

1 Title: To reauthorize the EB-5 Regional Center Program in order to promote and reform foreign
2 capital investment and job creation in American communities.

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5 Be it enacted by the Senate and House of Representatives of the United States of America in
6 Congress assembled,

7 **SECTION 1. SHORT TITLE.**

8 This Act may be cited as the “American Job Creation and Investment Promotion Reform Act
9 of 2016”.

10 **SEC. 2. REAUTHORIZATION AND REFORM OF THE**
11 **REGIONAL CENTER PROGRAM.**

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13 and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is repealed.

14 (b) Authorization.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C.
15 1153(b)(5)) is amended by adding at the end the following:

16 “(E) REGIONAL CENTER PROGRAM.—

17 “(i) IN GENERAL.—Visas under this paragraph shall be made available through
18 September 30, 2022, to qualified immigrants (and the eligible spouses and
19 children of such immigrants consistent with section 201(b)(1)(F)) pooling their
20 investments with 1 or more additional qualified immigrants participating in a
21 program implementing this paragraph that involves a regional center in the United
22 States, which has been designated by the Secretary of Homeland Security on the
23 basis of a proposal for the promotion of economic growth, including prospective
24 job creation and increased domestic capital investment.

25 “(ii) PROCESSING.—In processing petitions under section 204(a)(1)(H) for
26 classification under this paragraph, the Secretary of Homeland Security—

27 “(I) may process petitions in a manner and order established by the
28 Secretary; and

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

32 “(iii) ESTABLISHMENT OF A REGIONAL CENTER.—A regional center shall operate
33 within a defined and limited geographic area, which shall be described in the
34 proposal and be consistent with the purpose of concentrating pooled investment
35 within such area. The proposal to establish a regional center shall demonstrate that
36 the pooled investment will have a significant economic impact on such geographic area,
37 and shall include—

38 “(I) reasonable predictions, supported by economically and statistically
39 valid and transparent forecasting tools, concerning the amount of investment

1 that will be pooled, the kinds of commercial enterprises that will receive
2 such investments, details of the jobs that will be created directly or indirectly
3 as a result of such investments, and other positive economic effects such
4 investments will have; and

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

8 “(aa) all applicable laws, regulations, and executive orders of the
9 United States, including immigration laws (as defined in section
10 101(a)(17)) and securities laws; and

11 “(bb) all securities laws of each State in which securities offerings
12 will be conducted, investment advice will be rendered, or the offerors or
13 offerees reside; and

14 “(III) attestations and information confirming that all persons involved
15 with the regional center meet the requirements of subparagraph (H)(i) and (ii) of
16 this paragraph.

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

23 “(v) COMPLIANCE.—

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

29 “(aa) jobs estimated to have been created directly, which may be
30 verified using such methodologies, provided that the Secretary may
31 request additional evidence, when practicable and consistent with
32 applicable privacy laws, to verify that the directly-created jobs satisfy
33 the requirements under subparagraph (A)(ii); and

34 “(bb) consistent with this subparagraph, jobs estimated to have been
35 created indirectly through capital investment, direct employment,
36 revenues generated from increased exports, improved regional
37 productivity, job creation, and increased domestic capital investment
38 resulting from the program.

39 “(II) JOB AND INVESTMENT REQUIREMENTS.—

40 “(aa) RELOCATED JOBS.—In determining compliance with the job
41 creation requirement under subparagraph (A)(ii), the Secretary may
42 include jobs estimated to be created under a methodology that attributes

1 jobs to prospective tenants occupying commercial real estate created or
2 improved by capital investments if the number of such jobs estimated to
3 be created has been determined by an economically and statistically
4 valid methodology and such jobs are not existing jobs that have been
5 relocated.

6 “(bb) PUBLICLY AVAILABLE BONDS.—Alien investor capital may not
7 be utilized, by a new commercial enterprise or otherwise, to purchase
8 municipal bonds or any other bonds, if such bonds are available on the
9 same terms and conditions to the general public, either as part of a
10 primary offering or from a secondary market.

11 “(cc) CONSTRUCTION ACTIVITY JOBS.—The length of full-time
12 construction activity jobs that last shorter than 24 months may be
13 aggregated to satisfy the employment creation requirement under
14 subparagraph (A)(ii) for alien investors participating in the program
15 described in this subparagraph. A construction activity job may be
16 considered a job that is created directly.

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

18 “(I) require a regional center to give at least 45 days advance notice to ~~and~~
19 ~~obtain approval from~~ the Secretary of significant proposed changes to its
20 organizational structure, ownership, or administration, including the sale of
21 such center, or other arrangements which would result in individuals not
22 previously subject to the requirements under subparagraph (H) becoming
23 involved with the regional center, before any such proposed changes may
24 take effect, unless exigent circumstances are present in which case the
25 regional center shall provide notice to the Secretary within 5 business days of
26 such change;

27 “(II) after the Secretary’s determination, if any, that the regional center
28 would remain compliant with this subparagraph and subparagraph (H)
29 following the implementation of the proposed changes referred to in
30 subclause (I), require the regional center to publicly disclose such changes
31 not less than 10 days after their implementation through a publicly accessible
32 website hosted by U.S. Citizenship and Immigration Services for a period of
33 not fewer than 30 days; and

34 “(III) notwithstanding the pendency of a determination described in
35 subclause (II) relating to any amendment of a business plan or petition,
36 adjudicate business plans under subparagraph (F) and petitions under section
37 204(a)(1)(H).

38 “(vii) Record keeping and audits.—

39 “(I) Each regional center shall make and preserve for a period not less than
40 3 years from the end of the federal fiscal year in which any transactions occurred, books, ledgers,
41 records and other documentation from the regional center, new commercial enterprise, or job-
42 creating entity used to support any claims, evidence, or certifications contained in the regional
43 center’s annual statements under subparagraph (g) and associated petitions by aliens seeking

1 classification under this section or removal of conditions under section 216A.

2 “(II) The Secretary shall perform at least 1 audit of each regional center
3 not less than every 3 years, which shall include a review of any documentation required to be
4 maintained by subclause (I) for the preceding 3 years. To the extent multiple regional centers are
5 located at a single site, the Secretary may audit multiple regional centers in a single site visit.

6 “(III) The Secretary shall terminate the designation of a regional center
7 that fails to consent to or deliberately attempts to impede an audit.

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

9 “(i) APPLICATION FOR APPROVAL OF AN INVESTMENT IN A COMMERCIAL
10 ENTERPRISE.—A regional center shall file an application with the Secretary of
11 Homeland Security for each particular investment offering through an associated
12 commercial enterprise before any alien files a petition for classification under this
13 paragraph by reason of investment in that offering, which shall include, but is not
14 limited to—

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

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

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

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

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

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

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

41 “(dd)(AA) any fees, ongoing interest, or other compensation paid or

1 to be paid by the regional center, new commercial enterprise or **any**
2 **issuer of securities intended to be offered to alien investors** to agents,
3 finders, or broker dealers involved in the offering of securities to alien
4 investors in connection with the investment;

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

8 “(CC) the name and contact information of any such person;

9 “(V) a description of the policies and procedures, including those related
10 to internal and external due diligence, reasonably designed to cause the
11 regional center, new commercial enterprise, and any affiliated job-creating
12 entity, their agents, employees, advisors, and attorneys, and any persons in
13 active concert or participation with the regional center, new commercial
14 enterprise, or any affiliated job-creating entity to comply, as applicable, with
15 the securities laws of the United States and the laws of the applicable States
16 in connection with the offer, purchase, or sale of its securities;

17 “(VI) a certification from the regional center and any issuer of securities
18 **intended to be offered to alien investors in connection with the relevant**
19 **capital investment project** that their respective agents and employees, and
20 any parties associated with the regional center and such issuer of securities
21 affiliated with the regional center are in compliance with the securities laws
22 of the United States and the laws of the applicable States in connection with
23 the offer, purchase, or sale of its securities, to the best of the certifier’s
24 knowledge, after a due diligence investigation; and

25 “(VII) documentation demonstrating that the regional center consulted
26 with an existing local economic development agency or municipality
27 regarding the capital investment project, which shall address—

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

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

31 “(ii) EFFECT OF APPROVAL OF A BUSINESS PLAN FOR AN INVESTMENT IN A
32 REGIONAL CENTER’S COMMERCIAL ENTERPRISE.—The approval of an application
33 under this subparagraph, **including an approval prior to the date of enactment of**
34 **this Act**, shall be binding for purposes of the adjudication of subsequent petitions
35 seeking classification under this paragraph by immigrants investing in the same
36 capital investment project through a new commercial enterprise, and of petitions
37 by the same immigrants filed under section 216A, except in the case of fraud,
38 misrepresentation, criminal misuse, a threat to public safety or national security, a
39 material change that affects the program eligibility of the approved economic
40 model, other evidence affecting program eligibility that was not disclosed by the
41 applicant during the adjudication process, or a material mistake of law or fact in
42 the prior adjudication. **A regional center may amend an approved business plan**
43 **for a capital investment project in order to meet requirements of this section. On**

1 or after the date of enactment of this Act, any revision to any offering document
2 or other component of a business plan approved under this subparagraph prior to
3 the date of enactment of this Act, which revision is made for the purpose of
4 complying with the requirements of this Act, shall not be considered a material
5 change to such business plan.

