

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.

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

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

such area. The proposal to establish a regional center shall—

“(I) demonstrate that the pooled investment will have a significant economic impact on such geographic area;

“(II) include reasonable predictions, supported by economically and statistically valid forecasting tools, concerning—

“(aa) the amount of investment that will be pooled;

“(bb) the kinds of commercial enterprises that will receive such investments;

“(cc) the details of the jobs that will be created directly or indirectly as a result of such investments; and

“(dd) other positive economic effects such investments will have; and

“(III) include a description of the policies and procedures in place reasonably designed to monitor new com-

1 mercant 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—

“(aa) jobs estimated to have been created directly, which may be verified using such methodologies, provided that the Secretary may request additional evidence to verify that the directly created jobs satisfy the requirements under subparagraph (A)(ii); and

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

“(II) JOB AND INVESTMENT REQUIREMENTS.—

“(aa) RELOCATED JOBS.—
In determining compliance with the job creation requirement under subparagraph (A)(ii), the Secretary may include jobs estimated 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 proc-
14 ess, 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-

graph as the ‘Director’), in a manner prescribed by the Secretary of Homeland Security, which shall include—

“(I) a certification stating that, to the best of the certifier’s knowledge, after a due diligence investigation, the regional center, the new commercial enterprise, and any affiliated job-creating entity is in compliance with clauses (i) and (ii) of subparagraph (H);

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

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

“(IV) a description of any pending material litigation or bankruptcy proceedings, or litigation or bankruptcy proceedings resolved during the preceding fiscal year, involving the regional center, new commercial 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 ceding 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 of 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 GIONAL 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-

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

“(I) COMPLIANCE WITH SECURITIES LAWS.—

“(i) JURISDICTION.—

“(I) IN GENERAL.—The United States has jurisdiction, including subject matter jurisdiction, over the purchase or sale of any security offered or sold by any regional center or any party associated with a regional center for purposes of the securities laws.

“(II) COMPLIANCE WITH REGULATION S.—For purposes of section 5 of the Securities Act of 1933 (15 U.S.C. 77e), a regional center or any party associated with a regional center is not precluded from offering or selling a security pursuant to Regulation S (17 C.F.R. 230.901 et seq.) to the extent that such offering or selling otherwise complies with such regulation. 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

subparagraph as the ‘Fund’). Amounts deposited into the Fund shall be available to the Secretary of Homeland Security until expended for the purposes set forth in clause (iii).

“(ii) FEES.—

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

“(aa) except as provided in item (bb), collect a fee of \$20,000 from each regional center designated under subparagraph (E);

“(bb) collect a fee of \$10,000 from each regional center designated under subparagraph (E) that has 20 or fewer total investors in the preceding fiscal year in its new commercial enterprises; and

“(cc) deposit the fees collected pursuant to items (aa) and (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-

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

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

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

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

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

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

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

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.

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