

116TH CONGRESS
1ST SESSION

S. 2778

To reform the EB–5 Immigrant Investor Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 2019

Mr. ROUNDS (for himself, Mr. GRAHAM, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the EB–5 Immigrant Investor Program, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Immigrant Investor Program Reform Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Invest in American job creation.
- Sec. 3. Transparency.
- Sec. 4. Treatment of period for purposes of naturalization.
- Sec. 5. Concurrent filing of EB–5 petitions and applications for adjustment of status.

Sec. 6. Parole status for petitioners and dependents awaiting availability of an immigrant visa.

1 **SEC. 2. INVEST IN AMERICAN JOB CREATION.**

2 (a) IN GENERAL.—Section 203(b)(5) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1153(b)(5)) is
4 amended to read as follows:

5 “(5) EMPLOYMENT CREATION.—

6 “(A) IN GENERAL.—Visas shall be made
7 available, in a number not to exceed 7.1 percent
8 of such worldwide level, to qualified immigrants
9 seeking to enter the United States for the pur-
10 pose of investing in a new commercial enter-
11 prise, directly or in a new commercial enterprise
12 associated with a regional center under sub-
13 paragraph (B)—

14 “(i) in which such alien has invested
15 or, is actively in the process of investing,
16 capital in an amount not less than the
17 amount specified in subparagraph (D); and

18 “(ii) that will benefit the United
19 States economy and create full-time em-
20 ployment for not fewer than 10 United
21 States citizens or aliens lawfully admitted
22 for permanent residence or other immi-
23 grants lawfully authorized to be employed
24 in the United States (other than the immi-

1 grant and the immigrant’s spouse, sons, or
2 daughters).

3 “(B) REGIONAL CENTER PROGRAM.—Visas
4 made available under subparagraph (A) shall be
5 made available through September 30, 2025, to
6 qualified immigrants pooling their investments
7 with 1 or more additional qualified immigrants
8 in a new commercial enterprise associated with
9 a regional center in the United States that has
10 been designated by the Secretary of Homeland
11 Security on the basis of a proposal for the pro-
12 motion of economic growth, including prospec-
13 tive job creation and increased domestic capital
14 investment.

15 “(C) RESERVATION FOR TARGETED EM-
16 PLOYMENT AREAS.—

17 “(i) IN GENERAL.—Of the number of
18 visas allocated under subparagraph (A), 30
19 percent shall be reserved in each fiscal
20 year before fiscal year 2026 for qualified
21 immigrants who invest in a new commer-
22 cial enterprise in a targeted employment
23 area, of which 50 percent shall be reserved
24 for rural areas.

1 “(ii) UNUSED VISAS.—At the end of
2 each fiscal year, any unused visa numbers
3 that were reserved under this subpara-
4 graph shall be made generally available in
5 the next fiscal year to immigrants who
6 have filed applications for classification as
7 an immigrant investor under subparagraph
8 (A).

9 “(D) AMOUNT OF CAPITAL REQUIRED.—

10 “(i) IN GENERAL.—Except as other-
11 wise provided in this subparagraph, the
12 amount of capital required under subpara-
13 graph (A) shall be \$1,100,000.

14 “(ii) MINIMUM INVESTMENT FOR TAR-
15 GETED EMPLOYMENT AREAS.—Subject to
16 clause (iii), the amount of capital required
17 under subparagraph (A) in the case of a
18 targeted employment area shall be
19 \$1,000,000.

20 “(iii) PROGRAM IMPROVEMENT FEE.—
21 Each immigrant investor shall pay, to the
22 Treasury of the United States, a program
23 improvement fee of \$50,000 in conjunction
24 with each I-526 petition submitted under
25 this paragraph after the date of the enact-

1 ment of the Immigrant Investor Program
2 Reform Act.

3 “(iv) ADJUSTMENT OF REQUIRED
4 CAPITAL.—

5 “(I) AUTOMATIC ADJUSTMENT.—

6 Beginning on October 1, 2022 and
7 every 3 years thereafter, the quali-
8 fying investment amounts under
9 clauses (i) and (ii) shall be automati-
10 cally adjusted based on the cumulative
11 annual percentage change in the
12 unadjusted All Items Consumer Price
13 Index for All Urban Consumers (CPI-
14 U) for the U.S. City Average reported
15 by the Bureau of Labor Statistics
16 compared to such amounts in Sep-
17 tember 2019. The qualifying invest-
18 ment amount will be rounded down to
19 the nearest \$100,000.

20 “(II) NOTICE OF ADJUST-
21 MENT.—

22 “(aa) IN GENERAL.—Imme-
23 diately after each adjustment
24 under subclause (I), the Sec-
25 retary of Homeland Security

1 shall publish a technical amend-
2 ment in the Federal Register
3 that includes the amounts set
4 forth in clauses (i) and (ii), as
5 adjusted by subclause (I).

6 “(bb) APPLICABILITY.—Any
7 petition for classification of an
8 alien as an immigrant investor
9 under this paragraph that is filed
10 on or after October 1 in the year
11 an automatic adjustment to the
12 minimum qualifying investment
13 amount occurs under subclause
14 (I) shall be subject to such ad-
15 justed amount.

16 “(E) REGIONAL CENTER PROGRAM.—

17 “(i) PROCESSING.—

18 “(I) IN GENERAL.—In processing
19 petitions under section 204(a)(1)(H)
20 for classification under this para-
21 graph, the Secretary of Homeland Se-
22 curity—

23 “(aa) may process petitions
24 in a manner and order estab-
25 lished by the Secretary; and

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

“(II) PRIORITY.—In processing applications for designation as a regional center, amendments, specific investment offerings, and annual certifications submitted under this paragraph, the Secretary may give priority, upon the payment of a \$50,000 premium processing fee, to such applications and certifications, notwithstanding other pending applications or petitions filed under other employment-based visa categories.

“(III) PREMIUM PROCESSING OF EB-5 REGIONAL CENTER APPLICATIONS.—

“(aa) IN GENERAL.—An entity seeking designation as an EB-5 regional center or an

1 amendment of a previously ap-
2 proved regional center may, upon
3 the payment of a \$50,000 pre-
4 mium processing fee, request
5 that the Secretary process the
6 application within 120 days.

7 “(bb) RESPONSE TO PRE-
8 MIUM PROCESSING REQUEST.—If
9 the Secretary cannot render a
10 final decision on the application
11 or petition for which premium
12 processing was requested, as evi-
13 denced by an approval notice or
14 denial notice, the Secretary shall
15 refund the premium processing
16 fee.

17 “(IV) EXPEDITED PROCESSING
18 OF TARGETED EMPLOYMENT AREA
19 PETITIONS.—A petition relating to a
20 project in a targeted employment
21 area, including individual investor pe-
22 titions, will be subject to expedited re-
23 view without payment of an additional
24 premium processing fee.

“(ii) ESTABLISHMENT OF REGIONAL CENTERS.—A regional center shall operate within a defined, contiguous, 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—

“(I) demonstrate that the pooled investment will have a significant economic impact on such geographic area;

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

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

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

“(cc) the details of the jobs that will be created directly or indirectly as a result of such investments; and

1 “(dd) other positive eco-
2 nomic effects such investments
3 will have; and

4 “(III) include a description of the
5 policies and procedures that are rea-
6 sonably designed to ensure program
7 compliance; and

8 “(IV) include a description of the
9 policies and procedures in place that
10 are reasonably designed to monitor
11 new commercial enterprises, third-
12 party promoters (including migration
13 agents), and any affiliated job-cre-
14 ating entity to ensure compliance
15 with—

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

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

1 “(iii) JOB CREATION.—

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 based on an investment in a
7 new commercial enterprise associated
8 with a regional center under this sub-
9 paragraph to rely on economically and
10 statistically valid methodologies for
11 determining the number of jobs cre-
12 ated by the program, including—

13 “(aa) jobs estimated to have
14 been created directly, which may
15 be verified using such methodolo-
16 gies, provided that the Secretary
17 may request additional evidence
18 to verify that the directly created
19 jobs satisfy the requirements
20 under subparagraph (A)(ii); and

21 “(bb) consistent with this
22 subparagraph, jobs estimated to
23 have been created indirectly
24 through revenues generated from
25 increased exports, improved re-

1 regional productivity, job creation,
2 and increased domestic capital
3 investment resulting from the
4 program.

