

Title: To implement integrity measures to strengthen the EB-5 Regional Center Program in order to promote and reform foreign capital investment and job creation in American communities.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “EB-5 Integrity Act of 2015”.

SEC. 2. REFORM OF THE REGIONAL CENTER PROGRAM.

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of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is repealed.

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

“(E) REGIONAL CENTER PROGRAM.—

“(i) IN GENERAL.—Visas under this paragraph shall be made available through September 30, 2016, to qualified immigrants (and the eligible spouses and children of such immigrants) pooling their investments with 1 or more qualified immigrants participating in a program implementing this paragraph that involves a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment.

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

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

“(II) shall deem such petitions to include records previously filed with the Secretary pursuant to section 203(b)(5)(F) if the alien petitioner certifies that such records are incorporated by reference into the alien’s petition.

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

“(I) reasonable predictions, supported by economically and statistically

valid forecasting tools, concerning the amount of investment that will be pooled, the kinds of commercial enterprises that will receive such investments, details of the jobs that will be created directly or indirectly as a result of such investments, and other positive economic effects such investments will have; and

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

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

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

“(iv) COMPLIANCE.—

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

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

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

“(II) JOB AND INVESTMENT REQUIREMENTS.—

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

“(bb) PUBLICLY AVAILABLE BONDS.—Alien investor capital may not be utilized, by a new commercial enterprise or otherwise, to purchase

municipal bonds or any other bonds, if such bonds are available to the general public, either as part of a primary offering or from a secondary market.

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

“(I) require regional centers to give advance notice to, and obtain approval from, the Secretary of significant proposed changes to their organizational structure, ownership, or administration, including the sale of such centers or other arrangements in which individuals not previously subject to the requirements under subparagraph (H) become involved with the regional center, before any such proposed changes may take effect unless exigent circumstances are present in which case the regional center shall provide notice to the Secretary within 5 business days of such change;

“(II) approve the changes referred to in subclause (I) only after—

“(aa) notice of any such proposed changes are made publicly available through a publicly accessible website of U.S. Citizenship and Immigration Services for a period of not fewer than 30 days; and

“(bb) the Secretary determines that the regional center would remain compliant with this subparagraph and with subparagraph (H); and

“(III) notwithstanding the pendency of a request for approval of any amendment that has been filed pursuant to subclause (I), adjudicate business plans under subparagraph (F) and petitions under section 204(a)(1)(H).

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

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

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

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

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

“(IV) any investment and offering documents, including subscription, investment, partnership, and operating agreements, private placement memoranda, term sheets, biographies for management, officers, directors, and any person with similar responsibilities, the description of the business

plan to be provided to potential alien investors, and marketing materials used or drafts prepared for use in connection with the offering, which shall contain references, as appropriate, to any—

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

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

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

“(dd)(AA) fees, ongoing interest, or other compensation paid or to be paid by regional center or new commercial enterprise to agents, finders, or broker dealers involved in the offering;

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

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

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

“(VI) a certification from each of the regional centers and any issuer of securities under common control with the regional center that their respective employees and any parties associated with each of the regional centers and the issuer of securities under common control with any of the regional centers are in compliance with the securities laws of the United States and the laws of the applicable States in connection with the offer, purchase, or sale of its securities, to the best of the certifier’s knowledge, after a due diligence investigation; and

“(ii) EFFECT OF APPROVAL OF A BUSINESS PLAN FOR AN INVESTMENT IN A REGIONAL CENTER’S COMMERCIAL ENTERPRISE.—The approval of an application

under this subparagraph shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same capital investment project through a new commercial enterprise, and of petitions by the same immigrants filed under section 216A, except in the case of fraud, misrepresentation, criminal misuse, a threat to public safety or national security, a material change that affects the program eligibility of the approved economic model, other evidence affecting program eligibility that was not disclosed by the applicant during the adjudication process, or a material mistake of law or fact in the prior adjudication.

