115TH CONGRESS 1ST Session

H. R. 3471

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

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2017

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

A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “American Job Creation and Investment Into Public Works Reform Act of 2017”.

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(b) Table of Contents.—The table of contents for this Act is as follows:

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

SEC. 2. NEW EB–5 GENERAL PROVISIONS.

(a) In General.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended by inserting after subparagraph (C) the following:

``(D) Source of funds.—

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

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

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“(I) business and tax records, or similar records, including, but not limited to—

“(aa) foreign business registration records;

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

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

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

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

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

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

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

“(iv) Loan restrictions.—Capital
derived from indebtedness may be counted
toward the minimum capital investment re-
quirement under subparagraph (B) only if
such capital is—

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

“(II) issued by a banking or
lending institution that is properly
chartered or licensed under the laws
of any State, territory, country, or ap-
pllicable jurisdiction, and that is not
sanctioned or restricted, which the Secretary shall determine after consulting with relevant commercial or government databases, such as those of the Department of the Treasury’s Office of Foreign Assets Control, Office of Terrorist Financing and Financial Crimes, and Financial Crimes Enforcement Network.

“(E) Threats to the national interest.—

“(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 clause (ii), if the Secretary determines that the approval of such petition, application, or benefit is contrary to the national interest of the United States for reasons relating to threats to public safety or national security.

“(ii) Documents.—The documents described in this clause are—
“(I) a certification, designation, or amendment to the designation, of a regional center;

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

“(III) a petition to remove conditions under section 216A; or

“(IV) an application for approval of a business plan in a new commercial enterprise under subparagraph (I).

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

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

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

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

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

“(F) Fraud, misrepresentation, and
criminal misuse.—

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

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

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

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

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

“(G) ADMINISTRATIVE APPELLATE RE-
VIEW.—

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

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

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

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

“(IV) the termination or suspen-
sion of any benefit accorded under
this paragraph; and
“(V) any sanction imposed by the Secretary of Homeland Security pursuant to this paragraph.

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

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall be effective at any time after the date of the enactment of this Act, as determined by the Secretary, and shall be effective not later than 90 days after such date of enactment.

(2) EXCEPTIONS.—Subparagraph (D) of section 203(b)(5) of the Immigration and Nationality
Act (8 U.S.C. 1153(b)(5)), as inserted by subsection (a), shall not apply to a petition that—

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

(B) was filed by an alien investor under such section 203(b)(5) during the period beginning on June 1, 2015, and ending on the date of the enactment of this Act if such beneficiary is investing in the same commercial enterprise concerning the same economic activity as contained in an exemplar filed prior to June 1, 2015, or approved by the Secretary of Homeland Security at any time prior to the date of enactment of this Act, unless the Secretary determines that such approval or filing was based on fraud, misrepresentation in the record of proceeding, or is legally deficient; or

(C) is filed under section 216A of such Act (8 U.S.C. 1186b) if the underlying petition filed under section 203(b)(5) of such Act was filed prior to June 1, 2015, or approved before the date of the enactment of this Act.
SEC. 3. REAUTHORIZATION AND REFORM OF THE REGIONAL CENTER PROGRAM.

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

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

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(H) REGIONAL CENTER PROGRAM.—

(i) IN GENERAL.—Visas under this paragraph shall be made available through September 30, 2022, to qualified immigrants (and the eligible spouses and children of such immigrants) pooling their investments with one or more additional qualified immigrants participating in a program implementing this paragraph that promotes economic growth, including prospective job creation and increased domestic capital investment, through regional centers operating within defined geographic areas and designated by the Secretary of Homeland Security based upon
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proposals for concentrating pooled investment within such areas.

“(ii) PROCESSING.—In processing petitions under section 204(a)(1)(H) for classification pursuant to this subparagraph, the Secretary of Homeland Security—

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

“(II) shall deem such petitions to include records previously filed with the Secretary pursuant to subparagraph (I) if the alien petitioner certifies that such records are incorporated by reference into the alien’s petition.

“(iii) ESTABLISHMENT OF A REGIONAL CENTER.—The manager of a prospective regional center shall file a proposal, as provided in clause (i), with the Secretary of Homeland Security requesting that the Secretary designate the regional center for purposes of this subparagraph. A regional center shall operate within a defined and limited geographic area, which
shall be described in the proposal and shall be consistent with the purpose of concentrating pooled investment within such area. The proposal shall demonstrate that the pooled investment will have a significant economic impact on such area, and shall include—

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

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

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

“(cc) 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

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

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

“(bb) all securities laws of each State in which securities offerings will be conducted, investment advice will be rendered, or the offerors or offerees reside.

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

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

“(aa) jobs estimated to have been created directly, which may be verified using such methodologies, except 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 RE-
QUIREMENTS.—

“(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 methodology whereby jobs are attributable to prospective tenants occupying commercial real estate created or improved by capital investments, but only if the number of such jobs estimated to be created has been determined by an economically and statistically valid methodology and such jobs are not existing jobs that have been relocated.

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

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

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

“(I) require a regional center to give advance notice to, and obtain approval from, the Secretary of significant proposed changes to its organizational structure, ownership, or admin-
istration, including the sale of such
center or other arrangements in which
individuals not previously subject to
the requirements under subparagraph
(K) become involved with the regional
center, before any such proposed
changes may take effect unless exi-
genent circumstances are present in
which case the regional center shall
provide notice to the Secretary within
5 business days of such change;

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

“(aa) notice of any such
proposed changes are made pub-
licly available through a publicly
accessible Web site of U.S. Cit-
izenship and Immigration Services
for a period of not fewer than 30
days; and

“(bb) the Secretary deter-
nines that the regional center
would remain compliant with this
subparagraph and with subpara-
graph (K); and
“(III) notwithstanding the pendancy of a request for approval of any amendment that has been filed pursuant to subclause (I), adjudicate business plans under subparagraph (I) and petitions under section 204(a)(1)(H).

