116TH CONGRESS  1ST SESSION

S._____

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

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

A BILL

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

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

SECTION 1. SHORT TITLE.

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

SEC. 2. REAUTHORIZATION AND REFORM OF THE RE-
gional Center Program.

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Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is repealed.

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

“(E) REGIONAL CENTER PROGRAM.—

“(i) IN GENERAL.—Visas under this paragraph shall be made available through September 30, 2024, to qualified immigrants (and the eligible spouses and children of such immigrants) pooling their investments with 1 or more qualified immigrants participating in a program implementing this paragraph that involves a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment.

“(ii) PROCESSING.—In processing petitions under section 204(a)(1)(H) for classification under this paragraph, the Secretary of Homeland Security—
“(I) may process petitions in a manner and order established by the Secretary; and

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

“(iii) Establishment of a Regional Center.—A regional center shall operate within a defined and limited geographic area, which shall be described in the proposal and be consistent with the purpose of concentrating pooled investment within such area. The proposal to establish a regional center shall demonstrate that the pooled investment will have a significant economic impact on such geographic area, and shall include—

“(I) reasonable predictions, supported by economically and statistically valid and transparent forecasting tools, concerning the amount
of investment that will be pooled, the kinds of commercial enterprises that will receive such investments, details of the jobs that will be created directly or indirectly as a result of such investments, and other positive economic effects such investments will have;

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

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

“(bb) all securities laws of each State in which securities offerings will be conducted, investment advice will be rendered, or the offerors or offerees reside; and
“(III) attestations and information confirming that all persons involved with the regional center meet the requirements under clauses (i) and (ii) of subparagraph (H).

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

“(v) COMPLIANCE.—

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

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

“(bb) consistent with this
subparagraph, jobs estimated to
have been created indirectly
through capital expenditures, rev-

dues generated from increased
exports, improved regional pro-
ductivity, job creation, and in-
creased domestic capital invest-
ment resulting from the program.

“(II) JOB AND INVESTMENT RE-

uirements.—

“(aa) RELOCATED JOBS.—

In determining compliance with
the job creation requirement
under subparagraph (A)(ii), the
Secretary may include jobs estimated to be created under a methodology that attributes jobs to prospective tenants occupying commercial real estate created or improved by capital investments if the number of such jobs estimated to be created has been determined by an economically and statistically valid methodology and such jobs are not existing jobs that have been relocated.

“(bb) PUBLICLY AVAILABLE BONDS.—The Secretary shall prescribe regulations to ensure that alien investor capital may not be utilized, by a new commercial enterprise or otherwise, to purchase municipal bonds or any other bonds, if such bonds are available to the general public, either as part of a primary offering or from a secondary market.
“(vi) AMENDMENTS.—The Secretary of Homeland Security shall—

“(I) require a regional center—

“(aa) to provide advance notice to the Secretary of significant proposed changes to its organizational structure, ownership, or administration, including the sale of such center, or other arrangements which would result in individuals not previously subject to the requirements under subparagraph (H) becoming involved with the regional center, before any such proposed changes may take effect; or

“(bb) if exigent circumstances are present, to provide the notice described in item (aa) to the Secretary not later than 5 business days after a change described in such item;

“(II) approve any amendment referred to in subclause (I) only after the Secretary determines that the re-
regional center would remain compliant with this subparagraph and subparagraph (H) after implementing the proposed changes; and

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

“(vii) RECORD KEEPING AND AU-
DITS.—

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

“(aa) any claims, evidence,
or certifications contained in the
regional center’s annual state-
ments under subparagraph (G); and

“(bb) associated petitions by aliens seeking classification under this section or removal of conditions under section 216A.

“(II) AUDITS.—The Secretary shall audit each regional center not less frequently than once every 3 years. Each such audit shall include a review of any documentation required to be maintained under subclause (I) for the preceding 3 years and a review of the flow of alien investor capital into any capital investment project. To the extent multiple regional centers are located at a single site, the Secretary may audit multiple regional centers in a single site visit.

“(III) TERMINATION.—The Secretary shall terminate the designation of a regional center that fails to consent to an audit under subclause (II) or deliberately attempts to impede such an audit.
“(F) BUSINESS PLANS FOR REGIONAL CENTER INVESTMENTS.—

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

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

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

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

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

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

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

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

“(dd)(AA) any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the new commercial enterprise, or any issuer of securities intended to be offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien
investors in connection with the investment;

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

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

“(V) a description of the policies and procedures, such as those related to internal and external due diligence, reasonably designed to cause the regional center and any issuer of securities intended to be offered to alien investors in connection with the relevant capital investment project, to comply, as applicable, with the securities laws of the United States and the laws of the applicable States in connection with the offer, purchase, or sale of its securities;

