

114TH CONGRESS
1ST SESSION

S. _____

To promote and reform foreign capital investment and job creation in
American communities.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To promote and reform foreign capital investment and job
creation in American communities.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Job Creation
5 and Investment Promotion Reform Act of 2015”.

6 **SEC. 2. REAUTHORIZATION OF EB-5 REGIONAL CENTER**
7 **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2 is repealed.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, 2020, to qualified immi-
10 grants (and the eligible spouse and chil-
11 dren of such immigrants) participating in
12 a program implementing this paragraph
13 that involves a regional center in the
14 United States, which has been designated
15 by the Secretary of Homeland Security on
16 the basis of a proposal for the promotion
17 of economic growth, including prospective
18 job creation and increased domestic capital
19 investment.

20 “(ii) PRIORITY.—In processing peti-
21 tions under section 204(a)(1)(H) for clas-
22 sification under this paragraph, the Sec-
23 retary of Homeland Security may give pri-
24 ority to petitions filed by aliens seeking ad-
25 mission under this subparagraph. Notwith-

1 standing subsection (e), immigrant visas
2 made available under this paragraph may
3 be issued to such aliens in an order that
4 takes into account any priority accorded
5 under this clause.

6 “(iii) ESTABLISHMENT OF A RE-
7 GIONAL CENTER.—A regional center shall
8 operate within a defined geographic area,
9 which shall be described in the proposal
10 and be consistent with the purpose of con-
11 centrating pooled investment within the de-
12 fined and limited geographic area. The
13 proposal to establish a regional center shall
14 demonstrate that the pooled investment
15 will have a significant economic impact on
16 such geographic area, and shall include—

17 “(I) reasonable predictions, sup-
18 ported by economically and statis-
19 tically valid forecasting tools, con-
20 cerning the amount of investment that
21 will be pooled, the kinds of commer-
22 cial enterprises that will receive such
23 investments, verifiable details of the
24 jobs that will be created directly or in-
25 directly as a result of such invest-

1 ments, and other positive economic ef-
2 fects such investments will have; and

3 “**(II)** a description of the policies
4 and procedures in place reasonably
5 designed to monitor associated com-
6 mercial enterprises to ensure compli-
7 ance with all laws, regulations, and
8 executive orders of the United States.

9 “**(iv)** **INDIRECT JOB CREATION.**—The
10 Secretary of Homeland Security shall per-
11 mit aliens seeking admission under this
12 paragraph to satisfy up to 90 percent of
13 the requirements under subparagraph
14 **(A)(ii)** with jobs that are estimated to be
15 created indirectly through investment
16 under this paragraph in accordance with
17 this subparagraph.

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—

23 “**(aa)** permit aliens seeking
24 admission under this paragraph
25 to rely on economically and sta-

1 tistically valid methodologies for
2 determining the number of jobs
3 created by the program, includ-
4 ing, consistent with this subpara-
5 graph, jobs estimated to have
6 been created indirectly through
7 revenues generated from in-
8 creased exports, improved re-
9 gional productivity, job creation,
10 and increased domestic capital
11 investment resulting from the
12 program; and

13 “(bb) verify that the jobs de-
14 scribed in item (aa) meet the re-
15 quirements under this subpara-
16 graph by using a methodology
17 that has been accepted by the
18 Bureau of Economic Analysis of
19 the Department of Commerce to
20 be economically and statistically
21 valid for such purposes.

22 “(II) PROJECTS INVOLVING CAP-
23 ITAL CONTRIBUTION FROM NON-ALIEN
24 ENTREPRENEURS.—

1 “(aa) CREDIT FOR JOB CRE-
2 ATION.—Alien entrepreneurs may
3 accrue credit for job creation
4 based on capital investment pro-
5 vided by non-alien entrepreneurs
6 only for the percentage of total
7 jobs created that is equal to the
8 percentage of total capital invest-
9 ment provided by such non-alien
10 entrepreneurs in the commercial
11 enterprise.

12 “(bb) LIMITATION.—The
13 percentage of jobs created for
14 which alien entrepreneurs may
15 accrue credit under item (aa)
16 based on such non-alien entre-
17 preneur capital contribution may
18 not exceed 30 percent of all jobs
19 created even if such contribution
20 exceeds 30 percent.

21 “(III) INELIGIBLE JOBS.—In de-
22 termining compliance with the job cre-
23 ation requirements under subpara-
24 graph (A)(ii), the Secretary may not
25 include jobs estimated to be created

1 under a tenant-occupancy method-
2 ology.

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

5 “(I) require approved regional
6 centers to give advance notice to the
7 Secretary of significant proposed
8 changes to their organizational struc-
9 ture, ownership, or administration, in-
10 cluding the sale or rental of such cen-
11 ters;

12 “(II) approve or disapprove the
13 changes referred to in subclause (I)
14 before any such proposed changes
15 take effect; and

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

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

1 “(bb) the Secretary deter-
2 mines that the regional center
3 would remain compliant with this
4 subparagraph and with subpara-
5 graph (H).

6 “(F) BUSINESS PLANS FOR REGIONAL
7 CENTER INVESTMENTS.—

8 “(i) APPLICATION FOR APPROVAL OF
9 INVESTMENT IN COMMERCIAL ENTER-
10 PRISE.—A commercial enterprise associ-
11 ated with a regional center shall file an ap-
12 plication with, and obtain approval from,
13 the Secretary of Homeland Security for
14 each particular investment offering
15 through the commercial enterprise to
16 aliens seeking classification under this
17 paragraph, which shall include—

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

21 “(II) a credible economic analysis
22 regarding estimated job creation that
23 is based upon economically and statis-
24 tically valid methodologies;

1 “(III) documents filed with the
2 Securities and Exchange Commission
3 under the Securities Act of 1933 (15
4 U.S.C. 77a et seq.);

5 “(IV) investment and offering
6 documents, including subscription, in-
7 vestment, partnership, and operating
8 agreements, private placement memo-
9 randa, term sheets, management biog-
10 raphies, the description of the busi-
11 ness plan to be provided to potential
12 alien entrepreneurs, and any mar-
13 keting materials used or prepared for
14 use in connection with the offering by
15 the regional center or any associated
16 commercial enterprise, which shall
17 contain references, as appropriate, to
18 any—

19 “(aa) investment risks asso-
20 ciated with the new commercial
21 enterprise and any other business
22 subsequently receiving investment
23 capital from the new commercial
24 enterprise;

1 “(bb) conflicts of interest
2 that currently exist or may arise
3 among the regional center, new
4 commercial enterprise, other
5 business subsequently receiving
6 investment capital from the new
7 commercial enterprise, or the
8 principals of the aforementioned
9 entities;

10 “(cc) the name and contact
11 information of any person that
12 has received or the commercial
13 enterprise knows will receive any
14 fees or transaction-based com-
15 pensation in connection with the
16 investment, and a description of
17 the services performed or to be
18 performed by such person which
19 entitle them to the fees or trans-
20 action-based compensation; and

21 “(dd) any pending litigation
22 or bankruptcy or adverse judg-
23 ments during the most recent 10-
24 year period affecting the regional
25 center, new commercial enter-

