

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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—116th Cong., 2d Sess.

(no.) _____

(title) _____

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY

Viz:

1 At the appropriate place, insert the following:

2 **Subtitle _____—EB-5 Investor Visa**
3 **Reform**

4 **SEC. ___ 1. SHORT TITLE.**

5 This subtitle may be cited as the “EB-5 Reform and
6 Integrity Act of 2020”.

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

9 (a) REPEAL.—Section 610 of the Departments of
10 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2 is repealed.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, 2025, 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 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, criminal laws,
19 and securities 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;

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) a description of the policies
7 and procedures in place that are rea-
8 sonably designed to ensure program
9 compliance; and

10 “(V) the identities of all natural
11 persons involved in the regional cen-
12 ter, as described in subparagraph
13 (H)(v).

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

6

1 “(v) COMPLIANCE.—

2 “(I) IN GENERAL.—In deter-
3 mining compliance with subparagraph
4 (A)(ii), the Secretary of Homeland Se-
5 curity shall permit aliens seeking ad-
6 mission under this subparagraph to
7 rely on economically and statistically
8 valid methodologies for determining
9 the number of jobs created by the pro-
10 gram, including—

11 “(aa) jobs estimated to have
12 been created directly, which may
13 be verified using such methodolo-
14 gies; and

15 “(bb) consistent with this
16 subparagraph, jobs estimated to
17 have been directly or indirectly
18 created through capital expendi-
19 tures, revenues generated from
20 increased exports, improved re-
21 gional productivity, job creation,
22 and increased domestic capital
23 investment resulting from the
24 program.

1 “(II) JOB AND INVESTMENT RE-
2 QUIREMENTS.—

3 “(aa) RELOCATED JOBS.—

4 In determining compliance with
5 the job creation requirement
6 under subparagraph (A)(ii), the
7 Secretary of Homeland Security
8 may include jobs estimated to be
9 created under a methodology that
10 attributes jobs to prospective ten-
11 ants occupying commercial real
12 estate created or improved by
13 capital investments if the number
14 of such jobs estimated to be cre-
15 ated has been determined by an
16 economically and statistically
17 valid methodology and such jobs
18 are not existing jobs that have
19 been relocated.

20 “(bb) PUBLICLY AVAILABLE
21 BONDS.—The Secretary of
22 Homeland Security shall pre-
23 scribe regulations to ensure that
24 alien investor capital may not be
25 utilized, by a new commercial en-

1 terprise or otherwise, to purchase
2 municipal bonds or any other
3 bonds, if such bonds are available
4 to the general public, either as
5 part of a primary offering or
6 from a secondary market.

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

9 “(I) require a regional center—

10 “(aa) to notify the Sec-
11 retary, not later than 120 days
12 before the implementation of sig-
13 nificant proposed changes to its
14 organizational structure, owner-
15 ship, or administration, including
16 the sale of such center, or other
17 arrangements which would result
18 in individuals not previously sub-
19 ject to the requirements under
20 subparagraph (H) becoming in-
21 volved with the regional center;
22 or

23 “(bb) if exigent cir-
24 cumstances are present, to pro-
25 vide the notice described in item

1 (aa) to the Secretary not later
2 than 5 business days after a
3 change described in such item;
4 and

5 “(II) adjudicate business plans
6 under subparagraph (F) and petitions
7 under section 204(a)(1)(H) during
8 any notice period as long as the
9 amendment to the business or petition
10 does not negatively impact program
11 eligibility.

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 5
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 5 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. The application 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) all material invest-
18 ment risks associated with the
19 new commercial enterprise and
20 the job-creating 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 mate-
5 rial adverse judgments or bank-
6 ruptcy orders issued during the
7 most recent 10-year period, in
8 the 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; and

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

1 tion, and of petitions by the same immi-
2 grants filed under section 216A unless—

3 “(I) the applicant engaged in
4 fraud, misrepresentation, or criminal
5 misuse;

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

8 “(III) there has been a material
9 change that affects the program eligi-
10 bility of the approved economic model
11 or terms of the investment offering;

12 “(IV) the discovery of other evi-
13 dence affecting program eligibility was
14 not disclosed by the applicant during
15 the adjudication process; or

16 “(V) the previous adjudication
17 involved a material mistake of law or
18 fact.

19 “(iii) AMENDMENTS.—

20 “(I) APPROVAL.—The Secretary
21 of Homeland Security may establish
22 procedures by which a regional center
23 may seek approval of an amendment
24 to an approved application under this
25 subparagraph that reflects changes

1 specified by the Secretary to any in-
2 formation, documents, or other as-
3 pects of the investment offering de-
4 scribed in such approved application
5 not later than 30 days after any such
6 changes.

7 “(II) INCORPORATION.—Upon
8 the approval of a timely filed amend-
9 ment to an approved application, any
10 changes reflected in such amendment
11 may be incorporated into and consid-
12 ered in determining program eligibility
13 through adjudication of—

14 “(aa) pending petitions from
15 immigrants investing in the offer-
16 ing described in the approved ap-
17 plication who are seeking classi-
18 fication under this paragraph;
19 and

20 “(bb) petitions by immi-
21 grants described in item (aa)
22 that are filed under section
23 216A.

24 “(iv) SITE VISITS.—The Secretary of
25 Homeland Security shall—

1 “(I) perform site visits to re-
2 gional centers not earlier than 24
3 hours after providing notice of such
4 site visit; and

5 “(II) perform at least 1 site visit
6 to, as applicable, each new commercial
7 enterprise or job-creating entity, or
8 the business locations where any jobs
9 that are claimed as being created.

10 “(G) REGIONAL CENTER ANNUAL STATE-
11 MENTS.—

12 “(i) IN GENERAL.—Each regional cen-
13 ter designated under subparagraph (E)
14 shall submit an annual statement, in a
15 manner prescribed by the Secretary of
16 Homeland Security. Each such statement
17 shall include—

18 “(I) a certification stating that,
19 to the best of the certifier’s knowl-
20 edge, after a due diligence investiga-
21 tion, the regional center is in compli-
22 ance with clauses (i) and (ii) of sub-
23 paragraph (H);

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

1 “(III) 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 subparagraph (K)(iii);

6 “(IV) a description of any pend-
7 ing material litigation or bankruptcy
8 proceedings, or litigation or bank-
9 ruptcy proceedings resolved during the
10 preceding fiscal year, involving the re-
11 gional center, the new commercial en-
12 terprise, or any affiliated job-creating
13 entity;

14 “(V) an accounting of all indi-
15 vidual alien investor capital invested
16 in the regional center, new commercial
17 enterprise, and job-creating entity;

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

21 “(aa) an accounting of the
22 aggregate capital invested in the
23 new commercial enterprise and
24 any job-creating entity by alien
25 investors under this paragraph

1 for each capital investment
2 project being undertaken by the
3 new commercial enterprise;

4 “(bb) a description of how
5 the capital described in item (aa)
6 is being used to execute each
7 capital investment project in the
8 filed business plan or plans;

9 “(cc) evidence that 100 per-
10 cent of the capital described in
11 item (aa) has been committed to
12 each capital investment project;

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

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

20 “(ff) to the best of the re-
21 gional center’s knowledge, for all
22 fees, including administrative
23 fees, loan monitoring fees, loan
24 management fees, commissions
25 and similar transaction-based

1 compensation, collected from
2 alien investors by the regional
3 center, the new commercial enter-
4 prise, any affiliated job-creating
5 entity, any affiliated issuer of se-
6 curities intended to be offered to
7 alien investors, or any promoter,
8 finder, broker-dealer, or other en-
9 tity engaged by any of the afore-
10 mentioned entities to locate indi-
11 vidual investors—

