

116TH CONGRESS
1ST SESSION

S. 2540

To reauthorize the EB–5 Regional Center Program in order to prevent fraud and promote and reform foreign capital investment and job creation in American communities.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2019

Mr. GRASSLEY (for himself and Mr. LEAHY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To reauthorize the EB–5 Regional Center Program in order to prevent fraud and promote and reform foreign capital investment and job creation in American communities.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EB–5 Reform and In-
5 tegrity Act of 2019”.

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

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

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2 is repealed.

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

6 “(E) REGIONAL CENTER PROGRAM.—

7 “(i) IN GENERAL.—Visas under this
8 paragraph shall be made available through
9 September 30, 2024, to qualified immi-
10 grants (and the eligible spouses and chil-
11 dren of such immigrants) pooling their in-
12 vestments with 1 or more qualified immi-
13 grants participating in a program imple-
14 menting this paragraph that involves a re-
15 gional center in the United States, which
16 has been designated by the Secretary of
17 Homeland Security on the basis of a pro-
18 posal for the promotion of economic
19 growth, including prospective job creation
20 and increased domestic capital investment.

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

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

4 “(II) shall deem such petitions to
5 include records previously filed with
6 the Secretary pursuant to subpara-
7 graph (F) if the alien petitioner cer-
8 tifies that such records are incor-
9 porated by reference into the alien’s
10 petition.

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

22 “(I) reasonable predictions, sup-
23 ported by economically and statis-
24 tically valid and transparent fore-
25 casting tools, concerning the amount

1 of investment that will be pooled, the
2 kinds of commercial enterprises that
3 will receive such investments, details
4 of the jobs that will be created di-
5 rectly or indirectly as a result of such
6 investments, and other positive eco-
7 nomic effects such investments will
8 have;

9 “(II) a description of the policies
10 and procedures in place reasonably
11 designed to monitor new commercial
12 enterprises and any associated job-
13 creating entity to seek to ensure com-
14 pliance with—

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

20 “(bb) all securities laws of
21 each State in which securities of-
22 ferings will be conducted, invest-
23 ment advice will be rendered, or
24 the offerors or offerees reside;
25 and

1 “(III) attestations and informa-
2 tion confirming that all persons in-
3 volved with the regional center meet
4 the requirements under clauses (i)
5 and (ii) of subparagraph (H).

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

18 “(v) COMPLIANCE.—

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

1 the number of jobs created by the pro-
2 gram, including—

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

11 “(bb) consistent with this
12 subparagraph, jobs estimated to
13 have been created indirectly
14 through capital expenditures, rev-
15 enues generated from increased
16 exports, improved regional pro-
17 ductivity, job creation, and in-
18 creased domestic capital invest-
19 ment resulting from the program.

20 “(II) JOB AND INVESTMENT RE-
21 QUIREMENTS.—

22 “(aa) RELOCATED JOBS.—
23 In determining compliance with
24 the job creation requirement
25 under subparagraph (A)(ii), the

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

13 “(bb) PUBLICLY AVAILABLE
14 BONDS.—The Secretary shall
15 prescribe regulations to ensure
16 that alien investor capital may
17 not be utilized, by a new com-
18 mercial enterprise or otherwise,
19 to purchase municipal bonds or
20 any other bonds, if such bonds
21 are available to the general pub-
22 lic, either as part of a primary
23 offering or from a secondary
24 market.

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

3 “(I) require a regional center—

4 “(aa) to provide advance no-
5 tice to the Secretary of signifi-
6 cant proposed changes to its or-
7 ganizational structure, owner-
8 ship, or administration, including
9 the sale of such center, or other
10 arrangements which would result
11 in individuals not previously sub-
12 ject to the requirements under
13 subparagraph (H) becoming in-
14 volved with the regional center,
15 before any such proposed
16 changes may take effect; or

17 “(bb) if exigent cir-
18 cumstances are present, to pro-
19 vide the notice described in item
20 (aa) to the Secretary not later
21 than 5 business days after a
22 change described in such item;

23 “(II) approve any amendment re-
24 ferred to in subclause (I) only after
25 the Secretary determines that the re-

1 regional center would remain compliant
 2 with this subparagraph and subpara-
 3 graph (H) after implementing the pro-
 4 posed changes; and

5 “(III) notwithstanding the pend-
 6 ency of a determination described in
 7 subclause (II) relating to an amend-
 8 ment of a business plan or petition,
 9 adjudicate business plans under sub-
 10 paragraph (F) and petitions under
 11 section 204(a)(1)(H).

12 “(vii) RECORD KEEPING AND AU-
 13 DITS.—

14 “(I) RECORD KEEPING.—Each
 15 regional center shall make and pre-
 16 serve, during the 5-year period begin-
 17 ning on the last day of the Federal
 18 fiscal year in which any transactions
 19 occurred, books, ledgers, records, and
 20 other documentation from the regional
 21 center, new commercial enterprise, or
 22 job-creating entity used to support—

23 “(aa) any claims, evidence,
 24 or certifications contained in the
 25 regional center’s annual state-

1 ments under subparagraph (G);
2 and

3 “(bb) associated petitions by
4 aliens seeking classification under
5 this section or removal of condi-
6 tions under section 216A.

7 “(II) AUDITS.—The Secretary
8 shall audit each regional center not
9 less frequently than once every 3
10 years. Each such audit shall include a
11 review of any documentation required
12 to be maintained under subclause (I)
13 for the preceding 3 years and a review
14 of the flow of alien investor capital
15 into any capital investment project.
16 To the extent multiple regional cen-
17 ters are located at a single site, the
18 Secretary may audit multiple regional
19 centers in a single site visit.

20 “(III) TERMINATION.—The Sec-
21 retary shall terminate the designation
22 of a regional center that fails to con-
23 sent to an audit under subclause (II)
24 or deliberately attempts to impede
25 such an audit.

1 “(F) BUSINESS PLANS FOR REGIONAL
2 CENTER INVESTMENTS.—

3 “(i) APPLICATION FOR APPROVAL OF
4 AN INVESTMENT IN A COMMERCIAL EN-
5 TERPRISE.—A regional center shall file an
6 application with the Secretary of Home-
7 land Security for each particular invest-
8 ment offering through an associated new
9 commercial enterprise before any alien files
10 a petition for classification under this
11 paragraph by reason of investment in that
12 offering, which shall include—

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

16 “(II) a credible economic analysis
17 regarding estimated job creation that
18 is based upon economically and statis-
19 tically valid and transparent meth-
20 odologies;

21 “(III) any documents filed with
22 the Securities and Exchange Commis-
23 sion under the Securities Act of 1933
24 (15 U.S.C. 77a et seq.) or with the

1 securities regulator of any State, as
2 required by law;

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

17 “(aa) any investment risks
18 associated with the new commer-
19 cial enterprise and the job-cre-
20 ating entity;

21 “(bb) any conflicts of inter-
22 est that currently exist or may
23 arise among the regional center,
24 the new commercial enterprise,
25 the job-creating entity, or the

1 principals or attorneys of such
2 entities;

3 “(cc) any pending material
4 litigation or bankruptcy, or ad-
5 verse judgments or bankruptcy
6 orders issued during the most re-
7 cent 10-year period, in the
8 United States or in another
9 country, affecting the regional
10 center, the new commercial enter-
11 prise, any associated job-creating
12 entity, or any other enterprise in
13 which any principal of any of the
14 aforementioned entities held ma-
15 jority ownership at the time; and

16 “(dd)(AA) any fees, ongoing
17 interest, or other compensation
18 paid, or to be paid by the re-
19 gional center, the new commer-
20 cial enterprise, or any issuer of
21 securities intended to be offered
22 to alien investors, to agents, find-
23 ers, or broker dealers involved in
24 the offering of securities to alien

1 investors in connection with the
2 investment;

3 “(BB) a description of the
4 services performed, or that will
5 be performed, by such person to
6 entitle the person to such fees,
7 interest, or compensation; and

8 “(CC) the name and contact
9 information of any such person,
10 if known at the time of filing;