1 prise, any other business subse-
2 quently receiving investment cap-
3 ital from the new commercial en-
4 terprise, or any other enterprise
5 in which any principal of the
6 aforementioned entities held ma-
7 jority ownership at the time;

8 “(V) a description of the policies
9 and procedures reasonably designed to
10 ensure that the commercial enterprise,
11 its agents, employees, and attorneys,
12 and any persons in active concert or
13 participation with the commercial en-
14 terprise, comply with the securities
15 laws of the United States in connec-
16 tion with the offer, purchase, or sale
17 of its securities;

18 “(VI) a certification that the
19 commercial enterprise and its agents,
20 employees, and attorneys, and any
21 persons in active concert or participa-
22 tion with the commercial enterprise,
23 are in compliance with the securities
24 laws of the United States in connec-

1 tion with the offer, purchase, or sale
2 of its securities; and

3 “(VII) for a capital investment in
4 a targeted employment area, a cred-
5 ible economic analysis regarding esti-
6 mated job creation that is likely to
7 occur—

8 “(aa) if the targeted employ-
9 ment area is located within a
10 combined statistical area or a
11 metropolitan statistical area, in
12 the combined statistical area or
13 metropolitan statistical area; or

14 “(bb) if the targeted employ-
15 ment area is located outside of
16 an area described in item (aa), in
17 any county that is included in the
18 targeted employment area and
19 counties adjacent to the targeted
20 employment area.

21 “(ii) EFFECT OF APPROVAL OF BUSI-
22 NESS PLAN FOR INVESTMENT IN REGIONAL
23 CENTER COMMERCIAL ENTERPRISE.—The
24 approval of an application under this sub-
25 paragraph shall be binding for purposes of

1 the adjudication of subsequent petitions
2 seeking classification under this paragraph
3 by immigrants investing in the same com-
4 mercial enterprise concerning the same
5 economic activity, and of petitions filed
6 under section 216A, unless the Secretary
7 of Homeland Security determines that
8 there is evidence of fraud, misrepresenta-
9 tion, criminal misuse, a threat to public
10 safety or national security, a material
11 change that affects the approved economic
12 model, other evidence affecting program
13 eligibility that was not disclosed by the pe-
14 titioner during the approval process, or a
15 material mistake of law or fact in the prior
16 adjudication.

17 “(iii) CONSIDERATION OF FRAUDU-
18 LENT OR OTHER CRIMINAL ACTIVITY IN
19 ESTABLISHING ELIGIBILITY CRITERIA.—

20 “(I) IN GENERAL.—The Sec-
21 retary of Homeland Security shall
22 consider the potential for fraud, mis-
23 representation, criminal misuse, and
24 threats to public safety or national se-

1 curity in establishing eligibility cri-
2 teria under this subparagraph.

3 “(II) GROUNDS FOR DENIAL OR
4 REVOCAION.—The Secretary shall
5 deny or revoke the approval of any
6 business plan application under this
7 subparagraph with any particular in-
8 vestment or business arrangement
9 that, in the Secretary’s unreviewable
10 discretion—

11 “(aa) presents a threat to
12 public safety or national security;
13 or

14 “(bb) presents a significant
15 risk of criminal misuse, fraud, or
16 abuse, including arrangements
17 that involve self-dealing or any
18 other inherent conflict of interest
19 between potential alien entre-
20 preneurs and the principals of a
21 regional center or a regional cen-
22 ter associated commercial enter-
23 prise.

24 “(iv) SITE VISITS.—The Secretary
25 shall perform at least 1 site visit to each

1 regional center associated commercial en-
2 terprise in accordance with section
3 216A(c)(1)(C).

4 “(v) PREMIUM PROCESSING OP-
5 TION.—The Secretary shall establish a
6 process for premium processing of business
7 plan applications under this subparagraph
8 related to investment in a regional center
9 commercial enterprise, including making
10 available the expeditious execution of a site
11 visit described in clause (iv), which may in-
12 clude an opportunity for the applicant to
13 address and cure any deficiencies identified
14 by the Secretary in the applicant’s busi-
15 ness plan, investment documents, or state-
16 ment regarding job creation prior to a final
17 determination. The Secretary shall impose
18 a fee for the use of the process described
19 in this clause sufficient to recover the costs
20 of its administration.

21 “(vi) APPROVAL OF BUSINESS PLAN
22 IN A TARGETED EMPLOYMENT AREA.—For
23 a capital investment in a designated tar-
24 geted employment area, at least 50 percent
25 of the estimated job creation intended to

1 form the basis of the job creation require-
2 ment under subparagraph (A)(ii) shall be
3 expected to occur within an area specified
4 in subparagraph (F)(i)(VII). If the esti-
5 mated job creation in such area is below
6 50 percent, the total number of jobs cre-
7 ated by the capital investment for which
8 alien entrepreneurs may receive credit shall
9 be limited to the number at which 50 per-
10 cent of the job creation requirement occurs
11 within an area described in clause (i)(VII).

12 “(G) REGIONAL CENTER ANNUAL STATE-
13 MENTS.—

14 “(i) IN GENERAL.—Each regional cen-
15 ter designated under subparagraph (E)
16 shall annually submit, to the Director of
17 U.S. Citizenship and Immigration Services
18 (referred to in this subparagraph as the
19 ‘Director’), in a manner prescribed by the
20 Secretary of Homeland Security, a state-
21 ment, including—

22 “(I) a certification by the re-
23 gional center that it remains in com-
24 pliance with clauses (i) and (ii) of
25 subparagraph (H);

1 ment project being undertaken by
2 the new commercial enterprise;

3 “(bb) a description of how
4 such capital is being used to exe-
5 cute each capital investment
6 project in the approved business
7 plan or plans;

8 “(cc) evidence that 100 per-
9 cent of such capital has been ir-
10 revocably committed to each cap-
11 ital investment project;

12 “(dd) detailed evidence of
13 the progress made toward the
14 completion of each capital invest-
15 ment project;

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

19 “(ff) a description of all
20 funds, including administrative,
21 loan monitoring, or loan manage-
22 ment fees, in addition to investor
23 capital collected from alien entre-
24 preneurs by any party in relation
25 to the investment or participation

1 in the regional center program
2 described in subparagraph (E),
3 the entities that received such
4 funds, and the purpose for which
5 such funds were collected;

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

11 “(hh) a certification by the
12 regional center and associated
13 commercial enterprise that such
14 statements are accurate.

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

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

22 “(II) may require the regional
23 center to amend or supplement such
24 annual statement if the Director de-

1 termines that such an amendment or
2 supplement is appropriate.

3 “(iii) SANCTIONS.—

4 “(I) EFFECT OF VIOLATION.—If
5 the Director determines that a re-
6 gional center or other individual affili-
7 ated with a regional center, including
8 an individual affiliated with an associ-
9 ated commercial enterprise, and any
10 legal representative of such entities,
11 has violated any certification under
12 clause (i) or that the regional center
13 is conducting itself in a manner incon-
14 sistent with its designation, including
15 any willful and material deviation by
16 commercial enterprises associated
17 with the regional center from any ap-
18 proved business plan for such com-
19 mercial enterprises, the Director shall
20 sanction the violating entity or indi-
21 vidual under subclause (II).