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

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

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

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

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

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

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

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

“(cc) pending material litigation or bankruptcy, or adverse judgments or bankruptcy orders issued during the most recent 10-year period, in the United States or abroad, affecting the regional center, the new commercial enterprise, any affiliated job-creating entity, or any other enterprise in which any principal of the aforementioned entities held majority ownership at the time; and

“(dd)(AA) fees, ongoing interest, or other compensation that has been paid, or will be paid, to any person in connection
with the investment, including agents, finders, or broker dealers involved in the offering, and of which the regional center or new commercial enterprise has knowledge;

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

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

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

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

“(VII) documentation demonstrating that the regional center consulted with a local economic development agency or municipality regarding the capital investment project, which shall address—
“(aa) the number and type of jobs anticipated to be created; and

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

“(ii) Effect of Approval of a Business Plan for an Investment in a Regional Center’s New Commercial Enterprise.—The approval of an application under this subparagraph shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same capital investment project through a new commercial enterprise, and of petitions by the same immigrants filed under section 216A, except in the case of fraud, misrepresentation, criminal misuse, a threat to public safety or national security, a material change that affects the program eligibility of the approved economic model, other evidence affecting program eligibility that was not dis-
closed by the applicant during the adjudication process, or a material mistake of law or fact in the prior adjudication.

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

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

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

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

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

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

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

“(II) a certification described in subparagraph (L)(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 (N)(iii);
“(IV) a description of any pending material litigation or bankruptcy proceedings, or litigation or bankruptcy proceedings resolved during the preceding fiscal year, involving the regional center, new commercial enterprise, or any affiliated job-creating entity;

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

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

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

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

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

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

“(ff) to the best of the regional center’s knowledge, for all fees, including administrative fees, loan monitoring fees, loan management fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, new commercial enter-
prise, any affiliated job-creating entity, or issuer of securities associated with the regional center, or any promoter, finder, broker-dealer, or other entity engaged by any of the foregoing to locate alien investors investing pursuant to subparagraph (H)—

“(AA) a description of all fees collected;

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

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

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

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

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

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

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

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

“(iii) SANCTIONS.—

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

“(aa) knowingly submitted or caused to be submitted a statement, certification, or any information submitted pursuant to this subparagraph that contained an untrue statement of material fact; or

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

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

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

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

“(cc) permanent bar from program participation for one or more individuals associated with the regional center or new commercial enterprise or job-creating entity; and
“(dd) termination of regional center designation.

“(K) bona fides of persons involved with regional center program.—

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

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

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

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

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

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

authority that supervises or examines

banks, savings associations, or credit

unions, a State insurance commission

(or an agency of or officer of a State

who performs similar functions), an

appropriate Federal banking agency,

the Commodity Futures Trading

Commission, the Securities and Ex-

change Commission, a financial self-

regulatory organization recognized by

the Securities and Exchange Commissi-

on, or the National Credit Union

Administration, which is based on a

violation of any law or regulation

that—

“(aa) prohibits fraudulent, 

manipulative, or deceptive con-

duct; or

“(bb) bars the person

from—

“(AA) association with

an entity regulated by such

commission, authority, agen-

cy, or officer;
“(BB) appearing before such commission, authority, agency, or officer;

“(CC) engaging in the business of securities, insurance, or banking; or

“(DD) engaging in savings association or credit union activities;

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

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

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

“(cc) any activity related to money laundering (as described in section 1956 or 1957 of title 18, United States Code);
“(dd) any terrorist activity (as defined in section 212(a)(3)(B));
“(ee) any activity constituting or facilitating human trafficking or a human rights offense;
“(ff) any activity described in section 212(a)(3)(E); or
“(gg) the violation of any statute, regulation, or Executive order regarding foreign financial transactions or foreign asset control; or
“(IV) the person—
“(aa) is, or during the preceding 10 years has been, included on the Department of Justice’s List of Currently Disciplined Practitioners; or
“(bb) during the preceding 10 years has received a reprimand or otherwise been publicly disciplined for conduct related to fraud or deceit by a State bar as-
sociation of which the person is
or was a member.

“(ii) FOREIGN INVOLVEMENT IN RE-
GIONAL CENTER PROGRAM.—

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

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

“(iii) INFORMATION REQUIRED.—The
Secretary shall require such attestations
and information, including the submission
of fingerprints or other biometrics to the
Federal Bureau of Investigation, and shall
perform such criminal record checks and
other background and database checks
with respect to a regional center, new com-
cmercial enterprise, and any affiliated job-
creating entity, and persons involved with
such entities (as described in clause (v)),
in order to determine whether such entities
are in compliance with clauses (i) and (ii).
The Secretary may require the information
and attestations described in this clause
from such entities, and any person involved
with such entities, at any time on or after
the date of the enactment of the American
Job Creation and Investment Into Public
Works Reform Act of 2017 and may per-
form such checks with respect to any job
creating entity, and persons involved with
such entity.

“(iv) Termination.—

“(I) In general.—The Sec-
retary shall suspend or terminate the
designation of any regional center, or
the participation under the program
of any new commercial enterprise or
job-creating entity under this para-
graph if the Secretary determines that such entity—

“(aa) knowingly involved a person with such entity in violation of clause (i) or (ii);

“(bb) failed to provide an attestation or information requested by the Secretary; or

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

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

“(v) Persons involved with a regional center, new commercial enterprise, or job-creating entity.—For the purposes of this subparagraph, a person is considered to be ‘involved’ with a regional center, a new commercial enterprise, any affiliated job-creating entity, or other job-creating entity, as applicable, if he or she is, directly or indirectly, an owner or in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance, or control of any funding that was procured pursuant to subparagraph (H). An individual may be in a position of substantive authority if he or she serves as a principal, representative, administrator, owner, officer, board mem-
ber, manager, executive, general partner, fiduciary, or in a similar position at the re-
gional center, new commercial enterprise, any affiliated job-creating entity, or other job-creating entity, respectively.