11 “(V) a description of the policies
12 and procedures, such as those related
13 to internal and external due diligence,
14 reasonably designed to cause the re-
15 gional center and any issuer of securi-
16 ties intended to be offered to alien in-
17 vestors in connection with the relevant
18 capital investment project, to comply,
19 as applicable, with the securities laws
20 of the United States and the laws of
21 the applicable States in connection
22 with the offer, purchase, or sale of its
23 securities;

24 “(VI) a certification from the re-
25 gional center, and any issuer of secu-

1 rities intended to be offered to alien
2 investors in connection with the rel-
3 evant capital investment project, that
4 their respective agents and employees,
5 and any parties associated with the
6 regional center and such issuer of se-
7 curities affiliated with the regional
8 center are in compliance with the se-
9 curities laws of the United States and
10 the laws of the applicable States in
11 connection with the offer, purchase, or
12 sale of its securities, to the best of the
13 certifier’s knowledge, after a due dili-
14 gence investigation; and

15 “(VII) documentation dem-
16 onstrating that the regional center
17 consulted with a local economic devel-
18 opment agency or municipality re-
19 garding the capital investment project,
20 which shall address—

21 “(aa) the number and type
22 of jobs anticipated to be created;
23 and

24 “(bb) whether the project is
25 consistent with the agency or

1 municipality's plan for economic
2 development in the region.

3 “(ii) EFFECT OF APPROVAL OF A
4 BUSINESS PLAN FOR AN INVESTMENT IN A
5 REGIONAL CENTER'S COMMERCIAL ENTER-
6 PRISE.—The approval of an application
7 under this subparagraph, including an ap-
8 proval before the date of the enactment of
9 this subparagraph, shall be binding for
10 purposes of the adjudication of subsequent
11 petitions seeking classification under this
12 paragraph by immigrants investing in the
13 same offering described in such applica-
14 tion, and of petitions by the same immi-
15 grants filed under section 216A unless—

16 “(I) the applicant engaged in
17 fraud, misrepresentation, or criminal
18 misuse;

19 “(II) such approval would threat-
20 en public safety or national security;

21 “(III) there has been a material
22 change that affects the program eligi-
23 bility of the approved economic model
24 or terms of the investment offering;

1 “(IV) the discovery of other evi-
2 dence affecting program eligibility was
3 not disclosed by the applicant during
4 the adjudication process; or

5 “(V) the previous adjudication
6 involved a material mistake of law or
7 fact.

8 “(iii) AMENDMENTS.—

9 “(I) APPROVAL.—The Secretary
10 of Homeland Security may establish
11 procedures by which a regional center
12 may seek approval of an amendment
13 to an approved application under this
14 subparagraph that reflects changes
15 specified by the Secretary to any in-
16 formation, documents, or other as-
17 pects of the investment offering de-
18 scribed in such approved application
19 not later than 30 days after any such
20 changes.

21 “(II) INCORPORATION.—Upon
22 the approval of a timely filed amend-
23 ment to an approved application, any
24 changes reflected in such amendment
25 may be incorporated into and consid-

1 ered in determining program eligibility
2 through adjudication of—

3 “(aa) pending petitions from
4 immigrants investing in the offer-
5 ing described in the approved ap-
6 plication who are seeking classi-
7 fication under this paragraph;
8 and

9 “(bb) petitions by immi-
10 grants described in item (aa)
11 that are filed under section
12 216A.

13 “(iv) SITE VISITS.—The Secretary of
14 Homeland Security, not earlier than 24
15 hours after providing notice of each site
16 visit, shall—

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

19 “(II) perform at least 1 site visit
20 to, as applicable, each new commercial
21 enterprise or job-creating entity, or
22 the business locations where any jobs
23 that are claimed as being created,
24 which—

1 “(aa) shall include a review
2 for evidence of direct job creation
3 in accordance with subparagraph
4 (E)(v)(I); and

5 “(bb) may occur at any time
6 during the period between the fil-
7 ing of an application for approval
8 of an investment in a new com-
9 mercial enterprise under this sub-
10 paragraph and the adjudication
11 of the first petition for removal
12 of conditions on lawful perma-
13 nent resident status under sec-
14 tion 216A(c) filed by an alien in-
15 vesting in such investment.

16 “(G) REGIONAL CENTER ANNUAL STATE-
17 MENTS.—

18 “(i) IN GENERAL.—Each regional cen-
19 ter designated under subparagraph (E)
20 shall annually submit a statement to the
21 Director of U.S. Citizenship and Immigra-
22 tion Services (referred to in this subpara-
23 graph as the ‘Director’), in a manner pre-
24 scribed by the Secretary of Homeland Se-
25 curity, which shall include—

1 “(I) a certification stating that,
2 to the best of the certifier’s knowl-
3 edge, after a due diligence investiga-
4 tion, the regional center is in compli-
5 ance with clauses (i) and (ii) of sub-
6 paragraph (H);

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

9 “(III) a certification stating that,
10 to the best of the certifier’s knowl-
11 edge, after a due diligence investiga-
12 tion, the regional center is in compli-
13 ance with subparagraph (K)(iii);

14 “(IV) a description of any pend-
15 ing material litigation or bankruptcy
16 proceedings, or litigation or bank-
17 ruptcy proceedings resolved during the
18 preceding fiscal year, involving the re-
19 gional center, the new commercial en-
20 terprise, or any affiliated job-creating
21 entity;

22 “(V) an accounting of all foreign
23 investor capital invested in the re-
24 gional center, new commercial enter-
25 prise, or job-creating entity;

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

4 “(aa) an accounting of the
5 aggregate capital invested in the
6 new commercial enterprise and
7 job-creating entity by alien inves-
8 tors under this paragraph for
9 each capital investment project
10 being undertaken by the new
11 commercial enterprise;

12 “(bb) a description of how
13 the capital described in item (aa)
14 is being used to execute each
15 capital investment project in the
16 filed business plan or plans;

17 “(cc) evidence that 100 per-
18 cent of the capital described in
19 item (aa) has been committed to
20 each capital investment project;

21 “(dd) detailed evidence of
22 the progress made toward the
23 completion of each capital invest-
24 ment project;

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

4 “(ff) to the best of the re-
5 gional center’s knowledge, for all
6 fees, including administrative
7 fees, loan monitoring fees, loan
8 management fees, commissions
9 and similar transaction-based
10 compensation, collected from
11 alien investors by the regional
12 center, the new commercial enter-
13 prise, any affiliated job-creating
14 entity, any affiliated issuer of se-
15 curities intended to be offered to
16 alien investors, or any promoter,
17 finder, broker-dealer, or other en-
18 tity engaged by any of the afore-
19 mentioned entities to locate indi-
20 vidual investors—

21 “(AA) a description of
22 all fees collected;

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

1 “(CC) the purpose for
2 which such fees were col-
3 lected;

4 “(gg) any documentation re-
5 ferred to in subparagraph
6 (F)(i)(IV) if there has been a
7 material change during the pre-
8 ceding fiscal year; and

9 “(hh) a certification by the
10 regional center that the informa-
11 tion provided under items (aa)
12 through (gg) is accurate, to the
13 best of the certifier’s knowledge,
14 after a due diligence investiga-
15 tion; and

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

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

23 “(I) shall require the regional
24 center to amend or supplement an an-
25 nual statement required under clause

1 (i) if the Director determines that
2 such statement is deficient; and

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

8 “(iii) SANCTIONS.—

9 “(I) EFFECT OF VIOLATION.—

10 The Director shall sanction any re-
11 gional center entity in accordance
12 with subclause (II) if the regional cen-
13 ter fails to submit an annual state-
14 ment or if the Director determines
15 that the regional center—

16 “(aa) knowingly submitted
17 or caused to be submitted a
18 statement, certification, or any
19 information submitted pursuant
20 to this subparagraph that con-
21 tained an untrue statement of
22 material fact; or

23 “(bb) is conducting itself in
24 a manner inconsistent with its
25 designation under subparagraph

1 (E), including any willful, undis-
2 closed, and material deviation by
3 new commercial enterprises from
4 any filed business plan for such
5 new commercial enterprises.