22 “(II) AUTHORIZED SANCTIONS.—
23 The Director shall establish a grad-
24 uated set of sanctions based on the
25 severity of the violations referred to in

1 subclause (I), as determined by the
2 Director, including—

3 “(aa) civil money penalties
4 equal to not more than 10 per-
5 cent of the total capital invested
6 by alien entrepreneurs in the re-
7 gional center’s associated com-
8 mercial enterprises, the payment
9 of which shall not in any cir-
10 cumstance utilize any of such
11 alien entrepreneurs’ capital in-
12 vestment;

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

21 “(cc) permanent bar from
22 program participation for 1 or
23 more individuals associated with
24 the regional center or an associ-
25 ated commercial enterprise; and

1 a criminal conviction with a term of
2 imprisonment of more than 1 year or
3 a criminal or civil violation of any law
4 or agency regulation in connection
5 with the offer, purchase, or sale of a
6 security;

7 “(II) the person is subject to a
8 final order of a State securities com-
9 mission (or an agency or officer of a
10 State who performs similar functions),
11 a State authority that supervises or
12 examines banks, savings associations,
13 or credit unions, a State insurance
14 commission (or an agency of or officer
15 of a State who performs similar func-
16 tions), an appropriate Federal bank-
17 ing agency, the Commodity Futures
18 Trading Commission, or the National
19 Credit Union Administration, which is
20 based on a violation of any law or reg-
21 ulation that—

22 “(aa) prohibits fraudulent,
23 manipulative, or deceptive con-
24 duct; or

1 “(bb) bars the person
2 from—

3 “(AA) association with
4 an entity regulated by such
5 commission, authority, agen-
6 cy, or officer;

7 “(BB) engaging in the
8 business of securities, insur-
9 ance, or banking; or

10 “(CC) engaging in sav-
11 ings association or credit
12 union activities;

13 “(III) there is reasonable cause
14 to believe that the person is engaged
15 in, has ever been engaged in, or seeks
16 to engage in—

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

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

1 “(cc) any activity related to
2 money laundering (as described
3 in section 1956 or 1957 of title
4 18, United States Code);

5 “(dd) any terrorist activity
6 (as defined in clauses (iii) and
7 (iv) of section 212(a)(3)(B));

8 “(ee) any activity related to
9 human trafficking or a human
10 rights offense;

11 “(ff) any activity described
12 in section 212(a)(3)(E); or

13 “(gg) the violation of any
14 statute, regulation, or Executive
15 Order regarding foreign financial
16 transactions or foreign asset con-
17 trol; or

18 “(IV) the person—

19 “(aa) is, or during the pre-
20 ceeding 10 years has been, in-
21 cluded on the Department of
22 Justice’s List of Currently Dis-
23 ciplined Practitioners; or

24 “(bb) during the preceding
25 10 years, has received a rep-

1 rimand or otherwise been publicly
2 disciplined by a bar association of
3 which the person is or was a
4 member.

5 “(ii) STATUS OF REGIONAL CENTER
6 PRINCIPALS.—

7 “(I) LAWFUL STATUS RE-
8 QUIRED.—No person may be directly
9 or indirectly involved with a regional
10 center as its principal, administrator,
11 owner, officer, board member, man-
12 ager, executive, general partner, fidu-
13 ciary, or other similar position of sig-
14 nificant authority for the operations
15 or management of the regional center
16 unless the person is a national of the
17 United States or an individual who
18 has been lawfully admitted for perma-
19 nent residence.

20 “(II) FOREIGN GOVERNMENTS.—
21 No foreign government entity may be
22 directly or indirectly involved with the
23 ownership or administration of a re-
24 gional center.

1 “(iii) INFORMATION REQUIRED.—The
2 Secretary shall require such attestations
3 and information, including the submission
4 of fingerprints or other biometrics to the
5 Federal Bureau of Investigation, and shall
6 perform such criminal record checks and
7 other background checks with respect to a
8 regional center or regional center associ-
9 ated commercial enterprise, and persons
10 involved in a regional center or regional
11 center associated commercial enterprise as
12 described in clauses (i) and (ii), to deter-
13 mine whether such regional center or re-
14 gional center associated commercial enter-
15 prise is in compliance with clauses (i) and
16 (ii). The Secretary may require the infor-
17 mation and attestations described in this
18 clause from such regional center or re-
19 gional center associated commercial enter-
20 prise, and any person involved in the re-
21 gional center or regional center associated
22 commercial enterprise, at any time on or
23 after the date of the enactment of the
24 American Job Creation and Investment
25 Promotion Reform Act of 2015.

1 center associated commercial enter-
2 prise has engaged in fraud, misrepre-
3 sentation, criminal misuse, or poses a
4 threat to public safety or national se-
5 curity.

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

8 “(i) JURISDICTION.—In view of the
9 objective of promoting investment in the
10 United States, in an action filed by the Se-
11 curities and Exchange Commission, the
12 purchase or sale of securities offered or
13 sold by any regional center or any party
14 associated with a regional center shall be
15 deemed to have occurred within the terri-
16 tory of the United States for purposes of
17 the securities laws, and subject matter ju-
18 risdiction shall also lie within the United
19 States.

20 “(ii) REGIONAL CENTER CERTIFI-
21 CATIONS REQUIRED.—

22 “(I) INITIAL CERTIFICATION.—
23 The Secretary of Homeland Security
24 shall not approve an application for
25 regional center designation or regional

1 center amendment unless the regional
2 center certifies that the regional cen-
3 ter is in compliance with and has poli-
4 cies and procedures reasonably de-
5 signed to ensure that all parties asso-
6 ciated with the regional center remain
7 in compliance with the securities laws
8 of the United States and of any State
9 in which the regional center operates
10 in connection with the offer, purchase,
11 or sale of securities or the provision of
12 investment advice by the regional cen-
13 ter or parties associated with the re-
14 gional center.

15 “(II) REISSUE.—A regional cen-
16 ter shall annually reissue a certifi-
17 cation described in subclause (I) in
18 accordance with subparagraph (G).
19 Annual certifications under this sub-
20 clause shall also certify compliance
21 with clause (iii) by stating that the
22 certifier is in a position to have
23 knowledge of the offers, purchases,
24 and sales of securities or the provision
25 of investment advice by parties associ-

1 ciated with the regional center
2 are currently in compliance.

3 “(iii) OVERSIGHT REQUIRED.—Each
4 regional center shall monitor and supervise
5 all offers, purchases, and sales of, and ad-
6 vice relating to, securities made by parties
7 associated with the regional center to en-
8 sure compliance with the securities laws of
9 the United States, and maintain records,
10 data, and information relating to all such
11 offers, purchases, sales, and advice during
12 the 5-year period beginning on the date of
13 their creation. Such records, data, and in-
14 formation shall be made available to the
15 Securities and Exchange Commission and
16 to the Secretary upon request.

