                   rect communications described in subpara-  
23                   graph (A) to the channels of communica-  
24                   tion or offices listed in subparagraph (A).

1 (ii) RULE OF CONSTRUCTION.—Noth-  
2 ing in this subparagraph may be construed  
3 to prevent—

4 (I) any person from commu-  
5 nicating with the Ombudsman of U.S.  
6 Citizenship and Immigration Services  
7 regarding the immigrant investor pro-  
8 gram under section 203(b)(5) of the  
9 Immigration and Nationality Act (8  
10 U.S.C. 1153(b)(5)); or

11 (II) the Ombudsman from resolv-  
12 ing problems regarding such immi-  
13 grant investor program under section  
14 452 of the Homeland Security Act of  
15 2002 (6 U.S.C. 272).

16 (C) LOG.—

17 (i) IN GENERAL.—The Director of  
18 U.S. Citizenship and Immigration Services  
19 shall maintain a written or electronic log  
20 of—

21 (I) all communications described  
22 in subparagraph (A) and communica-  
23 tions from Members of Congress,  
24 which shall reference—

1 (aa) the date, time, and sub-  
2 ject of the communication; and

3 (bb) the identity of the De-  
4 partment of Homeland Security  
5 official, if any, to whom the in-  
6 quiry was forwarded;

7 (II) with respect to written com-  
8 munications described in subsection  
9 (c)(1)—

10 (aa) the date on which such  
11 communication was received;

12 (bb) the identities of the  
13 sender and addressee; and

14 (cc) the subject of such com-  
15 munication; and

16 (III) with respect to oral commu-  
17 nications described in subsection  
18 (c)(2)—

19 (aa) the date on which such  
20 communication occurred;

21 (bb) the participants in the  
22 conversation or meeting; and

23 (cc) the subject of such com-  
24 munication.



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

7 (3) PUBLICATION OF INFORMATION.—If, as a  
8 result of a communication with an official of the De-  
9 partment of Homeland Security, a person or entity  
10 inquiring about a specific case or about the immi-  
11 grant visa program described in section 203(b)(5) of  
12 the Immigration and Nationality Act (8 U.S.C.  
13 1153(b)(5)) received generally applicable and non-  
14 case-specific information about program require-  
15 ments or administration that has not been made  
16 publicly available by the Department, the Director of  
17 U.S. Citizenship and Immigration Services shall  
18 publish such information on the U.S. Citizenship  
19 and Immigration Services website, not later than 30  
20 days after the communication of such information to  
21 such person or entity, as an update to the relevant  
22 Frequently Asked Questions page or by some other  
23 comparable mechanism.

24 (f) PENALTY.—

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

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

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

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

22          (i) EFFECTIVE DATE.—This section, and the amend-  
23          ments made by this section, shall take effect on the date  
24          of the enactment of this Act.

○