“(VI) a certification from the regional center, and any issuer of secu-
rities intended to be offered to alien
investors in connection with the rel-

vant capital investment project, that
their respective agents and employees,
and any parties associated with the
regional center and such issuer of se-
curities affiliated with the regional
center are in compliance with the se-
curities laws of the United States and
the laws of the applicable States in
connection with the offer, purchase, or
sale of its securities, to the best of the
certifier’s knowledge, after a due dili-

gence investigation; and

“(VII) documentation dem-
onstrating that the regional center
consulted with a local economic devel-
lopment agency or municipality re-

garding the capital investment project,
which shall address—

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

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

“(ii) Effect of approval of a
business plan for an investment in a
regional center’s commercial enter-
prise.—The approval of an application
under this subparagraph, including an ap-
proval before the date of the enactment of
this subparagraph, shall be binding for
purposes of the adjudication of subsequent
petitions seeking classification under this
paragraph by immigrants investing in the
same offering described in such applica-
tion, and of petitions by the same immi-
grants filed under section 216A unless—

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

“(II) such approval would threaten
crime public safety or national security;

“(III) there has been a material
change that affects the program eligi-
bility of the approved economic model
or terms of the investment offering;
“(IV) the discovery of other evidence affecting program eligibility was not disclosed by the applicant during the adjudication process; or

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

“(iii) AMENDMENTS.—

“(I) APPROVAL.—The Secretary of Homeland Security may establish procedures by which a regional center may seek approval of an amendment to an approved application under this subparagraph that reflects changes specified by the Secretary to any information, documents, or other aspects of the investment offering described in such approved application not later than 30 days after any such changes.

“(II) INCORPORATION.—Upon the approval of a timely filed amendment to an approved application, any changes reflected in such amendment may be incorporated into and consid-
erred in determining program eligibility through adjudication of—

“(aa) pending petitions from immigrants investing in the offering described in the approved application who are seeking classification under this paragraph; and

“(bb) petitions by immigrants described in item (aa) that are filed under section 216A.

“(iv) Site visits.—The Secretary of Homeland Security, not earlier than 24 hours after providing notice of each site visit, shall—

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

“(II) perform at least 1 site visit to, as applicable, each new commercial enterprise or job-creating entity, or the business locations where any jobs that are claimed as being created, which—
“(aa) shall include a review for evidence of direct job creation in accordance with subparagraph (E)(v)(I); and

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

“(G) REGIONAL CENTER ANNUAL STATEMENTS.—

“(i) IN GENERAL.—Each regional center designated under subparagraph (E) shall annually submit a statement to the Director of U.S. Citizenship and Immigration Services (referred to in this subparagraph as the ‘Director’), in a manner prescribed by the Secretary of Homeland Security, which shall include—
“(I) a certification stating that, to the best of the certifier’s knowledge, after a due diligence investigation, the regional center is in compliance with clauses (i) and (ii) of subparagraph (H);

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

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

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

“(V) an accounting of all foreign investor capital invested in the regional center, new commercial enterprise, or job-creating entity;
“(VI) for each new commercial enterprise associated with the regional center—

“(aa) an accounting of the aggregate capital invested in the new commercial enterprise and job-creating entity by alien investors under this paragraph for each capital investment project being undertaken by the new commercial enterprise;

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

“(cc) evidence that 100 percent of the capital described in item (aa) has been committed to each capital investment project;

“(dd) detailed evidence of the progress made toward the completion of each capital investment project;
“(ee) an accounting of the aggregate direct jobs created or preserved;

“(ff) to the best of the regional center’s knowledge, for all fees, including administrative fees, loan monitoring fees, loan management fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, the new commercial enterprise, any affiliated job-creating entity, any affiliated issuer of securities intended to be offered to alien investors, or any promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors—

“(AA) a description of all fees collected;

“(BB) an accounting of the entities that received such fees; and
“(CC) the purpose for which such fees were collected;

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

“(hh) a certification by the regional center that the information provided under items (aa) through (gg) is accurate, to the best of the certifier’s knowledge, after a due diligence investigation; and

“(VII) a description of the regional center’s policies and procedures that are designed to enable the regional center to comply with applicable Federal labor laws.

“(ii) AMENDMENT OF ANNUAL STATEMENTS.—The Director—

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

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

“(iii) SANCTIONS.—

“(I) EFFECT OF VIOLATION.—

The Director shall sanction any regional center entity in accordance with subclause (II) if the regional center fails to submit an annual statement or if the Director determines that the regional center—

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

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

“(II) AUTHORIZED SANCTIONS.—

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

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

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

“(cc) permanent bar from participation in the program described in subparagraph (E) for 1 or more individuals or business entities associated with the regional center, new commercial enterprise, or job-creating entity; and

“(dd) termination of regional center designation.