6 “(II) AUTHORIZED SANCTIONS.—
7 The Director shall establish a grad-
8 uated set of sanctions based on the
9 severity of the violations referred to in
10 subclause (I), including—

11 “(aa) fines equal to not
12 more than 10 percent of the total
13 capital invested by alien investors
14 in the regional center’s new com-
15 mercial enterprises or associated
16 job-creating entities, the payment
17 of which shall not in any cir-
18 cumstance utilize any of such
19 alien investors’ capital invest-
20 ments, and which shall be depos-
21 ited into the EB–5 Integrity
22 Fund established under subpara-
23 graph (J);

24 “(bb) temporary suspension
25 from participation in the pro-

1 gram described in subparagraph
2 (E), which may be lifted by the
3 Director if the individual or enti-
4 ty cures the alleged violation
5 after being provided such an op-
6 portunity by the Director;

7 “(cc) permanent bar from
8 participation in the program de-
9 scribed in subparagraph (E) for
10 1 or more individuals or business
11 entities associated with the re-
12 gional center, new commercial
13 enterprise, or job-creating entity;
14 and

15 “(dd) termination of re-
16 gional center designation.

17 “(iv) AVAILABILITY OF ANNUAL
18 STATEMENTS TO INVESTORS.—Not later
19 than 30 days after a request from an alien
20 investor, a regional center shall make
21 available to such alien investor—

22 “(I) a copy of the filed annual
23 statement; and

24 “(II) any amendments filed to
25 such statement.

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

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

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

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

12 “(bb) a civil violation involv-
13 ing fraud or deceit that resulted
14 in a liability in excess of
15 \$1,000,000; or

16 “(cc) a crime for which the
17 person was convicted and sen-
18 tenced to a term of imprisonment
19 of more than 1 year;

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

1 authority that supervises or examines
2 banks, savings associations, or credit
3 unions, a State insurance commission
4 (or an agency or officer of a State
5 performing similar functions), an ap-
6 propriate Federal banking agency, the
7 Commodity Futures Trading Commis-
8 sion, the Securities and Exchange
9 Commission, a financial self-regu-
10 latory organization recognized by the
11 Securities and Exchange Commission,
12 or the National Credit Union Admin-
13 istration, which is based on a violation
14 of any law or regulation that—

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

18 “(bb) bars the person
19 from—

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

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

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

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

10 “(III) the Secretary determines
11 that the person is engaged in, has
12 ever been engaged in, or seeks to en-
13 gage in—

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

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

22 “(cc) any activity related to
23 money laundering (as described
24 in section 1956 or 1957 of title
25 18, United States Code);

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

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

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

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

15 “(IV) the person—

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

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

1 State bar association of which
2 the person is or was a member.

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

5 “(I) LAWFUL STATUS RE-
6 QUIRED.—A person may not be in-
7 volved with a regional center unless
8 the person is a national of the United
9 States or an individual who has been
10 lawfully admitted for permanent resi-
11 dence (as such terms are defined in
12 paragraphs (20) and (22) of section
13 101(a)).

14 “(II) FOREIGN GOVERNMENTS.—
15 No agency, official, or other similar
16 entity or representative of a foreign
17 government entity may provide capital
18 to, or be directly or indirectly involved
19 with the ownership or administration
20 of, a regional center, a new commer-
21 cial enterprise, or a job-creating enti-
22 ty, except that a foreign or domestic
23 investment fund or other investment
24 vehicle that is wholly or partially
25 owned, directly or indirectly, by a

1 bona fide foreign sovereign wealth
2 fund or a foreign state-owned enter-
3 prise otherwise permitted to do busi-
4 ness in the United States may be in-
5 volved with the ownership, but not the
6 administration, of a job-creating enti-
7 ty that is not an affiliated job-creating
8 entity.

9 “(III) RULEMAKING.—Not later
10 than 180 days after the date of the
11 enactment of the EB–5 Reform and
12 Integrity Act of 2019, the Secretary
13 shall issue regulations implementing
14 subparagraphs (I) and (II).

15 “(iii) INFORMATION REQUIRED.—

16 “(I) IN GENERAL.—The Sec-
17 retary of Homeland Security shall re-
18 quire such attestations and informa-
19 tion, including the submission of fin-
20 gerprints or other biometrics to the
21 Federal Bureau of Investigation, and
22 shall perform such criminal record
23 checks and other background and
24 database checks with respect to a re-
25 gional center, a new commercial enter-

1 prise, and any affiliated job-creating
2 entity, and persons involved with such
3 entities (as described in clause (v)), to
4 determine whether such entities are in
5 compliance with clauses (i) and (ii).

6 “(II) TIMING.—The Secretary
7 may—

8 “(aa) require the informa-
9 tion and attestations described in
10 subclause (I) from the entities re-
11 ferred to in subclause (I), and
12 any person involved with such en-
13 tities, at any time on or after the
14 date of the enactment of the EB-
15 5 Reform and Integrity Act of
16 2019; and

17 “(bb) perform such checks
18 with respect to any job-creating
19 entity and persons involved with
20 such entity.

21 “(iv) TERMINATION.—

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

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

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

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

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

14 “(II) INFORMATION.—

15 “(aa) NOTIFICATION.—The
16 Secretary, after performing the
17 criminal record checks and other
18 background checks described in
19 clause (iii), shall notify a regional
20 center, new commercial enter-
21 prise, or job-creating entity
22 whether any person involved with
23 such entities is not in compliance
24 with clause (i) or (ii).

1 “(bb) EFFECT OF FAILURE
2 TO RESPOND.—If the regional
3 center, new commercial enter-
4 prise, or job-creating entity fails
5 to discontinue the prohibited per-
6 son’s involvement with the re-
7 gional center, new commercial
8 enterprise, or job-creating entity,
9 as applicable, within 30 days
10 after receiving such notification,
11 such entity shall be deemed to
12 have knowledge under subclause
13 (I)(aa) that the involvement of
14 such person with the entity is in
15 violation of clause (i) or (ii).

16 “(v) PERSONS INVOLVED WITH A RE-
17 GIONAL CENTER, NEW COMMERCIAL EN-
18 TERPRISE, OR JOB-CREATING ENTITY.—
19 For the purposes of this paragraph, unless
20 otherwise determined by the Secretary of
21 Homeland Security, a person is involved
22 with a regional center, a new commercial
23 enterprise, any affiliated job-creating enti-
24 ty, or another job-creating entity, as appli-
25 cable, if the person is, directly or indi-

1 rectly, an owner or in a position of sub-
2 stantive authority to make operational or
3 managerial decisions over pooling,
4 securitization, investment, release, accept-
5 ance, or control or use of any funding that
6 was procured under the program described
7 in subparagraph (E). An individual may be
8 in a position of substantive authority if the
9 person serves as a principal, a representa-
10 tive, an administrator, an owner, an offi-
11 cer, a board member, a manager, an execu-
12 tive, a general partner, a fiduciary, an
13 agent, or in a similar position at the re-
14 gional center, new commercial enterprise,
15 or job-creating entity, respectively.

16 “(I) COMPLIANCE WITH SECURITIES

17 LAWS.—

18 “(i) JURISDICTION.—

19 “(I) IN GENERAL.—The United
20 States has jurisdiction, including sub-
21 ject matter jurisdiction, over the pur-
22 chase or sale of any security offered
23 or sold, or any investment advice pro-
24 vided, by any regional center or any

1 party associated with a regional cen-
2 ter for purposes of the securities laws.

3 “(II) COMPLIANCE WITH REGU-
4 LATION S.—For purposes of section 5
5 of the Securities Act of 1933 (15
6 U.S.C. 77e), a regional center or any
7 party associated with a regional cen-
8 ter is not precluded from offering or
9 selling a security pursuant to Regula-
10 tion S (17 C.F.R. 230.901 et seq.) to
11 the extent that such offering or selling
12 otherwise complies with that regula-
13 tion.