6 “(iii) AMENDMENTS.—The Secretary may establish procedures by which a
7 regional center may seek approval of an amendment to an approved application
8 under this subparagraph in order to reflect changes specified by the Secretary to
9 any information, documents, or other aspects of the investment offering described
10 in such approved application within 30 days of any such changes. Upon approval
11 of a timely filed amendment to an approved application, any changes reflected in
12 such amendment may be incorporated into and considered in determining
13 program eligibility through adjudication of any pending petitions seeking
14 classification under this paragraph by immigrants investing in the offering
15 described in the approved application, and of petitions by the same immigrants
16 filed under section 216A.

17 “(iv) SITE VISITS.—The Secretary shall—

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

19 “(II) perform at least 1 site visit to, as applicable, the corporate office of
20 each new commercial enterprise or job creating entity, or the business
21 location(s) where any jobs that are claimed are being created, which—

22 “(aa) shall include a review for evidence of direct job creation in
23 accordance with subparagraph (E)(v)(I); and

24 “(bb) may occur at any time during the period between the filing of
25 an application for approval of an investment in a commercial enterprise
26 under this subparagraph and the adjudication of the first petition for
27 removal of conditions on lawful permanent resident status under section
28 216A(c) filed by an alien investing in such investment.

29 “(G) REGIONAL CENTER ANNUAL STATEMENTS.—

30 “(i) IN GENERAL.—Each regional center designated under subparagraph (E)
31 shall annually submit a statement to the Director of United States Citizenship and
32 Immigration Services (referred to in this subparagraph as the ‘Director’), in a
33 manner prescribed by the Secretary of Homeland Security, which shall include—

34 “(I) a certification stating that, to the best of the certifier’s knowledge,
35 after a due diligence investigation, the regional center, the new commercial
36 enterprise, and any affiliated job-creating entity is in compliance with
37 clauses (i) and (ii) of subparagraph (H);

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

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

1 “(IV) a certification containing a description, to the best of the certifier’s
2 knowledge, after a due diligence investigation, of any pending material
3 litigation or bankruptcy proceedings, or litigation or bankruptcy proceedings
4 resolved during the preceding fiscal year, involving the regional center, new
5 commercial enterprise, or any affiliated job-creating entity;

6 “(V) an accounting of all foreign investor capital invested in the regional
7 center, new commercial enterprise, or job-creating entity;

8 “(VI) for each new commercial enterprise associated with the regional
9 center—

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

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

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

19 “(dd) detailed evidence of the progress made toward the completion
20 of each capital investment project;

21 “(ee) an accounting of the aggregate direct jobs created or preserved;

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

30 “(AA) a description of all fees collected;

31 “(BB) an accounting of the entities that received such fees; and

32 “(CC) the purpose for which such fees were collected;

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

35 “(hh) a certification by the regional center that such statements are
36 accurate, to the best of the certifier’s knowledge, after a due diligence
37 investigation; and

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

1 “(ii) AMENDMENT OF ANNUAL STATEMENTS.—The Director—
2 “(I) shall require the regional center to amend or supplement an annual
3 statement required under clause (i) if the Director determines that such
4 statement is deficient; and
5 “(II) may require the regional center to amend or supplement such annual
6 statement if the Director determines that such an amendment or supplement
7 is appropriate.
8 “(iii) SANCTIONS.—
9 “(I) EFFECT OF VIOLATION.—The Director shall sanction any regional
10 center entity in accordance with subclause (II) if the regional center fails to
11 submit an annual statement or if the Director determines that the regional
12 center—
13 “(aa) knowingly submitted or caused to be submitted a statement,
14 certification, or any information submitted under this subparagraph that
15 contained an untrue statement of material fact; or
16 “(bb) is conducting itself in a manner inconsistent with its
17 designation, including any willful, undisclosed, and material deviation
18 by new commercial enterprises from any filed business plan for such
19 commercial enterprises.
20 “(II) AUTHORIZED SANCTIONS.—The Director shall establish a graduated
21 set of sanctions based on the severity of the violations referred to in
22 subclause (I), including—
23 “(aa) fines equal to not more than 10 percent of the total capital
24 invested by alien investors in the regional center’s new commercial
25 enterprises or job-creating entities, the payment of which shall not in
26 any circumstance utilize any of such alien investor’s capital
27 investments, and which shall be deposited into the EB-5 Integrity Fund
28 established under subparagraph (J);
29 “(bb) temporary suspension from participation in the program
30 described in subparagraph (E), which may be lifted by the Director if
31 the individual or entity cures the alleged violation after being provided
32 such an opportunity by the Director;
33 “(cc) permanent bar from participation in the program described in
34 subparagraph (E) for 1 or more individuals or business entities
35 associated with the regional center or new commercial enterprise or job-
36 creating entity; and
37 “(dd) termination of regional center designation.
38 “(H) BONA FIDES OF PERSONS INVOLVED WITH REGIONAL CENTER PROGRAM.—
39 “(i) IN GENERAL.—No person shall be permitted to be involved with any
40 regional center, new commercial enterprise, or job-creating entity if—

- 1 “(I) the person has been found to have committed—
2 “(aa) a criminal or civil violation involving fraud or deceit within the
3 previous 10 years;
4 “(bb) a civil violation involving fraud or deceit that resulted in a
5 liability in excess of \$1,000,000; or
6 “(cc) a crime for which the person was convicted and was sentenced
7 to a term of imprisonment of more than 1 year;
8 “(II) the person is subject to a final order, for the duration of any penalty
9 imposed by such order, of a State securities commission (or an agency or
10 officer of a State who performs similar functions), a State authority that
11 supervises or examines banks, savings associations, or credit unions, a State
12 insurance commission (or an agency of or officer of a State who performs
13 similar functions), an appropriate Federal banking agency, the Commodity
14 Futures Trading Commission, the Securities and Exchange Commission, a
15 financial self-regulatory organization recognized by the Securities and
16 Exchange Commission, or the National Credit Union Administration, which
17 is based on a violation of any law or regulation that—
18 “(aa) prohibits fraudulent, manipulative, or deceptive conduct; or
19 “(bb) bars the person from—
20 “(AA) association with an entity regulated by such commission,
21 authority, agency, or officer;
22 “(BB) appearing before such commission, authority, agency, or
23 officer;
24 “(CC) engaging in the business of securities, insurance, or
25 banking; or
26 “(DD) engaging in savings association or credit union activities;
27 “(III) the Secretary determines that the person is engaged in, has ever been
28 engaged in, or seeks to engage in—
29 “(aa) any illicit trafficking in any controlled substance or in any listed
30 chemical (as defined in section 102 of the Controlled Substances Act
31 (21 U.S.C. 802));
32 “(bb) any activity relating to espionage, sabotage, or theft of
33 intellectual property;
34 “(cc) any activity related to money laundering (as described in
35 section 1956 or 1957 of title 18, United States Code);
36 “(dd) any terrorist activity (as described in section 212(a)(3)(B));
37 “(ee) any activity constituting or facilitating human trafficking or a
38 human rights offense;
39 “(ff) any activity described in section 212(a)(3)(E); or

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

3 “(IV) the person—

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

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

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

10 “(I) LAWFUL STATUS REQUIRED.—A person may not be involved with a
11 regional center unless the person is a national of the United States or an
12 individual who has been lawfully admitted for permanent residence (as such
13 terms are defined in paragraphs (20) and (22) of section 101(a)).
14

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

24 “(iii) INFORMATION REQUIRED.—The Secretary shall require such attestations
25 and information, including the submission of fingerprints or other biometrics to
26 the Federal Bureau of Investigation, and shall perform such criminal record
27 checks and other background and database checks with respect to a regional
28 center, new commercial enterprise, and any affiliated job-creating entity, and
29 persons involved with such entities (as described in clause (v)), to determine
30 whether such entities are in compliance with clauses (i) and (ii). The Secretary
31 may require the information and attestations described in this clause from the
32 entities described in this clause, and any person involved with such entities, at any
33 time on or after the date of the enactment of the American Job Creation and
34 Investment Promotion Reform Act of 2016.

35 “(iv) TERMINATION.—

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

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

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

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

5 “(II) INFORMATION.—The Secretary, after the performance of the criminal
6 record and other background checks described in clause (iii), shall notify a
7 regional center, new commercial enterprise, or job-creating entity whether
8 any person involved with such entities is not in compliance with clause (i) or
9 (ii). If the regional center, new commercial enterprise, or job-creating entity
10 receiving such notification fails to discontinue the prohibited person’s
11 involvement with the regional center, new commercial enterprise, or job-
12 creating entity, as applicable, such entity within 30 days after receiving a
13 notification under this subclause shall be deemed to have knowledge under
14 subclause (I)(aa) that the involvement of such person with the entity is in
15 violation of clause (i) or (ii).