17 “(iv) SUSPENSION OR TERMI-
18 NATION.—The Secretary, in the Sec-
19 retary’s unreviewable discretion, shall sus-
20 pend or terminate the designation of any
21 regional center that does not provide the
22 certification described in clause (ii). In ad-
23 dition to any other authority provided to
24 the Secretary under this paragraph, the
25 Secretary, in the Secretary’s unreviewable

1 discretion, may suspend or terminate the
2 designation of any regional center or im-
3 pose other sanctions against the regional
4 center if the regional center or any parties
5 associated with the regional center—

6 “(I) are permanently or tempo-
7 rarily enjoined by order, judgment, or
8 decree of any court of competent ju-
9 risdiction in connection with the offer,
10 purchase, or sale of a security or the
11 provision of investment advice;

12 “(II) are subject to any final
13 order of the Securities and Exchange
14 Commission that—

15 “(aa) bars such person from
16 association with an entity regu-
17 lated by the Securities and Ex-
18 change Commission; or

19 “(bb) constitutes a final
20 order based on violations in con-
21 nection with the offer, purchase,
22 or sale of, or advice relating to, a
23 security; or

24 “(III) knowingly submitted or
25 caused to be submitted a certification

1 described in clause (ii) that contained
2 an untrue statement of a material fact
3 or omitted to state a material fact
4 necessary in order to make the state-
5 ments made, in light of the cir-
6 cumstances under which they were
7 made, not misleading.

8 “(v) SAVINGS PROVISION.—Nothing in
9 this subparagraph may be construed to im-
10 pair or limit the authority of the Securities
11 and Exchange Commission under the Fed-
12 eral securities laws.

13 “(vi) DEFINED TERM.—In this sub-
14 paragraph, the term ‘parties associated
15 with a regional center’ means—

16 “(I) the regional center;

17 “(II) any commercial enterprise
18 associated with the regional center;

19 “(III) the regional center’s and
20 associated commercial enterprise’s
21 owners, officers, directors, managers,
22 partners, agents, employees, pro-
23 moters and attorneys; and

24 “(IV) any person in active con-
25 cert or participation with the regional

1 center or directly or indirectly control-
2 ling, controlled by, or under common
3 control with the regional center.

4 “(J) EB–5 INTEGRITY FUND.—

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

14 “(ii) FEES.—The Secretary of Home-
15 land Security shall collect an annual fee of
16 \$20,000 for the Fund from each regional
17 center designated under subparagraph (E).
18 The first fee under this clause shall be due
19 not later than January 1, 2016, and subse-
20 quent fees due not later than January 1 of
21 each year thereafter. Newly designated re-
22 gional centers shall pay their initial fee for
23 the calendar year following the calendar
24 year during which the regional center was
25 so designated. The Secretary may pre-

1 scribe regulations, as necessary, to increase
2 the dollar amount specified under this
3 clause to ensure the Secretary's continued
4 ability to carry out the activities specified
5 in clause (iii).

6 “(iii) PERMISSIBLE USES OF FUND.—
7 The Secretary of Homeland Security
8 shall—

9 “(I) use not less than $\frac{1}{3}$ of the
10 amounts deposited into the Fund to
11 conduct audits and site visits (an-
12 nounced and unannounced);

13 “(II) use not less than $\frac{1}{3}$ of the
14 amounts deposited into the Fund for
15 investigations based outside of the
16 United States, including—

17 “(aa) monitoring and inves-
18 tigating program-related events
19 and promotional activities; and

20 “(bb) ensuring an alien en-
21 trepreneur's compliance with sub-
22 paragraph (L);

23 “(III) use amounts deposited into
24 the Fund—

1 “(aa) to detect and inves-
2 tigate fraud or other crimes; and

3 “(bb) to determine whether
4 regional centers, associated com-
5 mercial enterprises, and alien en-
6 trepreneurs (and alien spouses
7 and alien children, if any) comply
8 with applicable immigration laws
9 and regulations;

10 “(IV) use amounts deposited into
11 the Fund to conduct interviews of the
12 owners, officers, directors, managers,
13 partners, agents, employees, pro-
14 motors, and attorneys of a regional
15 center and regional center associated
16 commercial enterprise; and

17 “(V) otherwise use amounts de-
18 posited into the Fund as the Sec-
19 retary determines to be necessary, in-
20 cluding monitoring compliance with
21 the requirements under section 7 of
22 the American Job Creation and In-
23 vestment Promotion Reform Act of
24 2015.

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

3 “(I) impose a reasonable penalty
4 if a regional center does not pay the
5 fee required under clause (ii) within
6 30 days of the date on which such fee
7 is due under clause (ii); and

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

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

21 “(K) DIRECT AND THIRD-PARTY PRO-
22 MOTERS.—

23 “(i) RULES AND STANDARDS.—Direct
24 and third party promoters of a regional
25 center, parties associated with a regional

1 center, or of the investment opportunities
2 of a regional center, shall comply with the
3 rules and standards prescribed by the Sec-
4 retary of Homeland Security to oversee re-
5 gional center promotion, including—

6 “(I) registration with U.S. Citi-
7 zenship and Immigration Services,
8 which the Secretary shall make pub-
9 licly available;

10 “(II) minimum qualifications;

11 “(III) guidelines for offering in-
12 vestment opportunities and rep-
13 resenting the visa process to foreign
14 entrepreneurs; and

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

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

1 “(iii) COMPLIANCE.—Each regional
2 center shall maintain a written agreement
3 between the regional center or regional
4 center associated commercial enterprise
5 and each direct or third-party promoter
6 operating on behalf of such regional center
7 or commercial enterprise that outlines the
8 rules and standards prescribed under
9 clause (i).

10 “(L) SOURCE OF FUNDS.—

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

18 “(ii) REQUIRED INFORMATION.—The
19 Secretary of Homeland Security shall re-
20 quire, as applicable, that an alien entre-
21 preneur petition under this paragraph con-
22 tain—

23 “(I) business and tax records, in-
24 cluding—

1 “(aa) foreign business reg-
2 istration records;

3 “(bb) corporate or partner-
4 ship tax returns (or any other en-
5 tity in any form that has filed in
6 any country or subdivision there-
7 of any return described in this
8 subpart), and personal tax re-
9 turns including income, fran-
10 chise, property (whether real,
11 personal, or intangible), or any
12 other tax returns of any kind
13 filed within 7 years, with any
14 taxing jurisdiction in or outside
15 the United States by or on behalf
16 of the alien entrepreneur; and

17 “(cc) evidence identifying
18 any other source of capital or ad-
19 ministrative fees;

20 “(II) evidence related to mone-
21 tary judgments against the alien en-
22 trepreneur, including certified copies
23 of any judgments or evidence of all
24 pending governmental civil or criminal
25 actions, governmental administrative

1 proceedings, and any private civil ac-
2 tions (pending or otherwise) involving
3 monetary judgments against the alien
4 entrepreneur from any court in or
5 outside the United States; and

6 “(III) the identity of all persons
7 who transfer into the United States,
8 on behalf of the entrepreneur—

9 “(aa) any funds that are
10 used to meet the capital require-
11 ment under subparagraph (A);
12 and

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

17 “(iii) GIFT RESTRICTIONS.—Gifted
18 funds may be counted toward the min-
19 imum capital investment requirement
20 under subparagraph (C) only if such funds
21 were gifted to the alien entrepreneur by
22 the alien entrepreneur’s spouse, parent,
23 child, sibling, or grandparent and such
24 funds were gifted in good faith and not to
25 circumvent any limitations imposed on per-

1 of Terrorist Financing and Financial
2 Crimes, and Financial Crimes En-
3 forcement Network.