12 “(AA) a description of
13 all fees collected;

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

17 “(CC) the purpose for
18 which such fees were col-
19 lected;

20 “(gg) any documentation re-
21 ferred to in subparagraph
22 (F)(i)(IV) if there has been a
23 material change during the pre-
24 ceding fiscal year; and

1 “(hh) a certification by the
2 regional center that the informa-
3 tion provided under items (aa)
4 through (gg) is accurate, to the
5 best of the certifier’s knowledge,
6 after a due diligence investiga-
7 tion; and

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

13 “(ii) AMENDMENT OF ANNUAL STATE-
14 MENTS.—The Secretary of Homeland Se-
15 curity—

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

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

1 “(iii) SANCTIONS.—

2 “(I) EFFECT OF VIOLATION.—

3 The Director shall sanction any re-
4 gional center entity in accordance
5 with subclause (II) if the regional cen-
6 ter fails to submit an annual state-
7 ment or if the Director determines
8 that the regional center—

9 “(aa) knowingly submitted
10 or caused to be submitted a
11 statement, certification, or any
12 information submitted pursuant
13 to this subparagraph that con-
14 tained an untrue statement of
15 material fact; or

16 “(bb) is conducting itself in
17 a manner inconsistent with its
18 designation under subparagraph
19 (E), including any willful, undis-
20 closed, and material deviation by
21 new commercial enterprises from
22 any filed business plan for such
23 new commercial enterprises.

24 “(II) AUTHORIZED SANCTIONS.—

25 The Director shall establish a grad-

1 uated set of sanctions based on the
2 severity of the violations referred to in
3 subclause (I), including—

4 “(aa) fines equal to not
5 more than 10 percent of the total
6 capital invested by alien investors
7 in the regional center’s new com-
8 mercial enterprises or job-cre-
9 ating entities directly involved in
10 such violations, the payment of
11 which shall not in any cir-
12 cumstance utilize any of such
13 alien investors’ capital invest-
14 ments, and which shall be depos-
15 ited into the EB–5 Integrity
16 Fund established under subpara-
17 graph (J);

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

1 “(cc) permanent bar from
2 participation in the program de-
3 scribed in subparagraph (E) for
4 1 or more individuals or business
5 entities associated with the re-
6 gional center, new commercial
7 enterprise, or job-creating entity;
8 and

9 “(dd) termination of re-
10 gional center designation.

11 “(iv) AVAILABILITY OF ANNUAL
12 STATEMENTS TO INVESTORS.—Not later
13 than 30 days after a request from an alien
14 investor, a regional center shall make
15 available to such alien investor a copy of
16 the filed annual statement and any amend-
17 ments filed to such statement, which shall
18 be redacted to exclude any information un-
19 related to such alien investor or the new
20 commercial enterprise or job creating enti-
21 ty into which the alien investor invested.

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

24 “(i) IN GENERAL.—The Secretary of
25 Homeland Security may not permit any

26

1 person to be involved with any regional
2 center, new commercial enterprise, or job-
3 creating entity if—

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

6 “(aa) a criminal or civil of-
7 fense involving fraud or deceit
8 within the previous 10 years;

9 “(bb) a civil offense involv-
10 ing fraud or deceit that resulted
11 in a liability in excess of
12 \$1,000,000; or

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

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

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

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

15 “(bb) bars the person
16 from—

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

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

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

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

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

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

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

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

23 “(dd) any terrorist activity
24 (as defined in section
25 212(a)(3)(B));

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

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

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

12 “(IV) the person—

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

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

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

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

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

1 prise otherwise permitted to do busi-
2 ness in the United States may be in-
3 volved with the ownership, but not the
4 administration, of a job-creating enti-
5 ty that is not an affiliated job-creating
6 entity.

7 “(III) RULEMAKING.—Not later
8 than 270 days after the date of the
9 enactment of the EB-5 Reform and
10 Integrity Act of 2020, the Secretary
11 shall issue regulations implementing
12 subparagraphs (I) and (II).

13 “(iii) INFORMATION REQUIRED.—The
14 Secretary of Homeland Security—

15 “(I) shall require such attesta-
16 tions and information, including the
17 submission of fingerprints or other
18 biometrics to the Federal Bureau of
19 Investigation with respect to a re-
20 gional center, a new commercial enter-
21 prise, and any affiliated job creating
22 entity, and persons involved with such
23 entities (as described in clause (v)), as
24 may be necessary to determine wheth-

1 er such entities are in compliance with
2 clauses (i) and (ii);

3 “(II) shall perform such criminal
4 record checks and other background
5 and database checks with respect to a
6 regional center, a new commercial en-
7 terprise, and any affiliated job-cre-
8 ating entity, and persons involved
9 with such entities (as described in
10 clause (v)), as may be necessary to de-
11 termine whether such entities are in
12 compliance with clauses (i) and (ii);
13 and

14 “(III) may, at the Secretary’s
15 discretion, require the information de-
16 scribed to in subclause (I) and may
17 perform the checks described in sub-
18 clause (II) with respect to any job cre-
19 ating entity and persons involved with
20 such entity if there is a reasonable
21 basis to believe such entity or person
22 is not in compliance with clauses (i)
23 and (ii).

24 “(iv) TERMINATION.—

1 “(cc) knowingly provided
2 any false attestation or informa-
3 tion under clause (iii)(I).

4 “(II) LIMITATION.—The Sec-
5 retary’s authorized sanctions under
6 subclause (I) shall be limited to enti-
7 ties that have engaged in any activity
8 described in subclause (I).

9 “(III) INFORMATION.—

10 “(aa) NOTIFICATION.—The
11 Secretary, after performing the
12 criminal record checks and other
13 background checks described in
14 clause (iii), shall notify a regional
15 center, new commercial enter-
16 prise, or job-creating entity
17 whether any person involved with
18 such entities is not in compliance
19 with clause (i) or (ii), unless the
20 information that provides the
21 basis for the determination is
22 classified or disclosure is other-
23 wise prohibited under law.

24 “(bb) EFFECT OF FAILURE
25 TO RESPOND.—If the regional

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

14 “(v) PERSONS INVOLVED WITH A RE-
15 GIONAL CENTER, NEW COMMERCIAL EN-
16 TERPRISE, OR JOB-CREATING ENTITY.—
17 For the purposes of this paragraph, unless
18 otherwise determined by the Secretary of
19 Homeland Security, a person is involved
20 with a regional center, a new commercial
21 enterprise, any affiliated job-creating enti-
22 ty, as applicable, if the person is, directly
23 or indirectly, in a position of substantive
24 authority to make operational or manage-
25 rial decisions over pooling, securitization,

1 investment, release, acceptance, or control
2 or use of any funding that was procured
3 under the program described in subpara-
4 graph (E). An individual may be in a posi-
5 tion of substantive authority if the person
6 serves as a principal, a representative, an
7 administrator, an owner, an officer, a
8 board member, a manager, an executive, a
9 general partner, a fiduciary, an agent, or
10 in a similar position at the regional center,
11 new commercial enterprise, or job-creating
12 entity, respectively.

13 “(I) COMPLIANCE WITH SECURITIES
14 LAWS.—

15 “(i) JURISDICTION.—

16 “(I) IN GENERAL.—The United
17 States has jurisdiction, including sub-
18 ject matter jurisdiction, over the pur-
19 chase or sale of any security offered
20 or sold, or any investment advice pro-
21 vided, by any regional center or any
22 party associated with a regional cen-
23 ter for purposes of the securities laws.