5 “(iv) AMENDMENTS.—The Secretary
6 of Homeland Security shall—

7 “(I) require regional centers to
8 provide 120 days advance notice to
9 the Secretary of significant proposed
10 changes to their organizational struc-
11 ture, ownership, or administration, in-
12 cluding the sale of such centers or
13 other arrangements in which individ-
14 uals not previously subject to the re-
15 quirements under subparagraph (H)
16 become involved with the regional cen-
17 ter, before any such proposed changes
18 may take effect unless exigent cir-
19 cumstances are present in which case
20 the regional center shall provide no-
21 tice to the Secretary not later than 5
22 business days after such change; and

23 “(II) notwithstanding the pend-
24 ency of a determination described in
25 subclause (II), adjudicate business

1 plans under subparagraph (F) and pe-
2 titions under section 204(a)(1)(H).

3 “(v) SANCTIONS.—

4 “(I) VIOLATIONS.—The Sec-
5 retary shall sanction a regional center,
6 in accordance with subclause (II), if—

7 “(aa) the regional center
8 fails to submit an annual state-
9 ment, attestation, certification, or
10 other information required under
11 this paragraph;

12 “(bb) the regional center
13 fails to pay the fee required
14 under subparagraph (J)(ii) with-
15 in 30 days after the date on
16 which such fee is due or, after
17 being fined, fails to pay the fine
18 within 90 days after the date on
19 which such fine is due;

20 “(cc) the Secretary deter-
21 mines that the regional center
22 knowingly submitted, or caused
23 to be submitted, a statement, at-
24 testation, certification, or any
25 other information under this

1 paragraph that contained an un-
2 true statement of material fact or
3 omitted to state a material fact
4 necessary in order to make the
5 statement, attestation, certifi-
6 cation or provision of informa-
7 tion, in light of the circumstances
8 under which they were made, not
9 misleading;

10 “(dd) the Secretary deter-
11 mines a person involved with the
12 regional center, an associated
13 new commercial enterprise, or
14 any affiliated job-creating entity
15 was knowingly involved by the re-
16 gional center in violation of sub-
17 paragraph (H); or

18 “(ee) the Secretary deter-
19 mines that the regional center is
20 otherwise conducting itself in a
21 manner inconsistent with its des-
22 ignation, including—

23 “(AA) conduct that
24 fails to demonstrate that the

1 regional center is operating
2 reliably or with integrity;

3 “(BB) failure to pro-
4 mote economic growth in
5 compliance with this para-
6 graph; or

7 “(CC) any willful, un-
8 disclosed, and material devi-
9 ation by new commercial en-
10 terprises from any filed
11 business plan for such com-
12 mercial enterprises.

13 “(II) AUTHORIZED SANCTIONS.—

14 The Secretary shall establish a grad-
15 uated set of sanctions based on the
16 severity of the violations referred to in
17 subclause (I), including 1 or more of
18 the following:

19 “(aa) Fines equal to not
20 more than 10 percent of the total
21 capital invested by alien investors
22 in the regional center’s new com-
23 mercial enterprises or job-cre-
24 ating entities, which—

1 “(AA) may not be paid
2 from any of such alien inves-
3 tor’s capital investments;
4 and

5 “(BB) shall be depos-
6 ited into the EB–5 Integrity
7 Fund established under sub-
8 paragraph (J)(i).

9 “(bb) Temporary suspension
10 from participation in the regional
11 center program, which may be
12 lifted by the Secretary if the indi-
13 vidual or entity cures the alleged
14 violation after being provided
15 such an opportunity by the Sec-
16 retary.

17 “(cc) Permanent bar from
18 program participation for 1 or
19 more individuals or entities asso-
20 ciated with the regional center or
21 new commercial enterprise or af-
22 filiated job-creating entity.

23 “(dd) Termination of the re-
24 gional center designation.

1 “(F) APPLICATION FOR APPROVAL OF AN
2 INVESTMENT IN A COMMERCIAL ENTERPRISE.—

3 “(i) IN GENERAL.—The director of a
4 regional center shall file an application
5 with the Secretary of Homeland Security
6 for each investment offering through an
7 associated commercial enterprise. An alien
8 may not file a petition for classification
9 under this paragraph by reason of invest-
10 ment in such offering until after such ap-
11 plication has been approved.

12 “(ii) CONTENTS.—Each application
13 submitted under clause (i) shall include—

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

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

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 for 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 to be used in connection
14 with the offering as of the time of the
15 filing, which shall contain references,
16 as appropriate, to—

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

21 “(bb) any conflicts of inter-
22 est that exist or may arise among
23 the regional center, new commer-
24 cial enterprise, job-creating enti-
25 ty, or the principals, attorneys,

1 or individuals responsible for re-
2 cuitment or promotion of such
3 entities;

4 “(cc) any pending litigation
5 or bankruptcy, or adverse judg-
6 ments or bankruptcy orders
7 issued during the most recent 10-
8 year period, in the United States
9 or abroad, affecting the regional
10 center, new commercial enter-
11 prise, any affiliated job-creating
12 entity, or any other enterprise in
13 which any principal of the afore-
14 mentioned entities held majority
15 ownership at the time; and

16 “(dd)(AA) any fees, ongoing
17 interest, or other compensation
18 paid or to be paid by regional
19 center or new commercial enter-
20 prise to agents, finders, or broker
21 dealers involved in the offering;

22 “(BB) a description of the
23 services performed, or which will
24 be performed, by such person to

1 entitle the person to such fees,
2 interest, or compensation; and

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

7 “(V) a description of the policies
8 and procedures, including those re-
9 lated to internal and external due dili-
10 gence, reasonably designed to cause
11 the regional center, new commercial
12 enterprise, and any affiliated job-cre-
13 ating entity, their agents, employees,
14 advisors, and attorneys, and any per-
15 sons in active concert or participation
16 with the regional center, new commer-
17 cial enterprise, or any affiliated job-
18 creating entity comply, as applicable,
19 with the securities laws of the United
20 States and the laws of the applicable
21 States in connection with the offer,
22 purchase, or sale of its securities.

23 “(iii) EFFECT OF APPROVAL OF AN
24 APPLICATION FOR AN INVESTMENT IN A
25 REGIONAL CENTER’S COMMERCIAL ENTER-

1 PRISE.—The approval of an application
2 under this subparagraph shall be binding
3 for purposes of the adjudication of subse-
4 quent petitions seeking classification under
5 this paragraph by immigrants investing in
6 the same offering described in such appli-
7 cation, and of petitions filed under section
8 216A by the same immigrants, except in
9 the case of—

10 “(I) fraud;

11 “(II) misrepresentation;

12 “(III) criminal misuse;

13 “(IV) a threat to public safety or
14 national security;

15 “(V) a material change that af-
16 fects eligibility;

17 “(VI) other evidence affecting
18 program eligibility that was not dis-
19 closed by the applicant during the ad-
20 judication process; or

21 “(VII) a material mistake of law
22 or fact in the prior adjudication.

23 “(iv) SITE VISITS.—The Secretary
24 shall—

1 “(I) perform site visits to re-
2 gional centers; and

3 “(II) perform at least 1 site visit
4 to each new commercial enterprise or
5 affiliated job-creating entity, which
6 shall include a review for evidence of
7 direct job creation in accordance with
8 subparagraph (E)(iii)(I).