16 “(v) PERSONS INVOLVED WITH A REGIONAL CENTER, NEW COMMERCIAL
17 ENTERPRISE, OR JOB-CREATING ENTITY.—For the purposes of this paragraph, a
18 person is involved with a regional center, a new commercial enterprise, any
19 affiliated job-creating entity, or other job-creating entity, as applicable, if the
20 person is, directly or indirectly, an owner or in a position of substantive authority
21 to make operational or managerial decisions over pooling, securitization,
22 investment, release, acceptance, or control or use of any funding that was
23 procured under the program described in subparagraph (E). An individual may be
24 in a position of substantive authority if the person serves as a principal,
25 representative, administrator, owner, officer, board member, manager, executive,
26 general partner, fiduciary, or in a similar position at the regional center, new
27 commercial enterprise, any affiliated job-creating entity, or other job-creating
28 entity, respectively.

29 “(I) COMPLIANCE WITH SECURITIES LAWS.—

30 “(i) JURISDICTION.—

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

35 “(II) COMPLIANCE WITH REGULATION S.—For purposes of section 5 of the
36 Securities Act of 1933 (15 U.S.C. 77e), a regional center or any party
37 associated with a regional center is not precluded from offering or selling a
38 security pursuant to Regulation S (17 C.F.R. 230.901 et seq.) to the extent
39 that such offering or selling otherwise complies with such regulation.
40 Subparagraph I is not intended to modify any existing rules or regulations of
41 the Securities and Exchange Commission related to the application of section
42 15(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(a)) to
43 foreign brokers or dealers.

1 “(ii) REGIONAL CENTER CERTIFICATIONS REQUIRED.—
2 “(I) INITIAL CERTIFICATION.—The Secretary of Homeland Security may
3 not approve an application for regional center designation or regional center
4 amendment unless the regional center certifies that, to the best of the
5 certifier’s knowledge, after a due diligence investigation, the regional center
6 is in compliance with and has policies and procedures, including those
7 related to internal and external due diligence, reasonably designed to
8 confirm, as applicable, that all parties associated with the regional center are
9 and will remain in compliance with the securities laws of the United States
10 and of any State in which—
11 “(aa) the offer, purchase, or sale of securities was conducted;
12 “(bb) the issuer of securities was located; or
13 “(cc) the investment advice was provided by the regional center or
14 parties associated with the regional center.
15 “(II) REISSUE.—A regional center shall annually reissue a certification
16 described in subclause (I) in accordance with subparagraph (G) to certify
17 compliance with clause (iii) by stating that—
18 “(aa) the certifier is in a position to have knowledge of the offers,
19 purchases, and sales of securities or the provision of investment advice
20 by parties associated with the regional center;
21 “(bb) to the best of the certifier’s knowledge, after a due diligence
22 investigation, all such offers, purchases, and sales of securities or the
23 provision of investment advice complied with the securities laws of the
24 United States and the securities laws of any State in which the offer,
25 purchase, or sale of securities was conducted, or the issuer of securities
26 was located, or the investment advice was provided; and
27 “(cc) records, data, and information related to such offers, purchases,
28 and sales have been maintained.
29 “(III) EFFECT OF NONCOMPLIANCE.—If a regional center, through its due
30 diligence, discovered during the previous fiscal year that the regional center
31 or any party associated with the regional center was not in compliance with
32 the securities laws of the United States or the securities laws of any State in
33 which the securities activities were conducted by any party associated with
34 the regional center, the certifier shall—
35 “(aa) describe the activities that led to noncompliance;
36 “(bb) describe the actions taken to remedy the noncompliance; and
37 “(cc) certify that the regional center and all parties associated with
38 the regional center are currently in compliance, to the best of the
39 certifier’s knowledge, after a due diligence investigation.
40 “(iii) OVERSIGHT REQUIRED.—Each regional center shall

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

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

8 “(III) make the records, data, and information described in subclause (II)
9 available to the Secretary or Securities and Exchange Commission upon
10 request.

11 “(iv) SUSPENSION OR TERMINATION.—In addition to any other authority
12 provided to the Secretary under this paragraph, the Secretary, in the Secretary’s
13 discretion, may suspend or terminate the designation of any regional center or
14 impose other sanctions against the regional center if the regional center, or any
15 parties associated with the regional center that the regional center knew or
16 reasonably should have known—

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

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

22 “(aa) bars such person from association with an entity regulated by
23 the Securities and Exchange Commission or a State securities regulator;
24 or

25 “(bb) constitutes a final order based on a finding of an intentional
26 violation or a violation related to fraud or deceit in connection with the
27 offer, purchase, or sale of, or investment advice relating to, a security;
28 or

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

33
34 “(v) DEFINED TERM.—In this subparagraph, the term ‘parties associated with a
35 regional center’ means—

36 “(I) the regional center;

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

39 “(III) the regional center’s and new commercial enterprise’s owners,
40 officers, directors, managers, operators, partners, agents, employees,
41 promoters and attorneys; and

1 ~~“(IV) any person in active concert or participation with the regional center~~
2 ~~or directly or indirectly controlling, controlled by, or under common control~~
3 ~~with the regional center.~~

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

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

11
12 “(J) EB-5 INTEGRITY FUND.—

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

18 “(ii) FEES.—

19 “(I) ANNUAL FEE.—On April 1, 2017, and on January 1 of each year
20 thereafter, the Secretary of Homeland Security shall collect a fee of \$20,000
21 for the Fund from each regional center designated under subparagraph (E).
22 The fee shall be \$10,000 if a regional center has 20 or fewer total investors in
23 the preceding fiscal year in its new commercial enterprises.

24 “(II) PETITION FEE.—Beginning on April 1, 2017, the Secretary shall
25 collect a fee of \$1,000 for the Fund with each petition filed under section
26 204(a)(1)(H) for classification under subparagraph (E).

27 “(III) INCREASES.—The Secretary may prescribe such regulations, as may
28 be necessary, to increase the dollar amounts under this clause to ensure that
29 the Fund is sufficient to carry out the purposes set forth in clause (iii).

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

31 “(I) use not less than 1/3 of the amounts deposited into the Fund for
32 investigations based outside of the United States, including—

33 “(aa) monitoring and investigating program-related events and
34 promotional activities; and

35 “(bb) ensuring the compliance of alien investors with subparagraph
36 (L);

37 “(II) use amounts deposited into the Fund—

38 “(aa) to detect and investigate fraud or other crimes; and

39 “(bb) to determine whether regional centers, new commercial
40 enterprises, any affiliated job-creating entities, and alien investors (and

1 their alien spouses and alien children) comply with the immigration
2 laws;

3 “(cc) to conduct audits and site visits;

4 “(dd) to conduct interviews of the owners, officers, directors,
5 managers, partners, agents, employees, promoters, and attorneys of
6 regional centers, new commercial enterprises, and job-creating entities;
7 and

8 “(ee) as the Secretary determines to be necessary, including to
9 monitor compliance with the requirements under section 7 of the
10 American Job Creation and Investment Promotion Reform Act of 2016.

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

12 “(I) impose a reasonable penalty, which shall be deposited into the Fund,
13 if a regional center does not pay the fee required under clause (ii) within 30
14 days of the date on which such fee is due under clause (ii); and

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

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

22 “(K) DIRECT AND THIRD-PARTY PROMOTERS.—

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

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

31 “(aa) may be limited to identifying and contact information of such
32 promoter and confirmation of the existence of the written agreement
33 required by clause (iii);

34 “(bb) shall not include any requirement that U.S. Citizenship and
35 Immigration Services approve the registration of such promoter; and

36 “(cc) **may permit** the list of such registered promoters to be made
37 publicly available;

38 “(II) certification by each promoter that such promoter is not ineligible
39 under subparagraph (H)(i);

40 “(III) guidelines for representing the visa process to foreign investors; and

1 “(IV) guidelines describing fee arrangements permissible under securities
2 and immigration laws.

3 “(ii) EFFECT OF VIOLATION.—If the Secretary determines that a direct or third-
4 party promoter has violated clause (i), the Secretary shall suspend or permanently
5 bar such individual from participation in the program described in subparagraph
6 (E).

7 “(iii) COMPLIANCE.—Each regional center shall maintain a written agreement
8 between the regional center, the new commercial enterprise, any affiliated job-
9 creating entity, or any issuer of securities **intended to be offered to alien investors**
10 **in connection with a particular capital investment project**, and each direct or third-
11 party promoter operating on behalf of such entities or issuer that outlines the rules
12 and standards prescribed under clause (i).