24 “(II) COMPLIANCE WITH REGU-
25 LATION S.—For purposes of section 5

1 of the Securities Act of 1933 (15
2 U.S.C. 77e), a regional center or any
3 party associated with a regional cen-
4 ter is not precluded from offering or
5 selling a security pursuant to Regula-
6 tion S (17 C.F.R. 230.901 et seq.) to
7 the extent that such offering or selling
8 otherwise complies with that regula-
9 tion.

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

18 “(ii) REGIONAL CENTER CERTIFI-
19 CATIONS REQUIRED.—

20 “(I) INITIAL CERTIFICATION.—
21 The Secretary of Homeland Security
22 may not approve an application for re-
23 gional center designation or regional
24 center amendment unless the regional
25 center certifies that, to the best of the

1 certifier’s knowledge, after a due dili-
2 gence investigation, the regional cen-
3 ter is in compliance with and has poli-
4 cies and procedures, including those
5 related to internal and external due
6 diligence, reasonably designed to con-
7 firm, as applicable, that all parties as-
8 sociated with the regional center are
9 and will remain in compliance with
10 the securities laws of the United
11 States and of any State in which—

12 “(aa) the offer, purchase, or
13 sale of securities was conducted;

14 “(bb) the issuer of securities
15 was located; or

16 “(cc) the investment advice
17 was provided by the regional cen-
18 ter or parties associated with the
19 regional center.

20 “(II) REISSUE.—A regional cen-
21 ter shall annually reissue a certifi-
22 cation described in subclause (I), in
23 accordance with subparagraph (G), to
24 certify compliance with clause (iii) by
25 stating that—

1 “(aa) the certification is
2 made by a certifier;

3 “(bb) to the best of the cer-
4 tifier’s knowledge, after a due
5 diligence investigation, all such
6 offers, purchases, and sales of se-
7 curities or the provision of invest-
8 ment advice complied with the se-
9 curities laws of the United States
10 and the securities laws of any
11 State in which—

12 “(AA) the offer, pur-
13 chase, or sale of securities
14 was conducted;

15 “(BB) the issuer of se-
16 curities was located; or

17 “(CC) the investment
18 advice was provided; and

19 “(cc) records, data, and in-
20 formation related to such offers,
21 purchases, and sales have been
22 maintained.

23 “(III) EFFECT OF NONCOMPLI-
24 ANCE.—If a regional center, through
25 its due diligence, discovered during

1 the previous fiscal year that the re-
2 gional center or any party associated
3 with the regional center was not in
4 compliance with the securities laws of
5 the United States or the securities
6 laws of any State in which the securi-
7 ties activities were conducted by any
8 party associated with the regional cen-
9 ter, the certifier shall—

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

12 “(bb) describe the actions
13 taken to remedy the noncompli-
14 ance; and

15 “(cc) certify that the re-
16 gional center and all parties asso-
17 ciated with the regional center
18 are currently in compliance, to
19 the best of the certifier’s knowl-
20 edge, after a due diligence inves-
21 tigation.

22 “(iii) OVERSIGHT REQUIRED.—Each
23 regional center shall—

24 “(I) use commercially reasonable
25 efforts to monitor and supervise all of-

1 fers, purchases, and sales of, and in-
2 vestment advice relating to, securities
3 made by parties associated with the
4 regional center to confirm compliance
5 with the securities laws of the United
6 States;

7 “(II) maintain records, data, and
8 information relating to all such offers,
9 purchases, sales, and investment ad-
10 vice during the 5-year period begin-
11 ning on the date of their creation; and

12 “(III) make the records, data,
13 and information described in sub-
14 clause (II) available to the Secretary
15 or to the Securities and Exchange
16 Commission upon request.

17 “(iv) SUSPENSION OR TERMI-
18 NATION.—In addition to any other author-
19 ity provided to the Secretary under this
20 paragraph, the Secretary, in the Sec-
21 retary’s discretion, may suspend or termi-
22 nate the designation of any regional center
23 or impose other sanctions against the re-
24 gional center if the regional center, or any
25 parties associated with the regional center

1 that the regional center knew or reason-
2 ably should have known—

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

9 “(II) are subject to any final
10 order of the Securities and Exchange
11 Commission or a State securities reg-
12 ulator that—

13 “(aa) bars such person from
14 association with an entity regu-
15 lated by the Securities and Ex-
16 change Commission or a State
17 securities regulator; or

18 “(bb) constitutes a final
19 order based on a finding of an in-
20 tentional violation or a violation
21 related to fraud or deceit in con-
22 nection with the offer, purchase,
23 or sale of, or investment advice
24 relating to, a security; or

1 “(III) submitted, or caused to be
2 submitted, a certification described in
3 clause (ii) that contained an untrue
4 statement of a material fact or omit-
5 ted to state a material fact necessary
6 in order to make the statements
7 made, in light of the circumstances
8 under which they were made, not mis-
9 leading.

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

13 “(I) the regional center;

14 “(II) any new commercial enter-
15 prise or affiliated job-creating entity
16 or issuer of securities associated with
17 the regional center;

18 “(III) the regional center’s and
19 new commercial enterprise’s owners,
20 officers, directors, managers, partners,
21 agents, employees, promoters and at-
22 torneys, or similar position, as deter-
23 mined by the Secretary; and

24 “(IV) any person under the con-
25 trol of the regional center, new com-

1 mercantile enterprise, or issuer of securi-
2 ties associated with the regional cen-
3 ter who is responsible for the mar-
4 keting, offering, or sale of any secu-
5 rity offered in connection with the
6 capital investment project.

7 “(vi) SAVINGS PROVISION.—Nothing
8 in this subparagraph may be construed to
9 impair or limit the authority of the Securi-
10 ties and Exchange Commission under the
11 Federal securities laws or any State securi-
12 ties regulator under State securities laws.

13 “(J) EB-5 INTEGRITY FUND.—

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

23 “(ii) FEES.—

24 “(I) ANNUAL FEE.—On October
25 1, 2021, and each October 1 there-

1 after, the Secretary of Homeland Se-
2 curity shall collect for the Fund an
3 annual fee—

4 “(aa) except as provided in
5 item (bb), of \$20,000 from each
6 regional center designated under
7 subparagraph (E); and

8 “(bb) of \$10,000 from each
9 such regional center with 20 or
10 fewer total investors in the pre-
11 ceeding fiscal year in its new com-
12 mercial enterprises.

13 “(II) PETITION FEE.—Beginning
14 on October 1, 2021, the Secretary
15 shall collect a fee of \$1,000 for the
16 Fund with each petition filed under
17 section 204(a)(1)(H) for classification
18 under subparagraph (E). The fee
19 under this subclause is in addition to
20 the fee that the Secretary is author-
21 ized to establish and collect for each
22 petition to recover the costs of adju-
23 dication and naturalization services
24 under section 286(m).

1 “(III) INCREASES.—The Sec-
2 retary may increase the amounts
3 under this clause by prescribing such
4 regulations as may be necessary to en-
5 sure that amounts in the Fund are
6 sufficient to carry out the purposes
7 set forth in clause (iii).