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

11 “(i) IN GENERAL.—The director of
12 each regional center designated under sub-
13 paragraph (E) shall annually submit a
14 statement, in a manner prescribed by the
15 Secretary of Homeland Security, which in-
16 cludes—

17 “(I) a certification stating that
18 the regional center, any associated
19 new commercial enterprises, and any
20 affiliated job-creating entity is in com-
21 pliance with clauses (i) and (ii) of
22 subparagraph (H);

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

1 “(III) a certification stating that
2 the regional center is in compliance
3 with subparagraph (K);

4 “(IV) a description of any pend-
5 ing material litigation or bankruptcy
6 proceedings, or litigation or bank-
7 ruptcy proceedings resolved during the
8 preceding fiscal year, involving the re-
9 gional center, any associated new
10 commercial enterprises, or any job-
11 creating entities;

12 “(V) an accounting of all foreign
13 investor capital invested in the re-
14 gional center, new commercial enter-
15 prise, or affiliated job-creating entity;

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

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

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

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

8 “(cc) evidence that the ac-
9 count requirements under sub-
10 paragraph (D) have been met;

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

15 “(ee) detailed evidence of
16 the progress made toward the
17 completion of each capital invest-
18 ment project;

19 “(ff) an accounting of the
20 aggregate direct jobs created or
21 preserved;

22 “(gg) an accounting of all
23 fees, including administrative
24 fees, loan monitoring fees, loan
25 management fees, commissions

1 and similar transaction-based
2 compensation, collected from
3 alien investors by the regional
4 center, any associated new com-
5 mercial enterprises, any job-cre-
6 ating entities or any promoter,
7 finder, broker-dealer or other en-
8 tity engaged by any such entity
9 to locate individual investors;

10 “(hh) any documentation re-
11 ferred to in subparagraph
12 (F)(i)(IV) if there has been a
13 material change during the pre-
14 ceding fiscal year; and

15 “(ii) a certification by the
16 regional center that such state-
17 ments are accurate; and

18 “(VII) a description of the re-
19 gional center’s policies and procedures
20 that are designed to enable the re-
21 gional center, any associated new
22 commercial enterprises, and any job-
23 creating entities to comply with appli-
24 cable Federal and State labor laws.

1 “(ii) AMENDMENT OF ANNUAL STATE-
2 MENTS.—The Secretary—

3 “(I) shall require each regional
4 center to amend or supplement the
5 annual statement required under
6 clause (i) if the Secretary determines
7 that such statement is deficient; and

8 “(II) may require the regional
9 center to amend or supplement such
10 annual statement if the Secretary de-
11 termines that such an amendment or
12 supplement is appropriate.

13 “(iii) RECORD KEEPING.—

14 “(I) IN GENERAL.—Each re-
15 gional center shall make and preserve,
16 during the 5-year period beginning on
17 the last day of the Federal fiscal year
18 in which any transactions occurred,
19 books, ledgers, records, and other doc-
20 umentation from the regional center,
21 new commercial enterprise, or affili-
22 ated job-creating entity that was used
23 to support—

24 “(aa) any claims, evidence,
25 or certifications contained in the

1 regional center’s annual state-
 2 ments under subparagraph (G);
 3 and

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

8 “(II) AVAILABILITY.—All of the
 9 books, ledgers, records, and other doc-
 10 umentation described in subclause (I)
 11 shall be made available to the Sec-
 12 retary upon request.

13 “(iv) VERIFICATIONS BY SECURITIES
 14 AND EXCHANGE COMMISSION.—The certifi-
 15 cations required under clause (i) shall be
 16 verified by the Securities and Exchange
 17 Commission.

18 “(H) BONA FIDES OF PERSONS INVOLVED
 19 WITH THE EB–5 PROGRAM.—

20 “(i) IN GENERAL.—No person may be
 21 a person involved with a regional center,
 22 new commercial enterprise, or affiliated
 23 job-creating entity who—

24 “(I) has been found by a court of
 25 competent jurisdiction, or any final

1 order of the Securities and Exchange
2 Commission, or a State securities reg-
3 ulator to have committed—

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

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

11 “(cc) a crime for which the
12 person was convicted and was
13 sentenced to a term of imprison-
14 ment of more than 1 year;

15 “(II) is subject to a final order,
16 for the duration of any penalty im-
17 posed by such order, of a State securi-
18 ties commission (or an agency or offi-
19 cer of a State who performs similar
20 functions), a State authority that su-
21 pervises or examines banks, savings
22 associations, or credit unions, a State
23 insurance commission (or an agency
24 of or officer of a State who performs
25 similar functions), an appropriate

1 Federal banking agency, the Com-
2 modity Futures Trading Commission,
3 the Securities and Exchange Commis-
4 sion, a financial self-regulatory orga-
5 nization recognized by the Securities
6 and Exchange Commission, or the
7 National Credit Union Administra-
8 tion, which is based on a violation of
9 any law or regulation that—

10 “(aa) prohibits fraudulent,
11 manipulative, deceptive, or neg-
12 ligent conduct; or

13 “(bb) bars the person
14 from—

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

19 “(BB) appearing before
20 such commission, authority,
21 agency, or officer;

22 “(CC) engaging in the
23 business of securities, insur-
24 ance, or banking; or

1 “(DD) engaging in sav-
2 ings association or credit
3 union activities;

4 “(III) is engaged in, has ever
5 been engaged in, or seeks to engage
6 in—

7 “(aa) any illicit trafficking
8 in any controlled substance or in
9 any listed chemical (as defined in
10 section 102 of the Controlled
11 Substances Act (21 U.S.C. 802));

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

15 “(cc) any activity related to
16 money laundering (as described
17 in section 1956 or 1957 of title
18 18, United States Code);

19 “(dd) any terrorist activity;

20 “(ee) any activity consti-
21 tuting or facilitating human traf-
22 ficking or a human rights of-
23 fense;

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

1 “(gg) the violation of any
2 statute, regulation, or Executive
3 order regarding foreign financial
4 transactions or foreign asset con-
5 trol; or

6 “(IV)(aa) is, or during the pre-
7 ceding 10 years has been, included on
8 the Department of Justice’s List of
9 Currently Disciplined Practitioners; or

10 “(bb) during the preceding 10
11 years, has received a reprimand or
12 otherwise been publicly disciplined for
13 conduct related to fraud or deceit by
14 any bar association or other self-regu-
15 lating professional association of
16 which the person is or was a member;
17 or

18 “(V) is debarred from participa-
19 tion in the program under this para-
20 graph pursuant to subparagraph (S).

21 “(ii) FOREIGN INVOLVEMENT IN THE
22 EB-5 PROGRAM.—

23 “(I) LAWFUL STATUS RE-
24 QUIRED.—An individual may not be

involved with a regional center unless
the individual—

“(aa) is a national of the
United States; or

“(bb) has been lawfully ad-
mitted for permanent residence
and is not the subject of removal
proceedings.

“(II) FOREIGN GOVERNMENTS.—

“(aa) IN GENERAL.—Except
as provided in item (bb), no
agency, official, or other similar
entity or representative of a for-
eign government may provide
capital to, or be directly or indi-
rectly involved with the owner-
ship or administration of, a re-
gional center, a new commercial
enterprise, or affiliated job-cre-
ating entity.

“(bb) EXCEPTION.—A for-
eign or domestic investment fund
or other investment vehicle that
is wholly or partially owned, di-
rectly or indirectly, by a bona

1 fide foreign sovereign wealth
2 fund or a foreign state-owned en-
3 terprise otherwise permitted to
4 do business in the United States
5 may be involved with the owner-
6 ship, but not the administration,
7 of a job-creating entity that is
8 not an affiliated job-creating en-
9 tity.

10 “(III) REVIEW OF TRANS-
11 ACTIONS.—Any transaction involving
12 a regional center, new commercial en-
13 terprise, or affiliated job-creating enti-
14 ty that is a ‘covered transaction’ (as
15 defined in section 721(a)(4) of the
16 Defense Production Act of 1950 (50
17 U.S.C. 4565(a)(4))) is subject to re-
18 view by the Committee on Foreign In-
19 vestment in the United States.

20 “(IV) RULEMAKING.—Not later
21 than 180 days after the date of the
22 enactment of the Immigrant Investor
23 Program Reform Act, the Secretary of
24 Homeland Security, in consultation
25 with the Secretary of the Treasury

1 and the Secretary of Commerce, shall
2 issue regulations implementing sub-
3 clauses (I) and (II).

4 “(iii) INFORMATION REQUIRED.—

5 “(I) IN GENERAL.—Beginning on
6 the date of the enactment of the Im-
7 migrant Investor Program Reform
8 Act, the Secretary of Homeland Secu-
9 rity shall require such attestations
10 and information, including the sub-
11 mission of fingerprints or other bio-
12 metrics to the Federal Bureau of In-
13 vestigation, and shall perform such
14 criminal record checks and other
15 background and database checks with
16 respect to a regional center, new com-
17 mercial enterprise, and any affiliated
18 job-creating entity, and persons in-
19 volved with such entities, to determine
20 whether such entities are in compli-
21 ance with clauses (i) and (ii).