“(iv) Availability of Annual Statements to Investors.—Not later than 30 days after a request from an alien investor, a regional center shall make available to such alien investor—

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

“(II) any amendments filed to such statement.
“(H) bona fides of persons involved with regional center program.—

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

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

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

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

“(cc) a crime for which the person was convicted and sentenced to a term of imprisonment of more than 1 year;

“(II) the person is subject to a final order, for the duration of any penalty imposed by such order, of a State securities commission (or an agency or officer of a State performing similar functions), a State
authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing similar functions), an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, a financial self-regulatory organization recognized by the Securities and Exchange Commission, or the National Credit Union Administration, which is based on a violation of any law or regulation that—

“(aa) prohibits fraudulent, manipulative, or deceptive conduct; or

“(bb) bars the person from—

“(AA) association with an entity regulated by such commission, authority, agency, or officer;
“(BB) appearing before such commission, authority, agency, or officer;

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

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

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

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

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

“(cc) any activity related to money laundering (as described in section 1956 or 1957 of title 18, United States Code);
“(dd) any terrorist activity (as defined in section 212(a)(3)(B));

“(ee) any activity constituting or facilitating human trafficking or a human rights offense;

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

“(gg) the violation of any statute, regulation, or Executive order regarding foreign financial transactions or foreign asset control; or

“(IV) the person—

“(aa) is, or during the preceding 10 years has been, included on the Department of Justice’s List of Currently Disciplined Practitioners; or

“(bb) during the preceding 10 years, has received a reprimand or has otherwise been publicly disciplined for conduct related to fraud or deceit by a
State bar association of which the person is or was a member.

“(ii) FOREIGN INVOLVEMENT IN REGIONAL CENTER PROGRAM.—

“(I) LAWFUL STATUS REQUIRED.—A person may not be involved with a regional center unless the person is a national of the United States or an individual who has been lawfully admitted for permanent residence (as such terms are defined in paragraphs (20) and (22) of section 101(a)).

“(II) FOREIGN GOVERNMENTS.—No agency, official, or other similar entity or representative of a foreign government entity may provide capital to, or be directly or indirectly involved with the ownership or administration of, a regional center, a new commercial enterprise, or a job-creating entity, except that a foreign or domestic investment fund or other investment vehicle that is wholly or partially owned, directly or indirectly, by a
bona fide foreign sovereign wealth fund or a foreign state-owned enterprise otherwise permitted to do business in the United States may be involved with the ownership, but not the administration, of a job-creating entity that is not an affiliated job-creating entity.

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

“(iii) INFORMATION REQUIRED.—

“(I) IN GENERAL.—The Secretary of Homeland Security shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation, and shall perform such criminal record checks and other background and database checks with respect to a regional center, a new commercial enter-
prise, and any affiliated job-creating entity, and persons involved with such entities (as described in clause (v)), to determine whether such entities are in compliance with clauses (i) and (ii).

“(II) TIMING.—The Secretary may—

“(aa) require the information and attestations described in subclause (I) from the entities referred to in subclause (I), and any person involved with such entities, at any time on or after the date of the enactment of the EB-5 Reform and Integrity Act of 2019; and

“(bb) perform such checks with respect to any job creating entity and persons involved with such entity.

“(iv) TERMINATION.—

“(I) IN GENERAL.—The Secretary shall suspend or terminate the designation of any regional center, or the participation under the program
of any new commercial enterprise or job-creating entity under this paragraph if the Secretary determines that such entity—

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

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

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

“(II) INFORMATION.—

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

“(v) Persons involved with a regional center, new commercial enterprise, or job-creating entity.—For the purposes of this paragraph, unless otherwise determined by the Secretary of Homeland Security, a person is involved with a regional center, a new commercial enterprise, any affiliated job-creating entity, or another job-creating entity, as applicable, if the person is, directly or indi-
rectly, an owner or in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance, or control or use of any funding that was procured under the program described in subparagraph (E). An individual may be in a position of substantive authority if the person serves as a principal, a representative, an administrator, an owner, an officer, a board member, a manager, an executive, a general partner, a fiduciary, an agent, or in a similar position at the regional center, new commercial enterprise, or job-creating entity, respectively.

“(I) COMPLIANCE WITH SECURITIES LAWS.—

“(i) JURISDICTION.—

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

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

“(III) Savings provision.—Subclause I is not intended to modify any existing rules or regulations of the Securities and Exchange Commission related to the application of section 15(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(a)) to foreign brokers or dealers.

“(ii) Regional center certifications required.—

“(I) Initial certification.—The Secretary of Homeland Security
may not approve an application for re-
gional center designation or regional
center amendment unless the regional
center certifies that, to the best of the
certifier’s knowledge, after a due dili-
gence investigation, the regional cen-
ter is in compliance with and has poli-
cies and procedures (such as those re-
lated to internal and external due dili-
gence) reasonably designed to con-
firm, as applicable, that all parties as-
sociated with the regional center are
and will remain in compliance with
the securities laws of the United
States and of any State in which—

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

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

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

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

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

“(bb) to the best of the certifier’s knowledge, after a due diligence investigation, all such offers, purchases, and sales of securities or the provision of investment advice complied with the securities laws of the United States and the securities laws of any State in which—

“(AA) the offer, purchase, or sale of securities was conducted;

“(BB) the issuer of securities was located; or
“(CC) the investment advice was provided; and
“(cc) records, data, and information related to such offers, purchases, and sales have been maintained.