8 “(iii) PERMISSIBLE USES OF FUND.—
9 The Secretary shall—

10 “(I) use not less than $\frac{1}{3}$ of the
11 amounts deposited into the Fund for
12 investigations based outside of the
13 United States, including—

14 “(aa) monitoring and inves-
15 tigating program-related events
16 and promotional activities; and

17 “(bb) ensuring an alien in-
18 vestor’s compliance with subpara-
19 graph (L); and

20 “(II) use amounts deposited into
21 the Fund—

22 “(aa) to detect and inves-
23 tigate fraud or other crimes;

24 “(bb) to determine whether
25 regional centers, new commercial

1 enterprises, job-creating entities,
2 and alien investors (and their
3 alien spouses and alien children)
4 comply with the immigration
5 laws;

6 “(cc) to conduct audits and
7 site visits; and

8 “(dd) as the Secretary de-
9 termines to be necessary, includ-
10 ing monitoring compliance with
11 the requirements under section 7
12 of the EB-5 Reform and Integ-
13 rity Act of 2020.

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

16 “(I) impose a reasonable penalty,
17 which shall be deposited into the
18 Fund, if any regional center does not
19 pay the fee required under clause (ii)
20 within 30 days after the date on
21 which such fee is due; and

22 “(II) terminate the designation
23 of any regional center that does not
24 pay the fee required under clause (ii)

1 within 90 days after the date on
2 which such fee is due.

3 “(v) REPORT.—The Secretary shall
4 submit an annual report to the Committee
5 on the Judiciary of the Senate and the
6 Committee on the Judiciary of the House
7 of Representatives that describes how
8 amounts in the Fund were expended dur-
9 ing the previous fiscal year.

10 “(K) DIRECT AND THIRD-PARTY PRO-
11 MOTERS.—

12 “(i) RULES AND STANDARDS.—Direct
13 and third party promoters (including mi-
14 gration agents) of a regional center, any
15 new commercial enterprise, an affiliated
16 job-creating entity, or an issuer of securi-
17 ties intended to be offered to alien inves-
18 tors in connection with a particular capital
19 investment project shall comply with the
20 rules and standards prescribed by the Sec-
21 retary of Homeland Security and any ap-
22 plicable Federal or State securities laws, to
23 oversee promotion of any offering of secu-
24 rities related to the EB-5 Program, includ-
25 ing—

1 (i), the Secretary shall suspend or perma-
2 nently bar such individual from participa-
3 tion in the program described in subpara-
4 graph (E).

5 “(iii) COMPLIANCE.—Each regional
6 center shall maintain a written agreement
7 outlining the rules and standards pre-
8 scribed under clause (i) between—

9 “(I) the regional center, the new
10 commercial enterprise, any affiliated
11 job-creating entity, or any issuer of
12 securities intended to be offered to
13 alien investors in connection with a
14 particular capital investment project;
15 and

16 “(II) each direct or third-party
17 promoter operating on behalf of such
18 entity or issuer.

19 “(iv) DISCLOSURE.—Each petition
20 filed under section 204(a)(1)(H) shall in-
21 clude a disclosure, signed by the investor,
22 that reflects all fees, ongoing interest, and
23 other compensation paid to any person
24 that the regional center or new commercial
25 enterprise knows has received, or will re-

1 ceive, in connection with the investment,
2 including compensation to agents, finders,
3 or broker dealers involved in the offering,
4 to the extent not already specifically identi-
5 fied in the business plan filed under sub-
6 paragraph (F).

7 “(L) SOURCE OF FUNDS.—

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

15 “(ii) REQUIRED INFORMATION.—The
16 Secretary of Homeland Security shall re-
17 quire that an alien investor’s petition
18 under this paragraph contain, as applica-
19 ble—

20 “(I) business and tax records, or
21 similar records, including—

22 “(aa) foreign business reg-
23 istration records;

24 “(bb) corporate or partner-
25 ship tax returns (or tax returns

1 of any other entity in any form
2 filed in any country or subdivi-
3 sion of such country), and per-
4 sonal tax returns, including in-
5 come, franchise, property (wheth-
6 er real, personal, or intangible),
7 or any other tax returns of any
8 kind, filed during the past 7
9 years (or another period to be de-
10 termined by the Secretary to en-
11 sure that the investment is ob-
12 tained from a lawful source of
13 funds) with any taxing jurisdic-
14 tion within or outside the United
15 States by or on behalf of the
16 alien investor; and

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

20 “(II) evidence related to mone-
21 tary judgments against the alien in-
22 vestor, including certified copies of
23 any judgments, and 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 possible monetary judgments against
4 the alien investor from any court
5 within or outside the United States;
6 and

7 “(III) the identity of all persons
8 who transfer into the United States,
9 on behalf of the investor, any funds
10 that are used to meet the capital re-
11 quirement under subparagraph (A).

12 “(iii) GIFT AND LOAN RESTRIC-
13 TIONS.—

14 “(I) IN GENERAL.—Gifted and
15 borrowed funds may not be counted
16 toward the minimum capital invest-
17 ment requirement under subpara-
18 graph (C) unless such funds—

19 “(aa) were gifted or loaned
20 to the alien investor in good
21 faith; and

22 “(bb) were not gifted or
23 loaned to circumvent any limita-
24 tions imposed on permissible
25 sources of capital under this sub-

1 paragraph, including but not lim-
2 ited to proceeds from illegal ac-
3 tivity.

4 “(II) RECORDS REQUIREMENT.—

5 If funds invested under subparagraph
6 (A) are gifted or loaned to the alien
7 investor, the Secretary shall require
8 that the alien investor’s petition under
9 this paragraph includes the records
10 described in subclauses (I) and (II) of
11 clause (ii) from the donor or, if other
12 than a bank, the lender.

13 “(M) TREATMENT OF GOOD FAITH INVES-
14 TORS FOLLOWING PROGRAM NONCOMPLI-
15 ANCE.—

16 “(i) TERMINATION OR DEBARMENT
17 OF EB-5 ENTITY.—Except as provided in
18 clause (vi), upon the termination or debar-
19 ment, as applicable, from the program
20 under this paragraph of a regional center,
21 a new commercial enterprise, or a job-cre-
22 ating entity—

23 “(I) an otherwise qualified peti-
24 tion under section 204(a)(1)(H) or
25 the conditional permanent residence of

1 an alien who has been admitted to the
2 United States pursuant to section
3 216A(a)(1) based on an investment in
4 a terminated regional center, new
5 commercial enterprise, or job-creating
6 entity shall remain valid or continue
7 to be authorized, as applicable, con-
8 sistent with this subparagraph; and

9 “(II) the Secretary of Homeland
10 Security shall notify the alien bene-
11 ficiaries of such petitions of such ter-
12 mination or debarment.

13 “(ii) NEW REGIONAL CENTER OR IN-
14 VESTMENT.—The petition under section
15 204(a)(1)(H) of an alien described in
16 clause (i) and the conditional permanent
17 resident status of an alien described in
18 clause (i) shall be terminated 180 days
19 after notification of the termination from
20 the program under this paragraph of a re-
21 gional center, a new commercial enterprise,
22 or a job creating entity (but not sooner
23 than 180 days after the date of the enact-
24 ment of the EB-5 Reform and Integrity
25 Act of 2020) unless—

1 “(I) in the case of the termi-
2 nation of a regional center—

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

9 “(bb) such alien makes a
10 qualifying investment in another
11 new commercial enterprise; or

12 “(II) in the case of the debar-
13 ment of a new commercial enterprise
14 or job-creating entity, such alien—

15 “(aa) associates with a new
16 commercial enterprise in good
17 standing; and

18 “(bb) invests additional in-
19 vestment capital solely to the ex-
20 tent necessary to satisfy remain-
21 ing job creation requirements
22 under subparagraph (A)(ii).