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

20 “(L) SOURCE OF FUNDS.—

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

25 “(ii) REQUIRED INFORMATION.—The Secretary of Homeland Security shall
26 require that an alien investor’s petition under this paragraph contain, as
27 applicable—

28 “(I) business and tax records, or similar records, including, but not limited
29 to—

30 “(aa) foreign business registration records, if applicable;

31 “(bb) to the extent such tax returns have been prepared, corporate or
32 partnership tax returns (or tax returns of any other entity in any form
33 filed in any country or subdivision of such country), and personal tax
34 returns including income, franchise, property (whether real, personal, or
35 intangible), or any other tax returns of any kind, filed during the past 7
36 years, **or another period to be determined by the Secretary to ensure that**
37 **the investment is obtained from a lawful source of funds**, with any
38 taxing jurisdiction in or outside the United States by or on behalf of the
39 alien investor, if applicable; and

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

42 “(II) evidence related to monetary judgments against the alien investor,

1 including certified copies of any judgments, and evidence of all pending
2 governmental civil or criminal actions, governmental administrative
3 proceedings, and any private civil actions (pending or otherwise) involving
4 possible monetary judgments against the alien investor from any court in or
5 outside the United States; and

6 “(III) the identity of all persons or other entities who transfer into the
7 United States, on behalf of the investor any funds that are used to support the
8 capital requirement under subparagraph (A).

Commented [A1]: Amended in response to industry concerns to remove same requirement for administrative fees.

9 “(iii) GIFT RESTRICTIONS.—Gifted funds may be counted toward the minimum
10 capital investment requirement under subparagraph (C) only if such funds were
11 gifted to the alien investor by the alien investor’s spouse, parent, son, or daughter
12 (but not children (as defined in section 101(b)(1))), sibling, or grandparent, **or in**
13 **the Secretary’s discretion, by another party with whom the alien investor has**
14 **demonstrated a personal relationship**, and such funds were gifted in good faith
15 and not to circumvent any limitations imposed on permissible sources of capital
16 under this subparagraph. If a significant portion of the capital invested under
17 subparagraph (A) was gifted to the alien investor, the Secretary shall require the
18 alien investor’s petition under this paragraph to include records described in
19 subclauses (I) and (II) of clause (ii) from the donor.

20 †“(iv) LOAN RESTRICTIONS.—Capital derived from indebtedness may be counted
21 toward the minimum capital investment requirement under subparagraph (C) only
22 if such capital is—

23 “(I) secured by assets owned by the alien investor; and

24 “(II) issued by a banking or lending institution that is properly chartered or
25 licensed under the laws of any State, territory, country, or applicable
26 jurisdiction, and that is not sanctioned or restricted, which the Secretary shall
27 determine after consulting with relevant commercial or government
28 databases or entities, such as those of the Department of Treasury’s Office of
29 Foreign Assets Control, Office of Terrorist Financing and Financial Crimes,
30 and Financial Crimes Enforcement Network.

Commented [A2]: Remains under negotiation

31
32 “(M) TREATMENT OF GOOD FAITH INVESTORS FOLLOWING PROGRAM
33 NONCOMPLIANCE.—

34 “(i) TERMINATION OR DEBARMENT OF EB-5 ENTITY.—Except as provided in
35 clause (v), upon the termination or debarment, as applicable, from the program
36 under this paragraph of a regional center, new commercial enterprise, or job-
37 creating entity, an otherwise qualified petition under section 204(a)(1)(H) or the
38 conditional permanent residence of an alien who has been admitted to the United
39 States pursuant to section 216A(a)(1) based on an investment in a terminated
40 regional center, new commercial enterprise, or job-creating entity shall remain
41 valid or continue to be authorized, as applicable, consistent with this
42 subparagraph.

43 “(ii) NEW REGIONAL CENTER OR INVESTMENT.—The petition under section

1 204(a)(1)(H) of an alien described in clause (i) and the conditional permanent
2 resident status of an alien described in clause (i) shall be terminated 180 days after
3 the termination from the program under this paragraph of a regional center, a new
4 commercial enterprise, or a job creating entity unless—

5 “(I) in the case of the termination of a regional center—

6 “(aa) the new commercial enterprise associates with an approved
7 regional center, **regardless of the approved geographical boundaries of**
8 **such regional center’s designation;**

9 “(bb) such alien makes a qualifying investment in another
10 commercial enterprise associated with an approved regional center; or

11 “(cc) such alien makes a qualifying investment in another
12 commercial enterprise under this paragraph not associated with a
13 regional center; or

14 “(II) in the case of the debarment of a new commercial enterprise or job-
15 creating entity, such alien invests in another commercial enterprise
16 associated with an approved regional center.

17 “(iii) REMOVAL OF CONDITIONS.—Aliens described in subclause (I)(bb), (I)(cc),
18 or (II) of clause (ii) shall be eligible to have their conditions removed pursuant to
19 section 216A beginning on the date that is 2 years after the date of the subsequent
20 investment.

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

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

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

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

36 “(II) the alien investor may—

37 “(aa) petition to amend the alien’s underlying petition for
38 classification under section 203(b)(5)(E) or the petition for removal of
39 conditions described in section 216A(c) without such facts underlying the
40 amendment being deemed a material change;

41 “(bb) retain the immigrant visa priority date related to the original

1 petition; and

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

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

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

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

19

20 “(N) THREATS TO THE NATIONAL INTEREST.—

21 “(i) DENIAL OR REVOCATION.—The Secretary of Homeland Security shall deny
22 or revoke the approval of a petition, application, or benefit described in this
23 paragraph, including the documents described in clause (ii), if the Secretary
24 determines that the approval of such petition, application, or benefit is contrary to
25 the national interest of the United States for reasons relating to threats to public
26 safety or national security.

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

28 “(I) a certification, designation, or amendment to the designation of a
29 regional center;

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

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

33 “(IV) an application for approval of a business plan in a commercial
34 enterprise under subparagraph (F).

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

1 of the evidence, that such person was a knowing participant in the conduct that
2 led to the termination.

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

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

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

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

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

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

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

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

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

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

42 “(P) JUDICIAL REVIEW.—Subject to section 242(a)(2), and notwithstanding any other

1 provision of law (statutory or nonstatutory), including section 2241 of title 28, United
2 States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such
3 title, no court shall have jurisdiction to review a determination under this paragraph
4 until the regional center, its associated entities, or the alien investor has exhausted all
5 available administrative appeals.”.

6 ~~“(Q) FUND ADMINISTRATION.—~~

7 “(i) A new commercial enterprise shall deposit and maintain the capital
8 investment of each alien investor in a separate account, including funds held in escrow.

9 “(I) The term separate account means an account—

10 “(aa) maintained in the United States by a new commercial
11 enterprise at a Federally regulated bank or at another financial institution in the United
12 States that is insured, as defined in section 20 of title 18, United States Code, except in
13 the case of subparagraph (6) the separate account shall be maintained by the job creating
14 entity;

15 “(bb) that contains only the pooled investment funds of alien
16 investors in a new commercial enterprise with respect to a single capital investment
17 project.

18 “(II) The funds in a separate account may be transferred only to another
19 separate account, to a job creating entity or otherwise deployed into the capital
20 investment project for which the funds were intended, or to the alien investor who
21 contributed the funds as a refund of that investor’s capital investment if otherwise
22 permitted under this paragraph.

23 “(ii) In the case of any transfer of funds from a separate account maintained by a
24 new commercial enterprise to an affiliated job creating entity, the affiliated job creating
25 entity shall maintain the funds in a separate account until the funds are deployed into the
26 capital investment project for which they were intended. Within 30 days of the
27 deployment of the funds into the capital investment project, the job creating enterprise
28 shall provide written notice to the administrator that a construction consultant or other
29 individual of the type who is authorized by the Secretary has verified that the funds have
30 been deployed into the project.

31 “(iii) A new commercial enterprise shall retain a fund administrator. The
32 administrator shall perform the following functions—

33 “(I) Monitor and track any transfer of funds from the separate account;

34 “(II) Serve as a co-signatory on all separate accounts;

35 “(III) Prior to any transfer of funds from a separate account—

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

39 “(bb) the administrator’s approval, as evidenced by a written or
40 electronic sign off, shall be required.

Commented [A3]: Modified from Account Transparency section in HR 5992; still refining language.

1 “(iv) The fund administrator shall periodically provide each alien investor with
2 information about the activity of the account in which the investor’s capital investment is
3 held, including the name and location of the bank or financial institution at which the
4 account is maintained, account history, and any additional information as required by the
5 Secretary.

6 “(v) A fund administrator shall be—

7 “(I) Independent of, and not directly related to, the new commercial
8 enterprise, the regional center associated with the new commercial enterprise, the job
9 creating entity or any of the principals or managers of such entities; and

10 “(II) Licensed, active and in good standing as a certified public
11 accountant, attorney, broker dealer or registered investment adviser, or an individual or
12 company that otherwise meets requirements as set forth by the Secretary.

13 “(vi) The Secretary, after consultation with the Securities and Exchange
14 Commission, may waive the requirements provided in [clauses] 3 through 5 for any new
15 commercial enterprise or affiliated job creating entity that is controlled by or under
16 common control of an investment adviser that is registered with the Securities and
17 Exchange Commission or a broker dealer that is so registered where the Secretary, in
18 Secretary’s discretion, determines that such an arrangement provides comparable [or
19 satisfactory] protections and transparency for alien investors as contained in such clauses.