“(L) COMPLIANCE WITH SECURITIES LAWS.—

“(i) JURISDICTION.—

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

“(II) COMPLIANCE WITH REGU-
lATIONS.—Solely for purposes of sec-
tion 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 Reg-
ulation S under the Securities Act of 1933 (15 U.S.C. 77a et seq.) to the
extent that such offering or selling otherwise complies with that regulation.

“(ii) Regional center certifications required.—

“(I) Initial certification.—

The Secretary of Homeland Security may not approve an application for regional center designation or regional center amendment unless the regional center certifies that, to the best of the certifier’s knowledge, after a due diligence investigation, the regional center is in compliance with and has policies and procedures, such as those related to internal and external due diligence, reasonably designed to confirm, as applicable, that all parties associated with the regional center are and will remain in compliance with the securities laws of the United States and of any State in which the offer, purchase, or sale of securities was conducted, or the issuer of securities was located, or the investment advice was
provided by the regional center or parties associated with the regional center.

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

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

“(bb) to the best of the certifier’s knowledge, after a due diligence investigation, all such offers, purchases, and sales of securities or the provision of investment advice complied with the securities laws of the United States and the securities laws of any State in which the offer, pur-
chase, or sale of securities was conducted, or the issuer of securities was located, or the investment advice was provided; and

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

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

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

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

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

“(iv) SUSPENSION OR TERMINATION.—In addition to any other authority provided to the Secretary under this paragraph, the Secretary, in the Sec-
retary’s discretion, may suspend or terminate the designation of any regional center, or impose other sanctions against the regional center, if—

“(I) the regional center is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the offer, purchase, or sale of a security or the provision of investment advice, or any party associated with the regional center is so enjoined and the regional center knew, or reasonably should have known, that this is the case;

“(II) the regional center is subject to any final order of the Securities and Exchange Commission or a State securities regulator, or any party associated with the regional center is subject to such an order and the regional center knew, or reasonably should have known, that this is the case, if the order—
“(aa) bars such person from association with an entity regulated by the Securities and Exchange Commission or a State securities regulator; or

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

“(III) the regional center submitted or caused to be submitted a certification described in clause (ii) that contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or any party associated with the regional center undertook such an action and the regional center knew, or reasonably
should have known, that this is the case.

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

“(vi) DEFINED TERM.—In this subparagraph, the term ‘party associated with a regional center’ means—

“(I) the regional center;

“(II) any new commercial enterprise or affiliated job-creating entity or issuer of securities associated with the regional center;

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

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

“(M) EB–5 INTEGRITY FUND.—

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

“(ii) FEES.—

“(I) ANNUAL FEE.—Beginning
on January 1, 2017, and each year
thereafter, the Secretary of Homeland
Security shall collect a fee of $25,000
for the Fund from each regional cen-
ter designated under subparagraph
(H). The fee shall be $10,000 if a re-
gional center has 20 or fewer alien in-
vestors investing pursuant to subpara-
graph (H) in the immediately pre-
ceding fiscal year in its new commer-
cial enterprises.
“(II) Petition Fee.—Beginning on October 1, 2016, the Secretary shall collect a fee of $2,000 for the Fund with each petition filed pursuant to section 204(a)(1)(H) for classification under this paragraph pursuant to subparagraph (H).

“(III) Increases.—The Secretary may prescribe regulations, as necessary, to increase the dollar amounts under this clause to ensure the Secretary’s continued ability to carry out the activities specified in clause (iii).

“(iii) Permissible Uses of Fund.—The Secretary shall—

“(I) use not less than ⅓ of the amounts deposited into the Fund to conduct audits and site visits (with or without notice);

“(II) use not less than ⅓ of the amounts deposited into the Fund for investigations based outside of the United States, including—
“(aa) monitoring and investigating program-related events and promotional activities; and

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

“(III) use amounts deposited into the Fund—

“(aa) to detect and investigate fraud or other crimes; and

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

“(IV) use amounts deposited into the Fund to conduct interviews of the owners, officers, directors, managers, partners, agents, employees, promoters, and attorneys of regional centers, new commercial enterprises, and job-creating entities; and
“(V) otherwise use amounts deposited into the Fund as the Secretary determines to be necessary, including monitoring compliance with the requirements under section 8 of the American Job Creation and Investment Into Public Works Reform Act of 2017.

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

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

“(II) terminate the designation of any regional center that does not pay the fee required under clause (ii)(I) within 90 days of the date on which such clause requires the Secretary to collect the fee.

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

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

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

“(I) registration with U.S. Citizenship and Immigration Services, which—

“(aa) may be limited to identifying and contact information of such promoter and confirmation of the existence of the
written agreement required by clause (iii); and

“(bb) shall not include any requirement that U.S. Citizenship and Immigration Services approve the registration of such promoter;

“(II) minimum qualifications;

“(III) guidelines for offering investment opportunities and representing the visa process to prospective investors under the program established under subparagraph (H); and

“(IV) permissible fee arrangements.

“(ii) EFFECT OF VIOLATION.—If the Secretary determines that a direct or third-party promoter has violated clause (i), the Secretary shall suspend or permanently bar such individual from participation in the program described in this paragraph.

“(iii) COMPLIANCE.—Each regional center shall maintain a written agreement
between the regional center, the new commercial enterprise, any affiliated job-creating entity, or any issuer of securities affiliated with the regional center, and each direct or third-party promoter operating on behalf of such entities or issuer that outlines the rules and standards prescribed under clause (i).