“(iii) SITE VISITS.—The Secretary shall—

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

“(II) perform at least 1 site visit to each new commercial enterprise or affiliated job-creating entity, which—

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

“(bb) may occur at any time during the period between the filing of an application for approval of an investment in a commercial enterprise under this subparagraph and the adjudication of the first petition for removal of conditions on lawful permanent resident status under section 216A(c) filed by an alien investing in such investment, provided that the regional center, new commercial enterprise and affiliated job-creating entity, as applicable, shall be provided with notice in accordance with what is required under 8 U.S.C. § 1324a.

“(G) REGIONAL CENTER ANNUAL STATEMENTS.—

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

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

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

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

“(IV) a description of any pending material litigation or bankruptcy proceedings, or litigation or bankruptcy proceedings resolved during the

preceding fiscal year, involving the regional center, new commercial enterprise, or any affiliated job-creating entity;

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

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

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

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

“(cc) evidence that 100 percent of such capital has actually been committed to each capital investment project;

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

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

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

“(AA) a description of all fees collected;

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

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

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

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

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

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

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

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

“(iii) SANCTIONS.—

“(I) EFFECT OF VIOLATION.—The Director shall sanction any regional center in accordance with subclause (II) if the regional center fails to submit an annual statement or if the Director determines that the regional center—

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

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

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

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

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

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

“(dd) termination of regional center designation.

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

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

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

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

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

“(cc) a crime resulting in a conviction with a term of imprisonment of more than 1 year;

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

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

“(bb) bars the person from—

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

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

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

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

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

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

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

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

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

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

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

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

“(IV) the person—

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

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

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

“(I) LAWFUL STATUS REQUIRED.—No person may be involved with a regional center unless the person is a national of the United States or an individual who has been lawfully admitted for permanent residence (as defined in paragraphs (20) and (22) of section 101(a)).

“(II) FOREIGN GOVERNMENTS.—No foreign government entity may provide capital to, or be directly or indirectly involved with the ownership or administration of a regional center.

(III) The Secretary, in consultation with the Treasury Secretary and the Commerce Secretary, shall, within 180 days of enactment, issue regulations implementing subparagraphs (I) and (II).

“(iii) INFORMATION REQUIRED.—The Secretary shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation, and shall perform such criminal record checks and other background and database checks with respect to a regional center, new commercial enterprise, and any affiliated job-creating entity, and persons involved with such entities (as described in clause (v)), in order to determine whether such entities are in compliance with clauses (i), (ii), and (iii). The Secretary may require the information and attestations described in this clause from such entities, and any person involved with such entities, at any time on or after the date of the enactment of the EB-5 Integrity Act of 2015.

“(iv) TERMINATION.—

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

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

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

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

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

“(v) PERSONS INVOLVED WITH A REGIONAL CENTER, NEW COMMERCIAL ENTERPRISE, OR JOB-CREATING ENTITY.—For the purposes of this paragraph, a person is considered to be ‘involved’ with a regional center, a new commercial enterprise, any affiliated job-creating entity, or other job-creating entity, as applicable, if he or she is in a position of substantive authority to make operational or managerial decisions over any pooling, securitization, investment, release, acceptance, or control of any funding that was procured under the EB-5 Regional Center Program. An individual may be in a position of substantive authority if he or she serves as the principal, representative, administrator, owner, officer, board member, manager, executive, or general partner of the regional center, new commercial enterprise, any affiliated job-creating entity, or other job-creating entity, respectively.

“(I) COMPLIANCE WITH SECURITIES LAWS.—

“(i) JURISDICTION.—

“(I) IN GENERAL.—The United States has jurisdiction over the purchase or sale of any security offered or sold by any regional center or any party associated with a regional center for purposes of the securities laws. Subject matter jurisdiction shall also lie within the United States.

“(II) COMPLIANCE WITH REGULATION S.—Solely for purposes of section 5 of the Securities Act of 1933 (15 U.S.C. 77e), a regional center or any party associated with a regional center is not precluded from offering or selling a security pursuant to Regulation S under the Securities Act of 1933 (15 U.S.C. 77a et seq.) to the extent that such offering or selling otherwise complies with that regulation. Subparagraph (I) is not intended to modify any existing regulations or interpretations of the Securities and Exchange

Commission related to the application of Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. sec. 780(a)) to foreign broker dealers.