20 (c) Effective Dates.—

21 (1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by
22 this section shall be effective at any time after the date of the enactment of this Act, as
23 determined by the Secretary, and shall be effective not later than 90 days after such date of
24 enactment.

25 (2) EXCEPTIONS.—Clauses (iv) and (v) of subparagraph (E) and subparagraph (L) of
26 section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) shall not
27 apply to a petition that—

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

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

33 (d) GAO Report.—Not later than December 31, 2018, the Comptroller General of the United
34 States shall submit a report to the Committee on the Judiciary of the Senate and the Committee
35 on the Judiciary of the House of Representatives that describes—

36 (1) the economic benefits of the regional center program established under section
37 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), including the steps
38 taken by United States Citizenship and Immigration Services to verify job creation;

39 (2) the extent to which United States Citizenship and Immigration Services ensures
40 compliance by regional center participants with their obligations under the immigrant
41 investor program;

1 (3) the extent to which United States Citizenship and Immigration Services has
2 maintained records of regional centers and associated commercial enterprises, including
3 annual statements and certifications;

4 (4) the steps taken by United States Citizenship and Immigration Services to verify the
5 source of funds, as required under section 203(b)(5)(L) of the Immigration and Nationality
6 Act, as added by subsection (b);

7 (5) the extent to which United States Citizenship and Immigration Services collaborates
8 with other Federal and law enforcement agencies, particularly to detect illegal activity and
9 threats to national security related to the regional center program;

10 (6) the extent to which United States Citizenship and Immigration Services has prevented
11 fraud and abuse in regional center activities, including the designation of targeted
12 employment areas in areas that otherwise have high employment;

13 (7) the extent to which United States Citizenship and Immigration Services has used its
14 authority to sanction, suspend, bar, or terminate regional centers or individuals affiliated
15 with regional centers;

16 (8) the steps taken to oversee direct and third-party promoters under section 203(b)(5)(K)
17 of the Immigration and Nationality Act, as added by subsection (b);

18 (9) the extent to which employees of the Department of Homeland Security have
19 complied with the ethical standards and transparency requirements under section 7; and

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

22 (e) Inspector General Report.—Not later than December 31, 2019, the Inspector General of the
23 Intelligence Community, in coordination with the Inspector General of the Department of
24 Homeland Security and after consultation with relevant Federal agencies, including United States
25 Immigration and Customs Enforcement, shall submit a report to the Committee on the Judiciary
26 of the Senate and the Committee on the Judiciary of the House of Representatives regarding the
27 immigrant visa program set forth in section 203(b)(5) of the Immigration and Nationality Act (8
28 U.S.C. 1153(b)(5)) that describes—

29 (1) the vulnerabilities within the program that may undermine the national security of the
30 United States;

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

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

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

34 (5) the actual or potential use of the program to facilitate terrorist activity, including
35 funding terrorist activity or laundering terrorist funds.

36 (f) Review of Job Creation Methodologies.—Not later than 1 year after the date of the
37 enactment of this Act, the Secretary of Homeland Security, in consultation with the Bureau of
38 Economic Analysis of the Department of Commerce, or another component within the
39 Department of Commerce, as determined by the Secretary of Commerce, shall issue regulations
40 to determine economically and statistically valid general economic methodologies that comply

1 with section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C.
2 1153(b)(5)(A)(ii)).

3 (g) Report by the U.S. Securities and Exchange Commission. --- Not later than 180 days after
4 the date of enactment of this section, the Securities and Exchange Commission shall submit a
5 report to the House and Senate Committees on the Judiciary in which the Securities and
6 Exchange Commission that details the applicability of securities laws and registration
7 requirements for individuals and entities involved in the EB-5 Immigrant Investor Program.

8 SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS 9 FOR ALIEN INVESTORS, SPOUSES, AND CHILDREN.

10 (a) In General.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is
11 amended—

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

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

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

16 “(1) CONDITIONAL BASIS FOR STATUS.—

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

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

25 (4) in subsection (b)—

26 (A) in the heading, by striking “Entrepreneurship” and inserting “Investment”; and

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

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

29 (5) in subsection (c)—

30 (A) in the heading, by striking “of Timely Petition and Interview”;

31 (B) in paragraph (1)—

32 (i) in the matter preceding subparagraph (A), by striking “In order” and
33 inserting “Except as provided in paragraph (3)(D), in order”;

34 (ii) in subparagraph (A)—

35 (I) by striking “must” and inserting “shall”; and

36 (II) by striking “, and” and inserting a semicolon;

1 (iii) in subparagraph (B)—

2 (I) by striking “must” and inserting “shall”;

3 (II) by striking “Service” and inserting “Department of Homeland
4 Security”; and

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

6 (iv) by adding at the end the following:

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

9 (C) in paragraph (3)—

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

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

13 “(B) REMOVAL OR EXTENSION OF CONDITIONAL BASIS.—

14 “(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary determines
15 that the facts and information contained in a petition submitted under paragraph
16 (1)(A) are true, including demonstrating that the alien complied with subsection
17 (d)(1)(B)(i), the Secretary shall—

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

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

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

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

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

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

32 (6) in subsection (d)—

33 (A) in paragraph (1)—

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

35 “(A) invested the requisite capital pursuant to section 203(b)(5)(A)(i);”;

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

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

1 “(B)(i) created the employment required under section 203(b)(5)(A)(ii); or
2 “(ii) is actively in the process of creating the employment required under section
3 203(b)(5)(A)(ii) and will create such employment before the third anniversary of the
4 alien’s lawful admission for permanent residence provided that such alien’s capital will
5 remain invested during such time; and”;

6 (B) in paragraph (2), by amending subparagraph (A) to read as follows:
7 “(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—
8 “(i) IN GENERAL.—Except as provided in clause (ii) and subparagraph (B), a
9 petition under subsection (c)(1)(A) shall be filed during the 90-day period before
10 the second anniversary of the alien investor’s lawful admission for permanent
11 residence.
12 “(ii) EXCEPTION.—Aliens described in subclauses (I)(bb), (I)(cc), and (II) of
13 section 203(b)(5)(M)(ii) shall file a petition under subsection (c)(1)(A) during the
14 90-day period before the second anniversary of the subsequent investment.”; and
15 (C) in paragraph (3)—
16 (i) by striking “The interview” and inserting the following:
17 “(A) IN GENERAL.—The interview”;
18 (ii) by striking “Service” and inserting “Department of Homeland Security”;
19 and
20 (iii) by striking the last sentence and inserting the following:
21 “(B) WAIVER.—The Secretary of Homeland Security, in the Secretary’s discretion,
22 may waive the deadline for such an interview or the requirement for such an interview
23 according to criteria developed by United States Citizenship and Immigration Services
24 in consultation with its Fraud Detection and National Security Directorate, and United
25 States Immigration and Customs Enforcement, provided that such criteria shall not
26 include reduction of case processing times or the allocation of adjudicatory resources.
27 A waiver may not be granted under this subparagraph if the alien to be interviewed—
28 “(i) invested in a regional center, new commercial enterprise, or job-creating
29 entity that was sanctioned under section 203(b)(5); or
30 “(ii) is in a class of aliens determined by the Secretary to be threats to public
31 safety or national security.”;

32 (7) by redesignating subsection (f) as subsection (g);
33 (8) by inserting after subsection (e) the following:
34 “(f) Petition From Qualified Alien Investor.—An alien investor who invested the requisite
35 capital and created the employment required under section 203(b)(5)(A)(ii) at least 24 months
36 before admission, and is otherwise conforming to the requirements under section 203(b)(5), may
37 file a petition, before admission for permanent residence, to be considered, at the time of
38 obtaining status of an alien lawfully admitted for permanent residence, to obtain such status
39 without conditions.”; and

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

3 (b) Effective Dates.—

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

6 (2) EXCEPTIONS.—

7 (A) SITE VISITS.—The amendment made by subsection (a)(5)(B)(iv) shall take effect
8 not later than 2 years after the date of the enactment of this Act.

9 (B) PETITION BENEFICIARIES.—The amendments made by subsection (a) shall not
10 apply to the beneficiary of a petition that is filed under section 216A of the
11 Immigration and Nationality Act (8 U.S.C. 1186b) if the underlying petition filed
12 under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) was approved before the
13 date of the enactment of this Act.

14 SEC. 4. EB–5 VISA REFORMS.

15 (a) Targeted Employment Areas.—

16 (1) Visa Set-Asides.—Section 203(b)(5)(B) of the Immigration and Nationality Act (8
17 U.S.C. 1153(b)(5)(B)) is amended to read as follows:

18 “(B) VISA SET-ASIDES AND AREA DESIGNATIONS.—

19 “(i) RESERVED VISAS.—

20 “(I) IN GENERAL.—Of the visas made available under this paragraph—

21 “(aa) in fiscal year 2018 ---

22 “(AA) 7.5 per cent shall be reserved for immigrants who invest
23 in rural areas; and

24 “(BB) 7.5 per cent shall be reserved for immigrants who invest
25 in priority urban investment areas;

26 “(bb) beginning in fiscal year 2019 and in each succeeding fiscal
27 year---

28 “(AA) 15 per cent shall be reserved for immigrants who invest
29 in rural areas; and

30 “(BB) 15 per cent shall be reserved for immigrants who invest in
31 priority urban investments areas.