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

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

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

“(I) monitor and supervise all offers, purchases, and sales of, and investment advice relating to, securities made by parties associated with the regional center to confirm compliance with the securities laws of the United States;

“(II) maintain records, data, and information relating to all such offers, purchases, sales, and investment advice during the 5-year period beginning on the date of their creation; and

“(III) make the records, data, and information described in subclause (II) available to the Secretary or to the Securities and Exchange Commission upon request.
“(iv) Suspension or termination.—In addition to any other authority provided to the Secretary under this paragraph, the Secretary, in the Secretary’s discretion, may suspend or terminate the designation of any regional center or impose other sanctions against the regional center if the regional center, or any parties associated with the regional center that the regional center knew or reasonably should have known—

“(I) are permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the offer, purchase, or sale of a security or the provision of investment advice;

“(II) are subject to any final order of the Securities and Exchange Commission or a State securities regulator that—

“(aa) bars such person from association with an entity regulated by the Securities and Ex-
change Commission or a State securities regulator; or

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

“(III) submitted, or caused to be submitted, a certification described in clause (ii) that contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not mis-
leading.

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

“(I) the regional center;

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

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

“(IV) any person under the control of the regional center, new commercial enterprise, or issuer of securities associated with the regional center who is responsible for the marketing, offering, or sale of any security offered in connection with the capital investment project.

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

“(J) EB–5 INTEGRITY FUND.—

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

“(ii) FEES.—

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

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

“(bb) of $10,000 from each such regional center with 20 or fewer total investors in the preceding fiscal year in its new commercial enterprises.

“(II) PETITION FEE.—Beginning on October 1, 2020, The Secretary shall collect a fee of $1,000 for the
Fund with each petition filed under section 204(a)(1)(H) for classification under subparagraph (E). The fee under this subclause is in addition to the fee that the Secretary is authorized to establish and collect for each petition to recover the costs of adjudication and naturalization services under section 286(m).

"(III) INCREASES.—The Secretary may increase the amounts under this clause by prescribing such regulations as may be necessary to ensure that amounts in the Fund are sufficient to carry out the purposes set forth in clause (iii).

"(iii) PERMISSIBLE USES OF FUND.—The Secretary shall—

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

"(aa) monitoring and investigating program-related events and promotional activities; and
“(bb) ensuring an alien investor’s compliance with subparagraph (L); and
“(II) use amounts deposited into the Fund—
“(aa) to detect and investigate fraud or other crimes;
“(bb) to determine whether regional centers, new commercial enterprises, job-creating entities, and alien investors (and their alien spouses and alien children) comply with the immigration laws;
“(cc) to conduct audits and site visits; and
“(dd) as the Secretary determines to be necessary, including monitoring compliance with the requirements under section 7 of the EB-5 Reform and Integrity Act of 2019.
“(iv) FAILURE TO PAY FEE.—The Secretary of Homeland Security shall—
“(I) impose a reasonable penalty, which shall be deposited into the Fund, if any regional center does not pay the fee required under clause (ii) within 30 days after the date on which such fee is due; and

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

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

“(K) D IRECT AND THIRD-PARTY PROMOTERS.—

“(i) R ULES AND STANDARDS.—Direct and third party promoters (including migration agents) of a regional center, any new commercial enterprise, an affiliated job-creating entity, or an issuer of securi-
ties intended to be offered to alien investors in connection with a particular capital investment project shall comply with the rules and standards prescribed by the Secretary of Homeland Security and any applicable Federal or State securities laws, to oversee regional center promotion, including—

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

“(aa) includes identifying and contact information for such promoter and confirmation of the existence of the written agreement required under clause (iii); and

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

“(II) certification by each promoter that such promoter is not ineligible under subparagraph (H)(i);
“(III) guidelines for representing
the visa process to foreign investors;
and
“(IV) guidelines describing per-
missible fee arrangements under ap-
licable securities and immigration
laws.
“(ii) Effect of Violation.—If the
Secretary determines that a direct or
third-party promoter has violated clause
(i), the Secretary shall suspend or perma-
nently bar such individual from participa-
tion in the program described in subpara-
graph (E).
“(iii) Compliance.—Each regional
center shall maintain a written agreement
outlining the rules and standards pre-
scribed under clause (i) between—
“(I) the regional center, the new
commercial enterprise, any affiliated
job-creating entity, or any issuer of
securities intended to be offered to
alien investors in connection with a
particular capital investment project;
and
“(II) each direct or third-party promoter operating on behalf of such entity or issuer.