23 “(iii) AMENDMENTS.—

24 “(I) FILING REQUIREMENT.—

25 The Secretary shall permit a petition

1 described in clause (i)(I) to be amend-
2 ed to allow such petition to meet the
3 applicable eligibility requirements
4 under clause (ii), or to notify the Sec-
5 retary that a pending or approved pe-
6 tition continues to meet the eligibility
7 requirements described in clause (ii)
8 notwithstanding termination or debar-
9 ment described in clause (i) if such
10 amendment is filed not later than 180
11 days after the Secretary provides noti-
12 fication of termination or debarment
13 of a regional center, a new commercial
14 enterprise, or a job-creating entity, as
15 applicable.

16 “(II) DETERMINATION OF ELIGI-
17 BILITY.—For purposes of determining
18 eligibility under subclause (I)—

19 “(aa) the Secretary shall
20 permit amendments to the busi-
21 ness plan, without such facts un-
22 derlying the amendment being
23 deemed a material change; and

24 “(bb) may deem any funds
25 obtained or recovered by an alien

1 investor, directly or indirectly,
2 from claims against third parties,
3 including insurance proceeds, or
4 any additional investment capital
5 provided by the alien, to be such
6 alien's investment capital for the
7 purposes of subparagraph (A) if
8 such investment otherwise com-
9 plies with the requirements under
10 this paragraph and section 216A.

11 “(iv) REMOVAL OF CONDITIONS.—
12 Aliens described in subclauses (I)(bb) and
13 (II) of clause (ii) shall be eligible to have
14 their conditions removed pursuant to sec-
15 tion 216A beginning on the date that is 2
16 years after the date of the subsequent in-
17 vestment.

18 “(v) REMEDIES.—For petitions ap-
19 proved under clause (ii), including fol-
20 lowing an amendment filed under clause
21 (iii), the Secretary—

22 “(I) shall retain the immigrant
23 visa priority date related to the origi-
24 nal petition and prevent age-out of de-
25 rivative beneficiaries; and

1 “(II) may hold such petition in
2 abeyance and extend any applicable
3 deadlines under this paragraph.

4 “(vi) EXCEPTION.—If the Secretary
5 has reason to believe that an alien was a
6 knowing participant in the conduct that led
7 to the termination of a regional center,
8 new commercial enterprise, or job-creating
9 entity described in clause (i)—

10 “(I) the alien shall not be ac-
11 corded any benefit under this sub-
12 paragraph; and

13 “(II) the Secretary shall—

14 “(aa) notify the alien of
15 such belief; and

16 “(bb) subject to section
17 216A(b)(2), shall deny or initiate
18 proceedings to revoke the ap-
19 proval of such alien’s petition,
20 application, or benefit (and that
21 of any spouse or child, if applica-
22 ble) described in this paragraph.

23 “(N) THREATS TO THE NATIONAL INTER-
24 EST.—

1 cial enterprise under subparagraph
2 (F); or

3 “(V) a temporary Green Card
4 granting conditional permanent resi-
5 dent status that was issued to an
6 alien pursuant to section 216A.

7 “(iii) DEBARMENT.—If a regional
8 center, new commercial enterprise, or job-
9 creating entity has its designation or par-
10 ticipation in the program under this para-
11 graph terminated for reasons relating to
12 public safety or national security, any per-
13 son associated with such regional center,
14 new commercial enterprise, or job-creating
15 entity, including an alien investor, shall be
16 permanently barred from future participa-
17 tion in the program under this paragraph
18 if the Secretary of Homeland Security, in
19 the Secretary’s discretion, determines, by a
20 preponderance of the evidence, that such
21 person was a knowing participant in the
22 conduct that led to the termination.

23 “(iv) NOTICE.—If the Secretary of
24 Homeland Security determines that the ap-
25 proval of a petition, application, or benefit

1 described in this paragraph should be de-
2 nied or revoked pursuant to clause (i), the
3 Secretary shall—

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

7 “(II) deny or revoke such peti-
8 tion, application, or benefit or termi-
9 nate the permanent resident status of
10 the alien (and the alien spouse and
11 alien children of such immigrant), as
12 of the date of such determination; and

13 “(III) provide any United States-
14 owned regional center, new commer-
15 cial enterprise, or job creating entity
16 an explanation for such determination
17 unless the relevant information is
18 classified or disclosure is otherwise
19 prohibited under law.

20 “(v) JUDICIAL REVIEW.—Notwith-
21 standing any other provision of law (statu-
22 tory or nonstatutory), including section
23 2241 of title 28, United States Code, or
24 any other habeas corpus provision, and
25 sections 1361 and 1651 of such title, no

1 court shall have jurisdiction to review a de-
2 nial or revocation under this subparagraph.
3 Nothing in this clause may be construed as
4 precluding review of constitutional claims
5 or questions of law raised upon a petition
6 for review filed with an appropriate court
7 of appeals in accordance with section 242.

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

10 “(i) DENIAL OR REVOCATION.—Sub-
11 ject to subparagraph (M), the Secretary of
12 Homeland Security shall deny or revoke
13 the approval of a petition, application, or
14 benefit described in this paragraph, includ-
15 ing the documents described in subpara-
16 graph (N)(ii), if the Secretary determines,
17 in the Secretary’s discretion, that such pe-
18 tition, application, or benefit was predi-
19 cated on or involved fraud, deceit, inten-
20 tional material misrepresentation, or crimi-
21 nal misuse.

22 “(ii) DEBARMENT.—If a regional cen-
23 ter, new commercial enterprise, or job-cre-
24 ating entity has its designation or partici-
25 pation in the program under this para-

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

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

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

22 “(II) deny or revoke such peti-
23 tion, application, or benefit or termi-
24 nate the permanent resident status of
25 the alien (and the alien spouse and

1 alien children of such immigrant), in
2 accordance with clause (i), as of the
3 date of such determination.

4 “(P) ADMINISTRATIVE APPELLATE RE-
5 VIEW.—

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

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

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

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

23 “(IV) the termination or suspen-
24 sion of any benefit accorded under
25 this paragraph; and

1 “(V) any sanction imposed by the
2 Secretary under this paragraph.

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

15 “(Q) FUND ADMINISTRATION.—

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

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

23 “(I) be transferred to another
24 separate account or a job creating en-
25 tity;

1 “(II) otherwise be deployed into
2 the capital investment project for
3 which the funds were intended; or

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

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

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

20 “(II) not later than 30 days after
21 such amounts are deployed pursuant
22 to subclause (I), the affiliated job-cre-
23 ating entity shall provide written no-
24 tice to the fund administrator re-
25 tained pursuant to clause (iv) that a

1 construction consultant or other indi-
2 vidual authorized by the Secretary has
3 verified that such amounts have been
4 deployed into the project.

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

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

18 “(II) be licensed, active, and in
19 good standing as—

20 “(aa) a certified public ac-
21 countant;

22 “(bb) an attorney;

23 “(cc) a broker-dealer or in-
24 vestment adviser registered with

1 the Securities and Exchange
2 Commission; or

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

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

10 “(IV) serve as a cosignatory on
11 all separate accounts;

12 “(V) before any transfer of
13 amounts from a separate account—

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

19 “(bb) approves such transfer
20 with a written or electronic sig-
21 nature; and

22 “(VI) periodically provide each
23 alien investor with information about
24 the activity of the account in which

1 the investor's capital investment is
2 held, including—

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

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

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

11 “(v) WAIVER.—

12 “(I) WAIVER PERMITTED.—The
13 Secretary of Homeland Security, after
14 consultation with the Securities and
15 Exchange Commission, may waive the
16 requirements under clause (iv) for any
17 new commercial enterprise or affili-
18 ated job-creating entity that is con-
19 trolled by or under common control of
20 an investment adviser or broker-dealer
21 that is registered with the Securities
22 and Exchange Commission if the Sec-
23 retary, in the Secretary's discretion,
24 determines that the Securities and
25 Exchange Commission provides com-

1 parable protections and transparency
2 for alien investors as the protections
3 and transparency provided under
4 clause (iv).