32 “(II) UNUSED VISAS.—

33 “(aa) At the end of each fiscal year, any unused visa that had been
34 reserved for immigrants investing in each of the categories described in
35 subclauses (I)(aa) and (bb) shall remain available within the same such
36 category for the immediately succeeding fiscal year.

37 “(bb) In the fiscal year succeeding the immediately succeeding fiscal

Commented [A4]: Visa Set Asides begin in FY18 and phased in.

Commented [A5]: No longer permanent set asides

1 year described in item (aa), any of the unused visas described in item (aa)
2 that remain unused within each of the categories described in item (aa)
3 shall be made generally available to immigrants who have filed petitions
4 under this paragraph ~~generally but not for investments in rural or priority~~
5 ~~urban areas.~~

6 “(III) No more than 50 per cent of the annual allocation described in
7 subclause (I) may be allocated to alien investors who are redesignating their
8 petition pursuant to section 4(j)(3) of the American Job Creation and
9 Investment Promotion of 2016.

10 “(ii) ELIGIBILITY.—The Secretary of Homeland Security shall determine
11 eligibility for designation as a targeted employment area and shall not be bound
12 by the determination of any other governmental or nongovernmental entity.

13 “(iii) DESIGNATION OF INFRASTRUCTURE PROJECT, MANUFACTURING PROJECT,
14 AND TARGETED EMPLOYMENT AREA.—

15 “(I) INFRASTRUCTURE PROJECT OR MANUFACTURING PROJECT.—The
16 designation of an infrastructure project or manufacturing project shall be
17 made at the time of the investment.

18 “(II) TARGETED EMPLOYMENT AREA.—The designation of a targeted
19 employment area—

20 “(aa) may be made at the time of the investment or at the time an
21 application is filed under subparagraph (F); and

22 “(bb) shall be valid for a 2-year period.

23 “(III) DESIGNATIONS AND RENEWALS.—The Secretary shall establish a
24 process by which regional centers may request a designation under subclause
25 (I) or (II). A designation under either such subclause shall be issued not later
26 than 60 days after a request by a regional center and a designation under
27 subclause (II) may be renewed for additional 2-year periods if the area
28 continues to meet the definition of a targeted employment area. An investor
29 who has made the required amount of investment in such an area during its
30 period of designation shall not be required to increase the amount of
31 investment based upon expiration of the designation. The Secretary shall
32 establish a fee for the adjudication of a designation request at a level that is
33 sufficient only to ensure the full recovery of the costs of providing such
34 adjudication within the required timeframe. Nothing in this clause shall be
35 deemed to prohibit an investor from filing a petition before such designation
36 is made.”.

37 (2) Visa Queue for Set-Aside Categories.—Subparagraph (A) of section 203(b)(5) of
38 such Act (8 U.S.C. 1153(b)(5)) is amended to read as follows:
39

40 “(A) In general. - Visas shall be made available, in a number not to exceed 7.1 percent of
41 such worldwide level, to qualified immigrants seeking to enter the United States for the
42 purpose of engaging in a new commercial enterprise (including a limited partnership),

1 except that, pursuant to subparagraph (B)(i)(I), a certain percentage of such visa numbers
2 shall be allocated to each of the categories of aliens described in such subparagraph--“

3 (b) Adjustment of Minimum Investment Amount.—Section 203(b)(5)(C) of such Act (8
4 U.S.C. 1153(b)(5)(C)) is amended—

5 (1) by redesignating clause (iii) as clause (iv);

6 (2) by striking clauses (i) and (ii) and inserting the following:

7 “(i) ~~MINIMUM INVESTMENT AMOUNTS~~.—Except as otherwise provided in this
8 subparagraph, the amount of capital required under subparagraph (A) shall be—

9 “(I) on date of enactment of this Act--

10 “(aa) \$700,000 (except as provided in subclause (bb));

11 “(bb) \$650,000 in the case of an investment in an infrastructure project,
12 a manufacturing project, or a project that is physically located in a targeted
13 employment area;

14 “(II) on October 1, 2017--

15 “(aa) \$850,000 (except as provided in subclause (bb));

16 “(bb) \$750,000 in the case of an investment in an infrastructure project,
17 a manufacturing project, or a project that is physically located in a targeted
18 employment area;

19 “(III) on October 1, 2018--

20 “(aa) \$1,000,000 (except as provided in subclause (bb));

21 “(bb) \$800,000 in the case of an investment in an infrastructure project,
22 a manufacturing project, or a project that is physically located in a targeted
23 employment area.

24 “(ii) ~~AUTHORITY TO INCREASE INVESTMENT AMOUNTS~~.—After September 30,
25 2021, the Secretary may periodically prescribe regulations increasing the dollar
26 amount specified under clause (i), provided that any such increase simultaneously
27 affects each category of investment under clause (i) by the same percentage. **The**
28 **Secretary shall publish a notice of such increase in the Federal Register with**
29 **opportunity for public comment. Any such increase shall take effect no earlier**
30 **than the date that is 90 days after publication of the notice in the Federal Register.**

31 “(iii) ~~AUTOMATIC ADJUSTMENT OF MINIMUM INVESTMENT AMOUNTS~~.—
32 Beginning on January 1, 2021, and on every third subsequent January 1, after
33 notice in the Federal Register is published for not less than 60 days, the Secretary
34 shall adjust each of the minimum amounts specified in clause (i) as follows:

35 “(I) ~~NO INCREASES IN PREVIOUS 3 FISCAL YEARS~~.—If the Secretary did not
36 increase the minimum amount during the 3 prior fiscal years concluding with
37 the fiscal year ending on September 30 of the prior calendar year, the
38 amounts specified in clause (i) shall automatically be adjusted by the amount
39 of the cumulative percentage change in the Consumer Price Index (CPI-U)

Commented [A6]: Investment Levels increase over time.

1 for the previous 3 fiscal years, rounded to the nearest multiple of \$10,000.

2 “(II) INCREASES BELOW CPI-U DURING PREVIOUS 3 FISCAL YEARS.—If the
3 Secretary increased the minimum amount during the previous 3 fiscal years
4 by an amount that is less than the cumulative percentage change in the CPI-
5 U during the previous 3 fiscal years, the amounts specified in clause (i) shall
6 automatically be adjusted by the amount of such cumulative percentage
7 change for such period minus any increase previously prescribed by the
8 Secretary by regulations, rounded to the nearest multiple of \$10,000.

9 “(III) INCREASES ABOVE CPI-U DURING PREVIOUS 3 FISCAL YEARS.—If the
10 Secretary increased the minimum amount during the previous 3 fiscal years
11 by an amount that is greater than the cumulative percentage change in the
12 CPI-U during the previous 3 fiscal years, the amounts specified in clause (i)
13 shall not be increased.”; and

14 (3) in clause (iv), as redesignated, by striking “Attorney General” and inserting
15 “Secretary”.

16 (c) Definitions.—

17 (1) IN GENERAL.—Section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), as amended by
18 subsections (a) and (b) and by section 2, is further amended by striking subparagraph (D)
19 and inserting the following:

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

21 “(i) AFFILIATED JOB-CREATING ENTITY.—The term ‘affiliated job-creating
22 entity’ means any job-creating entity that is, directly or indirectly, controlled,
23 managed, or owned by any of the persons involved with the regional center or
24 new commercial enterprise under section 203(b)(5)(H)(v).

25 “(ii) CAPITAL.—The term ‘capital’—

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

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

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

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

41 “(iv) FULL-TIME EMPLOYMENT.—The term ‘full-time employment’ means

1 employment in a position that requires at least 35 hours of service per week for at
2 least a 24-month period, regardless of who fills the position. A position or job that
3 is filled by more than 1 employee may be considered full-time employment for
4 purposes of subparagraph (A)(ii).

5 “(v) INFRASTRUCTURE PROJECT.—The term ‘infrastructure project’ means a
6 capital investment project in a filed or approved business plan, which is
7 administered by a governmental entity, such as a Federal, State, or local agency or
8 authority, in which the entity contracts with a regional center, new commercial
9 enterprise, or job-creating entity to receive capital investment from investors or
10 the new commercial enterprise as financing for maintaining, improving, or
11 constructing a public works project. An entity performing an inherently
12 governmental function, the operations of which in fulfillment of such function are
13 directly funded in whole or in material part by a governmental entity, shall be
14 deemed a governmental entity for purposes of this definition with respect to that
15 public works project.

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

23 “(vii) MANUFACTURING PROJECT.—The term ‘manufacturing project’ means a
24 capital investment project in a filed or approved business plan, the purpose of
25 which is to improve, construct, or operate a plant, factory, or mill, which
26 primarily exists in order to produce or assemble a product in the United States.