“(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (F).

“(L) SOURCE OF FUNDS.—

“(i) IN GENERAL.—An alien investor shall demonstrate that the capital required under subparagraph (A) and any funds used to pay administrative costs and fees associated with the alien’s investment were obtained from a lawful source and through lawful means.
“(ii) REQUIRED INFORMATION.—The Secretary of Homeland Security shall require that an alien investor’s petition under this paragraph contain, as applicable—

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

“(aa) foreign business registration records;

“(bb) corporate or partnership tax returns (or tax returns of any other entity in any form filed in any country or subdivision of such country), and personal tax returns, including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind, filed during the past 7 years (or another period to be determined by the Secretary to ensure that the investment is obtained from a lawful source of funds) with any taxing jurisdiction within or outside the United
States by or on behalf of the alien investor; and

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

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

“(III) the identity of all persons who transfer into the United States, on behalf of the investor, any funds that are used to meet the capital requirement under subparagraph (A).

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

“(ii) **New Regional Center or Investment.**—The petition under section 204(a)(1)(H) of an alien described in clause (i) and the conditional permanent resident status of an alien described in clause (i) shall be terminated 180 days after the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job cre-
ating entity (but not sooner than 180 days
after the date of the enactment of the EB-5 Reform and Integrity Act of 2019) un-
less—

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

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

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

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

“(iii) Removal of Conditions.—
Aliens described in subclauses (I)(bb) and
(II) of clause (ii) shall be eligible to have
their conditions removed pursuant to sec-
tion 216A beginning on the date that is 2
years after the date of the subsequent investment.

“(iv) IN CASE OF ENFORCEMENT ACTION.—Except as provided in clause (v), if the Secretary of Homeland Security, the Attorney General, or the Securities and Exchange Commission files, in any United States District Court, a criminal or civil enforcement action containing allegations that a regional center, a new commercial enterprise, a job-creating entity, or any person involved with any of the foregoing entities, committed fraud which affected an alien’s investment capital under subparagraph (A), or if a State authority or agency files such an action in a State court—

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

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

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

“(II) the alien investor may—

“(aa) petition to amend the alien’s underlying petition for classification under section 203(b)(5)(E) or the petition for removal of conditions described in section 216A(c), including amendments to the business plan, without such facts underlying the amendment being deemed a material change; and

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

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

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

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

“(II) the Secretary shall—
“(aa) notify the alien of such belief; and

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

“(N) Threats to the national interest.—

“(i) Denial or revocation.—The Secretary of Homeland Security shall deny or revoke the approval of a petition, application, or benefit described in this paragraph, including the documents described in clause (ii), if the Secretary determines, in the Secretary’s discretion, that the approval of such petition, application, or benefit is contrary to the national interest of the United States for reasons relating to threats to public safety or national security.

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

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

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

“(IV) an application for approval of a business plan in a new commercial enterprise under subparagraph (F); or

“(V) a temporary Green Card granting conditional permanent resident status that was issued to an alien pursuant to section 216A.

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

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

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

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

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

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

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

"(ii) DEBARMENT.—If a regional center, new commercial enterprise, or job-cre-
ating entity has its designation or participation in the program under this paragraph terminated for reasons relating to fraud, intentional material misrepresentation, or criminal misuse, any person associated with such regional center, new commercial enterprise, or job-creating entity, including an alien investor, shall be permanently barred from future participation in the program if the Secretary determines, in the Secretary’s discretion, by a preponderance of the evidence, that such person was a knowing participant in the conduct that led to the termination.

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

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

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

"(P) Administrative Appellate Review.—

"(i) In general.—The Director of U.S. Citizenship and Immigration Services shall provide an opportunity for an administrative appellate review by the Administrative Appeals Office of U.S. Citizenship and Immigration Services of any determination made under this paragraph, including—

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

"(II) an application for approval of a business plan filed under subparagraph (F);

"(III) a petition by an alien investor for status as an immigrant under this paragraph;
“(IV) the termination or suspension of any benefit accorded under this paragraph; and

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

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

“(Q) FUND ADMINISTRATION.—

“(i) IN GENERAL.—Each new commercial enterprise shall deposit and maintain the capital investment of each alien investor in a separate account, including amounts held in escrow.

“(ii) USE OF FUNDS.—Amounts in a separate account may only—
“(I) be transferred to another separate account or a job creating entity;

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

“(III) be transferred to the alien investor who contributed the funds as a refund of that investor’s capital investment, if otherwise permitted under this paragraph.