“(iv) Disclosure.—Each petition filed pursuant to section 204(a)(1)(H) for classification under this paragraph pursuant to subparagraph (H) shall include a disclosure, signed by the alien investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (I).
“(v) Publication.—The list of such registered promoters may be made publicly available by the Secretary.

“(O) Treatment of Good Faith Investors Following Program Noncompliance.—

“(i) Termination or Debarment of EB-5 Entity.—Except as provided in clause (v), upon the termination or debarment, as applicable, from the program under this paragraph of a regional center, new commercial enterprise, or job-creating entity, an otherwise qualified petition under section 204(a)(1)(H) or the conditional permanent residence of an alien who has been admitted to the United States pursuant to section 216A(a)(1) based on an investment in a terminated regional center, new commercial enterprise, or job-creating entity shall remain valid or continue to be authorized, as applicable, consistent with this subparagraph.

“(ii) New Regional Center or Investment.—The petition under section 204(a)(1)(H) of an alien described in
clause (i) and the conditional permanent resident status of an alien described in clause (i) shall be terminated 180 days after the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job creating entity unless—

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

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

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

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

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

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

“(iv) In Case of Enforcement Action.—Except as provided in clause (v), if the Secretary, the Attorney General, or the Securities and Exchange Commission files a criminal or civil enforcement action in any United States District Court containing allegations that a regional center, new commercial enterprise, job-creating entity, or any person involved with the foregoing entities, committed fraud which affected an alien’s investment capital under subparagraph (A), or if a State authority or agency files such an action in a State court—
“(I) for all related petitions for classification under this paragraph and petitions for removal of conditions described in section 216A—

“(aa) the Secretary may hold such petitions in abeyance unless ordered to take action by the United States District Court overseeing such action, if applicable; and

“(bb) the United States District Court overseeing such action, if applicable, may enter an order extending any deadlines applicable under this paragraph and to prevent age-out of derivative beneficiaries;

“(II) the alien investor may—

“(aa) petition to amend the alien’s underlying petition for classification under this paragraph or the petition for removal of conditions described in section 216A(c) without such facts un-
derlying the amendment being
deemed a material change; and

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

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

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

“(I) the alien shall not be accorded any benefit under this subparagraph; and

“(II) the Secretary shall notify the alien of such belief and, subject to section 216A(b)(2), shall deny or initiate proceedings to revoke the approval of such alien’s petition, application, or benefit (and that of any spouse or child, if applicable) described in this paragraph.

“(P) ACCOUNT TRANSPARENCY REQUIREMENT.—

“(i) IN GENERAL.—Except as provided in clause (iii), a new commercial enterprise shall deposit and maintain the capital investment of each alien investor in a separate account as described in this subparagraph, including funds held in escrow.

“(ii) REQUIREMENTS FOR SEPARATE ACCOUNTS.—
“(I) REQUIRED INFORMATION.—

Prior to, or within one business day of, the deposit of an alien investor’s capital investment in a separate account, the new commercial enterprise shall provide the following information to the alien investor whose capital investment will be or has been deposited into the separate account, the regional center associated with the new commercial enterprise, and the Director of U.S. Citizenship and Immigration Services:

“(aa) The name, address, and other contact information of the bank or other financial institution where the separate account is or will be maintained and the name of the authorized signatory required under subclause (II).

“(bb) Sufficient information to enable the alien investor whose capital investment will be or has been deposited into the separate
account, the regional center associated with the new commercial enterprise, and the Director to view online the balance in the separate account on an ongoing basis.

“(II) Authorized Signatories.—At least one of the authorized signatories to the separate account shall be an individual who is—

“(aa) independent of, and not directly or indirectly related to, the new commercial enterprise, the regional center associated with the new commercial enterprise, the job creating entity, or any of the principals or managers of such entities; and

“(bb) an officer at the bank or other financial institution where the separate account is maintained; licensed, active, and in good standing as an attorney, certified public accountant, or broker-dealer; or otherwise au-
authorized by the Director to serve as a signatory.

“(iii) Transfers from a separate account.—

“(I) In general.—The funds in a separate account may be transferred only—

“(aa) to the alien investor who contributed the funds held in the separate account as a refund of that investor’s capital investment if otherwise permitted under this paragraph, to another separate account, or to a job creating entity or otherwise deployed into the capital investment project for which the funds were intended; and

“(bb) after at least one of the authorized signatories described in clause (ii)(II) has provided written consent for the proposed transfer.

“(II) Notice.—Prior to, or within one business day of, funds being
transferred from a separate account, the new commercial enterprise shall provide notice to the alien investor whose capital investment has been or will be transferred from the separate account, the regional center associated with the new commercial enterprise, and the Director, including—

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

“(bb) the destination of the transferred funds, including whether the funds are transferred to another separate account, or transferred directly to a job creating entity or otherwise deployed into the capital investment project for which the funds were intended.

“(III) TRANSFER OF FUNDS.—In the case of a transfer of funds from a separate account maintained by a new commercial enterprise to an affiliated job creating entity, the affiliated job
creating entity shall maintain the funds in a separate account that meets the requirements of this section until the funds are deployed into the capital investment project for which they were intended. Within 30 days of the deployment of the funds into the capital investment project for which they were intended, an individual who is licensed, active, and in good standing as an attorney, certified public accountant, or broker-dealer, or an individual otherwise authorized by the Director to serve as a signatory, shall verify that the funds were deployed into the capital investment project for which they were intended and shall so notify the alien investor whose capital investment was invested, the regional center associated with the capital investment project, and the Director.

“(iv) ELECTRONIC MAIL AUTHORIZED.—Any notice or information to be provided under this section may be given via electronic mail.
“(v) DEFINITIONS.—In this subparagraph:

“(I) The term ‘financial institution’ has the meaning given such term by section 20 of title 18, United States Code.