22 “(II) EFFECT OF NONCOMPLI-
23 ANCE.—The Secretary, after the com-
24 pletion of the background checks de-
25 scribed in subclause (I), shall notify a

1 regional center, new commercial enter-
 2 prise, or affiliated job-creating entity
 3 whether any individual involved with
 4 such entities is not in compliance with
 5 clause (i) or (ii). If the regional cen-
 6 ter, new commercial enterprise, or af-
 7 filiated job-creating entity fails to dis-
 8 continue the prohibited individual's in-
 9 volvement with such entity within 30
 10 days after receiving a notification
 11 under this subclause, the regional cen-
 12 ter, new commercial enterprise, or af-
 13 filiated job-creating entity shall be
 14 deemed to have knowledge that such
 15 person is in violation of clause (i) or
 16 (ii).

17 “(I) COMPLIANCE WITH SECURITIES
 18 LAWS.—

19 “(i) JURISDICTION.—

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

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

3 “(II) COMPLIANCE WITH REGU-
 4 LATION S.—For purposes of section 5
 5 of the Securities Act of 1933 (15
 6 U.S.C. 77e), a regional center or any
 7 party associated with a regional cen-
 8 ter is not precluded from offering or
 9 selling a security pursuant to Regula-
 10 tion S (17 C.F.R. 230.901 et seq.) to
 11 the extent that such offering or selling
 12 otherwise complies with such regula-
 13 tion. Subclause (I) may not be con-
 14 strued to modify any existing regula-
 15 tions or interpretations of the Securi-
 16 ties and Exchange Commission related
 17 to the application of section 15 of the
 18 Securities Exchange Act of 1934 (15
 19 U.S.C. 78o) to foreign broker dealers.

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

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

1 center amendment unless the regional
2 center certifies that the regional cen-
3 ter is in compliance with, and has
4 policies and procedures (including
5 those related to internal and external
6 due diligence) reasonably designed to
7 confirm, as applicable, that the re-
8 gional center, any associated new
9 commercial enterprises, any job-cre-
10 ating entities, and all persons involved
11 with such entities are and will remain
12 in compliance with the securities laws
13 of the United States and of any State
14 in which—

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

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

19 “(cc) the investment advice
20 was provided by the regional cen-
21 ter, any associated new commer-
22 cial enterprises, any job-creating
23 entities, or persons involved with
24 such entities.

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

7 “(aa) the certifier is in a po-
8 sition to have knowledge of the
9 offers, purchases, and sales of se-
10 curities or the provision of invest-
11 ment advice by the regional cen-
12 ter, any associated new commer-
13 cial enterprises, any job-creating
14 entities, and all persons involved
15 with such entities;

16 “(bb) all such offers, pur-
17 chases, and sales of securities or
18 the provision of investment ad-
19 vice complied with the securities
20 laws of the United States and the
21 securities laws of any State in
22 which the offer, purchase, or sale
23 of securities was conducted, the
24 issuer of securities was located,

1 or the investment advice was pro-
2 vided; and

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

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

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

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

24 “(cc) certify that the re-
25 gional center, any associated new

1 commercial enterprises, any job-
2 creating entities, and all persons
3 involved with such entities are
4 currently in compliance.

5 “(IV) DUE DILIGENCE INVES-
6 TIGATION.—Any certification provided
7 by a certifier under this clause with
8 respect to an entity in which the cer-
9 tifier is not in a position of sub-
10 stantive authority shall be made to
11 the best of the certifier’s knowledge
12 after due diligence investigation.

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

15 “(I) monitor and supervise all of-
16 fers, purchases, and sales of, and in-
17 vestment advice relating to securities
18 made by the regional center, any asso-
19 ciated new commercial enterprises,
20 any job-creating entities, and all per-
21 sons involved with such entities to
22 confirm compliance with the securities
23 laws of the United States;

24 “(II) maintain records, data, and
25 information relating to all such offers,

1 purchases, sales, and investment ad-
2 vice during the 5-year period begin-
3 ning on the date of creation of such
4 records, data, or information, which
5 shall be made available to the Sec-
6 retary upon request; and

7 “(III) make the records, data,
8 and information described in sub-
9 clause (II) available to the Secretary
10 upon request.

11 “(iv) SAVINGS PROVISION.—Nothing
12 in this subparagraph may be construed to
13 impair or limit the authority of the Securi-
14 ties and Exchange Commission under the
15 Federal securities laws or any State securi-
16 ties regulator under State securities laws.

17 “(J) EB–5 INTEGRITY FUND.—

18 “(i) ESTABLISHMENT.—There is es-
19 tablished in the United States Treasury a
20 special fund, which shall be known as the
21 EB–5 Integrity Fund (referred to in this
22 subparagraph as the ‘Fund’). Amounts de-
23 posited into the Fund shall be available to
24 the Secretary of Homeland Security until

1 expended for the purposes set forth in
2 clause (iii).

3 “(ii) FEES.—

4 “(I) ANNUAL FEE.—On April 1,
5 2020, and on January 1 of each year
6 thereafter, the Secretary of Homeland
7 Security shall—

8 “(aa) except as provided in
9 item (bb), collect a fee of
10 \$20,000 from each regional cen-
11 ter designated under subpara-
12 graph (E);

13 “(bb) collect a fee of
14 \$10,000 from each regional cen-
15 ter designated under subpara-
16 graph (E) that is a not-for-profit
17 regional center, or has 20 or
18 fewer total investors in the pre-
19 ceding fiscal year in its new com-
20 mercial enterprises; and

21 “(cc) deposit the fees col-
22 lected pursuant to items (aa) and
23 (bb) into the Fund.

24 “(II) PETITION FEE.—Beginning
25 on April 1, 2020, the Secretary shall

1 collect a fee of \$1,000 with each peti-
2 tion filed under section 204(a)(1)(H)
3 for classification under subparagraph
4 (E) and deposit each fee collected
5 under this subclause into the Fund.

6 “(III) INCREASES.—The Sec-
7 retary may prescribe such regulations
8 as may be necessary to increase the
9 dollar amounts under this clause to
10 ensure that the Fund is sufficient to
11 carry out the purposes set forth in
12 clause (iii). Increases under this sub-
13 clause may not exceed 100 percent in
14 any 12-month period.

15 “(iii) PERMISSIBLE USES OF FUND.—
16 The Secretary of Homeland Security
17 shall—

18 “(I) use not less than $\frac{1}{3}$ of the
19 amounts deposited into the Fund to
20 conduct audits and site visits (with or
21 without notice);

22 “(II) use not less than $\frac{1}{3}$ of the
23 amounts deposited into the Fund for
24 investigations based outside of the
25 United States, including—

1 “(aa) monitoring and inves-
2 tigating program-related events
3 and promotional activities; and

4 “(bb) ensuring the compli-
5 ance of alien investors with sub-
6 paragraph (L);

7 “(III) use amounts deposited into
8 the Fund as the Secretary determines
9 to be necessary, including to monitor
10 compliance with the requirements
11 under this paragraph;

12 “(IV) use amounts deposited into
13 the Fund to conduct interviews of the
14 owners, officers, directors, managers,
15 partners, agents, employees, pro-
16 moters, and attorneys of regional cen-
17 ters, new commercial enterprises, and
18 job-creating entities; and

19 “(V) use amounts deposited into
20 the Fund—

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

23 “(bb) to determine whether
24 regional centers, new commercial
25 enterprises, any job-creating enti-

1 ties, and alien investors (and
2 their alien spouses and alien chil-
3 dren) comply with the immigra-
4 tion laws.

5 “(iv) REPORT.—The Secretary of
6 Homeland Security shall submit an annual
7 report to the Committee on the Judiciary
8 of the Senate and the Committee on the
9 Judiciary of the House of Representatives
10 that describes how amounts in the Fund
11 were expended during the previous fiscal
12 year.