5 “(II) WAIVER REQUIRED.—The
6 Secretary of Homeland Security shall
7 waive the requirements under clause
8 (iv) for any new commercial enterprise
9 that commissions an annual inde-
10 pendent financial audit of such new
11 commercial enterprise or job creating
12 entity conducted in accordance with
13 Generally Accepted Auditing Stand-
14 ards, which audit shall be provided to
15 the Secretary and all investors in the
16 new commercial enterprise.

17 “(vi) DEFINED TERM.—In this sub-
18 paragraph, the term ‘separate account’
19 means an account that—

20 “(I) is maintained in the United
21 States by a new commercial enterprise
22 or job creating entity at a Federally
23 regulated bank or at another financial
24 institution (as defined in section 20 of

1 title 18, United States Code) in the
2 United States;

3 “(II) is insured; and

4 “(III) contains only the pooled
5 investment funds of alien investors in
6 a new commercial enterprise with re-
7 spect to a single capital investment
8 project.”.

9 (c) EFFECTIVE DATE.—Unless otherwise provided in
10 this section, the amendments made by this section shall
11 take effect on the date that is 90 days after the date of
12 the enactment of this Act.

13 **SEC. ___ 3. CONDITIONAL PERMANENT RESIDENT STATUS**
14 **FOR ALIEN INVESTORS, SPOUSES, AND CHIL-**
15 **DREN.**

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

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

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

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

1 “(1) **CONDITIONAL BASIS FOR STATUS.**—An
2 alien investor, alien spouse, and alien child shall be
3 considered, at the time of obtaining status as an
4 alien lawfully admitted for permanent residence, to
5 have obtained such status on a conditional basis sub-
6 ject to the provisions of this section.”;

7 (4) in subsection (b)—

8 (A) in the subsection heading, by striking
9 “**ENTREPRENEURSHIP**” and inserting “**INVEST-**
10 **MENT**”; and

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

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

15 (5) in subsection (c)—

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

18 (B) in paragraph (1)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “In order” and in-
21 serting “Except as provided in paragraph
22 (3)(D), in order”;

23 (ii) in subparagraph (A)—

24 (I) by striking “must” and in-
25 serting “shall”; and

1 (II) by striking “, and” and in-
2 sserting a semicolon;

3 (iii) in subparagraph (B)—

4 (I) by striking “must” and in-
5 sserting “shall”;

6 (II) by striking “Service” and in-
7 sserting “Department of Homeland Se-
8 curity”; and

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

11 (iv) by adding at the end the fol-
12 lowing:

13 “(C) the Secretary shall have performed a
14 site visit to the relevant corporate office or busi-
15 ness location described in section
16 203(b)(5)(F)(iv).”; and

17 (C) in paragraph (3)—

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

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

23 “(B) REMOVAL OR EXTENSION OF CONDI-
24 TIONAL BASIS.—

1 third anniversary of the alien’s lawful
2 admission for permanent residence
3 demonstrating that the alien complied
4 with subsection (d)(1)(B)(i), the Sec-
5 retary shall remove the conditional
6 basis of the alien’s status effective as
7 of such third anniversary; or

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

12 (6) in subsection (d)—

13 (A) in paragraph (1)—

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

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

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

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

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

23 “(ii) is actively in the process of creating
24 the employment required under section
25 203(b)(5)(A)(ii) and will create such employ-

1 ment before the third anniversary of the alien’s
2 lawful admission for permanent residence, pro-
3 vided that such alien’s capital will remain in-
4 vested during such time; and”;

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

7 “(A) NINETY-DAY PERIOD BEFORE SEC-
8 OND ANNIVERSARY.—

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

16 “(ii) EXCEPTION.—Aliens described in
17 subclauses (I)(bb) and (II) of section
18 203(b)(5)(M)(ii) shall file a petition under
19 subsection (c)(1)(A) during the 90-day pe-
20 riod before the second anniversary of the
21 subsequent investment.”; and

22 (C) in paragraph (3)—

23 (i) by striking “The interview” and
24 inserting the following:

25 “(A) IN GENERAL.—The interview”;

1 (ii) by striking “Service” and insert-
2 ing “Department of Homeland Security”;
3 and

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

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

20 “(i) invested in a regional center, new
21 commercial enterprise, or job-creating enti-
22 ty that was sanctioned under section
23 203(b)(5); or

1 “(ii) is in a class of aliens determined
2 by the Secretary to be threats to public
3 safety or national security.”; and

4 (7) in subsection (f)(3), by striking “a limited
5 partnership” and inserting “any entity formed for
6 the purpose of doing for-profit business”.

7 (b) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by subsection (a)
10 shall take effect on the date of the enactment of this
11 Act.

12 (2) EXCEPTIONS.—

13 (A) SITE VISITS.—The amendment made
14 by subsection (a)(5)(B)(iv) shall take effect on
15 the date that is 2 years after the date of the
16 enactment of this Act.

17 (B) PETITION BENEFICIARIES.—The
18 amendments made by subsection (a) shall not
19 apply to the beneficiary of a petition that is
20 filed under section 216A of the Immigration
21 and Nationality Act (8 U.S.C. 1186b) if the un-
22 derlying petition was filed under section
23 203(b)(5) of such Act (8 U.S.C. 1153(b)(5))
24 before the date of the enactment of this Act.

1 **SEC. ____ 4. EB-5 VISA REFORMS.**

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

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

6 “(i) AFFILIATED JOB-CREATING ENTI-
7 TY.—The term ‘affiliated job-creating enti-
8 ty’ means any job-creating entity that is
9 controlled, managed, or owned by any of
10 the people involved with the regional center
11 or new commercial enterprise under section
12 203(b)(5)(H)(v).

13 “(ii) CAPITAL.—The term ‘capital’—

14 “(I) means cash and all real, per-
15 sonal, or mixed tangible assets owned
16 and controlled by the alien investor,
17 or held in trust for the benefit of the
18 alien and to which the alien has unre-
19 stricted access;

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

1 sion, at the time it is invested under
2 this paragraph;

3 “(III) does not include—

4 “(aa) assets directly or indi-
5 rectly acquired by unlawful
6 means, including any cash pro-
7 ceeds of indebtedness secured by
8 such assets;

9 “(bb) capital invested in ex-
10 change for a note, bond, convert-
11 ible debt, obligation, or any other
12 debt arrangement between the
13 alien investor and the new com-
14 mercial enterprise;

15 “(cc) capital invested with a
16 guaranteed rate of return on the
17 amount invested by the alien in-
18 vestor; or

19 “(dd) except as provided in
20 subclause (IV), capital invested
21 that is subject to any agreement
22 between the alien investor and
23 the new commercial enterprise
24 that provides the investor with a
25 contractual right to repayment,

1 such as a mandatory redemption
2 at a certain time or upon the oc-
3 currence of a certain event, or a
4 put or sell-back option held by
5 the alien investor, even if such
6 contractual right is contingent on
7 the success of the new commer-
8 cial enterprise, such as having
9 sufficient available cash flow; and
10 “(IV) includes capital invested

11 that—

12 “(aa) is subject to a buy
13 back option that may be exer-
14 cised solely at the discretion of
15 the new commercial enterprise;
16 and

17 “(bb) results in the alien in-
18 vestor withdrawing his or her pe-
19 tition unless the alien investor
20 has fulfilled his or her
21 sustainment period and other re-
22 quirements under this paragraph.