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

“(aa) maintained in the United States by a new commercial enterprise at a federally regulated bank or at another financial institution in the United States that is insured; and

“(bb) that contains only the pooled investment funds of alien investors in a new commercial enterprise with respect to a single capital investment project.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall be effective at any time after the date of the enactment of this Act, as determined by the Sec-
retary, and shall be effective not later than 90 days
after such date of enactment.

(2) EXCEPTIONS.—

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

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

(ii) was filed by an alien investor
under such section 203(b)(5) during the
period beginning on June 1, 2015, and
ending on the date of the enactment of this
Act if such beneficiary is investing in the
same commercial enterprise concerning the
same economic activity as contained in an
exemplar filed prior to June 1, 2015, or
approved by the Secretary of Homeland
Security at any time prior to the date of
enactment of this Act, unless the Secretary
determines that such approval or filing was
based on fraud, misrepresentation in the
record of proceeding, or is legally deficient;

or

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

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

SEC. 4. OTHER EB–5 VISA REFORMS.

(a) Type of Investment.—Section 203(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)), is amended—

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


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

(3) in clause (ii)—

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

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

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

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

“(i) RESERVED VISAS.—Of the visas
made available under this paragraph in
each fiscal year—

“(I) 2,000 shall be reserved for
immigrants who invest in rural areas;

“(II) 2,000 shall be reserved for
immigrants who invest in priority
urban investment areas; and

“(III) 2,000 shall be reserved for
immigrants who invest in infrastruc-
ture projects.
“(ii) **ELIGIBILITY.**—The Secretary of Homeland Security shall determine eligibility for designation as a targeted employment area and shall not be bound by the determination of any other governmental or nongovernmental entity.

“(iii) **DESIGNATION OF INFRASTRUCTURE PROJECT, MANUFACTURING PROJECT, AND TARGETED EMPLOYMENT AREA.**—

“(I) **INFRASTRUCTURE PROJECT OR MANUFACTURING PROJECT.**—The designation of an infrastructure project or manufacturing project shall be made at the time of the investment.

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

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

“(bb) shall be valid for a 2- year period.
“(III) Designations and renewals.—The Secretary shall establish a process by which regional centers may request a designation under subclause (I) or (II). A designation under either such subclause shall be issued not later than 60 days after a request by a regional center and a designation under subclause (II) may be renewed for additional 2-year periods if the area continues to meet the definition of a targeted employment area. An alien investor who has made the required amount of investment in such an area during its period of designation shall not be required to increase the amount of investment based upon expiration of the designation. The Secretary shall establish a fee for the adjudication of a designation request at a level that is sufficient to ensure the full recovery of the costs of providing such adjudication within the required timeframe. Nothing in this clause shall be deemed to
prohibit an investor from filing a petition before such designation is made.”.

(c) ADJUSTMENT OF MINIMUM INVESTMENT AMOUNT.—

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

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

(B) by striking clauses (i) and (ii) and inserting the following:

“(i) MINIMUM INVESTMENT AMOUNTS.—Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be—

“(I) $1,200,000 (except as provided in subclause (II)); or

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

“(ii) AUTHORITY TO INCREASE INVESTMENT AMOUNTS.—The Secretary may
periodically prescribe regulations increasing the dollar amount specified under clause (i) if any such increase simultaneously affects each category of investment under clause (i) by the same percentage. The Secretary shall publish a notice in the Federal Register no later than the date that is 60 days prior to the date upon which the increase will take effect.

“(iii) AUTOMATIC ADJUSTMENT OF MINIMUM INVESTMENT AMOUNTS.—Beginning on January 1, 2022, and on every fifth subsequent January 1, after notice in the Federal Register is published for not less than 60 days, the Secretary shall adjust each of the minimum amounts specified in clause (i) as follows:

“(I) NO INCREASES IN PREVIOUS 5 FISCAL YEARS.—If the Secretary did not increase the minimum amount during the 5 prior fiscal years concluding with the fiscal year ending on September 30 of the prior calendar year, the amounts specified in clause (i) shall automatically be adjusted by
the amount of the cumulative percentage change in the Consumer Price Index (CPI–U) for the previous 5 fiscal years, rounded to the nearest multiple of $10,000.

“(II) INCREASES BELOW CPI–U DURING PREVIOUS 5 FISCAL YEARS.—If the Secretary increased the minimum amount during the previous 5 fiscal years by an amount that is less than the cumulative percentage change in the CPI–U during the previous 5 fiscal years, the amounts specified in clause (i) shall automatically be adjusted by the amount of such cumulative percentage change for such period minus any increase previously prescribed by the Secretary by regulations, rounded to the nearest multiple of $10,000.

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

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

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

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

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

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

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

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

(c) Definitions.—

(1) In general.—Section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), as amended by sections 2 and 3 of this Act, is further amended by striking the second subparagraph (D) (relating to definitions) and inserting the following:

“(Q) Definitions.—In this paragraph:

“(i) Affiliated job-creating entity.—The term ‘affiliated job-creating entity’ means any job-creating entity that is directly or indirectly controlled, managed, or owned by any of the persons involved with the regional center or new commercial enterprise under section 203(b)(5)(K)(v).

“(ii) Capital.—The term ‘capital’—

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

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

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

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

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

“(v) INFRASTRUCTURE PROJECT.—The term ‘infrastructure project’ means a capital investment project in a filed or approved business plan, which is administered by a governmental entity, such as a Federal, State, or local agency or authority, where the governmental entity is the job-creating entity which contracts with a regional center, or new commercial enterprise to receive capital investment under the regional center program described in subparagraph (H) from alien investors or the new commercial enterprise as financing
for maintaining, improving, or constructing
a public works project.