“(iii) DEPLOYMENT OF FUNDS INTO AN AFFILIATED JOB-CREATING ENTITY.—

If amounts are transferred to an affiliated job-creating entity pursuant to clause (ii)(I)—

“(I) the affiliated job-creating entity shall maintain such amounts in a separate account until they are deployed into the capital investment project for which they were intended; and

“(II) not later than 30 days after such amounts are deployed pursuant to subclause (I), the affiliated job-cree-
ating entity shall provide written no-
tice to the fund administrator re-
tained pursuant to clause (iv) that a
construction consultant or other indi-
vidual authorized by the Secretary has
verified that such amounts have been
deployed into the project.

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

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

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

“(aa) a certified public ac-
countant;

“(bb) an attorney;
“(cc) a broker-dealer or investment adviser registered with the Securities and Exchange Commission; or

“(dd) an individual or company that otherwise meets such requirements as may be established by the Secretary;

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

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

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

“(aa) verify that the transfer complies with all governing documents, including organizational, operational, and investment documents; and

“(bb) approves such transfer with a written or electronic signature; and

“(VI) periodically provide each alien investor with information about
the activity of the account in which
the investor’s capital investment is
held, including—

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

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

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

“(v) WAIVER.—The Secretary of
Homeland Security, after consultation with
the Securities and Exchange Commission,
may waive the requirements under clause
(iv) for any new commercial enterprise or
affiliated job-creating entity that is con-
trolled by or under common control of an
investment adviser or broker-dealer that is
registered with the Securities and Ex-
change Commission if the Secretary, in the
Secretary’s discretion, determines that the
Securities and Exchange Commission pro-
vides comparable protections and trans-
parency for alien investors as the protec-
tions and transparency provided under clause (iv).

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

“(I) is maintained in the United States by a new commercial enterprise at a Federally regulated bank or at another financial institution (as de-
defined in section 20 of title 18, United States Code) in the United States;

“(II) is insured;

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

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

SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIEN INVESTORS, SPOUSES, AND CHILDREN. (a) IN GENERAL.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—
(1) by striking “Attorney General” each place such term appears (except in subsection (d)(2)(C)) and inserting “Secretary of Homeland Security”;

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

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

“(1) CONDITIONAL BASIS FOR STATUS.—

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

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

(4) in subsection (b)—
(A) in the subsection heading, by striking
“ENTREPRENEURSHIP” and inserting “INVEST-
MENT”; and

(B) by amending paragraph (1)(B) to read
as follows:
“(B) the alien did not invest the requisite
capital; or”;

(5) in subsection (c)—

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

(B) in paragraph (1)—

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

(ii) in subparagraph (A)—

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

(II) by striking “, and” and in-
serting a semicolon;

(iii) in subparagraph (B)—

(I) by striking “must” and in-
serting “shall”;
(II) by striking “Service” and inserting “Department of Homeland Security”; and

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

(iv) by adding at the end the following:

“(C) the Secretary shall have performed a site visit to the relevant corporate office or business location described in section 203(b)(5)(F)(iv).”; and

(C) in paragraph (3)—

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

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

“(B) REMOVAL OR EXTENSION OF CONDIT
TIONAL BASIS.—

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

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

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

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

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

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

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

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

(6) in subsection (d)—

(A) in paragraph (1)—

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

“(A) invested the requisite capital;”;

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

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

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

“(ii) is actively in the process of creating
the employment required under section
203(b)(5)(A)(ii) and will create such employ-
ment before the third anniversary of the alien’s
lawful admission for permanent residence, pro-
vided that such alien’s capital will remain in-
vested during such time; and”;}
(B) in paragraph (2), by amending subparagraph (A) to read as follows:

“(A) NINETY-DAY PERIOD BEFORE SECOND ANNIVERSARY.—

“(i) IN GENERAL.—Except as provided in clause (ii) and subparagraph (B), a petition under subsection (c)(1)(A) shall be filed during the 90-day period immediately preceding the second anniversary of the alien investor’s lawful admission for permanent residence.

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

(C) in paragraph (3)—

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

“(A) IN GENERAL.—The interview”;

(ii) by striking “Service” and inserting “Department of Homeland Security”; and
(iii) by striking the last sentence and inserting the following:

“(B) WAIVER.—The Secretary of Homeland Security, in the Secretary’s discretion, may waive the deadline for an interview under subsection (c)(1)(B) or the requirement for such an interview according to criteria developed by U.S. Citizenship and Immigration Services, in consultation with its Fraud Detection and National Security Directorate and U.S. Immigration and Customs Enforcement, provided that such criteria do not include a reduction of case processing times or the allocation of adjudicatory resources. A waiver may not be granted under this subparagraph if the alien to be interviewed—

“(i) invested in a regional center, new commercial enterprise, or job-creating entity that was sanctioned under section 203(b)(5); or

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

(7) by redesignating subsection (f) as subsection (g);
(8) by inserting after subsection (e) the following:

“(f) Petition From Qualified Alien Investor.—An alien investor who invested the requisite capital and created the employment required under section 203(b)(5)(A)(ii) at least 24 months before admission, and is otherwise conforming to the requirements under section 203(b)(5), may file a petition, before admission for permanent residence, to be considered, at the time of obtaining status of an alien lawfully admitted for permanent residence, to obtain such status without conditions.”; and

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

(b) Effective Dates.—

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

(2) Exceptions.—

(A) Site visits.—The amendment made by subsection (a)(5)(B)(iv) shall take effect not later than 2 years after the date of the enactment of this Act.
(B) Petition beneficiaries.—The amendments made by subsection (a) shall not apply to the beneficiary of a petition that is filed under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) if the underlying petition filed under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) was approved before the date of the enactment of this Act.