14 “(III) SAVINGS PROVISION.—
15 Subclause I is not intended to modify
16 any existing rules or regulations of
17 the Securities and Exchange Commis-
18 sion related to the application of sec-
19 tion 15(a) of the Securities and Ex-
20 change Act of 1934 (15 U.S.C.
21 78o(a)) to foreign brokers or dealers.

22 “(ii) REGIONAL CENTER CERTIFI-
23 CATIONS REQUIRED.—

24 “(I) INITIAL CERTIFICATION.—
25 The Secretary of Homeland Security

1 may not approve an application for re-
2 gional center designation or regional
3 center amendment unless the regional
4 center certifies that, to the best of the
5 certifier’s knowledge, after a due dili-
6 gence investigation, the regional cen-
7 ter is in compliance with and has poli-
8 cies and procedures (such as those re-
9 lated to internal and external due dili-
10 gence) reasonably designed to con-
11 firm, as applicable, that all parties as-
12 sociated with the regional center are
13 and will remain in compliance with
14 the securities laws of the United
15 States and of any State in which—

16 “(aa) the offer, purchase, or
17 sale of securities was conducted;

18 “(bb) the issuer of securities
19 was located; or

20 “(cc) the investment advice
21 was provided by the regional cen-
22 ter or parties associated with the
23 regional center.

24 “(II) REISSUE.—A regional cen-
25 ter shall annually reissue a certifi-

1 cation described in subclause (I), in
2 accordance with subparagraph (G), to
3 certify compliance with clause (iii) by
4 stating that—

5 “(aa) the certifier is in a po-
6 sition to have knowledge of the
7 offers, purchases, and sales of se-
8 curities or the provision of invest-
9 ment advice by parties associated
10 with the regional center;

11 “(bb) to the best of the cer-
12 tifier’s knowledge, after a due
13 diligence investigation, all such
14 offers, purchases, and sales of se-
15 curities or the provision of invest-
16 ment advice complied with the se-
17 curities laws of the United States
18 and the securities laws of any
19 State in which—

20 “(AA) the offer, pur-
21 chase, or sale of securities
22 was conducted;

23 “(BB) the issuer of se-
24 curities was located; or

1 “(CC) the investment
2 advice was provided; and

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

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

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

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

24 “(cc) certify that the re-
25 gional center and all parties asso-

1 ciated with the regional center
2 are currently in compliance, to
3 the best of the certifier’s knowl-
4 edge, after a due diligence inves-
5 tigation.

6 “(iii) OVERSIGHT REQUIRED.—Each
7 regional center shall—

8 “(I) monitor and supervise all of-
9 fers, purchases, and sales of, and in-
10 vestment advice relating to, securities
11 made by parties associated with the
12 regional center to confirm compliance
13 with the securities laws of the United
14 States;

15 “(II) maintain records, data, and
16 information relating to all such offers,
17 purchases, sales, and investment ad-
18 vice during the 5-year period begin-
19 ning on the date of their creation; and

20 “(III) make the records, data,
21 and information described in sub-
22 clause (II) available to the Secretary
23 or to the Securities and Exchange
24 Commission upon request.

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

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

18 “(II) are subject to any final
19 order of the Securities and Exchange
20 Commission or a State securities reg-
21 ulator that—

22 “(aa) bars such person from
23 association with an entity regu-
24 lated by the Securities and Ex-

1 change Commission or a State
2 securities regulator; or

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

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

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

22 “(I) the regional center;

23 “(II) any new commercial enter-
24 prise or affiliated job-creating entity

1 or issuer of securities associated with
2 the regional center;

3 “(III) the regional center’s and
4 new commercial enterprise’s owners,
5 officers, directors, managers, partners,
6 agents, employees, promoters and at-
7 torneys, or similar position, as deter-
8 mined by the Secretary; and

9 “(IV) any person under the con-
10 trol of the regional center, new com-
11 mercial enterprise, or issuer of securi-
12 ties associated with the regional cen-
13 ter who is responsible for the mar-
14 keting, offering, or sale of any secu-
15 rity offered in connection with the
16 capital investment project.

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

23 “(J) EB-5 INTEGRITY FUND.—

24 “(i) ESTABLISHMENT.—There is es-
25 tablished in the United States Treasury a

1 special fund, which shall be known as the
2 ‘EB–5 Integrity Fund’ (referred to in this
3 subparagraph as the ‘Fund’). Amounts de-
4 posited into the Fund shall be available to
5 the Secretary of Homeland Security until
6 expended for the purposes set forth in
7 clause (iii).

8 “(ii) FEES.—

9 “(I) ANNUAL FEE.—On October
10 1, 2020, and on October 1 of each
11 year thereafter, the Secretary of
12 Homeland Security shall collect for
13 the Fund an annual fee—

14 “(aa) except as provided in
15 item (bb), of \$20,000 from each
16 regional center designated under
17 subparagraph (E); and

18 “(bb) of \$10,000 from each
19 such regional center with 20 or
20 fewer total investors in the pre-
21 ceding fiscal year in its new com-
22 mercial enterprises.

23 “(II) PETITION FEE.—Beginning
24 on October 1, 2020, the Secretary
25 shall collect a fee of \$1,000 for the

1 Fund with each petition filed under
2 section 204(a)(1)(H) for classification
3 under subparagraph (E). The fee
4 under this subclause is in addition to
5 the fee that the Secretary is author-
6 ized to establish and collect for each
7 petition to recover the costs of adju-
8 dication and naturalization services
9 under section 286(m).

10 “(III) INCREASES.—The Sec-
11 retary may increase the amounts
12 under this clause by prescribing such
13 regulations as may be necessary to en-
14 sure that amounts in the Fund are
15 sufficient to carry out the purposes
16 set forth in clause (iii).

17 “(iii) PERMISSIBLE USES OF FUND.—
18 The Secretary shall—

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

23 “(aa) monitoring and inves-
24 tigating program-related events
25 and promotional activities; and

1 “(bb) ensuring an alien in-
2 vestor’s compliance with subpara-
3 graph (L); and

4 “(II) use amounts deposited into
5 the Fund—

6 “(aa) to detect and inves-
7 tigate fraud or other crimes;

8 “(bb) to determine whether
9 regional centers, new commercial
10 enterprises, job-creating entities,
11 and alien investors (and their
12 alien spouses and alien children)
13 comply with the immigration
14 laws;

15 “(cc) to conduct audits and
16 site visits; and

17 “(dd) as the Secretary de-
18 termines to be necessary, includ-
19 ing monitoring compliance with
20 the requirements under section 7
21 of the EB–5 Reform and Integ-
22 rity Act of 2019.

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

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

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

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

19 “(K) DIRECT AND THIRD-PARTY PRO-
20 MOTERS.—

21 “(i) RULES AND STANDARDS.—Direct
22 and third-party promoters (including mi-
23 gration agents) of a regional center, any
24 new commercial enterprise, an affiliated
25 job-creating entity, or an issuer of securi-

1 ties intended to be offered to alien inves-
2 tors in connection with a particular capital
3 investment project shall comply with the
4 rules and standards prescribed by the Sec-
5 retary of Homeland Security and any ap-
6 plicable Federal or State securities laws, to
7 oversee regional center promotion, includ-
8 ing—

9 “(I) registration with U.S. Citi-
10 zenship and Immigration Services,
11 which—

12 “(aa) includes identifying
13 and contact information for such
14 promoter and confirmation of the
15 existence of the written agree-
16 ment required under clause (iii);
17 and

18 “(bb) may be made publicly
19 available at the discretion of the
20 Secretary;

21 “(II) certification by each pro-
22 moter that such promoter is not ineli-
23 gible under subparagraph (H)(i);

1 “(III) guidelines for representing
2 the visa process to foreign investors;
3 and

4 “(IV) guidelines describing per-
5 missible fee arrangements under ap-
6 plicable securities and immigration
7 laws.

8 “(ii) EFFECT OF VIOLATION.—If the
9 Secretary determines that a direct or
10 third-party promoter has violated clause
11 (i), the Secretary shall suspend or perma-
12 nently bar such individual from participa-
13 tion in the program described in subpara-
14 graph (E).