4 “(M) TREATMENT OF ENTREPRENEURS IF
5 REGIONAL CENTER TERMINATED.—

6 “(i) IN GENERAL.—Upon the termi-
7 nation of a regional center or regional cen-
8 ter associated commercial enterprise under
9 this paragraph—

10 “(I) the conditional permanent
11 residence of an alien who has been ad-
12 mitted to the United States pursuant
13 to section 216A(a)(1) based on an in-
14 vestment in a commercial enterprise
15 associated with the terminated re-
16 gional center or regional center associ-
17 ated commercial enterprise shall con-
18 tinue to be authorized; and

19 “(II) the alien shall not accrue
20 any period of unlawful presence under
21 section 212(a)(9) during the 180-day
22 period following such termination un-
23 less the Secretary has reason to be-
24 lieve the alien was a knowing partici-
25 pant in the conduct that led to the

1 termination of such regional center or
2 regional center associated commercial
3 enterprise.

4 “(ii) NEW REGIONAL CENTER OR IN-
5 VESTMENT.—The conditional permanent
6 resident status of an alien described in
7 clause (i)(I) shall be terminated at the end
8 of the 180-day period described in clause
9 (i)(II) unless—

10 “(I) in the case of the termi-
11 nation of a regional center—

12 “(aa) the associated com-
13 mercial enterprise affiliates with
14 an approved regional center des-
15 ignated to operate within the
16 same geographic area as the
17 commercial enterprise; or

18 “(bb) such alien invests in
19 another commercial enterprise
20 associated with an approved re-
21 gional center; or

22 “(II) in the case of the termi-
23 nation of a regional center associated
24 commercial enterprise, such alien in-
25 vests in another commercial enterprise

1 associated with an approved regional
2 center.

3 “(iii) REMOVAL OF CONDITIONS.—
4 Aliens described in subclause (I)(bb) and
5 (II) of clause (ii) shall be eligible to have
6 their conditions removed pursuant to sec-
7 tion 216A beginning on the date that is 2
8 years after the date of the subsequent in-
9 vestment.

10 “(N) FRAUD, CRIMINAL MISUSE, AND
11 THREATS TO NATIONAL INTERESTS.—

12 “(i) DENIAL OR REVOCATION.—If the
13 Secretary of Homeland Security deter-
14 mines, in the Secretary’s unreviewable dis-
15 cretion, that the approval of a petition, ap-
16 plication, or benefit described in this para-
17 graph is contrary to the national interest
18 of the United States for reasons relating to
19 fraud, misrepresentation, criminal misuse,
20 or threats to public safety or national secu-
21 rity, the Secretary shall deny or revoke the
22 approval of—

23 “(I) a petition seeking classifica-
24 tion of an alien as an alien entre-
25 preneur under this paragraph;

1 “(II) a petition to remove condi-
2 tions under section 216A before
3 granting lawful permanent resident
4 status or any other petition, applica-
5 tion, or benefit based upon the pre-
6 vious or concurrent filing or approval
7 of a petition for classification of an
8 alien under this paragraph;

9 “(III) an application for approval
10 of a business plan in a regional center
11 associate commercial enterprise; or

12 “(IV) an application for designa-
13 tion as a regional center.

14 “(ii) DEBARMENT.—If a regional cen-
15 ter or regional center associated commer-
16 cial enterprise has its designation or par-
17 ticipation in the program under this para-
18 graph terminated for reasons relating to
19 fraud, intentional material misrepresenta-
20 tion, criminal misuse, or threats to public
21 safety or national security, any person as-
22 sociated with such regional center or re-
23 gional center associated commercial enter-
24 prise, including an alien investor, shall be
25 permanently barred from future participa-

1 tion in the program if the Secretary of
2 Homeland Security, in the Secretary’s
3 unreviewable discretion, determines that
4 such person was a knowing participant in
5 the conduct that led to the termination.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section—

8 (1) shall take effect on the date of the enact-
9 ment of this Act; and

10 (2) shall apply to—

11 (A) any application to designate a regional
12 center, and any person involved with the re-
13 gional center, that is pending or approved on or
14 after the date of the enactment of this Act; and

15 (B) any regional center approved before
16 the date of the enactment of this Act, on or
17 after a delayed effective date that is 1 year
18 after such date of enactment with respect to
19 any person involved in the regional center on or
20 after such delayed effective date, unless other-
21 wise provided in this section.

22 (d) GAO REPORT.—Not later than December 31,
23 2018, the Comptroller General of the United States shall
24 submit a report to the Committee on the Judiciary of the

1 Senate and the Committee on the Judiciary of the House
2 of Representatives that describes—

3 (1) the economic benefits of the regional center
4 program established under section 203(b)(5) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1153(b)(5)), including the steps taken by U.S. Citi-
7 zenship and Immigration Services to verify job cre-
8 ation;

9 (2) the extent to which U.S. Citizenship and
10 Immigration Services ensures compliance by regional
11 center participants;

12 (3) the extent to which U.S. Citizenship and
13 Immigration Services has maintained records by re-
14 gional centers and associated commercial enter-
15 prises, including annual statements and certifi-
16 cations;

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

21 (5) the extent to which U.S. Citizenship and
22 Immigration Services collaborates with other Federal
23 and law enforcement agencies, particularly to detect
24 illegal activity and threats to national security;

1 (6) the extent to which U.S. Citizenship and
2 Immigration Services has prevented fraud and abuse
3 in regional center activities, including the designa-
4 tion of a regional center investment in a targeted
5 employment area;

6 (7) the extent to which U.S. Citizenship and
7 Immigration Services has used its authority to sanc-
8 tion, suspend, bar, or terminate a regional center or
9 individuals affiliated with a regional center;

10 (8) the steps that have been taken to oversee
11 direct and third-party promoters under section
12 203(b)(5)(H) of the Immigration and Nationality
13 Act, as added by subsection (b);

14 (9) the extent to which employees of the De-
15 partment of Homeland Security have complied with
16 the ethical standards and transparency requirements
17 under section 7; and

18 (10) an accounting of the expenditure of
19 amounts from the EB-5 Integrity Fund established
20 under section 203(b)(5)(J) of the Immigration and
21 Nationality Act, as added by subsection (b).

22 (e) INSPECTOR GENERAL REPORT.—Not later than
23 December 31, 2018, the Inspector General of the Intel-
24 ligence Community, in coordination with the Inspector
25 General of the Department of Homeland Security and

1 after consultation with relevant Federal agencies, includ-
2 ing U.S. Immigration and Customs Enforcement, shall
3 submit a report to the Committee on the Judiciary of the
4 Senate and the Committee on the Judiciary of the House
5 of Representatives that describes—

6 (1) vulnerabilities within the EB–5 Immigrant
7 Investor Program that may undermine the national
8 security of the United States;

9 (2) actual or potential use of the EB–5 Immi-
10 grant Investor Program to facilitate export of sen-
11 sitive technology;

12 (3) actual or potential use of the EB–5 Immi-
13 grant Investor Program to facilitate economic espio-
14 nage;

15 (4) actual or potential use of the EB–5 Immi-
16 grant Investor Program by foreign government
17 agents; and

18 (5) actual or potential use of the EB–5 Immi-
19 grant Investor Program to facilitate terrorist activ-
20 ity, including funding terrorist activity or laundering
21 terrorist funds.