13 “(K) DIRECT AND THIRD-PARTY PRO-
14 MOTERS.—

15 “(i) RULES AND STANDARDS.—Direct
16 and third-party promoters of a regional
17 center, any new commercial enterprise, or
18 any affiliated job-creating entity shall com-
19 ply with the rules and standards prescribed
20 by the Secretary of Homeland Security and
21 any applicable Federal or State securities
22 laws, to oversee promotion of any offering
23 of securities related to the immigrant in-
24 vestor program under this paragraph, in-
25 cluding—

1 “(I) registration with U.S. Citi-
2 zenship and Immigration Services,
3 which—

4 “(aa) may be limited to
5 identifying and contact informa-
6 tion of such promoter and con-
7 firmation of the existence of the
8 written agreement required under
9 clause (iii);

10 “(bb) may not include any
11 requirement that U.S. Citizen-
12 ship and Immigration Services
13 approve the registration of such
14 promoter; and

15 “(cc) may permit the list of
16 such registered promoters to be
17 made publicly available;

18 “(II) certification by each pro-
19 moter that such promoter is not ineli-
20 gible under subparagraph (H)(i);

21 “(III) guidelines for accurately
22 representing the visa process to for-
23 eign investors; and

24 “(IV) permissible fee arrange-
25 ments, if applicable.

1 “(ii) COMPLIANCE.—Each regional
2 center, new commercial enterprise, and af-
3 filiated job-creating entity shall maintain a
4 written agreement between or among such
5 entities and each direct or third-party pro-
6 moter operating on behalf of such entities
7 or associated issuer that outlines the rules
8 and standards prescribed under clause (i).

9 “(iii) DISCLOSURE.—Each petition
10 filed under section 204(a)(1)(H) shall in-
11 clude a disclosure by the regional center,
12 new commercial enterprise, or affiliated
13 job-creating entity, as applicable, acknowl-
14 edged by the investor, that reflects all fees,
15 ongoing interest, and other compensation
16 paid or to be paid to any person in connec-
17 tion with the investment, including com-
18 pensation to agents, finders, or broker
19 dealers involved in the offering, to the ex-
20 tent not already specifically identified in
21 the business plan filed under subparagraph
22 (F).

23 “(L) SOURCE OF FUNDS.—

24 “(i) IN GENERAL.—An alien investor
25 shall demonstrate that the capital required

1 under subparagraph (A) and any amounts
2 used to pay administrative costs and fees
3 associated with the alien’s investment were
4 obtained from a lawful source and through
5 lawful means.

6 “(ii) REQUIRED INFORMATION.—The
7 Secretary of Homeland Security shall re-
8 quire that an alien investor’s petition
9 under this paragraph contain, as applica-
10 ble—

11 “(I) business and tax records, in-
12 cluding—

13 “(aa) foreign business reg-
14 istration records, if applicable;

15 “(bb) corporate or partner-
16 ship tax returns (or tax returns
17 of any other entity in any form
18 filed in any country or subdivi-
19 sion of such country), and per-
20 sonal tax returns including in-
21 come, franchise, property (wheth-
22 er real, personal, or intangible),
23 or any other tax returns of any
24 kind, filed during the past 7
25 years, or another period to be de-

1 terminated by the Secretary to en-
2 sure that the investment is ob-
3 tained from a lawful source of
4 funds, with any taxing jurisdic-
5 tion in or outside the United
6 States by or on behalf of the
7 alien investor, if applicable; and

8 “(cc) evidence identifying
9 any other source of capital or ad-
10 ministrative fees;

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

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

1 “(aa) any funds that are
 2 used to meet the capital require-
 3 ment under subparagraph (A);
 4 and

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

9 “(iii) GIFT AND LOAN RESTRIC-
 10 TIONS.—

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

16 “(aa) were gifted or loaned
 17 to the alien investor in good
 18 faith; and

19 “(bb) were not gifted or
 20 loaned to circumvent any limita-
 21 tions imposed on permissible
 22 sources of capital under this sub-
 23 paragraph.

24 “(II) RECORDS REQUIREMENT.—
 25 If a significant portion of the capital

1 invested under subparagraph (A) was
2 gifted or loaned to the alien investor,
3 the Secretary shall require that the
4 alien investor's petition under this
5 paragraph includes the records de-
6 scribed in subclauses (I) and (II) of
7 clause (ii) from the donor or, if other
8 than a bank, the lender.

9 “(M) PETITION FOR CLASSIFICATION AS
10 AN IMMIGRANT INVESTOR.—

11 “(i) FILING.—An alien seeking classi-
12 fication as an immigrant investor under
13 this paragraph shall file a petition with the
14 Secretary of Homeland Security, with the
15 appropriate filing fees (including the EB-
16 5 Fraud Prevention and Detection Fee re-
17 quired under section 286(w)(3)), and with
18 such evidence as the Secretary shall pre-
19 scribe. The approval of a petition for clas-
20 sification as an immigrant investor under
21 this paragraph does not, by itself, establish
22 that the alien is entitled to immigrant sta-
23 tus.

24 “(ii) TREATMENT OF CHILDREN.—A
25 child of an alien investor on the date on

1 which a petition is filed under clause (i)
2 shall continue to be considered a child
3 until the removal of the conditional basis
4 of the child's lawful permanent resident
5 status unless—

6 “(I) the petition on which the
7 child's status is based is revoked; or

8 “(II) the child's lawful perma-
9 nent resident status is otherwise ter-
10 minated.

11 “(iii) DECISIONS.—

12 “(I) WITHHOLDING ADJUDICA-
13 TION.—The Secretary of Homeland
14 Security may suspend adjudication of
15 any petition for classification under
16 this paragraph until all background
17 and security checks and any national
18 security or law enforcement investiga-
19 tion relating to such application or the
20 alien seeking classification is com-
21 pleted.

22 “(II) DENIALS AND REVOC-
23 TIONS.—

24 “(aa) NOTICE OF DENIAL
25 OR REVOCATION.—The Secretary

1 shall provide an alien investor
2 with a notice of the Secretary's
3 denial of a petition or revocation
4 of an approved petition under
5 this subparagraph.

6 “(bb) DENIAL FOR FRAUD,
7 MISREPRESENTATION, AND
8 CRIMINAL MISUSE.—The Sec-
9 retary shall deny a petition for
10 classification of an alien as an
11 immigrant investor under this
12 paragraph if the Secretary deter-
13 mines that the petition was
14 predicated on or involved fraud,
15 deceit, intentional material mis-
16 representation, or criminal mis-
17 use.

18 “(cc) NATIONAL SECURITY
19 OR PUBLIC SAFETY.—The Sec-
20 retary may deny a petition or re-
21 voke an approved petition under
22 this section if the Secretary de-
23 termines that approval of such a
24 petition would be contrary to the
25 national interests of the United

1 States for reasons relating to na-
2 tional security or public safety.

3 “(III) JUDICIAL REVIEW.—Not-
4 withstanding any other provision of
5 law (statutory or nonstatutory), in-
6 cluding section 2241 of title 28,
7 United States Code, or any other ha-
8 beas corpus provision, and sections
9 1361 and 1651 of such title, no court
10 shall have jurisdiction to review a de-
11 nial or revocation under this subpara-
12 graph. Nothing in this clause may be
13 construed as precluding review of con-
14 stitutional claims or questions of law
15 raised upon a petition for review filed
16 with an appropriate court of appeals
17 in accordance with section 242.

18 “(N) THREATS TO THE NATIONAL INTER-
19 EST.—The Secretary of Homeland Security
20 shall deny or revoke the approval of a petition,
21 application, certification, or benefit under this
22 paragraph, including the documents described
23 in subclause (II), if the Secretary determines,
24 in the Secretary’s unreviewable discretion, that
25 the approval of such petition, application, or

1 benefit is contrary to the national interest of
2 the United States for reasons relating to
3 threats to public safety or national security.

4 “(O) 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 under subpara-
19 graph (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 of Homeland Security under
3 this paragraph.

4 “(ii) JUDICIAL REVIEW.—Subject to
5 section 242(a)(2), and notwithstanding any
6 other provision of law (statutory or non-
7 statutory), including section 2241 of title
8 28, United States Code, any other habeas
9 corpus provision, and sections 1361 and
10 1651 of such title, no court shall have ju-
11 risdiction to review a determination under
12 this subparagraph (O)(i)(III) until the re-
13 gional center, its associated entities, or the
14 alien investor has exhausted all administra-
15 tive appeals.