15 “(iii) COMPLIANCE.—Each regional
16 center shall maintain a written agreement
17 outlining the rules and standards pre-
18 scribed under clause (i) between—

19 “(I) the regional center, the new
20 commercial enterprise, any affiliated
21 job-creating entity, or any issuer of
22 securities intended to be offered to
23 alien investors in connection with a
24 particular capital investment project;
25 and

1 “(II) each direct or third-party
2 promoter operating on behalf of such
3 entity or issuer.

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

17 “(L) SOURCE OF FUNDS.—

18 “(i) IN GENERAL.—An alien investor
19 shall demonstrate that the capital required
20 under subparagraph (A) and any funds
21 used to pay administrative costs and fees
22 associated with the alien’s investment were
23 obtained from a lawful source and through
24 lawful means.

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

6 “(I) business and tax records, or
7 similar records, including—

8 “(aa) foreign business reg-
9 istration records;

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

1 States by or on behalf of the
2 alien investor; and

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

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

18 “(III) the identity of all persons
19 who transfer into the United States,
20 on behalf of the investor, any funds
21 that are used to meet the capital re-
22 quirement under subparagraph (A).

23 “(M) TREATMENT OF GOOD FAITH INVES-
24 TORS FOLLOWING PROGRAM NONCOMPLI-
25 ANCE.—

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

17 “(ii) NEW REGIONAL CENTER OR IN-
18 VESTMENT.—The petition under section
19 204(a)(1)(H) of an alien described in
20 clause (i) and the conditional permanent
21 resident status of an alien described in
22 clause (i) shall be terminated 180 days
23 after the termination from the program
24 under this paragraph of a regional center,
25 a new commercial enterprise, or a job-cre-

1 ating entity (but not sooner than 180 days
2 after the date of the enactment of the EB-
3 5 Reform and Integrity Act of 2019) un-
4 less—

5 “(I) in the case of the termi-
6 nation of a regional center—

7 “(aa) the new commercial
8 enterprise associates with an ap-
9 proved regional center, regardless
10 of the approved geographical
11 boundaries of such regional cen-
12 ter’s designation; or

13 “(bb) such alien makes a
14 qualifying investment in another
15 new commercial enterprise; or

16 “(II) in the case of the debar-
17 ment of a new commercial enterprise
18 or job-creating entity, such alien in-
19 vests in another new commercial en-
20 terprise.

21 “(iii) REMOVAL OF CONDITIONS.—
22 Aliens described in subclauses (I)(bb) and
23 (II) of clause (ii) shall be eligible to have
24 their conditions removed pursuant to sec-
25 tion 216A beginning on the date that is 2

1 years after the date of the subsequent in-
2 vestment.

3 “(iv) IN CASE OF ENFORCEMENT AC-
4 TION.—Except as provided in clause (v), if
5 the Secretary of Homeland Security, the
6 Attorney General, or the Securities and
7 Exchange Commission files, in any United
8 States District Court, a criminal or civil
9 enforcement action containing allegations
10 that a regional center, a new commercial
11 enterprise, a job-creating entity, or any
12 person involved with any of the foregoing
13 entities, committed fraud which affected an
14 alien’s investment capital under subpara-
15 graph (A), or if a State authority or agen-
16 cy files such an action in a State court—

17 “(I) for all related petitions for
18 classification under section 203(b)(5)
19 and petitions for removal of conditions
20 described in section 216A—

21 “(aa) the Secretary may
22 hold such petitions in abeyance
23 unless ordered to take action by
24 the United States District Court

1 overseeing such action, if applica-
2 ble; and

3 “(bb) the United States Dis-
4 trict Court overseeing such ac-
5 tion, if applicable, may enter an
6 order extending any deadlines ap-
7 plicable under this paragraph
8 and to prevent age-out of deriva-
9 tive beneficiaries;

10 “(II) the alien investor may—

11 “(aa) petition to amend the
12 alien’s underlying petition for
13 classification under section
14 203(b)(5)(E) or the petition for
15 removal of conditions described
16 in section 216A(c), including
17 amendments to the business plan,
18 without such facts underlying the
19 amendment being deemed a ma-
20 terial change; and

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

24 “(III) any funds obtained or re-
25 covered by an alien investor, directly

1 or indirectly, from claims against
2 third parties, including insurance pro-
3 ceeds, or any additional investment
4 capital provided by the alien after the
5 enforcement action described in clause
6 (iv) is filed, may be deemed to be such
7 alien’s investment capital for the pur-
8 poses of subparagraph (A) if such in-
9 vestment otherwise complies with the
10 requirements under this paragraph
11 and under section 216A.

12 “(v) EXCEPTION.—If the Secretary
13 has reason to believe that an alien was a
14 knowing participant in the conduct that led
15 to the termination of a regional center,
16 new commercial enterprise, or job-creating
17 entity described in clause (i), or was a
18 knowing participant in the alleged wrong-
19 doing that led to an enforcement action de-
20 scribed in clause (iv)—

21 “(I) the alien shall not be ac-
22 corded any benefit under this sub-
23 paragraph; and

24 “(II) the Secretary shall—

1 “(aa) notify the alien of
2 such belief; and

3 “(bb) subject to section
4 216A(b)(2), deny or initiate pro-
5 ceedings to revoke the approval
6 of such alien’s petition, applica-
7 tion, or benefit (and that of any
8 spouse or child, if applicable) de-
9 scribed in this paragraph.

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

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

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

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

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

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

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

13 “(V) a temporary Green Card
14 granting conditional permanent resi-
15 dent status that was issued to an
16 alien pursuant to section 216A.

17 “(iii) DEPARTMENT.—If a regional
18 center, new commercial enterprise, or job-
19 creating entity has its designation or par-
20 ticipation in the program under this para-
21 graph terminated for reasons relating to
22 public safety or national security, any per-
23 son associated with such regional center,
24 new commercial enterprise, or job-creating
25 entity, including an alien investor, shall be

1 permanently barred from future participa-
2 tion in the program under this paragraph
3 if the Secretary of Homeland Security, in
4 the Secretary’s discretion, determines, by a
5 preponderance of the evidence, that such
6 person was a knowing participant in the
7 conduct that led to the termination.

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

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

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

23 “(v) JUDICIAL REVIEW.—Notwith-
24 standing any other provision of law (statu-
25 tory or nonstatutory), including section

1 2241 of title 28, United States Code, or
2 any other habeas corpus provision, and
3 sections 1361 and 1651 of such title, no
4 court shall have jurisdiction to review a de-
5 nial or revocation under this subparagraph.
6 Nothing in this clause may be construed as
7 precluding review of constitutional claims
8 or questions of law raised upon a petition
9 for review filed with an appropriate court
10 of appeals in accordance with section 242.

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

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

24 “(ii) DEBARMENT.—If a regional cen-
25 ter, new commercial enterprise, or job-cre-

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

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

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

24 “(II) deny or revoke such peti-
25 tion, application, or benefit or termi-

1 nate the permanent resident status of
2 the alien (and the alien spouse and
3 alien children of such immigrant), in
4 accordance with clause (i), as of the
5 date of such determination.

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

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

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

19 “(II) an application for approval
20 of a business plan filed under sub-
21 paragraph (F);

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

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

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

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

18 “(Q) FUND ADMINISTRATION.—

19 “(i) IN GENERAL.—Each new com-
20 mercial enterprise shall deposit and main-
21 tain the capital investment of each alien
22 investor in a separate account, including
23 amounts held in escrow.

24 “(ii) USE OF FUNDS.—Amounts in a
25 separate account may only—

1 “(I) be transferred to another
2 separate account or a job-creating en-
3 tity;

4 “(II) otherwise be deployed into
5 the capital investment project for
6 which the funds were intended; or

7 “(III) be transferred to the alien
8 investor who contributed the funds as
9 a refund of that investor’s capital in-
10 vestment, if otherwise permitted
11 under this paragraph.