1 **SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
2 **ALIEN ENTREPRENEURS, SPOUSES, AND**
3 **CHILDREN.**

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

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

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

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

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

19 “(B) **EXCEPTION.**—Alien entrepreneurs
20 who meet the requirements under subsection
21 (d)(2)(A)(ii) shall obtain the status of an alien
22 lawfully admitted for permanent residence with-
23 out a conditional basis upon approval of the pe-
24 tition required under such subsection.”;

25 (3) in subsection (c)—

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

3 (B) in paragraph (1)—

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

8 (ii) in subparagraph (A), by striking
9 “, and” and inserting a semicolon;

10 (iii) in subparagraph (B), by striking
11 “Service respecting the facts and informa-
12 tion described in subsection (d)(1).” and
13 inserting “Department of Homeland Secu-
14 rity respecting the facts and information
15 described in subsection (d)(1); and”;

16 (iv) by adding at the end the fol-
17 lowing:

18 “(C) the Secretary shall perform a site
19 visit to the job creating entity in which the
20 alien entrepreneur invested capital under sec-
21 tion 203(b)(5)(A), which visit may take place at
22 any time after an application for approval of in-
23 vestment in a commercial enterprise is filed
24 under section 203(b)(5)(F).”; and

1 (C) in paragraph (3)(A), by striking “the”
2 before “such filing”;

3 (4) in subsection (d)—

4 (A) in paragraph (1)(A)(ii), by inserting
5 “except for alien entrepreneurs described in
6 subsection (d)(2)(A)(ii),” before “sustained”;

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

9 “(A) 90-DAY PERIOD BEFORE SECOND AN-
10 NIVERSARY.—(i) Except as provided in clause
11 (ii) and subparagraph (B), the petition under
12 subsection (c)(1)(A) shall be filed during the
13 90-day period before the second anniversary of
14 the alien entrepreneur’s lawful admission for
15 permanent residence.

16 “(ii) If the alien entrepreneur has sus-
17 tained the actions described in paragraph
18 (1)(A)(i) for at least a 24-month period before
19 admission, the alien entrepreneur may file the
20 petition under subsection (c)(1)(A) any time
21 after such period and before admission for per-
22 manent residence.”; and

23 (C) in paragraph (3), by striking “Service”
24 and inserting “Department of Homeland Secu-
25 rity”;

1 (5) by redesignating subsection (f) as sub-
2 section (g); and

3 (6) by inserting after subsection (e) the fol-
4 lowing:

5 “(f) FRAUD, MISREPRESENTATION, CRIMINAL MIS-
6 USE, OR THREATS TO THE PUBLIC SAFETY OR NATIONAL
7 SECURITY.—If the Secretary of Homeland Security deter-
8 mines, in the Secretary’s sole and unreviewable discretion,
9 that the approval of any petition under this section or the
10 conditional permanent resident status granted to an alien
11 entrepreneur under subsection (a) is contrary to the na-
12 tional interest of the United States for reasons relating
13 to fraud, misrepresentation, criminal misuse, or threats to
14 public safety or national security, the Secretary shall—

15 “(1) notify the alien involved of such deter-
16 mination without being required to disclose the basis
17 for such determination to the extent such disclosure
18 would be contrary to the national interest of the
19 United States; and

20 “(2) deny such petition or terminate the perma-
21 nent resident status of the alien involved (and the
22 alien spouse and alien children of such immigrant)
23 as of the date of such determination.”.

24 (b) EFFECTIVE DATE.—

1 in this subparagraph, the amount of cap-
2 ital required under subparagraph (A) shall
3 be \$1,200,000. In the case of an invest-
4 ment in a targeted employment area, the
5 amount of capital required under subpara-
6 graph (A) shall be \$800,000.

7 “(ii) ADJUSTMENT OF MINIMUM IN-
8 VESTMENT AMOUNTS.—

9 “(I) IN GENERAL.—The Sec-
10 retary of Homeland Security, in con-
11 sultation with the Secretary of Labor
12 and the Secretary of Commerce, may
13 from time to time prescribe regula-
14 tions increasing the dollar amounts
15 specified under clause (i).

16 “(II) AUTOMATIC ADJUST-
17 MENTS.—Beginning on January 1,
18 2020, and on every fifth subsequent
19 January 1—

20 “(aa) if the Secretary did
21 not increase the minimum
22 amount during the previous 5 fis-
23 cal years, the amounts specified
24 in clause (i) shall automatically
25 be adjusted by the amount of the

1 cumulative percentage change in
2 the Consumer Price Index (CPI-
3 U) for the previous 5 fiscal years;

4 “(bb) if the Secretary in-
5 creased the minimum amount
6 during the previous 5 fiscal years
7 by an amount that is less than
8 the cumulative percentage change
9 in the CPI-U during the previous
10 5 fiscal years, the amounts speci-
11 fied in clause (i) shall automati-
12 cally be adjusted by the amount
13 of such cumulative percentage
14 change for such period minus any
15 increase prescribed by the Sec-
16 retary by regulations; or

17 “(cc) if the Secretary in-
18 creased the minimum amount
19 during the previous 5 fiscal years
20 by an amount that is greater
21 than the cumulative percentage
22 change in the CPI-U during the
23 previous 5 fiscal years, the
24 amounts specified in clause (i)
25 shall not be increased.

1 “(iii) MINIMUM INVESTMENT AMOUNT
2 IN A TARGETED EMPLOYMENT AREA.—The
3 minimum investment amount in a targeted
4 employment area shall be not less than $\frac{1}{2}$
5 and not more than $\frac{3}{4}$ of the investment in
6 a non-targeted area of employment.”; and

7 (2) in clause (iii) by striking “the Attorney
8 General” and inserting “the Secretary”.

9 (c) DEFINITIONS.—

10 (1) IN GENERAL.—Section 203(b)(5) of such
11 Act (8 U.S.C. 1153(b)(5)), as amended by sub-
12 sections (a) and (b) and by section 2, is further
13 amended by amending subparagraph (D) to read as
14 follows:

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

16 “(i) CAPITAL.—The term ‘capital’—

17 “(I) means all real, personal, or
18 mixed tangible assets owned and con-
19 trolled by the alien entrepreneur, or
20 held in trust for the benefit of the
21 alien and to which the alien has unre-
22 stricted access;

23 “(II) shall be valued at fair mar-
24 ket value in United States dollars, in
25 accordance with Generally Accepted

1 Accounting Principles or other stand-
2 ard accounting practice adopted by
3 the Securities and Exchange Commis-
4 sion, at the time it is invested under
5 this paragraph; and

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

11 “(ii) COMMERCIAL ENTERPRISE ASSO-
12 CIATED WITH A REGIONAL CENTER.—The
13 terms ‘commercial enterprise associated
14 with a regional center’ and ‘regional center
15 associated commercial enterprise’ mean
16 any for-profit activity formed for the ongo-
17 ing conduct of lawful business, including a
18 sole proprietorship, partnership (whether
19 limited or general), holding company, joint
20 venture, corporation, business trust, or
21 other entity, that associates with a regional
22 center and receives, or is established to re-
23 ceive, capital investment under the regional
24 center program described in subparagraph
25 (E).