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

32 “(ix) PRIORITY URBAN INVESTMENT AREA.—The term ‘priority urban
33 investment area’ means an area consisting of a census tract or tracts, each of
34 which is in a metropolitan statistical area and, using the most recent census data
35 available, each of which has at least two of the following criteria—

36 “(I) an unemployment rate that is at least 150 percent of the national
37 average unemployment rate;

38 “(II) a poverty rate that is at least 30 percent; or

39 “(III) a median family income that is not more than 60 percent of the
40 greater of the statewide median family income or the metropolitan statistical
41 area median family income.

42 “(x) RURAL AREA.—The term ‘rural area’ means an area that—

Commented [A7]: Remains under negotiation

Commented [A8]: Amended to require 2 of 3 instead of 1 of 3 of the NMTC severely distressed criteria (as opposed to simply distressed criteria)

1 “(I) is outside of the outer boundary of any city or town having a
2 population of 20,000 or more (based on the most recent decennial census of
3 the United States); and

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

5 “(bb) is within an outlying county of a metropolitan statistical area; or

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

8
9 “(xi) TARGETED EMPLOYMENT AREA.—The term ‘targeted employment area’
10 means—

11 “(I) a priority urban investment area;

12 “(II) a rural area; or

13 “(III) any area within the geographic boundaries of any military
14 installation that was closed, during the 25-year period immediately preceding
15 the filing of an application under subparagraph (F) based upon a
16 recommendation by the Defense Base Closure and Realignment
17 Commission.”.

18 (2) RULEMAKING.—The Secretary of Homeland Security shall issue appropriate
19 regulations to account for the modified definition of targeted employment area in section
20 203(b)(5)(D)(xii) of the Immigration and Nationality Act, as added by paragraph (1), within
21 180 days of the enactment of this Act.

22 (d) Age Determination for Children of Alien Investors.—Section 203(h) of such Act (8 U.S.C.
23 1153(h)) is amended by adding at the end the following:

24 “(5) AGE DETERMINATION FOR CHILDREN OF ALIEN INVESTORS.—An alien who has
25 reached 21 years of age and has been admitted under subsection (d) as a lawful permanent
26 resident on a conditional basis as the child of an alien lawfully admitted for permanent
27 residence under subsection (b)(5), whose lawful permanent resident status on a conditional
28 basis is terminated under section 216A or subparagraph (M) of subsection (b)(5), shall
29 continue to be considered a child of the principal alien for the purpose of a subsequent
30 immigrant petition by such alien under subsection (b)(5) if the alien remains unmarried and
31 the subsequent petition is filed by the principal alien not later than 1 year after the
32 termination of conditional lawful permanent resident status. No alien shall be considered a
33 child under this paragraph with respect to more than 1 petition filed after the alien reaches
34 21 years of age.”.

35 (e) Enhanced Pay Scale for Certain Federal Employees Administering the Employment
36 Creation Program.—The Secretary of Homeland Security may establish, fix the compensation of,
37 and appoint individuals to designated critical, technical, and professional positions needed to
38 administer sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C.
39 1153(b)(5) and 1186b)).

40 (f) Concurrent Filing of EB-5 Petitions and Applications for Adjustment of Status.—Section
41 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

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

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

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

8 (g) Type of Investment.—Section 203(b)(5)(A) of the Immigration and Nationality Act (8
9 U.S.C. 1153(b)(5)(A)), is amended—

10 (1) in the matter preceding clause (i), by striking “(including a limited partnership)”;

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

13 (3) in clause (ii)—

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

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

16 (h) Required Checks.—Section 203(b)(5) of such Act, as amended by this section and section
17 2, is further amended by adding at the end the following:

18 “(R) REQUIRED CHECKS.—Any petition filed pursuant to section 204(a)(1)(H) may
19 not be approved under this paragraph unless the Secretary of Homeland Security has
20 determined that such alien is not on the Department of Treasury’s Office of Foreign
21 Assets Control Specially Designated Nationals List.”.

22 (i) Conforming Changes.

23 (1) Section 201(d)(1) is amended by—

24 (A) striking the period at the end of subparagraph (B) and inserting “, plus”; and

25 (B) inserting the following new subparagraph (C) at the end—

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

28 (2) Section 203(b)(1) of the Immigration and Nationality Act is amended by inserting “,
29 subject to section 203(b)(5)(B)(i),” after “classes specified in paragraphs (4) and (5)”.

30 (3) Section 203(b)(5)(A) of the Immigration and Nationality Act is amended by striking
31 “Visas shall be made available” and inserting “Subject to section 203(b)(5)(B)(i), visas
32 shall be made available”.

33 (j) Effective Dates.—

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

36 (2) EXCEPTIONS.—

37 (A) IN GENERAL.—

Commented [A9]: This subsection may not be acceptable; all effective dates remain unresolved.

1 (i) The amendments made by subsections (b)(2) and (c)(1) shall not apply to a
2 beneficiary of a petition that—

3 (I) was filed by an alien investor under section 203(b)(5) of the
4 Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) before the date of
5 the enactment of this Act; or

6 (II) is filed under section 216A of such Act (8 U.S.C. 1186b), if the
7 underlying petition filed under section 203(b)(5) of such Act was filed
8 before the date of the enactment of this Act.

9 (ii) The targeted employment criteria as described in section 203(b)(5)(D) of such
10 Act (8 U.S.C. 1153(b)(5)(D)), as added by subsection (c)(1), shall further not
11 apply to a beneficiary of a petition that—

12 (I) is filed by an alien investor under section 203(b)(5) of the Immigration
13 and Nationality Act (8 U.S.C. 1153(b)(5)) during the period beginning on
14 the date of the enactment of this Act and ending 120 days thereafter if
15 such beneficiary is investing in the same commercial enterprise
16 concerning the same economic activity as contained in—

17 (aa) an application by a regional center for approval of an
18 investment in a commercial enterprise filed or approved by the
19 Secretary of Homeland Security at any time prior to the date of
20 enactment;

21 (bb) an application by a regional center for approval of an
22 investment in a commercial enterprise filed prior to the date of
23 enactment; or

24 (cc) a petition by an alien investor seeking classification under
25 section 203(b)(5) that was filed or approved by the Secretary at
26 any time prior to the date of enactment;

27 that includes the commercial enterprise's business plan, economic
28 analysis, and organizational documents, unless the Secretary determines
29 that such approval or filing was based on fraud, misrepresentation in the
30 record of proceeding, or is legally deficient; or

31 (II) is filed under section 216A of such Act (8 U.S.C. 1186b), if the
32 underlying petition filed under section 203(b)(5) of such Act qualifies
33 pursuant to subclause (I).

34 (3) REDESIGNATION.—

35 (A) PETITION AMENDMENT.—Petitioners described in paragraph (2)(A) may apply to
36 amend their petition to redesignate the targeted employment area upon which such
37 petition was based to conform to the targeted employment area criteria described in
38 section 203(b)(5)(D) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(D)),

1 as amended by subsection (c)(1), provided such application for amendment is filed
2 with the Secretary prior to October 1, 2017.

3 (B) RETENTION OF PRIORITY DATE.—If a petitioner applies to amend a petition in
4 accordance with subparagraph (A)—

5 (i) the immigrant visa priority date related to the original petition shall be
6 retained;

7 (ii) changes made in the amended petition to redesignate such area shall not be
8 deemed a material change; and

9 (iii) the minimum investment amount such petitioner is required to make shall
10 not be affected by any such redesignation.

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

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

15 “(H)(i) An alien desiring to be classified under section 203(b)(5) may file a petition with the
16 Secretary of Homeland Security, but only if the alien is not under 18 years of age at the time of
17 filing. An alien who seeks to pool his or her investment with 1 or more additional aliens seeking
18 classification under section 203(b)(5) shall file for classification pursuant to section
19 203(b)(5)(E). An alien petitioning for classification pursuant to section 203(b)(5)(E) may file a
20 petition with the Secretary after the regional center has filed an application for approval of an
21 investment under section 203(b)(5)(F).

22 “(ii) A petitioner shall establish eligibility at the time he or she files for classification under
23 section 203(b)(5) and, if not eligible at the time of filing, shall be denied such classification even
24 if the petitioner later becomes eligible under materially different facts or circumstances. Aliens
25 asserting eligibility under a materially different set of facts that did not exist when the petition
26 was filed shall file a new petition. A petitioner shall continue to be eligible for classification at
27 the time such petition is adjudicated.”

28 (b) Effective Dates.—

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

31 (2) APPLICABILITY TO PETITIONS.—

32 (A) FILING.—Clause (i) of section 204(a)(1)(H) of the Immigration and Nationality
33 Act (8 U.S.C. 1154(a)(1)(H)), as added by subsection (a), shall apply to any petition
34 for classification pursuant to section 203(b)(5)(E) of such Act (8 U.S.C. 1153(b)(5)(E))
35 that is filed with the Secretary of Homeland Security on or after the date of the
36 enactment of this Act.

37 (B) ELIGIBILITY.—Clause (ii) of section 204(a)(1)(H) of such Act, as added by
38 subsection (a), shall apply to any petition for classification pursuant to section
39 203(b)(5)(E) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(E)) filed
40 with the Secretary of Homeland Security at any time.