16 “(P) TREATMENT OF INVESTORS IF A RE-
17 GIONAL CENTER HAS BEEN TERMINATED.—

18 “(i) IN GENERAL.—Upon termination
19 or debarment, as applicable, from the pro-
20 gram under this paragraph of a regional
21 center, new commercial enterprise, or af-
22 filiated job-creating entity under this para-
23 graph, and except as provided in clauses
24 (iii) and (vi) of subparagraph (S), the con-
25 ditional permanent residence of an alien

1 who has been admitted to the United
2 States pursuant to section 216A(a)(1)
3 based on an investment in a terminated re-
4 gional center, new commercial enterprise,
5 or affiliated job-creating entity shall re-
6 main valid or continue to be authorized, as
7 applicable, in accordance with this sub-
8 paragraph.

9 “(ii) NEW REGIONAL CENTER OR IN-
10 VESTMENT.—The conditional permanent
11 resident status of an alien described in
12 clause (i) shall be terminated on the date
13 that is 180 days after the termination
14 from the program under this paragraph of
15 a regional center, a new commercial enter-
16 prise, or a job-creating entity unless—

17 “(I) if a regional center was ter-
18 minated—

19 “(aa) the new commercial
20 enterprise is associated with an
21 approved regional center;

22 “(bb) the alien makes a
23 qualifying investment in another
24 commercial enterprise associated

1 with an approved regional center;
 2 or

3 “(cc) the alien makes a
 4 qualifying investment in another
 5 commercial enterprise under this
 6 paragraph not associated with a
 7 regional center; or

8 “(II) if a new commercial enter-
 9 prise or affiliated job-creating entity
 10 was debarred, the alien invests in an-
 11 other commercial enterprise associated
 12 with an approved regional center.

13 “(iii) REMOVAL OF CONDITIONS.—
 14 Aliens described in subclause (I)(bb),
 15 (I)(cc), or (II) of clause (ii) who have ob-
 16 tained conditional permanent residence be-
 17 fore making the subsequent investment
 18 shall be eligible to have their conditions re-
 19 moved pursuant to section 216A beginning
 20 on the date that is 2 years after the date
 21 of the subsequent investment.

22 “(Q) FRAUD, MISREPRESENTATION, AND
 23 CRIMINAL MISUSE.—

24 “(i) DENIAL OR REVOCATION.—The
 25 Secretary of Homeland Security shall deny

1 or revoke the approval of a petition, appli-
2 cation, or benefit described in this para-
3 graph, including the documents described
4 in subparagraph (M)(iv)(II), if the Sec-
5 retary determines that such petition, appli-
6 cation, or benefit was predicated on or in-
7 volved fraud, deceit, intentional material
8 misrepresentation, or other criminal activ-
9 ity.

10 “(ii) NOTICE.—If the Secretary deter-
11 mines that the approval of a petition, ap-
12 plication, or benefit described in this para-
13 graph should be denied or revoked pursu-
14 ant to clause (i), the Secretary shall—

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

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

24 “(R) DEBARMENT.—

1 “(i) SUSPENSION OR TERMINATION.—

2 A regional center, new commercial enter-
3 prise, affiliated job-creating entity or any
4 person involved with any such entity may
5 be suspended or terminated from partici-
6 pating in the program under this para-
7 graph—

8 “(I) for failing to comply with
9 subparagraphs (G), (H), (I), or (J);

10 “(II) for fraud, intentional mate-
11 rial misrepresentation, or criminal
12 misuse;

13 “(III) for reasons related to pub-
14 lic safety or national security; or

15 “(IV) for engaging in any activ-
16 ity described in paragraph (2) or (3)
17 of section 212(a).

18 “(ii) DIRECT OR THIRD-PARTY PRO-
19 MOTERS.—If the Secretary determines that
20 a direct or third-party promoter has vio-
21 lated subparagraph (K)(i), the Secretary
22 shall suspend or permanently bar such in-
23 dividual from participation in the immi-
24 grant investor program under this para-
25 graph.

1 “(iii) TEMPORARY OR PERMANENT
2 BARS.—Any person, including an immi-
3 grant investor, who the Secretary deter-
4 mines, by a preponderance of the evidence,
5 was a knowing or negligent participant in
6 the conduct that led to the suspension or
7 termination under clause (i) or (ii) may be
8 temporarily or permanently barred from
9 future participation in the immigrant in-
10 vestor program under this paragraph.

11 “(iv) EFFECT OF DEBARMENT.—A
12 person who is suspended, terminated, or
13 barred under this subparagraph—

14 “(I) may not serve as a basis for
15 eligibility for any application, petition,
16 or other benefit request under this
17 paragraph;

18 “(II) may not file an application,
19 petition, or other benefit request
20 under this paragraph;

21 “(III) may not be involved with
22 any regional center, new commercial
23 enterprise or any affiliated job-cre-
24 ating entity; and

1 “(IV) may not have any author-
2 ity, connection, or other form of asso-
3 ciation with the offer, sale, purchase
4 or promotion of any securities offered
5 by an entity described in subclause
6 (III) in connection with the immigrant
7 investor program under this para-
8 graph.

9 “(v) DENIAL OR REVOCATION.—Sub-
10 ject to subparagraph (P), the Secretary
11 may deny or revoke any pending or ap-
12 proved application, petition, or other ben-
13 efit request under this paragraph in con-
14 nection with the suspension, termination,
15 or bar of any person under this subpara-
16 graph that was filed by the suspended, ter-
17 minated, or barred person or relies on such
18 person for eligibility.

19 “(vi) TERMINATION OF STATUS.—If
20 the Secretary has reason to believe an alien
21 was a knowing participant in the conduct
22 that led to a suspension or termination
23 under this subparagraph, the Secretary
24 shall—

1 “(I) notify the alien of such be-
2 lief; and

3 “(II) subject to section
4 216A(b)(2), terminate the permanent
5 resident status of the alien (and the
6 alien’s spouse and child) as of the
7 date of such determination.

8 “(S) CONFLICT OF INTEREST.—An indi-
9 vidual may not contract to provide services as
10 a loan monitor for a business or project with
11 which the individual was associated while em-
12 ployed by a regional center.

13 “(T) DEFINITIONS.—In this paragraph:

14 “(i) AFFILIATED JOB-CREATING ENTI-
15 TY.—The term ‘affiliated job-creating enti-
16 ty’ means any organization that—

17 “(I) is formed in the United
18 States for the ongoing conduct of law-
19 ful business, including a partnership
20 (whether limited or general), corpora-
21 tion, limited liability company, or
22 other entity that receives, or is estab-
23 lished to receive, capital investment
24 from alien investors or a new commer-
25 cial enterprise under the regional cen-

1 ter program described in subpara-
2 graph (E); and

3 “(II) is responsible for the cre-
4 ation of jobs to satisfy the require-
5 ment under subparagraph (A)(ii).

6 “(ii) CAPITAL.—The term ‘capital’—

7 “(I) means cash (including the
8 cash proceeds of indebtedness that are
9 fully secured by the petitioner’s as-
10 sets) and all real, personal, or mixed
11 tangible assets owned and controlled
12 by the alien investor, or held in trust
13 for the benefit of the alien and to
14 which the alien has unrestricted ac-
15 cess;

16 “(II) shall be valued at fair mar-
17 ket value in United States dollars, in
18 accordance with Generally Accepted
19 Accounting Principles or other stand-
20 ard accounting practice adopted by
21 the Securities and Exchange Commis-
22 sion, at the time such capital is in-
23 vested under this paragraph; and

24 “(III) does not include assets di-
25 rectly or indirectly acquired by unlaw-

1 ful means, including any cash pro-
2 ceeds of indebtedness secured by such
3 assets.

4 “(iii) CERTIFIER.—The term ‘cer-
5 tifier’ means a person providing a certifi-
6 cation for any entity under this paragraph
7 who is in a position of substantive author-
8 ity for the management or operations of
9 the entity, including a principal executive
10 officer or a principal financial officer, with
11 knowledge of such entity’s policies and pro-
12 cedures related to compliance with the re-
13 quirements under this paragraph.

14 “(iv) FULL-TIME EMPLOYMENT.—The
15 term ‘full-time employment’ means employ-
16 ment in a position that requires at least 35
17 hours of service per week at any time, re-
18 gardless of who fills the position.