12 “(iii) DEPLOYMENT OF FUNDS INTO
13 AN AFFILIATED JOB-CREATING ENTITY.—
14 If amounts are transferred to an affiliated
15 job-creating entity pursuant to clause
16 (ii)(I)—

17 “(I) the affiliated job-creating
18 entity shall maintain such amounts in
19 a separate account until they are de-
20 ployed into the capital investment
21 project for which they were intended;
22 and

23 “(II) not later than 30 days after
24 such amounts are deployed pursuant
25 to subclause (I), the affiliated job-cre-

1 ating entity shall provide written no-
2 tice to the fund administrator re-
3 tained pursuant to clause (iv) that a
4 construction consultant or other indi-
5 vidual authorized by the Secretary has
6 verified that such amounts have been
7 deployed into the project.

8 “(iv) FUND ADMINISTRATOR.—Except
9 as provided in clause (v), the new commer-
10 cial enterprise shall retain a fund adminis-
11 trator to fulfill the requirements under this
12 subparagraph. The fund administrator
13 shall—

14 “(I) be independent of, and not
15 directly related to, the new commer-
16 cial enterprise, the regional center as-
17 sociated with the new commercial en-
18 terprise, the job-creating entity, or
19 any of the principals or managers of
20 such entities;

21 “(II) be licensed, active, and in
22 good standing as—

23 “(aa) a certified public ac-
24 countant;

25 “(bb) an attorney;

1 “(cc) a broker-dealer or in-
2 vestment adviser registered with
3 the Securities and Exchange
4 Commission; or

5 “(dd) an individual or com-
6 pany that otherwise meets such
7 requirements as may be estab-
8 lished by the Secretary;

9 “(III) monitor and track any
10 transfer of amounts from the separate
11 account;

12 “(IV) serve as a cosignatory on
13 all separate accounts;

14 “(V) before any transfer of
15 amounts from a separate account—

16 “(aa) verify that the trans-
17 fer complies with all governing
18 documents, including organiza-
19 tional, operational, and invest-
20 ment documents; and

21 “(bb) approve such transfer
22 with a written or electronic sig-
23 nature; and

24 “(VI) periodically provide each
25 alien investor with information about

1 the activity of the account in which
2 the investor's capital investment is
3 held, including—

4 “(aa) the name and location
5 of the bank or financial institu-
6 tion at which the account is
7 maintained;

8 “(bb) the history of the ac-
9 count; and

10 “(cc) any additional infor-
11 mation required by the Secretary.

12 “(v) WAIVER.—The Secretary of
13 Homeland Security, after consultation with
14 the Securities and Exchange Commission,
15 may waive the requirements under clause
16 (iv) for any new commercial enterprise or
17 affiliated job-creating entity that is con-
18 trolled by or under common control of an
19 investment adviser or broker-dealer that is
20 registered with the Securities and Ex-
21 change Commission if the Secretary, in the
22 Secretary's discretion, determines that the
23 Securities and Exchange Commission pro-
24 vides comparable protections and trans-
25 parency for alien investors as the protec-

1 tions and transparency provided under
2 clause (iv).

3 “(vi) DEFINED TERM.—In this sub-
4 paragraph, the term ‘separate account’
5 means an account that—

6 “(I) is maintained in the United
7 States by a new commercial enterprise
8 at a federally regulated bank or at an-
9 other financial institution (as defined
10 in section 20 of title 18, United
11 States Code) in the United States;

12 “(II) is insured;

13 “(III) is maintained by the job-
14 creating entity, except as provided in
15 paragraph (6); and

16 “(IV) contains only the pooled in-
17 vestment funds of alien investors in a
18 new commercial enterprise with re-
19 spect to a single capital investment
20 project.”.

21 **SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
22 **ALIEN INVESTORS, SPOUSES, AND CHILDREN.**

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

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

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

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

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

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

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

23 (4) in subsection (b)—

1 (A) in the subsection heading, by striking
2 “ENTREPRENEURSHIP” and inserting “INVEST-
3 MENT”; and

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

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

8 (5) in subsection (c)—

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

11 (B) in paragraph (1)—

12 (i) in the matter preceding subpara-
13 graph (A), by striking “In order” and in-
14 sserting “Except as provided in paragraph
15 (3)(D), in order”;

16 (ii) in subparagraph (A)—

17 (I) by striking “must” and in-
18 sserting “shall”; and

19 (II) by striking “, and” and in-
20 sserting a semicolon;

21 (iii) in subparagraph (B)—

22 (I) by striking “must” and in-
23 sserting “shall”;

1 (II) by striking “Service” and in-
2 serting “Department of Homeland Se-
3 curity”; and

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

6 (iv) by adding at the end the fol-
7 lowing:

8 “(C) the Secretary shall have performed a
9 site visit to the relevant corporate office or busi-
10 ness location described in section
11 203(b)(5)(F)(iv).”; and

12 (C) in paragraph (3)—

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

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

18 “(B) REMOVAL OR EXTENSION OF CONDI-
19 TIONAL BASIS.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), if the Secretary deter-
22 mines that the facts and information con-
23 tained in a petition submitted under para-
24 graph (1)(A) are true, including dem-
25 onstrating that the alien complied with

1 subsection (d)(1)(B)(i), the Secretary
2 shall—

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

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

10 “(ii) EXCEPTION.—If the petition
11 demonstrates that the facts and informa-
12 tion are true and that the alien is in com-
13 pliance with subsection (d)(1)(B)(ii)—

14 “(I) the Secretary, in the Sec-
15 retary’s discretion, may provide a 1-
16 time, 1-year extension of the alien’s
17 conditional status; and

18 “(II)(aa) if the alien files a peti-
19 tion not later than 30 days after the
20 third anniversary of the alien’s lawful
21 admission for permanent residence
22 demonstrating that the alien complied
23 with subsection (d)(1)(B)(i), the Sec-
24 retary shall remove the conditional

1 basis of the alien’s status effective as
2 of such third anniversary; or

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

7 (6) in subsection (d)—

8 (A) in paragraph (1)—

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

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

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

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

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

18 “(ii) is actively in the process of creating
19 the employment required under section
20 203(b)(5)(A)(ii) and will create such employ-
21 ment before the third anniversary of the alien’s
22 lawful admission for permanent residence, pro-
23 vided that such alien’s capital will remain in-
24 vested during such time; and”;

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

3 “(A) NINETY-DAY PERIOD BEFORE SEC-
4 OND ANNIVERSARY.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii) and subparagraph (B),
7 a petition under subsection (c)(1)(A) shall
8 be filed during the 90-day period imme-
9 diately preceding the second anniversary of
10 the alien investor’s lawful admission for
11 permanent residence.

12 “(ii) EXCEPTION.—Aliens described in
13 subclauses (I)(bb) and (II) of section
14 203(b)(5)(M)(ii) shall file a petition under
15 subsection (c)(1)(A) during the 90-day pe-
16 riod before the second anniversary of the
17 subsequent investment.”; and

18 (C) in paragraph (3)—

19 (i) by striking “The interview” and
20 inserting the following:

21 “(A) IN GENERAL.—The interview”;

22 (ii) by striking “Service” and insert-
23 ing “Department of Homeland Security”;
24 and

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

3 “(B) WAIVER.—The Secretary of Home-
4 land Security, in the Secretary’s discretion, may
5 waive the deadline for an interview under sub-
6 section (c)(1)(B) or the requirement for such
7 an interview according to criteria developed by
8 U.S. Citizenship and Immigration Services, in
9 consultation with its Fraud Detection and Na-
10 tional Security Directorate and U.S. Immigra-
11 tion and Customs Enforcement, provided that
12 such criteria do not include a reduction of case
13 processing times or the allocation of adjudica-
14 tory resources. A waiver may not be granted
15 under this subparagraph if the alien to be inter-
16 viewed—

17 “(i) invested in a regional center, new
18 commercial enterprise, or job-creating enti-
19 ty that was sanctioned under section
20 203(b)(5); or

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

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

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

3 “(f) PETITION FROM QUALIFIED ALIEN INVES-
4 TOR.—An alien investor who invested the requisite capital
5 and created the employment required under section
6 203(b)(5)(A)(ii) at least 24 months before admission, and
7 is otherwise conforming to the requirements under section
8 203(b)(5), may file a petition, before admission for perma-
9 nent residence, to be considered, at the time of obtaining
10 status of an alien lawfully admitted for permanent resi-
11 dence, to obtain such status without conditions.”; and

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

16 (b) EFFECTIVE DATES.—

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

21 (2) EXCEPTIONS.—

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

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

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

11 (a) DEFINITIONS.—Section 203(b)(5)(D) of the Im-
12 migration and Nationality Act (8 U.S.C. 1153(b)(5)(D))
13 is amended to read as follows:

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

15 “(i) AFFILIATED JOB-CREATING ENTI-
16 TY.—The term ‘affiliated job-creating enti-
17 ty’ means any job-creating entity that is
18 controlled, managed, or owned by any of
19 the people involved with the regional center
20 or new commercial enterprise under section
21 203(b)(5)(H)(v).