“(vi) JOB-CREATING ENTITY.—The
term ‘job-creating entity’ means any orga-
nization formed in the United States for
the ongoing conduct of lawful business, in-
cluding a partnership (whether limited or
general), corporation, limited liability com-
pany, governmental entity (whether a Fed-
eral, State, or local entity, authority, or in-
strumentality), or other entity that re-
ceives, or is established to receive, capital
investment from alien investors or a new
commercial enterprise under the regional
center program described in subparagraph
(H) and which is responsible for creating
jobs to satisfy the requirement under sub-
paragraph (A)(ii).

“(vii) MANUFACTURING PROJECT.—
The term ‘manufacturing project’ means a
capital investment project in a filed or ap-
proved business plan, the purpose of which
is to improve, construct, or operate a
plant, factory, or mill, which primarily ex-
ists in order to produce or assemble a product in the United States.

“(viii) New commercial enterprise.—The term ‘new commercial enterprise’ means any for-profit organization formed in the United States for the ongoing conduct of lawful business, including a partnership (whether limited or general), corporation, limited liability company, or other entity that receives, or is established to receive, capital investment from alien investors under subparagraph (H).

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

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

“(II) a poverty rate that is at least 30 percent; or
“(III) a median family income that is not more than 60 percent of the greater of the statewide median family income or the metropolitan statistical area median family income.

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

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

“(II) is—

“(aa) outside of a metropolitan statistical area;

“(bb) within an outlying county of a metropolitan statistical area; or

“(cc) within any census tract that is greater than 100 square miles in area and has a population density of fewer than 100 people per square mile.
“(xi) Targeted Employment Area.—The term ‘targeted employment area’ means—

“(I) a priority urban investment area;

“(II) a rural area;

“(III) any area within the geographic boundaries of any military installation that was closed, during the 25-year period immediately preceding the filing of an application under subparagraph (F) based upon a recommendation by the Defense Base Closure and Realignment Commission; or

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

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

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

(2) Rulemaking.—The Secretary of Homeland Security shall issue appropriate regulations to account for the modified definition of targeted employment area in section 203(b)(5)(Q)(xi) of the Immigration and Nationality Act, as added by paragraph (1), within 180 days of the enactment of this Act.

(f) Age Determination for Children of Alien Investors.—Section 203(h) of such Act (8 U.S.C. 1153(h)) is amended by adding at the end the following:

“(5) Age determination for children of alien investors.—An alien who has reached 21 years of age and has been admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose lawful permanent resident status on a conditional basis is terminated under section 216A or subparagraph (O) of subsection (b)(5), shall continue to be considered a child of the principal alien for the purpose of a subsequent immigrant petition by the principal alien under subsection (b)(5) if the alien who was a child of the principal alien remains unmarried and the subsequent petition is filed by the principal
alien not later than 1 year after the termination of conditional lawful permanent resident status. No alien shall be considered a child under this paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.”.

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

(h) Concurrent Filing of EB–5 Petitions and Applications for Adjustment of Status.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

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

(2) by adding at the end the following:

“(n) If the approval of a petition for classification under section 203(b)(5) would make a visa immediately available to the alien beneficiary, the alien beneficiary’s application for adjustment of status under this section
shall be considered to be properly filed whether the appli-

cation is submitted concurrently with, or subsequent to,
the visa petition.”.

(i) CONFORMING CHANGES.—

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

(2) Section 203(b)(5)(A) of the Immigration
and Nationality Act is amended by striking “Visas
shall be made available” and inserting “Subject to
section 203(b)(5)(C)(i), visas shall be made avail-
able”.

(j) EFFECTIVE DATES.—

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

(2) EXCEPTIONS.—

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

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

(ii) was filed by an alien investor under such section 203(b)(5) during the period beginning on June 1, 2015, and ending on the date of the enactment of this Act if such beneficiary is investing in the same commercial enterprise concerning the same economic activity as contained in an exemplar filed prior to June 1, 2015, or approved by the Secretary of Homeland Security at any time prior to the date of enactment of this Act, unless the Secretary determines that such approval or filing was based on fraud, misrepresentation in the record of proceeding, or is legally deficient; or

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

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

(3) REDESIGNATION.—

(A) PETITION AMENDMENT.—Petitioners described in paragraph (2)(A) may apply to amend their petition to redesignate the targeted employment area upon which such petition was based to conform to the targeted employment area criteria described in section 203(b)(5)(Q) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(Q)), as amended by subsection (e), if such application for amendment is filed with the Secretary prior to October 1, 2017.

(B) RETENTION OF Priority DATE.—If a petitioner applies to amend a petition in accordance with subparagraph (A)—

(i) the immigrant visa priority date related to the original petition shall be retained;

(ii) changes made in the amended petition to redesignate such area shall not be deemed a material change; and
(iii) the minimum investment amount such petitioner is required to make shall not be affected by any such redesignation.

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

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

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

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

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

“(1) Conditional basis for status.—

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

“(B) Exception.—An alien investor (and his or her alien spouse or alien child) whose petition under subsection (f) is approved before
the alien investor is lawfully admitted for permanent residence shall be granted the status of an alien lawfully admitted for permanent residence without conditions.”;

(4) in subsection (b)—

(A) in the heading, by striking “ENTREPRENEURSHIP” and inserting “INVESTMENT”;

and

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

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

(5) in subsection (c)—

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

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “In order” and inserting “Except as provided in paragraph (3)(D), in order”;

(ii) in subparagraph (A)—

(I) by striking “must” and inserting “shall”; and

(II) by striking “, and” and inserting a semicolon;
(iii) in subparagraph (B)—

(I) by striking “must” and inserting “shall”;

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

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

(iv) by adding at the end the following:

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

(C) in paragraph (3)—

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

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

“(B) Removal or Extension of Conditional Basis.—
“(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary determines that the facts and information contained in a petition submitted under paragraph (1)(A) are true, including demonstrating that the alien complied with subsection (d)(1)(B)(i), the Secretary shall—

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

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

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

“(I) the Secretary, in the Secretary’s discretion, may provide one 1-year extension of the alien’s conditional status; and

“(II)(aa) if the alien files a petition not later than 30 days after the
third anniversary of the alien’s lawful admission for permanent residence demonstrating that the alien complied with subsection (d)(1)(B)(i), the Secretary shall remove the conditional basis of the alien’s status effective as of such third anniversary; or

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

(6) in subsection (d)—

(A) in paragraph (1)—

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

“(A) invested the requisite capital;”;

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

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

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

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

(B) in paragraph (2), by amending sub-
paragraph (A) to read as follows:
“(A) 90-DAY PERIOD BEFORE SECOND AN-
NIVERSARY.—

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

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

(C) in paragraph (3)—

(i) by striking “The interview” and
inserting the following:
“(A) IN GENERAL.—The interview”;

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

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

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

(C) in paragraph (3)—
(ii) by striking "Service" and inserting "Department of Homeland Security";
and

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

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

“(i) invested in a regional center, new commercial enterprise, or job-creating entity that was sanctioned under section 203(b)(5); or
“(ii) is in a class of aliens determined
by the Secretary to be threats to public
safety or national security.”;

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

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

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

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

(b) EFFECTIVE DATES.—

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

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

(B) PETITION BENEFICIARIES.—The amendments made by subsection (a) shall not apply to the beneficiary of a petition that is filed under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) if the underlying petition filed pursuant to section 204(a)(1)(H) of such Act (8 U.S.C. 1154(a)(1)(H)) was approved before the date of the enactment of this Act.

SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

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

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

“(ii) A petitioner shall establish eligibility at the time the alien files for classification under section 203(b)(5) and, if not eligible at the time of filing, shall be denied such classification even if the petitioner later becomes eligible under materially different facts or circumstances. Aliens asserting eligibility under a materially different set of facts that did not exist when the petition was filed shall file a new petition. A petitioner shall continue to be eligible for classification at the time such petition is adjudicated.”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) APPLICABILITY TO PETITIONS.—
(A) FILING.—Clause (i) of section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)), as added by subsection (a), shall apply to any petition for classification pursuant to section 203(b)(5)(H) of such Act (8 U.S.C. 1153(b)(5)(H)) that is filed with the Secretary of Homeland Security on or after the date of the enactment of this Act.

(B) ELIGIBILITY.—Clause (ii) of section 204(a)(1)(H) of such Act, as added by subsection (a), shall apply to any petition for classification pursuant to section 203(b)(5)(H) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(E)) filed with the Secretary of Homeland Security at any time.

SEC. 7. TIMELY PROCESSING.

(a) Fee Study.—Not later than 180 days after the date of the enactment of this Act, the Director of United States Citizenship and Immigration Services shall complete a study of fees charged in the administration of the program described in sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).
(b) ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT PROCESSING.—Notwithstanding section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), and except as provided under subsection (c), the Director shall set fees for services provided pursuant to sections 203(b)(5) and 216A of such Act (8 U.S.C. 1153(b)(5) and 1186b), as amended by this Act, and for adjudicating petitions filed pursuant to section 204(a)(1)(H) of such Act (8 U.S.C. 1154(a)(1)(H)), as amended by this Act, at a level sufficient to ensure the full recovery only of the costs of providing such services, including the cost of attaining the goal of completing adjudications, on average, not later than—

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

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

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

(4) 180 days after receiving a petition from an alien for removal of conditions described in section 216A(c).
(c) ADDITIONAL FEES.—Additional fees in excess of the fee levels described in subsection (b) may be charged only to contribute—

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

(2) in an amount that is not greater than 1 percent of the fee for filing a petition pursuant to section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)), to make improvements to the information technology systems used by the Secretary to process, adjudicate, and archive applications and petitions under such section, including the conversion to electronic format of documents filed by petitioners and applicants for benefits under such section.

(d) PREMIUM PROCESSING OF EB–5 PETITIONS AND APPLICATIONS.—

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

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

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

“(2) ALIEN INVESTOR PETITIONS AND APPLICATIONS.—The Secretary shall establish and collect a premium fee for expeditious processing of applica-
tions for regional center designation or regional cen-
ter amendment under section 203(b)(5)(H), peti-
tions under section 203(b)(5), petitions for removal
of conditions on lawful permanent residence under
section 216A(c), and applications under section
203(b)(5)(I) related to investment in a new commer-
cial enterprise (as defined in section 203(b)(5)(Q)).
A petitioner or applicant shall be permitted an op-
portunity to provide additional evidence identified by
the Secretary in any such petition or application
prior to a final determination. The premium fee for
each such application or petition shall be set at an
amount sufficient to adjudicate such application or
petition within \( \frac{1}{2} \) of the relevant period set forth in
section 6(b) of the American Job Creation and In-
vestment Into Public Works Reform Act of 2017,
and shall otherwise only be used to recover the costs
of such processing, including the hiring of additional
adjudicatory staff, shall be paid in addition to any
normal petition or application fee that may be appli-
cable, and shall be deposited as offsetting collections
in the Immigration Examinations Fee Account.”.

(2) Establishment of EB–5 Premium Proc-
essing.—Not later than 180 days after the date of
the enactment of this Act, the Secretary of Home-
land Security shall establish the premium processing
of immigrant investor petitions and applications, as
described in section 286(u) of the Immigration and
Nationality Act (8 U.S.C. 1356(u)), as amended by
paragraph (1).