19 “(v) NEW COMMERCIAL ENTER-
20 PRISE.—The term ‘new commercial enter-
21 prise’ means any for-profit organization
22 formed in the United States within 5 years
23 after the earlier of the application for ap-
24 proval of an investment or the submission
25 of a petition under this paragraph, for the

1 ongoing conduct of lawful business, includ-
2 ing a partnership (whether limited or gen-
3 eral), corporation, limited liability com-
4 pany, or other entity that receives, or is es-
5 tablished to receive, capital investment
6 from investors under this paragraph.

7 “(vi) PERSONS INVOLVED WITH A RE-
8 GIONAL CENTER, NEW COMMERCIAL EN-
9 TERPRISE, OR AFFILIATED JOB-CREATING
10 ENTITY.—The term ‘persons involved’ with
11 respect to a regional center, a new com-
12 mercial enterprise, or any affiliated job-
13 creating entity means a person directly or
14 indirectly in a position of substantive au-
15 thority to make operational or managerial
16 decisions over or to legally bind such enti-
17 ties. A person may be in a position of sub-
18 stantive authority if the person serves as
19 the principal, representative, adminis-
20 trator, owner, officer, board member, man-
21 ager, executive, or general partner of the
22 regional center, new commercial enterprise,
23 or affiliated job-creating entity, respec-
24 tively.

“(vii) RURAL AREA.—The term ‘rural area’ means any area that, based on the most recent decennial census of the United States—

“(I) is outside of the boundary of any city or town with a population of 20,000 or more people; and

“(II)(aa) is outside of a metropolitan statistical area; or

“(bb) is within any census tract that is greater than 100 square miles in area and has a population density of fewer than 100 people per square mile.

“(viii) TARGETED EMPLOYMENT AREA.—The term ‘targeted employment area’ means—

“(I) a qualified opportunity zone (as designated under section 1400Z-1 of the Internal Revenue Code of 1986;

“(II) a rural area; or

“(III) an area within the geographic boundaries of any military installation that was closed before the filing of an application for classifica-

1 tion as an immigrant investor under
 2 this paragraph, based upon a rec-
 3 ommendation by a Defense Base Clo-
 4 sure and Realignment Commission.”.

5 (b) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
 7 graph (2), the amendment made by subsection (a),
 8 shall take effect on the date that is 90 days after
 9 the date of the enactment of this Act.

10 (2) EXCEPTIONS.—Subparagraphs (E)(iv) and
 11 (L) of section 203(b)(5) of the Immigration and Na-
 12 tionality Act (8 U.S.C. 1153(b)(5)) shall not apply
 13 to a petition that—

14 (A) was filed by an alien investor under
 15 such section 203(b)(5) before the date of the
 16 enactment of this Act; or

17 (B) is filed under section 216A of such Act
 18 (8 U.S.C. 1186b) if the underlying petition filed
 19 under section 203(b)(5) of such Act was filed
 20 before the date of the enactment of this Act.

21 (c) GAO REPORT.—Not later than December 31,
 22 2021, the Comptroller General of the United States shall
 23 submit a report to the Committee on the Judiciary of the
 24 Senate and the Committee on the Judiciary of the House
 25 of Representatives that describes—

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

7 (2) the extent to which U.S. Citizenship and
8 Immigration Services ensures compliance by regional
9 center participants with their obligations under the
10 immigrant investor program;

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

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

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

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

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

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

14 (9) the extent to which employees of the De-
15 partment of Homeland Security have complied with
16 the ethical standards and transparency requirements
17 set forth in section 3; and

18 (10) the amounts expended from the EB–5 In-
19 tegrity Fund established under section 203(b)(5)(J)
20 of the Immigration and Nationality Act, as added by
21 subsection (a).

22 (d) INSPECTOR GENERAL REPORT.—Not later than
23 December 31, 2021, the Inspector General of the Intel-
24 ligence Community, in coordination with the Inspector
25 General of the Department of Homeland Security and

1 after consultation with relevant Federal agencies, includ-
2 ing U.S. Immigration and Customs Enforcement, shall
3 submit a report to the Committee on the Judiciary of the
4 Senate and the Committee on the Judiciary of the House
5 of Representatives regarding the immigrant visa program
6 set forth in section 203(b)(5) of the Immigration and Na-
7 tionality Act, as amended by subsection (a) that de-
8 scribes—

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

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

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

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

18 (5) the actual or potential use of the program
19 to facilitate terrorist activity, including funding ter-
20 rorist activity or laundering terrorist funds.

21 (e) REVIEW OF JOB CREATION METHODOLOGIES.—

22 Not later than 1 year after the date of the enactment of
23 this Act, the Secretary of Homeland Security, in consulta-
24 tion with the Bureau of Economic Analysis of the Depart-
25 ment of Commerce, or another component within the De-

1 partment of Commerce, as determined by the Secretary
 2 of Commerce, shall issue regulations to determine eco-
 3 nomically and statistically valid general economic meth-
 4 odologies that comply with section 203(b)(5)(A)(ii) of the
 5 Immigration and Nationality Act, as amended by sub-
 6 section (a).

7 (f) DEPARTMENT OF HOMELAND SECURITY RE-
 8 PORT.—Not later than 18 months after the date of the
 9 enactment of this Act, and annually thereafter, the Sec-
 10 retary of Homeland Security shall submit a report to Con-
 11 gress regarding—

12 (1) the geographic location and types of com-
 13 pleted and pending capital investment projects with-
 14 in the scope of business plans (whether approved or
 15 waiting approval) submitted pursuant to section
 16 203(b)(5)(F) of the Immigration and Nationality
 17 Act, as added by subsection (a); and

18 (2) the amount of foreign investments raised
 19 and expected to be raised to finance projects re-
 20 ferred to in paragraph (1).

21 **SEC. 3. 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, as
 8 amended by section 2.

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 described in
 16 section 203(b)(5) of the Immigration and Nation-
 17 ality Act, as amended by section 2, the standard
 18 processing of an application, petition, or benefit
 19 for—

20 (A) a regional center;

21 (B) a new commercial enterprise;

22 (C) an affiliated job-creating entity; or

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

1 (2) meeting or communicating with persons as-
2 sociated with the entities described in paragraph (1),
3 at the request of such persons, in a manner not
4 available to or accorded to all other petitioners, ap-
5 plicants, and seekers of benefits under such immi-
6 grant visa program.

7 (c) REPORTING OF COMMUNICATIONS.—

8 (1) WRITTEN COMMUNICATION.—Employees of
9 the Department of Homeland Security, including the
10 officials listed in subsection (a), shall include, in the
11 record of proceeding for a case under section
12 203(b)(5) of the Immigration and Nationality Act,
13 as amended by section 2, actual or electronic copies
14 of all case-specific written communication, including
15 emails from government and private accounts, with
16 non-Department persons or entities advocating for
17 regional center applications or individual petitions
18 under such section that are pending on or after the
19 date of the enactment of this Act (other than rou-
20 tine communications with other agencies of the Fed-
21 eral Government regarding the case, including com-
22 munications involving background checks and litiga-
23 tion defense).

24 (2) ORAL COMMUNICATION.—If substantive oral
25 communication, including telephonic communication,

1 virtual communication, and in-person meetings,
2 takes place between officials of the Department of
3 Homeland Security and non-Department persons or
4 entities advocating for regional center applications
5 or individual petitions under section 203(b)(5) of the
6 Immigration and Nationality Act, as amended by
7 section 2, that are pending on or after the date of
8 the enactment of this Act (other than routine com-
9 munications with other agencies of the Federal Gov-
10 ernment regarding the case, including communica-
11 tions involving background checks and litigation de-
12 fense)—

13 (A) the conversation shall be recorded; or

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

16 (3) NOTIFICATION.—

17 (A) IN GENERAL.—If the Secretary of
18 Homeland Security, in the course of written or
19 oral communication described in this sub-
20 section, receives evidence about a specific case
21 from anyone other than an affected party or his
22 or her representative (excluding Federal Gov-
23 ernment or law enforcement sources), such in-
24 formation may not be made part of the record

1 of proceeding and may not be considered in ad-
2 judicative proceedings unless—

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

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

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

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

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

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

3 (d) CONSIDERATION OF EVIDENCE.—

4 (1) IN GENERAL.—Case-specific communication
5 with persons or entities that are not part of the De-
6 partment of Homeland Security may not be consid-
7 ered in the adjudication of an application or petition
8 under section 203(b)(5) of the Immigration and Na-
9 tionality Act, as amended by section 2, unless the
10 communication is included in the record of pro-
11 ceeding of the case.