23 “(iii) CERTIFIER.—The term ‘cer-
24 tifier’ means a person in a position of sub-
25 stantive authority for the management or

1 operations of a regional center, new com-
2 mercial enterprise, affiliated job-creating
3 entity, or issuer of securities, such as a
4 principal executive officer or principal fi-
5 nancial officer, with knowledge of such en-
6 tities' policies and procedures related to
7 compliance with the requirements under
8 this paragraph.

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

23 “(v) **NEW COMMERCIAL ENTER-**
24 **PRISE.**—The term ‘new commercial enter-
25 prise’ means any for-profit organization

1 formed in the United States for the ongo-
2 ing conduct of lawful business, including a
3 partnership (whether limited or general),
4 corporation, limited liability company, or
5 other entity that receives, or is established
6 to receive, capital investment from inves-
7 tors under this paragraph.”.

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

12 “(5) AGE DETERMINATION FOR CHILDREN OF
13 ALIEN INVESTORS.—An alien who has reached 21
14 years of age and has been admitted under subsection
15 (d) as a lawful permanent resident on a conditional
16 basis as the child of an alien lawfully admitted for
17 permanent residence under subsection (b)(5), whose
18 lawful permanent resident status on a conditional
19 basis is terminated under section 216A or subsection
20 (b)(5)(M), shall continue to be considered a child of
21 the principal alien for the purpose of a subsequent
22 immigrant petition by such alien under subsection
23 (b)(5) if the alien remains unmarried and the subse-
24 quent petition is filed by the principal alien not later
25 than 1 year after the termination of conditional law-

1 ful permanent resident status. No alien shall be con-
2 sidered a child under this paragraph with respect to
3 more than 1 petition filed after the alien reaches 21
4 years of age.”.

5 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
6 EMPLOYEES ADMINISTERING THE EMPLOYMENT CRE-
7 ATION PROGRAM.—The Secretary of Homeland Security
8 may establish, fix the compensation of, and appoint indi-
9 viduals to designated critical, technical, and professional
10 positions needed to administer sections 203(b)(5) and
11 216A of the Immigration and Nationality Act (8 U.S.C.
12 1153(b)(5) and 1186b).

13 (d) CONCURRENT FILING OF EB–5 PETITIONS AND
14 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
15 245 of the Immigration and Nationality Act (8 U.S.C.
16 1255) is amended—

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

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

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

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

3 (e) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1153(b)(5)(A)), as amended by subsection (a)(2), is fur-
6 ther amended—

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

10 (2) in clause (ii)—

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

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

15 (f) REQUIRED CHECKS.—Section 203(b)(5) of the
16 Immigration and Nationality Act, as amended by this sec-
17 tion and section ____2, is further amended by adding at
18 the end the following:

19 “(R) REQUIRED CHECKS.—Any petition
20 filed by an alien under section 204(a)(1)(H)
21 may not be approved under this paragraph un-
22 less the Secretary of Homeland Security has
23 searched for the alien and any associated em-
24 ployer of such alien on the Specially Designated

1 classification under section 203(b)(5). A petitioner who
2 was eligible for such classification at the time of such fil-
3 ing shall be deemed eligible for such classification at the
4 time such petition is adjudicated, subject to the approval
5 of the petitioner's associated application under section
6 203(b)(5)(F).”.

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

19 (c) ADJUDICATION OF PETITIONS.—The Secretary of
20 Homeland Security shall continue to adjudicate petitions
21 and benefits under sections 203(b)(5) and 216A of the
22 Immigration and Nationality Act (8 U.S.C. 1153(b)(5)
23 and 1186b) during the implementation of this Act and the
24 amendments made by this Act.

1 **SEC. ____ 6. TIMELY PROCESSING.**

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

9 (b) **ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT**
10 **PROCESSING.**—Notwithstanding section 286(m) of the
11 Immigration and Nationality Act (8 U.S.C. 1356(m)), and
12 except as provided under subsection (c), the Director, not
13 later than 60 days after the completion of the study under
14 subsection (a), shall set fees for services provided under
15 sections 203(b)(5) and 216A of such Act (8 U.S.C.
16 1153(b)(5) and 1186b) at a level sufficient to ensure the
17 full recovery only of the costs of providing such services,
18 including the cost of attaining the goal of completing adju-
19 dications, on average, not later than—

20 (1) 180 days after receiving a proposal for the
21 establishment of a regional center described in sec-
22 tion 203(b)(5)(E) of such Act;

23 (2) 180 days after receiving an application for
24 approval of an investment in a new commercial en-
25 terprise described in section 203(b)(5)(F) of such
26 Act;

1 (3) 90 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 that is located in a targeted employment area
5 (as defined in section 203(b)(5)(B) of such Act);

6 (4) 240 days after receiving a petition from an
7 alien desiring to be classified under section
8 203(b)(5)(E);

9 (5) 120 days after receiving a petition from an
10 alien desiring to be classified under section
11 203(b)(5)(E) with respect to an investment in a tar-
12 geted employment area (as defined in section
13 203(b)(5)(B) of such Act); and

14 (6) 240 days after receiving a petition from an
15 alien for removal of conditions described in section
16 216A(c).

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

19 (1) in an amount that is equal to the amount
20 paid by all other classes of fee-paying applicants for
21 immigration-related benefits, to contribute to the
22 coverage or reduction of the costs of processing or
23 adjudicating classes of immigration benefit applica-
24 tions that Congress, or the Secretary of Homeland
25 Security in the case of asylum applications, has au-

1 thorized to be processed or adjudicated at no cost or
2 at a reduced cost to the applicant; and

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

13 (d) EXEMPTION FROM PAPERWORK REDUCTION
14 ACT.—During the 1-year period beginning on the date of
15 the enactment of this Act, the requirements under chapter
16 35 of title 44, United States Code, shall not apply to any
17 collection of information required under this subtitle, any
18 amendment made by this subtitle, or any rule promulgated
19 by the Secretary of Homeland Security to implement this
20 subtitle or the amendments made by this subtitle, to the
21 extent that the Secretary determines that compliance with
22 such requirements would impede the expeditious imple-
23 mentation of this subtitle or the amendments made by this
24 subtitle.

1 (e) RULE OF CONSTRUCTION REGARDING ADJUDICA-
2 TION DELAYS.—Nothing in this subtitle may be construed
3 to limit the authority of the Secretary of Homeland Secu-
4 rity to suspend the adjudication of any application or peti-
5 tion under section 203(b)(5) or 216A of the Immigration
6 and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b)
7 pending the completion of a national security or law en-
8 forcement investigation relating to such application or pe-
9 tion.

10 (f) RULE OF CONSTRUCTION REGARDING MODIFICA-
11 TION OF FEES.—Nothing in this section may be construed
12 to require any modification of fees before the completion
13 of—

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

21 **SEC. ___ 7. TRANSPARENCY.**

22 (a) IN GENERAL.—Employees of the Department of
23 Homeland Security, including the Secretary of Homeland
24 Security, the Secretary’s counselors, the Assistant Sec-
25 retary for the Private Sector, the Director of U.S. Citizen-

1 ship and Immigration Services, counselors to such Direc-
2 tor, and the Chief of Immigrant Investor Programs at
3 U.S. Citizenship and Immigration Services, shall act im-
4 partially and may not give preferential treatment to any
5 entity, organization, or individual in connection with any
6 aspect of the immigrant visa program described in section
7 203(b)(5) of the Immigration and Nationality Act (8
8 U.S.C. 1153(b)(5)).