1 “(iii) FULL-TIME EMPLOYMENT.—The
2 term ‘full-time employment’ means employ-
3 ment in a position that requires at least 35
4 hours of service per week for at least a 24-
5 month period.

6 “(iv) HIGH UNEMPLOYMENT AREA.—
7 The term ‘high unemployment area’ means
8 an area, using the most recent census data
9 available, consisting of a census tract that
10 has an unemployment rate that is at least
11 150 percent of the national average unem-
12 ployment rate.

13 “(v) RURAL AREA.—The term ‘rural
14 area’ means any area other than an area
15 within a metropolitan statistical area or
16 within the outer boundary of any city or
17 town having a population of 20,000 or
18 more (based on the most recent decennial
19 census of the United States).

20 “(vi) TARGETED EMPLOYMENT
21 AREA.—

22 “(I) IN GENERAL.—The term
23 ‘targeted employment area’ means a
24 high unemployment area, a rural area,
25 or any area within the geographic

1 boundaries of any military installation
2 closed, during the 20 year period im-
3 mediately preceding the filing of an
4 application under subparagraph (F),
5 based upon a recommendation by the
6 Defense Base Closure and Realign-
7 ment Commission.

8 “(II) ELIGIBILITY.—Eligibility
9 for designation as a targeted employ-
10 ment area shall be determined by the
11 Secretary of Homeland Security, who
12 shall not be bound by the determina-
13 tion of any other Federal or State
14 governmental or nongovernmental en-
15 tity.”.

16 (2) RULEMAKING.—The Secretary of Homeland
17 Security, in consultation with the Secretary of De-
18 fense, shall issue appropriate regulations to account
19 for the modified definition of targeted employment
20 area in section 203(b)(5)(D)(vi) of the Immigration
21 and Nationality Act, as added by paragraph (1).

22 (d) AGE DETERMINATION FOR CHILDREN OF ALIEN
23 ENTREPRENEURS.—Section 203(h) of the Immigration
24 and Nationality Act (8 U.S.C. 1153(h)) is amended by
25 adding at the end the following:

1 “(5) AGE DETERMINATION FOR CHILDREN OF
2 ALIEN ENTREPRENEURS.—An alien admitted under
3 subsection (d) as a lawful permanent resident on a
4 conditional basis as the child of an alien lawfully ad-
5 mitted for permanent residence under subsection
6 (b)(5), whose lawful permanent resident status on a
7 conditional basis is terminated under section 216A,
8 shall continue to be considered a child of the prin-
9 cipal alien for the purpose of a subsequent immi-
10 grant petition by such alien under subsection (b)(5)
11 if the alien remains unmarried and the subsequent
12 petition is filed by the principal alien not later than
13 1 year after the termination of conditional lawful
14 permanent resident status. No alien shall be consid-
15 ered a child under this paragraph with respect to
16 more than 1 petition filed after the alien reaches 21
17 years of age.”.

18 (e) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
19 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The
20 Secretary of Homeland Security may establish, fix the
21 compensation of, and appoint individuals to, designated
22 critical, technical, and professional positions needed to ad-
23 minister sections 203(b)(5) and 216A of the Immigration
24 and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

1 (f) CONCURRENT FILING OF EB-5 PETITIONS AND
2 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
3 245 of the Immigration and Nationality Act (8 U.S.C.
4 1255) is amended—

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

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

9 “(n) If the approval of a petition for classification
10 under section 203(b)(5) would make a visa immediately
11 available to the alien beneficiary, the alien beneficiary’s
12 application for adjustment of status under this section
13 shall be considered to be properly filed whether the appli-
14 cation is submitted concurrently with, or subsequent to,
15 the visa petition.”.

16 (g) EFFECTIVE DATES.—

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

21 (2) EXCEPTIONS.—The amendments made by
22 subsections (b)(1) and (c)(1) shall not apply to—

23 (A) applications for business plan approval
24 for regional center investments in actual
25 projects that were filed with, or approved by,

1 the Secretary of Homeland Security before the
2 date of the enactment of this Act; and

3 (B) petitions seeking classification under
4 section 203(b)(5) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1153(b)(5)) and peti-
6 tions filed under section 216A of such Act (8
7 U.S.C. 1186b) by immigrants investing in the
8 same commercial enterprise concerning the
9 same economic activity as contained in an appli-
10 cation for business plan approval described in
11 subparagraph (A).

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

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

16 “(H) An alien desiring to be classified under section
17 203(b)(5) may file a petition with the Secretary of Home-
18 land Security. An alien petitioning for classification pursu-
19 ant to section 203(b)(5)(E) may file a petition with the
20 Secretary only after approval of investment in a commer-
21 cial enterprise under section 203(b)(5)(F).”.

22 (b) **EFFECTIVE DATE.**—The amendment made by
23 subsection (a)—

24 (1) shall take effect on the date of the enact-
25 ment of this Act; and

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

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

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

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

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

21 (2) in an amount that is not greater than 1
22 percent of the fee for filing a petition under section
23 203(b)(5) of the Immigration and Nationality Act (8
24 U.S.C. 1153(b)(5)), to improvements to the informa-
25 tion technological systems used by the Secretary to

1 process, adjudicate, and archive applications and pe-
2 titions under such section, including the conversion
3 to electronic format of documents filed by petitioners
4 and applicants for benefits under such section.

5 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
6 tion may be construed to require any modification of fees
7 before the completion of—

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

10 (2) regulations promulgated by the Secretary of
11 Homeland Security, in accordance with subchapter
12 II of chapter 5 and chapter 7 of title 5, United
13 States Code (commonly known as the “Administra-
14 tive Procedures Act”), to carry out subsection (b).

15 **SEC. 7. TRANSPARENCY.**

16 (a) **IN GENERAL.**—Employees of the Department of
17 Homeland Security, including the Secretary of Homeland
18 Security, the Secretary’s counselors, the Assistant Sec-
19 retary for the Private Sector, the Director of U.S. Citizen-
20 ship and Immigration Services, counselors to such Direc-
21 tor, and the Chief of Immigrant Investor Programs at
22 U.S. Citizenship and Immigration Services, shall act im-
23 partially and may not give preferential treatment to any
24 organization or individual in connection with any aspect
25 of the immigrant visa program described in section

1 203(b)(5)(E) of the Immigration and Nationality Act, as
2 added by section 2(b).