SEC. 4. EB-5 VISA REFORMS.

(a) Definitions.—Section 203(b)(5)(D) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

“(D) Definitions.—In this paragraph:

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

“(ii) Capital.—The term ‘capital’—

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

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

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

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

“(iv) JOB-CREATING ENTITY.—The term ‘job-creating entity’ means any organization formed in the United States for the ongoing conduct of lawful business, including a partnership (whether limited or general), corporation, limited liability company, or other entity that receives, or is established to receive, capital investment from alien investors or a new commercial enterprise under the regional center program described in subparagraph (E) and which is responsible for creating jobs to satisfy the requirement under subparagraph (A)(ii).

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

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

“(5) Age Determination for Children of Alien Investors.—An alien who has reached 21 years of age and has been admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose lawful permanent resident status on a conditional basis is terminated under section 216A or subsection (b)(5)(M), shall continue to be considered a child of the principal alien for the purpose of a subsequent immigrant petition by such alien under subsection (b)(5) if the alien remains unmarried and the subsequent petition is filed by the principal alien not later than 1 year after the termination of conditional lawful permanent resident status. No alien shall be considered a child under this paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.”.
(c) **Enhanced Pay Scale for Certain Federal Employees Administering the Employment Creation Program.**—The Secretary of Homeland Security may establish, fix the compensation of, and appoint individuals to designated critical, technical, and professional positions needed to administer sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

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

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

(2) by adding at the end the following:

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

(e) **Type of Investment.**—Section 203(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).
1153(b)(5)(A)), as amended by subsection (a)(2), is further amended—

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

(2) in clause (ii)—

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

(B) by inserting “, United States nationals,” after “citizens”.

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

“(R) REQUIRED CHECKS.—Any petition filed by an alien under section 204(a)(1)(H) may not be approved under this paragraph unless the Secretary of Homeland Security has searched for the alien and any associated employer of such alien on the Specially Designated Nationals List of the Department of Treasury Office of Foreign Assets Control.”.

(g) CONFORMING CHANGES.—Section 201(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(1)) is amended—
(1) in subparagraph (A), by striking the comma and inserting a semicolon;

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

(3) by adding at the end the following:

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

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

SEC. 5. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

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

“(H)(i) Any alien seeking classification under section 203(b)(5) may file a petition for such classification with the Secretary of Homeland Security. An alien seeking to pool his or her investment with 1 or more additional aliens seeking classification under section 203(b)(5) shall file for such classification in accordance with section 203(b)(5)(E). An alien petitioning for classification under section 203(b)(5)(E) may file a petition with the Secretary after filing an application for approval of an investment under section 203(b)(5)(F).
“(ii) A petitioner described in clause (i) shall establish eligibility at the time he or she files a petition for classification under section 203(b)(5). A petitioner who was eligible for such classification at the time of such filing shall be deemed eligible for such classification at the time such petition is adjudicated.”.

(b) EFFECTIVE DATES.—

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

(2) APPLICABILITY TO PETITIONS.—

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

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

SEC. 6. TIMELY PROCESSING.

(a) Fee Study.—Not later than 1 year after the date of the enactment of this Act, the Director of U.S. Citizenship and Immigration Services shall complete a study of fees charged in the administration of the program described in sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

(b) Adjustment of Fees To Achieve Efficient Processing.—Notwithstanding section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), and except as provided under subsection (e), the Director, not later than 60 days after the completion of the study under subsection (a), shall set fees for services provided under sections 203(b)(5) and 216A of such Act at a level sufficient to ensure the full recovery only of the costs of providing such services, including the cost of attaining the goal of completing adjudications, on average, not later than—

(1) 180 days after receiving a proposal for the establishment of a regional center described in section 203(b)(5)(E) of such Act;
(2) 180 days after receiving an application for approval of an investment in a new commercial enterprise described in section 203(b)(5)(F) of such Act;

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

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

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

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

(c) ADDITIONAL FEES.—Fees in excess of the fee levels described in subsection (b) may be charged only—
(1) in an amount that is equal to the amount paid by all other classes of fee-paying applicants for immigration-related benefits, to contribute to the coverage or reduction of the costs of processing or adjudicating classes of immigration benefit applications that Congress, or the Secretary of Homeland Security in the case of asylum applications, has authorized to be processed or adjudicated at no cost or at a reduced cost to the applicant; and

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

(d) Exemption From Paperwork Reduction Act.—During the 1-year period beginning on the date of the enactment of this Act, the requirements under chapter 35 of title 44, United States Code, shall not apply to any collection of information required under this Act, any amendment made by this Act, or any rule promulgated
by the Secretary of Homeland Security to implement this Act or the amendments made by this Act, to the extent that the Secretary determines that compliance with such requirements would impede the expeditious implementation of this Act or the amendments made by this Act.