22 “(ii) CAPITAL.—The term ‘capital’—

23 “(I) means cash and all real, per-
24 sonal, or mixed tangible assets owned
25 and controlled by the alien investor,

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

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

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

17 “(iii) CERTIFIER.—The term ‘cer-
18 tifier’ means a person in a position of sub-
19 stantive authority for the management or
20 operations of a regional center, new com-
21 mercial enterprise, affiliated job-creating
22 entity, or issuer of securities, such as a
23 principal executive officer or principal fi-
24 nancial officer, with knowledge of such en-
25 tities’ policies and procedures related to

1 compliance with the requirements under
2 this paragraph.

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

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

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

3 (b) AGE DETERMINATION FOR CHILDREN OF ALIEN
4 INVESTORS.—Section 203(h) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1153(h)) is amended by adding
6 at the end the following:

7 “(5) AGE DETERMINATION FOR CHILDREN OF
8 ALIEN INVESTORS.—An alien who has reached 21
9 years of age and has been admitted under subsection
10 (d) as a lawful permanent resident on a conditional
11 basis as the child of an alien lawfully admitted for
12 permanent residence under subsection (b)(5), whose
13 lawful permanent resident status on a conditional
14 basis is terminated under section 216A or subsection
15 (b)(5)(M), shall continue to be considered a child of
16 the principal alien for the purpose of a subsequent
17 immigrant petition by such alien under subsection
18 (b)(5) if the alien remains unmarried and the subse-
19 quent petition is filed by the principal alien not later
20 than 1 year after the termination of conditional law-
21 ful permanent resident status. No alien shall be con-
22 sidered a child under this paragraph with respect to
23 more than 1 petition filed after the alien reaches 21
24 years of age.”.

1 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
2 EMPLOYEES ADMINISTERING THE EMPLOYMENT CRE-
3 ATION PROGRAM.—The Secretary of Homeland Security
4 may establish, fix the compensation of, and appoint indi-
5 viduals to designated critical, technical, and professional
6 positions needed to administer sections 203(b)(5) and
7 216A of the Immigration and Nationality Act (8 U.S.C.
8 1153(b)(5) and 1186b).

9 (d) CONCURRENT FILING OF EB-5 PETITIONS AND
10 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
11 245 of the Immigration and Nationality Act (8 U.S.C.
12 1255) is amended—

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

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

17 “(n) If the approval of a petition for classification
18 under section 203(b)(5) would make a visa immediately
19 available to the alien beneficiary, the alien beneficiary’s
20 application for adjustment of status under this section
21 shall be considered to be properly filed whether the appli-
22 cation is submitted concurrently with, or subsequent to,
23 the visa petition.”.

24 (e) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
25 the Immigration and Nationality Act (8 U.S.C.

1 1153(b)(5)(A)), as amended by subsection (a)(2), is fur-
2 ther amended—

3 (1) in clause (i), by striking “(C), and” and in-
4 serting “(C) and which is expected to remain in-
5 vested for not less than 2 years; and”;

6 (2) in clause (ii)—

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

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

11 (f) REQUIRED CHECKS.—Section 203(b)(5) of the
12 Immigration and Nationality Act, as amended by this sec-
13 tion and section 2, is further amended by adding at the
14 end the following:

15 “(R) REQUIRED CHECKS.—Any petition
16 filed by an alien under section 204(a)(1)(H)
17 may not be approved under this paragraph un-
18 less the Secretary of Homeland Security has
19 searched for the alien and any associated em-
20 ployer of such alien on the Specially Designated
21 Nationals List of the Department of the Treas-
22 ury Office of Foreign Assets Control.”.

23 (g) CONFORMING CHANGES.—Section 201(d)(1) of
24 the Immigration and Nationality Act (8 U.S.C.
25 1151(d)(1)) is amended—

1 (1) in subparagraph (A), by striking the comma
2 and inserting a semicolon;

3 (2) in subparagraph (B), by striking the period
4 at the end and inserting “; plus”; and

5 (3) by adding at the end the following:

6 “(C) the number of unused visas computed
7 under section 203(b)(5)(B)(i)(II) (which shall
8 be allocated pursuant to such section).”.

9 (h) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date of the enactment
11 of this Act.

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

13 (a) FILING ORDER AND ELIGIBILITY.—Section
14 204(a)(1)(H) of the Immigration and Nationality Act (8
15 U.S.C. 1154(a)(1)(H)) is amended to read as follows:

16 “(H)(i) Any alien seeking classification under section
17 203(b)(5) may file a petition for such classification with
18 the Secretary of Homeland Security. An alien seeking to
19 pool his or her investment with 1 or more additional aliens
20 seeking classification under section 203(b)(5) shall file for
21 such classification in accordance with section
22 203(b)(5)(E). An alien petitioning for classification under
23 section 203(b)(5)(E) may file a petition with the Secretary
24 after filing an application for approval of an investment
25 under section 203(b)(5)(F).

1 “(ii) A petitioner described in clause (i) shall estab-
2 lish eligibility at the time he or she files a petition for
3 classification under section 203(b)(5). A petitioner who
4 was eligible for such classification at the time of such fil-
5 ing shall be deemed eligible for such classification at the
6 time such petition is adjudicated.”.

7 (b) EFFECTIVE DATES.—

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

11 (2) APPLICABILITY TO PETITIONS.—

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

20 (B) ELIGIBILITY.—Clause (ii) of section
21 204(a)(1)(H) of such Act, as added by sub-
22 section (a), shall apply to any petition for clas-
23 sification pursuant to section 203(b)(5)(E) of
24 such Act (8 U.S.C. 1153(b)(5)(E)) that is filed

1 with the Secretary of Homeland Security at any
2 time.

3 **SEC. 6. TIMELY PROCESSING.**

4 (a) FEE STUDY.—Not later than 1 year after the
5 date of the enactment of this Act, the Director of U.S.
6 Citizenship and Immigration Services shall complete a
7 study of fees charged in the administration of the program
8 described in sections 203(b)(5) and 216A of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1153(b)(5) and
10 1186b).

11 (b) ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT
12 PROCESSING.—Notwithstanding section 286(m) of the
13 Immigration and Nationality Act (8 U.S.C. 1356(m)), and
14 except as provided under subsection (c), the Director, not
15 later than 60 days after the completion of the study under
16 subsection (a), shall set fees for services provided under
17 sections 203(b)(5) and 216A of such Act at a level suffi-
18 cient to ensure the full recovery only of the costs of pro-
19 viding such services, including the cost of attaining the
20 goal of completing adjudications, on average, not later
21 than—

22 (1) 180 days after receiving a proposal for the
23 establishment of a regional center described in sec-
24 tion 203(b)(5)(E) of such Act;

1 (2) 180 days after receiving an application for
2 approval of an investment in a new commercial en-
3 terprise described in section 203(b)(5)(F) of such
4 Act;

5 (3) 90 days after receiving an application for
6 approval of an investment in a new commercial en-
7 terprise described in section 203(b)(5)(F) of such
8 Act that is located in a rural area or a priority
9 urban investment area (as such terms are defined in
10 section 203(b)(5)(D) of such Act, as amended by
11 section 4(c));

12 (4) 240 days after receiving a petition from an
13 alien desiring to be classified under section
14 203(b)(5)(E);

15 (5) 120 days after receiving a petition from an
16 alien desiring to be classified under section
17 203(b)(5)(E) with respect to an investment in a
18 rural area or a priority urban investment area (as
19 such terms are defined in section 203(b)(5)(D) of
20 such Act); and

21 (6) 240 days after receiving a petition from an
22 alien for removal of conditions described in section
23 216A(c).