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

16 (e) CHANNELS OF COMMUNICATION.—

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

21 (A) with inquiries regarding specific peti-
22 tions or applications under the immigrant visa
23 program described in section 203(b)(5) of the
24 Immigration and Nationality Act, as amended
25 by section 2; or

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

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

6 (A) ANNOUNCEMENT OF APPROPRIATE
7 CHANNELS OF COMMUNICATION.—Not later
8 than 40 days after the date of the enactment of
9 this Act, the Director of U.S. Citizenship and
10 Immigration Services shall announce that the
11 only channels or offices by which industry
12 stakeholders, petitioners, applicants, and seek-
13 ers of benefits under the immigrant visa pro-
14 gram described in section 203(b)(5) of the Im-
15 migration and Nationality Act, as amended by
16 section 2, may communicate with the Depart-
17 ment of Homeland Security regarding specific
18 cases under such section (except for commu-
19 nication made by applicants and petitioners
20 pursuant to regular adjudicatory procedures),
21 or non-case-specific information about the visa
22 program applicable to certain cases under such
23 section, are through—

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

(ii) the National Customer Service Center of U.S. Citizenship and Immigration Services, or any successor to that Center; or

(iii) the Customer Service and Public Engagement Directorate, the Immigrant Investor Program Office, or any successor agencies.

(B) DIRECTION OF INCOMING COMMUNICATIONS.—

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

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

(I) any person from communicating with the Ombudsman of U.S. Citizenship and Immigration Services regarding the immigrant investor program under section 203(b)(5) of the Immigration and Nationality Act, as amended by section 2; or

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

6 (C) LOG.—

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

11 (I) all communications described
12 in subparagraph (A) and communica-
13 tions from Members of Congress,
14 which shall reference—

15 (aa) the date, time, and sub-
16 ject of the communication; and

17 (bb) the identity of the De-
18 partment of Homeland Security
19 official, if any, to whom the in-
20 quiry was forwarded;

21 (II) with respect to written com-
22 munications described in subsection
23 (c)(1)—

24 (aa) the date on which such
25 communication was received;

1 (bb) the identities of the
2 sender and addressee; and

3 (cc) the subject of such com-
4 munication; and

5 (III) with respect to oral commu-
6 nications described in subsection
7 (c)(2)—

8 (aa) the date on which such
9 communication occurred;

10 (bb) the participants in the
11 conversation or meeting; and

12 (cc) the subject of such com-
13 munication.

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

20 (3) PUBLICATION OF INFORMATION.—If, as a
21 result of a communication with an official of the De-
22 partment of Homeland Security, a person or entity
23 inquiring about a specific case or about the immi-
24 grant visa program described in section 203(b)(5) of
25 the Immigration and Nationality Act (8 U.S.C.

1 1153(b)(5)) received generally applicable and non-
2 case-specific information about program require-
3 ments or administration that has not been made
4 publicly available by the Department, the Director of
5 U.S. Citizenship and Immigration Services shall
6 publish such information on the U.S. Citizenship
7 and Immigration Services website, not later than 30
8 days after the communication of such information to
9 such person or entity, as an update to the relevant
10 Frequently Asked Questions page or by some other
11 comparable mechanism.

12 (f) PENALTY.—

13 (1) IN GENERAL.—Any person who inten-
14 tionally violates the prohibition on preferential treat-
15 ment under this section or intentionally violates the
16 reporting requirements under subsection (c) shall be
17 disciplined in accordance with paragraph (2).

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

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

5 (h) NO CREATION OF PRIVATE RIGHT OF ACTION.—
 6 Nothing in this section may be construed to create or au-
 7 thorize a private right of action to challenge a decision
 8 of an employee of the Department of Homeland Security.

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

12 **SEC. 4. TREATMENT OF PERIOD FOR PURPOSES OF NATU-**
 13 **RALIZATION.**

14 Section 216A(e) of the Immigration and Nationality
 15 Act (8 U.S.C. 1186b(e)) is amended to read as follows:

16 “(e) TREATMENT OF PERIOD FOR PURPOSES OF
 17 NATURALIZATION.—For purposes of title III, an alien who
 18 is in the United States as a lawful permanent resident
 19 on a conditional basis under this section, upon favorable
 20 determination and removal of the conditional basis of the
 21 alien’s lawful permanent resident status under subsection
 22 (c)(3)(B), shall be considered to have been admitted as
 23 an alien lawfully admitted to the United States for perma-
 24 nent residence.”.

1 **SEC. 5. CONCURRENT FILING OF EB-5 PETITIONS AND AP-**
 2 **PLICATIONS FOR ADJUSTMENT OF STATUS.**

3 Section 245 of the Immigration and Nationality Act
 4 (8 U.S.C. 1255) is amended—

5 (1) in subsection (k)—

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

9 (B) in paragraph (1), by adding “and” at
 10 the end; and

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

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

19 **SEC. 6. PAROLE STATUS FOR PETITIONERS AND DEPEND-**
 20 **ENTS AWAITING AVAILABILITY OF AN IMMI-**
 21 **GRANT VISA.**

22 (a) **AUTHORIZATION.**—Section 212(d)(5) of the Im-
 23 migration and Nationality Act (8 U.S.C. 1182(d)(5)) is
 24 amended—

25 (1) in subparagraph (A), by striking “The At-
 26 torney General may, except as provided in subpara-

1 graph (B) or in section 214(f), in his discretion pa-
 2 role into the United States temporarily under such
 3 conditions as he may prescribe only on a case-by-
 4 case basis” and inserting “Except as provided in
 5 subparagraph (C) and section 214(f), the Secretary
 6 of Homeland Security may temporarily parole into
 7 the United States, under such conditions as the Sec-
 8 retary may prescribe, on a case-by-case basis,”;

9 (2) by redesignating subparagraph (B) as sub-
 10 paragraph (C); and

11 (3) by inserting after subparagraph (A) the fol-
 12 lowing:

13 “(B) The Secretary of Homeland Security, in the
 14 Secretary’s discretion, may temporarily parole into the
 15 United States, under such conditions as the Secretary may
 16 prescribe, any alien who is the beneficiary of a petition
 17 for immigrant status under section 203(b)(5) (including
 18 the spouse or child of such principal alien, if eligible to
 19 receive a visa under section 203(d)) if—

20 “(i) such petition has been pending for at least
 21 3 years; or

22 “(ii)(I) such petition has been approved;

23 “(II) 3 years or more have elapsed since the pe-
 24 tition was filed; and

1 “(III) an immigrant visa is not immediately
2 available to the alien because the total number of
3 visas issued under section 203(b)(5) has reached the
4 maximum number of visas that may be made avail-
5 able to immigrants of the State or area under sec-
6 tion 203(b).”.

7 (b) EMPLOYMENT AUTHORIZATION FOR ALIEN IN-
8 VESTORS.—

9 (1) IN GENERAL.—The Secretary of Homeland
10 Security may—

11 (A) authorize any alien described in section
12 212(d)(5)(B) of the Immigration and Nation-
13 ality Act, as added by subsection (a), to engage
14 in employment in the United States; and

15 (B) provide the alien referred to in sub-
16 paragraph (A) with appropriate endorsement of
17 the authorization under such subparagraph.

18 (2) FEES.—

19 (A) IN GENERAL.—The Secretary may as-
20 sess a fee for providing an employment author-
21 ization endorsement under paragraph (1) in an
22 amount equal to not more than the average cost
23 incurred by the Secretary in adjudicating appli-
24 cations for such endorsement. The Secretary

1 may provide for the payment of such fees by in-
2 stallments.

3 (B) SAVINGS PROVISION.—Nothing in this
4 paragraph may be construed—

5 (i) to require the Secretary to charge
6 fees for adjudication services provided to
7 alien investors; or

8 (ii) to limit the authority of the Sec-
9 retary to set adjudication and naturaliza-
10 tion fees.

○