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

(f) **EXEMPTION FROM PAPERWORK REDUCTION
Act.**—For a period of one year after the date of the enact-
ment of this Act, the requirements of chapter 35 of title
44, United States Code, shall not apply to any collection
of information required under this Act, under any amend-
ment made by this Act, or under any rule promulgated
by the Secretary of Homeland Security to implement this
Act or the amendments made by this Act, to the extent
the Secretary determines that compliance with such re-
quirements would impede the expeditious implementation
of this Act or the amendments made by this Act.
(g) Rule of Construction.—Nothing in this section may be construed to require any modification of fees before the completion of—

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

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

SEC. 8. TRANSPARENCY.

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

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

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

(B) a new commercial enterprise (as defined in subparagraph (Q) of such section);

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

(D) any person or entity associated with such regional center, new commercial enterprise, or job-creating entity; and

(2) meeting or communicating with persons associated with the entities described in paragraph (1), at the request of such persons, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under such immigrant visa program.
(c) REPORTING OF COMMUNICATIONS.—

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

(2) ORAL COMMUNICATION.—If substantive oral communication, including telephonic communication, virtual communication, and in-person meetings, takes place between officials of the Department of Homeland Security and non-Department persons or entities advocating for regional center applications or individual petitions under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) that are pending on or after the date of
the enactment of this Act (other than routine communications with other agencies of the Federal Government regarding the case, including communications involving background checks and litigation defense)—

(A) the conversation shall be recorded; or

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

(3) NOTIFICATION.—

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

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

(ii) if such evidence is derogatory, the affected party has been given an opportunity to respond to the evidence.
(B) Information from law enforcement, intelligence agencies, or confidential sources.—

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

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

(d) Consideration of Evidence.—

(1) In general.—No case-specific communication with persons or entities that are not part of the Department of Homeland Security may be considered in the adjudication of an application or petition under section 203(b)(5) of the Immigration and Na-
tionality Act (8 U.S.C. 1153(b)(5)) unless the com-
munication is included in the record of proceeding of
the case.

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

(c) CHANNELS OF COMMUNICATION.—

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

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

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

(2) COMMUNICATION ONLY THROUGH APPROP-
RIATE CHANNELS OR OFFICES.—

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

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

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

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

(B) DIRECTION OF INCOMING COMMUNICATIONS.—

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

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

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

(II) the Ombudsman from resolving problems regarding such immigrant investor program pursuant to the authority granted under section
(C) Log.—

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

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

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

(III) with respect to oral communications described in subsection (c)(2), the date on which the communication occurred, the participants in

the conversation or meeting, and the
subject of the communication.

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

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

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

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

(g) **Rule of Construction.**—Nothing in this section may be construed to modify any law, regulation, or policy regarding the handling or disclosure of classified information.

(h) **No Creation of Private Right of Action.**—Nothing in this section may be construed to create or authorize a private right of action to challenge a decision of an employee of the Department of Homeland Security.

**SEC. 9. REPORTS.**

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

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

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

(3) the extent to which United States Citizenship and Immigration Services has maintained records of regional centers and associated commercial enterprises, including annual statements and certifications;

(4) the steps taken by United States Citizenship and Immigration Services to verify the source of funds, as required under section 203(b)(5)(D) of the Immigration and Nationality Act, as added by section 2 of this Act;

(5) the extent to which United States Citizenship and Immigration Services collaborates with
other Federal and law enforcement agencies, par-

ticularly to detect illegal activity and threats to na-
tional security related to the regional center pro-
gram;

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

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

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

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

(10) an accounting of the expenditure of
amounts from the EB–5 Integrity Fund established
under section 203(b)(5)(M) of the Immigration and
Nationality Act, as added by section 3 of this Act.
(b) Inspector General Report.—Not later than December 31, 2019, the Inspector General of the Intelligence Community, in coordination with the Inspector General of the Department of Homeland Security and after consultation with relevant Federal agencies, including United States Immigration and Customs Enforcement, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives concerning the immigrant visa program set forth in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) that describes—

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

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

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

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

(5) the actual or potential use of the program to facilitate terrorist activity, including funding terrorist activity or laundering terrorist funds.
(c) Review of Job Creation Methodologies.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Bureau of Economic Analysis of the Department of Commerce, or another component within the Department of Commerce, as determined by the Secretary of Commerce, shall publish regulations to determine economically and statistically valid general economic methodologies that are in compliance with section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

(d) Report.—

(1) In general.—Not later than 3 years after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with the Secretary of Commerce and after consultation with relevant Federal agencies, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes, with respect to the program under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5))—

(A) the percentage of completed and pending capital investment projects and the number of alien investors investing pursuant to such
program in the States, metropolitan and micropolitan statistical areas, and counties in which such projects occurred in each fiscal year, within the scope of business plans filed pursuant to section 203(b)(5)(I) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(I)), as added by this Act, both approved and awaiting approval—

(i) in rural areas;

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

(iii) in priority urban investment areas;

(iv) for infrastructure projects;

(v) for manufacturing projects; and

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

(B) whether other Federal financial assistance and tax incentive programs, such as economic development programs administered by the Department of Agriculture, the Department of Housing and Urban Development, or the Community Development Financial Institutions
Fund, are also used or available for use by projects described in subparagraph (A);

(C)(i) what data is available to assess commuting patterns from high unemployment census tracts to project locations;

(ii) whether the consideration of such commuting patterns may be an appropriate factor for targeted employment area designations; and

(iii) whether such data can be used to assess job creation in high unemployment census tracts;

(D) whether market demands to approve projects described in subparagraph (A) exceed the number of visas allowed under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5));

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

(F) what data is available to assess the percentage of jobs created through the investor visa program that are held by persons who reside in census tracts that have an unemploy-
ment rate of at least 150 percent of the national average.

(2) Public input.—Not later than 60 days before the submission of the report required under paragraph (1), the Secretary of Homeland Security shall provide the public with notice and an opportunity to comment on the draft report.