3 (b) IMPROPER ACTIVITIES.—Activities that con-
4 stitute preferential treatment under subsection (a) shall
5 include—

6 (1) working on, or in any way attempting to ex-
7 pedite or otherwise influence, in a manner not avail-
8 able to or accorded to all other petitioners, appli-
9 cants, and seekers of benefits under the immigrant
10 visa program described in section 203(b)(5)(E) of
11 the Immigration and Nationality Act, as added by
12 section 2(b), the processing of, an application, peti-
13 tion, or benefit for—

14 (A) a regional center;

15 (B) a commercial enterprise associated
16 with a regional center;

17 (C) a job-creating entity associated with a
18 regional center; or

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

22 (2) meeting or communicating with persons as-
23 sociated with the entities described in paragraph (1),
24 at the request of such persons, in a manner not
25 available to or accorded to all other petitioners, ap-

1 plicants, and seekers of benefits under the immi-
2 grant visa program described in section
3 203(b)(5)(E) of the Immigration and Nationality
4 Act, as added by section 2(b).

5 (c) REPORTING OF COMMUNICATIONS.—

6 (1) WRITTEN COMMUNICATION.—Employees of
7 the Department of Homeland Security, including the
8 officials listed in subsection (a), shall include, in the
9 record of proceeding for a case under section
10 203(b)(5)(E) of the Immigration and Nationality
11 Act, as added by section 2(b), actual or electronic
12 copies of all case-specific written communication, in-
13 cluding e-mails from government and private ac-
14 counts, with non-Department persons or entities ad-
15 vocating for regional center proposals or individual
16 petitions pending on or after the date of enactment
17 of this Act.

18 (2) ORAL COMMUNICATION.—If substantive oral
19 communication, including telephonic communication,
20 virtual communication, and in-person meetings,
21 takes place between officials of the Department of
22 Homeland Security and non-Department persons or
23 entities regarding specific cases under section
24 203(b)(5)(E) of the Immigration and Nationality
25 Act (other than routine communications with other

1 agencies of the Federal Government regarding the
2 case, including communications involving back-
3 ground checks and litigation defense)—

4 (A) the conversation shall be recorded; or

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

7 (3) NOTIFICATION.—

8 (A) IN GENERAL.—If the Secretary, in the
9 course of written or oral communication de-
10 scribed in this subsection, receives evidence
11 about a specific case from anyone other than an
12 affected party or his or her representative (ex-
13 cluding Federal Government or law enforcement
14 sources), such information may not be made
15 part of the record of proceeding and may not
16 be considered in adjudicative proceedings un-
17 less—

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

20 (ii) if such evidence is derogatory, the
21 affected party has been given an oppor-
22 tunity to respond to the evidence.

23 (B) INFORMATION FROM LAW ENFORCE-
24 MENT, INTELLIGENCE AGENCIES, OR CON-
25 FIDENTIAL SOURCES.—

1 (i) LAW ENFORCEMENT OR INTEL-
2 LIGENCE AGENCIES.—Evidence received
3 from law enforcement or intelligence agen-
4 cies may not be made part of the record of
5 proceeding without the consent of the rel-
6 evant agency or law enforcement entity.

7 (ii) WHISTLEBLOWERS OR OTHER
8 CONFIDENTIAL SOURCES.—Evidence re-
9 ceived from whistleblowers or other con-
10 fidential sources that is included in the
11 record of proceeding and considered in ad-
12 judicative proceedings shall be handled in a
13 manner that does not reveal the identity of
14 the whistleblower or confidential source.

15 (d) CONSIDERATION OF EVIDENCE.—

16 (1) IN GENERAL.—No case-specific communica-
17 tion with persons or entities that are not part of the
18 Department of Homeland Security may be consid-
19 ered in the adjudication of an application or petition
20 under section 203(b)(5)(E) of the Immigration and
21 Nationality Act, as added by section 2(b), unless the
22 communication is included in the record of pro-
23 ceeding of the case.

24 (2) WAIVER.—The Secretary of Homeland Se-
25 curity may waive the requirement under paragraph

1 (1) only in the interests of national security or for
2 investigative or law enforcement purposes.

3 (e) CHANNELS OF COMMUNICATION.—

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

8 (A) with inquiries regarding specific cases
9 under section 203(b)(5)(E) of the Immigration
10 and Nationality Act, as added by section 2(b);
11 or

12 (B) seeking non-case-specific information
13 about the regional center program described in
14 such section.

15 (2) COMMUNICATION ONLY THROUGH APPRO-
16 PRIATE CHANNELS OR OFFICES.—

17 (A) ANNOUNCEMENT OF APPROPRIATE
18 CHANNELS OF COMMUNICATION.—Not later
19 than 40 days after the date of the enactment of
20 this Act, the Director of U.S. Citizenship and
21 Immigration Services shall announce that the
22 only channels or offices by which petitioners,
23 applicants, and seekers of benefits under the
24 immigrant visa program described in section
25 203(b)(5)(E) of the Immigration and Nation-

1 ality Act, or such persons' representatives, may
2 communicate with the Department of Home-
3 land Security regarding specific cases under
4 such section, or non-case-specific information
5 about the regional center program applicable to
6 certain cases under such section, are through—

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

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

12 (iii) the U.S. Citizenship and Immi-
13 gration Services Office of Public Engage-
14 ment, Immigrant Investor Program Office,
15 Stakeholder Engagement Branch, or any
16 successors to those Offices or Branch.

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

19 (i) IN GENERAL.—Employees of the
20 Department of Homeland Security shall di-
21 rect all persons making inquiries regarding
22 the regional center program applicable to
23 certain cases under section 203(b)(5)(E) of
24 the Immigration and Nationality Act, as
25 added by section 2(b) to the channels of

1 communication or offices listed in subpara-
2 graph (A).

3 (ii) SAVINGS PROVISION.—Nothing in
4 this subparagraph may be construed to
5 prevent Department employees from di-
6 recting inquiries to the U.S. Citizenship
7 and Immigration Services Ombudsman.

8 (C) LOG.—

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

13 (I) all communications described
14 in subparagraph (A), which shall ref-
15 erence the date, time, and subject of
16 the communication, and the identity
17 of the Department official, if any, to
18 whom the inquiry was forwarded;

19 (II) with respect to written com-
20 munications described in subsection
21 (c)(1), the date the communication
22 was received, the identities of the
23 sender and addressee, and the subject
24 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.—If, as a
14 result of a communication with an official of the De-
15 partment of Homeland Security, a person or entity
16 inquiring about a specific case or generally about the
17 regional center program described in section
18 203(b)(5)(E) of the Immigration and Nationality
19 Act received generally applicable and non-case spe-
20 cific information about program requirements or ad-
21 ministration that has not been made publicly avail-
22 able by the Department, the Director of U.S. Citi-
23 zenship and Immigration Services, not later than 30
24 days after the communication of such information to
25 such person or entity, shall publish such information

1 on the U.S. Citizenship and Immigration Services
2 website as an update to the relevant Frequently
3 Asked Questions page or by some other comparable
4 mechanism.

5 (f) PENALTY.—

6 (1) IN GENERAL.—Any person who violates the
7 prohibition on preferential treatment under this sec-
8 tion or intentionally violates the reporting require-
9 ments under subsection (c) shall be disciplined in ac-
10 cordance with paragraph (2).

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

18 (A) written reprimand;

19 (B) suspension;

20 (C) demotion; or

21 (D) removal.

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

1 (h) **EFFECTIVE DATE.**—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.