24 (c) ADDITIONAL FEES.—Fees in excess of the fee lev-
25 els described in subsection (b) may be charged only—

1 (1) in an amount that is equal to the amount
2 paid by all other classes of fee-paying applicants for
3 immigration-related benefits, to contribute to the
4 coverage or reduction of the costs of processing or
5 adjudicating classes of immigration benefit applica-
6 tions that Congress, or the Secretary of Homeland
7 Security in the case of asylum applications, has au-
8 thorized to be processed or adjudicated at no cost or
9 at a reduced cost to the applicant; and

10 (2) in an amount that is not greater than 1
11 percent of the fee for filing a petition under section
12 203(b)(5) of the Immigration and Nationality Act (8
13 U.S.C. 1153(b)(5)), to make improvements to the
14 information technology systems used by the Sec-
15 retary of Homeland Security to process, adjudicate,
16 and archive applications and petitions under such
17 section, including the conversion to electronic format
18 of documents filed by petitioners and applicants for
19 benefits under such section.

20 (d) EXEMPTION FROM PAPERWORK REDUCTION
21 ACT.—During the 1-year period beginning on the date of
22 the enactment of this Act, the requirements under chapter
23 35 of title 44, United States Code, shall not apply to any
24 collection of information required under this Act, any
25 amendment made by this Act, or any rule promulgated

1 by the Secretary of Homeland Security to implement this
2 Act or the amendments made by this Act, to the extent
3 that the Secretary determines that compliance with such
4 requirements would impede the expeditious implementa-
5 tion of this Act or the amendments made by this Act.

6 (e) RULE OF CONSTRUCTION REGARDING ADJUDICA-
7 TION DELAYS.—Nothing in this Act may be construed to
8 limit the authority of the Secretary of Homeland Security
9 to suspend the adjudication of any application or petition
10 under section 203(b)(5) or 216A of the Immigration and
11 Nationality Act (8 U.S.C. 1153(b)(5) and 1186b) pending
12 the completion of a national security or law enforcement
13 investigation relating to such application or petition.

14 (f) RULE OF CONSTRUCTION REGARDING MODIFICA-
15 TION OF FEES.—Nothing in this section may be construed
16 to require any modification of fees before the completion
17 of—

- 18 (1) the fee study described in subsection (a); or
19 (2) regulations promulgated by the Secretary of
20 Homeland Security, in accordance with subchapter
21 II of chapter 5 and chapter 7 of title 5, United
22 States Code (commonly known as the “Administra-
23 tive Procedure Act”), to carry out subsections (b)
24 and (c).

1 **SEC. 7. TRANSPARENCY.**

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

14 (b) IMPROPER ACTIVITIES.—Activities that con-
15 stitute preferential treatment under subsection (a) shall
16 include—

17 (1) working on, or in any way attempting to in-
18 fluence, in a manner not available to or accorded to
19 all other petitioners, applicants, and seekers of bene-
20 fits under the immigrant visa program referred to in
21 subsection (a), the standard processing of an appli-
22 cation, petition, or benefit for—

23 (A) a regional center;

24 (B) a new commercial enterprise;

25 (C) a job-creating entity; or

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

4 (2) meeting or communicating with persons as-
5 sociated with the entities listed in paragraph (1), at
6 the request of such persons, in a manner not avail-
7 able to or accorded to all other petitioners, appli-
8 cants, and seekers of benefits under such immigrant
9 visa program.

10 (c) REPORTING OF COMMUNICATIONS.—

11 (1) WRITTEN COMMUNICATION.—Employees of
12 the Department of Homeland Security, including the
13 officials listed in subsection (a), shall include, in the
14 record of proceeding for a case under section
15 203(b)(5) of the Immigration and Nationality Act (8
16 U.S.C. 1153(b)(5)), actual or electronic copies of all
17 case-specific written communication, including
18 emails from government and private accounts, with
19 non-Department persons or entities advocating for
20 regional center applications or individual petitions
21 under such section that are pending on or after the
22 date of the enactment of this Act (other than rou-
23 tine communications with other agencies of the Fed-
24 eral Government regarding the case, including com-

1 munications involving background checks and litiga-
2 tion defense).

3 (2) ORAL COMMUNICATION.—If substantive oral
4 communication, including telephonic communication,
5 virtual communication, or in-person meetings, takes
6 place between officials of the Department of Home-
7 land Security and non-Department persons or enti-
8 ties advocating for regional center applications or in-
9 dividual petitions under section 203(b)(5) of such
10 Act that are pending on or after the date of the en-
11 actment of this Act (except communications exempt-
12 ed under paragraph (1))—

13 (A) the conversation shall be recorded; or

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

16 (3) NOTIFICATION.—

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

1 be considered in adjudicative proceedings un-
2 less—

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

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

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

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

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

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

3 (d) CONSIDERATION OF EVIDENCE.—

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

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

16 (e) CHANNELS OF COMMUNICATION.—

17 (1) EMAIL ADDRESS OR EQUIVALENT.—The Di-
18 rector of U.S. Citizenship and Immigration Services
19 shall maintain an email account (or equivalent
20 means of communication) for persons or entities—

21 (A) with inquiries regarding specific peti-
22 tions or applications under the immigrant visa
23 program described in section 203(b)(5) of the
24 Immigration and Nationality Act (8 U.S.C.
25 1153(b)(5)); or

1 (B) seeking information that is not case-
2 specific about the immigrant visa program de-
3 scribed in such section 203(b)(5).

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

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

24 (i) the email address or equivalent
25 channel described in paragraph (1);

1 (ii) the National Customer Service
2 Center, or any successor to such Center; or

3 (iii) the Office of Public Engagement,
4 Immigrant Investor Program Office, in-
5 cluding the Stakeholder Engagement
6 Branch, or any successors to those Offices
7 or that Branch.

8 (B) DIRECTION OF INCOMING COMMUNICA-
9 TIONS.—

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

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

19 (I) any person from commu-
20 nicating with the Ombudsman of U.S.
21 Citizenship and Immigration Services
22 regarding the immigrant investor pro-
23 gram under section 203(b)(5) of the
24 Immigration and Nationality Act (8
25 U.S.C. 1153(b)(5)); or

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

7 (C) LOG.—

8 (i) IN GENERAL.—The Director of
9 U.S. Citizenship and Immigration Services
10 shall maintain a written or electronic log
11 of—

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

20 (II) with respect to written com-
21 munications described in subsection
22 (c)(1), the date on which the commu-
23 nication was received, the identities of
24 the sender and addressee, and the
25 subject of the communication; and

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

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

13 (3) PUBLICATION OF INFORMATION.—Not later
14 than 30 days after a person or entity inquiring
15 about a specific case or generally about the immi-
16 grant visa program described in section 203(b)(5) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5)) receives, as a result of a communication
19 with an official of the Department of Homeland Se-
20 curity, generally applicable information that is not
21 case-specific about program requirements or admin-
22 istration that has not been made publicly available
23 by the Department, the Director of U.S. Citizenship
24 and Immigration Services shall publish such infor-
25 mation on the U.S. Citizenship and Immigration

1 Services website as an update to the relevant Fre-
2 quently Asked Questions page or by some other com-
3 parable mechanism.

4 (f) PENALTY.—

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

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

18 (g) RULE OF CONSTRUCTION REGARDING CLASSI-
19 FIED INFORMATION.—Nothing in this section may be con-
20 strued to modify any law, regulation, or policy regarding
21 the handling or disclosure of classified information.

22 (h) RULE OF CONSTRUCTION REGARDING PRIVATE
23 RIGHT OF ACTION.—Nothing in this section may be con-
24 strued to create or authorize a private right of action to

1 challenge a decision of an employee of the Department of
2 Homeland Security.

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

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