9 (b) IMPROPER ACTIVITIES.—Activities that con-
10 stitute preferential treatment under subsection (a) shall
11 include—

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

18 (A) a regional center;

19 (B) a new commercial enterprise;

20 (C) a job-creating entity; or

21 (D) any person or entity associated with
22 such regional center, new commercial enter-
23 prise, or job-creating entity; and

24 (2) meeting or communicating with persons as-
25 sociated with the entities listed in paragraph (1), at

1 the request of such persons, in a manner not avail-
2 able to or accorded to all other petitioners, appli-
3 cants, and seekers of benefits under such immigrant
4 visa program.

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) of the Immigration and Nationality Act (8
11 U.S.C. 1153(b)(5)), actual or electronic copies of all
12 case-specific written communication, including e-
13 mails from government and private accounts, with
14 non-Department persons or entities advocating for
15 regional center applications or individual petitions
16 under such section that are pending on or after the
17 date of the enactment of this Act (other than rou-
18 tine communications with other agencies of the Fed-
19 eral Government regarding the case, including com-
20 munications involving background checks and litiga-
21 tion defense).

22 (2) ORAL COMMUNICATION.—If substantive oral
23 communication, including telephonic communication,
24 virtual communication, or in-person meetings, takes
25 place between officials of the Department of Home-

1 land Security and non-Department persons or enti-
2 ties advocating for regional center applications or in-
3 dividual petitions under section 203(b)(5) of such
4 Act that are pending on or after the date of the en-
5 actment of this Act (except communications exempt-
6 ed under paragraph (1))—

7 (A) the conversation shall be recorded; or

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

10 (3) NOTIFICATION.—

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

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

23 (ii) if such evidence is derogatory, the
24 affected party has been given an oppor-
25 tunity to respond to the evidence.

1 (B) INFORMATION FROM LAW ENFORCE-
2 MENT, INTELLIGENCE AGENCIES, OR CON-
3 FIDENTIAL SOURCES.—

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

10 (ii) WHISTLEBLOWERS, CONFIDEN-
11 TIAL SOURCES, OR INTELLIGENCE AGEN-
12 CIES.—Evidence received from whistle-
13 blowers, other confidential sources, or the
14 intelligence community that is included in
15 the record of proceeding and considered in
16 adjudicative proceedings shall be handled
17 in a manner that does not reveal the iden-
18 tity of the whistleblower or confidential
19 source, or reveal classified information.

20 (d) CONSIDERATION OF EVIDENCE.—

21 (1) IN GENERAL.—No case-specific communica-
22 tion with persons or entities that are not part of the
23 Department of Homeland Security may be consid-
24 ered in the adjudication of an application or petition
25 under section 203(b)(5) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1153(b)(5)) unless the com-
2 munication is included in the record of proceeding of
3 the case.

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

8 (e) CHANNELS OF COMMUNICATION.—

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

13 (A) with inquiries regarding specific peti-
14 tions or applications under the immigrant visa
15 program described in section 203(b)(5) of the
16 Immigration and Nationality Act (8 U.S.C.
17 1153(b)(5)); or

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

21 (2) COMMUNICATION ONLY THROUGH APPRO-
22 PRIATE CHANNELS OR OFFICES.—

23 (A) ANNOUNCEMENT OF APPROPRIATE
24 CHANNELS OF COMMUNICATION.—Not later
25 than 40 days after the date of the enactment of

1 this Act, the Director of U.S. Citizenship and
2 Immigration Services shall announce that the
3 only channels or offices by which industry
4 stakeholders, petitioners, applicants, and seek-
5 ers of benefits under the immigrant visa pro-
6 gram described in section 203(b)(5) of the Im-
7 migration and Nationality Act (8 U.S.C.
8 1153(b)(5)) may communicate with the Depart-
9 ment of Homeland Security regarding specific
10 cases under such section (except for commu-
11 nication made by applicants and petitioners
12 pursuant to regular adjudicatory procedures),
13 or information that is not case-specific about
14 the visa program applicable to certain cases
15 under such section, are through—

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

18 (ii) the National Customer Service
19 Center, or any successor to such Center; or

20 (iii) the Office of Public Engagement,
21 Immigrant Investor Program Office, in-
22 cluding the Stakeholder Engagement
23 Branch, or any successors to those Offices
24 or that Branch.

1 (B) DIRECTION OF INCOMING COMMUNICA-
2 TIONS.—

3 (i) IN GENERAL.—Employees of the
4 Department of Homeland Security shall di-
5 rect communications described in subpara-
6 graph (A) to the channels of communica-
7 tion or offices listed in clauses (i) through
8 (iii) of subparagraph (A).

9 (ii) RULE OF CONSTRUCTION.—Noth-
10 ing in this subparagraph may be construed
11 to prevent—

12 (I) any person from commu-
13 nicating with the Ombudsman of U.S.
14 Citizenship and Immigration Services
15 regarding the immigrant investor pro-
16 gram under section 203(b)(5) of the
17 Immigration and Nationality Act (8
18 U.S.C. 1153(b)(5)); or

19 (II) the Ombudsman from resolv-
20 ing problems regarding such immi-
21 grant investor program pursuant to
22 the authority granted under section
23 452 of the Homeland Security Act of
24 2002 (6 U.S.C. 272).

25 (C) LOG.—

100

1 (i) IN GENERAL.—The Director of
2 U.S. Citizenship and Immigration Services
3 shall maintain a written or electronic log
4 of—

5 (I) all communications described
6 in subparagraph (A) and communica-
7 tions from members of Congress,
8 which shall reference the date, time,
9 and subject of the communication,
10 and the identity of the Department of-
11 ficial, if any, to whom the inquiry was
12 forwarded;

13 (II) with respect to written com-
14 munications described in subsection
15 (c)(1), the date on which the commu-
16 nication was received, the identities of
17 the sender and addressee, and the
18 subject of the communication; and

19 (III) with respect to oral commu-
20 nications described in subsection
21 (c)(2), the date on which the commu-
22 nication occurred, the participants in
23 the conversation or meeting, and the
24 subject of the communication.

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

7 (3) PUBLICATION OF INFORMATION.—Not later
8 than 30 days after a person or entity inquiring
9 about a specific case or generally about the immi-
10 grant visa program described in section 203(b)(5) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1153(b)(5)) receives, as a result of a communication
13 with an official of the Department of Homeland Se-
14 curity, generally applicable and information that is
15 not case-specific about program requirements or ad-
16 ministration that has not been made publicly avail-
17 able by the Department, the Director of U.S. Citi-
18 zenship and Immigration Services shall publish such
19 information on the U.S. Citizenship and Immigra-
20 tion Services website as an update to the relevant
21 Frequently Asked Questions page or by some other
22 comparable mechanism.

23 (f) PENALTY.—

24 (1) IN GENERAL.—Any person who inten-
25 tionally violates the prohibition on preferential treat-

1 ment under this section or intentionally violates the
2 reporting requirements under subsection (c) shall be
3 disciplined in accordance with paragraph (2).

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

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

16 (h) RULE OF CONSTRUCTION REGARDING PRIVATE
17 RIGHT OF ACTION.—Nothing in this section may be con-
18 strued to create or authorize a private right of action to
19 challenge a decision of an employee of the Department of
20 Homeland Security.

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