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

(f) RULE OF CONSTRUCTION REGARDING MODIFICATION OF FEES.—Nothing in this section may be construed to require any modification of fees before the completion of—

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

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

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

(b) Improper Activities.—Activities that constitute preferential treatment under subsection (a) shall include—

(1) working on, or in any way attempting to influence, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under the immigrant visa program referred to in subsection (a), the standard processing of an application, petition, or benefit for—

(A) a regional center;

(B) a new commercial enterprise;

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

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

(c) REPORTING OF COMMUNICATIONS.—

(1) WRITTEN COMMUNICATION.—Employees of the Department of Homeland Security, including the officials listed in subsection (a), shall include, in the record of proceeding for a case under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), actual or electronic copies of all case-specific written communication, including e-mails from government and private accounts, with non-Department persons or entities advocating for regional center applications or individual petitions under such section that are pending on or after the date of the enactment of this Act (other than routine communications with other agencies of the Federal Government regarding the case, including com-
communications involving background checks and litigation defense).

(2) ORAL COMMUNICATION.—If substantive oral
communication, including telephonic communication,
virtual communication, or in-person meetings, takes
place between officials of the Department of Homeland Security and non-Department persons or entities advocating for regional center applications or individual petitions under section 203(b)(5) of such Act that are pending on or after the date of the enactment of this Act (except communications exempted under paragraph (1))—

(A) the conversation shall be recorded; or

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

(3) NOTIFICATION.—

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

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

(ii) if such evidence is derogatory, the affected party has been given an opportunity to respond to the evidence.

(B) **Information from Law Enforcement, Intelligence Agencies, or Confidential Sources.**—

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

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

(d) CONSIDERATION OF EVIDENCE.—

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

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

(e) CHANNELS OF COMMUNICATION.—

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

(A) with inquiries regarding specific peti-
tions or applications under the immigrant visa
program described in section 203(b)(5) of the
Immigration and Nationality Act (8 U.S.C.
1153(b)(5)); or
(B) seeking information that is not case-specific about the immigrant visa program described in such section 203(b)(5).

(2) Communication only through appropriate channels or offices.—

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

(i) the e-mail address or equivalent channel described in paragraph (1);
(ii) the National Customer Service Center, or any successor to such Center; or

(iii) the Office of Public Engagement, Immigrant Investor Program Office, including the Stakeholder Engagement Branch, or any successors to those Offices or that Branch.

(B) DIRECTION OF INCOMING COMMUNICATIONS.—

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

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

(I) any person from communicating with the Ombudsman of U.S. Citizenship and Immigration Services regarding the immigrant investor program under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)); or
(II) the Ombudsman from resolving problems regarding such immigrant investor program pursuant to the authority granted under section 452 of the Homeland Security Act of 2002 (6 U.S.C. 272).

(C) Log.—

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

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

(II) with respect to written communications described in subsection (c)(1), the date on which the communication was received, the identities of the sender and addressee, and the subject of the communication; and
(III) with respect to oral communications described in subsection (c)(2), the date on which the communication occurred, the participants in the conversation or meeting, and the subject of the communication.

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

(3) PUBLICATION OF INFORMATION.—Not later than 30 days after a person or entity inquiring about a specific case or generally about the immigrant visa program described in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) receives, as a result of a communication with an official of the Department of Homeland Security, generally applicable and information that is not case-specific about program requirements or administration that has not been made publicly available by the Department, the Director of U.S. Citizenship and Immigration Services shall publish such information on the U.S. Citizenship and Immigra-
tion Services website as an update to the relevant
Frequently Asked Questions page or by some other
comparable mechanism.

(f) PENALTY.—

(1) In general.—Any person who inten-
tionally violates the prohibition on preferential treat-
ment under this section or intentionally violates the
reporting requirements under subsection (c) shall be
disciplined in accordance with paragraph (2).

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

(g) Rule of construction regarding classified information.—Nothing in this section may be con-
strued to modify any law, regulation, or policy regarding
the handling or disclosure of classified information.

(h) Rule of construction regarding private right of action.—Nothing in this section may be con-
strued to create or authorize a private right of action to

(i) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the date of the enactment of this Act.