1 SEC. 6. TIMELY PROCESSING.

2 (a) Fee Study.—Not later than 180 days after the date of the enactment of this Act, the
3 Director of United States Citizenship and Immigration Service shall complete a study of fees
4 charged in the administration of the program described in sections 203(b)(5) and 216A of the
5 Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

6 (b) Adjustment of Fees To Achieve Efficient Processing.—Notwithstanding section 286(m) of
7 the Immigration and Nationality Act (8 U.S.C. 1356(m)), and except as provided under
8 subsection (c), the Director shall, within 30 days of the completion of the fee study described in
9 subsection (a), set fees for services provided pursuant to section 203(b)(5) and 216A of such Act
10 at a level sufficient to ensure the full recovery only of the costs of providing such services,
11 including the cost of attaining the goal of completing adjudications, on average, not later than—

12 (1) 180 days after receiving a proposal for the establishment of a regional center
13 described in section 203(b)(5)(E);

14 (2) 180 days after receiving an application for approval of investment in a commercial
15 enterprise described in section 203(b)(5)(F);

16 (3) 90 days after receiving an application for approval of investment in a commercial
17 enterprise described in section 203(b)(5)(F) that is located in a rural or priority urban
18 investment area, as defined at sections 203(b)(5)(D)(ix) and (x) of the Immigration and
19 Nationality Act (8 U.S.C. 1153(b)(5)(D)(ix) and (x)), as amended by section 4(c);

20 (4) 240 days after receiving a petition from an alien desiring to be classified under section
21 203(b)(5)(E);

22 (5) 120 days after receiving a petition from an alien desiring to be classified under section
23 203(b)(5)(E) with respect to an investment in a rural or priority urban investment area, as
24 defined at sections 203(b)(5)(D)(ix) and (x) of the Immigration and Nationality Act (8
25 U.S.C. 1153(b)(5)(D)(ix) and (x)), as amended by section 4(c);

26 (6) 240 days after receiving a petition from an alien for removal of conditions described
27 in section 216A(c).

28 (c) Additional Fees.—Additional fees in excess of the fee levels described in subsection (b)
29 may be charged only to contribute—

30 (1) in an amount that is equal to the amount paid by all other classes of fee-paying
31 applicants for immigration-related benefits, to the coverage or reduction of the costs of
32 processing or adjudicating classes of immigration benefit applications that Congress, or the
33 Secretary in the case of asylum applications, has authorized to be processed or adjudicated
34 at no cost or at a reduced cost to the applicant; and

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

41 (d) Delay in Adjudication.—Nothing in this Act may be construed to limit the authority of the

1 Secretary of Homeland Security to suspend the adjudication of any application or petition under
2 section 203(b)(5) or 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and
3 1186b) pending the completion of a national security or law enforcement investigation relating to
4 such application or petition.

5 (e) Exemption from Paperwork Reduction Act.—For a period of one year after the date of the
6 enactment of this Act, the requirements of chapter 35 of title 44, United States Code, shall not
7 apply to any collection of information required under this Act, under any amendment made by
8 this Act, or under any rule promulgated by the Secretary of Homeland Security to implement this
9 Act or the amendments made by this Act, to the extent the Secretary determines that compliance
10 with such requirements would impede the expeditious implementation of this Act or the
11 amendments made by this Act.

12 (f) Rule of Construction.—Nothing in this section may be construed to require any
13 modification of fees before the completion of—

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

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

18 SEC. 7. TRANSPARENCY.

19 (a) In General.—Employees of the Department of Homeland Security, including the Secretary
20 of Homeland Security, the Secretary’s counselors, the Assistant Secretary for the Private Sector,
21 the Director of United States Citizenship and Immigration Services, counselors to such Director,
22 and the Chief of Immigrant Investor Programs at United States Citizenship and Immigration
23 Services, shall act impartially and may not give preferential treatment to any entity, organization,
24 or individual in connection with any aspect of the immigrant visa program described in section
25 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

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

28 (1) working on, or in any way attempting to influence, in a manner not available to or
29 accorded to all other petitioners, applicants, and seekers of benefits under the immigrant
30 visa program described in section 203(b)(5) of the Immigration and Nationality Act (8
31 U.S.C. 1153(b)(5)), the standard processing of an application, petition, or benefit for—

32 (A) a regional center;

33 (B) a new commercial enterprise;

34 (C) a job-creating entity; or

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

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

40 (c) Reporting of Communications.—

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

10 (2) ORAL COMMUNICATION.—If substantive oral communication, including telephonic
11 communication, virtual communication, and in-person meetings, takes place between
12 officials of the Department of Homeland Security and non-Department persons or entities
13 advocating for regional center applications or individual petitions under section 203(b)(5) of
14 the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) that are pending on or after the
15 date of the enactment of this Act (other than routine communications with other agencies of
16 the Federal Government regarding the case, including communications involving
17 background checks and litigation defense)—

18 (A) the conversation shall be recorded; or

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

21 (3) NOTIFICATION.—

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

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

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

30 (B) INFORMATION FROM LAW ENFORCEMENT, INTELLIGENCE AGENCIES, OR
31 CONFIDENTIAL SOURCES.—

32 (i) LAW ENFORCEMENT OR INTELLIGENCE AGENCIES.—Evidence received from
33 law enforcement or intelligence agencies may not be made part of the record of
34 proceeding without the consent of the relevant agency or law enforcement entity.

35 (ii) WHISTLEBLOWERS, CONFIDENTIAL SOURCES, OR INTELLIGENCE AGENCIES.—
36 Evidence received from whistleblowers, other confidential sources, or the
37 intelligence community that is included in the record of proceeding and
38 considered in adjudicative proceedings shall be handled in a manner that does not
39 reveal the identity of the whistleblower or confidential source, or reveal classified
40 information.

41 (d) Consideration of Evidence.—

1 (1) IN GENERAL.—No case-specific communication with persons or entities that are not
2 part of the Department of Homeland Security may be considered in the adjudication of an
3 application or petition under section 203(b)(5) of the Immigration and Nationality Act (8
4 U.S.C. 1153(b)(5)) unless the communication is included in the record of proceeding of the
5 case.

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

9 (e) Channels of Communication.—

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

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

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

18 (2) COMMUNICATION ONLY THROUGH APPROPRIATE CHANNELS OR OFFICES.—

19 (A) ANNOUNCEMENT OF APPROPRIATE CHANNELS OF COMMUNICATION.—Not later
20 than 40 days after the date of the enactment of this Act, the Director of United States
21 Citizenship and Immigration Services shall announce that the only channels or offices
22 by which industry stakeholders, petitioners, applicants, and seekers of benefits under
23 the immigrant visa program described in section 203(b)(5) of the Immigration and
24 Nationality Act (8 U.S.C. 1153(b)(5)) may communicate with the Department of
25 Homeland Security regarding specific cases under such section (except for
26 communication made by applicants and petitioners pursuant to regular adjudicatory
27 procedures), or non-case-specific information about the visa program applicable to
28 certain cases under such section, are through—

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

30 (ii) the United States Citizenship and Immigration Services National Customer
31 Service Center, or any successor to that Center; or

32 (iii) the United States Citizenship and Immigration Services Office of Public
33 Engagement, Immigrant Investor Program Office, Stakeholder Engagement
34 Branch, or any successors to those Offices or Branch.

35 (B) DIRECTION OF INCOMING COMMUNICATIONS.—

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

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

1 (I) any person from communicating with the Ombudsman of United States
2 Citizenship and Immigration Services regarding the immigrant investor
3 program under section 203(b)(5) of the Immigration and Nationality Act (8
4 U.S.C. 1153(b)(5)); or

5 (II) the Ombudsman from resolving problems regarding such immigrant
6 investor program pursuant to the authority granted under section 452 of the
7 Homeland Security Act of 2002 (6 U.S.C. 272).

8 (C) LOG.—

9 (i) IN GENERAL.—The Director of United States Citizenship and Immigration
10 Services shall maintain a written or electronic log of—

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

15 (II) with respect to written communications described in subsection (c)(1),
16 the date the communication was received, the identities of the sender and
17 addressee, and the subject of the communication; and

18 (III) with respect to oral communications described in subsection (c)(2),
19 the date on which the communication occurred, the participants in the
20 conversation or meeting, and the subject of the communication.

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

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

34 (f) Penalty.—

35 (1) IN GENERAL.—Any person who intentionally violates the prohibition on preferential
36 treatment under this section or intentionally violates the reporting requirements under
37 subsection (c) shall be disciplined in accordance with paragraph (2).

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

1 (g) Rule of Construction.—Nothing in this section may be construed to modify any law,
2 regulation, or policy regarding the handling or disclosure of classified information.

3 (h) No Creation of Private Right of Action.—Nothing in this section may be construed to
4 create or authorize a private right of action to challenge a decision of an employee of the
5 Department of Homeland Security.

6 (i) Effective Date.—This section shall take effect on the date of the enactment of this Act.
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