“(ii) REGIONAL CENTER CERTIFICATIONS REQUIRED.—

“(I) INITIAL CERTIFICATION.—The Secretary of Homeland Security may not approve an application for regional center designation or regional center amendment unless the regional center certifies that, to the best of the certifier’s knowledge, after a due diligence investigation, the regional center is in compliance with and has policies and procedures, such as those related to internal and external due diligence, reasonably designed to confirm, as applicable, that all parties associated with the regional center are and will remain in compliance with the securities laws of the United States and of any State in which the offer, purchase, or sale of securities was conducted, or the issuer of securities was located, or the investment advice was provided by the regional center or parties associated with the regional center.

“(II) REISSUE.—A regional center shall annually reissue a certification described in subclause (I) in accordance with subparagraph (G). Annual certifications under this subclause shall also certify compliance with clause (iii) by stating that—

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

“(bb) to the best of the certifier’s knowledge, after a due diligence investigation, all such offers, purchases, and sales of securities or the provision of investment advice complied with the securities laws of the United States and the securities laws of any State in which the offer, purchase, or sale of securities was conducted, or the issuer of securities was located, or the investment advice was provided; and

“(cc) records, data, and information related to such offers, purchases, and sales have been maintained.

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

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

“(bb) describe the actions taken to remedy the noncompliance; and

“(cc) certify that the regional center and all parties associated with the regional center are currently in compliance, to the best of the

certifier's knowledge, after a due diligence investigation.

“(iii) OVERSIGHT REQUIRED.—Each regional center shall monitor and supervise all offers, purchases, and sales of, and investment advice relating to securities made by parties associated with the regional center to confirm compliance with the securities laws of the United States, and maintain records, data, and information relating to all such offers, purchases, sales, and investment advice during the 5-year period beginning on the date of their creation. Such records, data, and information shall be made available to the Secretary upon request.

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

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

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

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

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

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

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

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

“(I) the regional center;

“(II) any new commercial enterprise or affiliated job-creating entity or

issuer of securities under common control with the regional center; and

“(III) the regional center’s and new commercial enterprise’s principal owners, officers, directors, managers and any person vested with the power to legally bind the regional center or new commercial enterprise.

“(J) EB-5 INTEGRITY FUND.—

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

“(ii) FEES.—

“(I) ANNUAL FEE.—On April 1, 2016, and on January 1 of each year thereafter, the Secretary of Homeland Security shall collect a fee of \$20,000 for the Fund from each regional center designated under subparagraph (E). The fee shall be \$10,000 if a regional center has 20 or fewer total investors in the preceding fiscal year in its new commercial enterprises.

“(II) PETITION FEE.—Beginning on April 1, 2016, the Secretary shall collect a fee of \$1,000 for the Fund with each petition filed under section 204(a)(1)(H) for classification under subparagraph (E).

“(III) INCREASES.—The Secretary may prescribe regulations, as necessary, to increase the dollar amounts under this clause to ensure the Secretary’s continued ability to carry out the activities specified in clause (iii).

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

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

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

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

“(bb) ensuring an alien investor’s compliance with subparagraph (L);

“(III) use amounts deposited into the Fund—

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

“(bb) to determine whether regional centers, new commercial enterprises, any affiliated job-creating entities, and alien investors (and their alien spouses and alien children, if any) comply with applicable immigration laws;

“(IV) use amounts deposited into the Fund to conduct interviews of the owners, officers, directors, managers, partners, agents, employees, promoters, and attorneys of regional centers, new commercial enterprises, and job-creating entities; and

“(V) otherwise use amounts deposited into the Fund as the Secretary determines to be necessary, including monitoring compliance with the requirements under section 7 of the EB-5 Integrity Act of 2015.

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

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

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

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

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

“(i) RULES AND STANDARDS.—Direct and third party promoters of a regional center, any new commercial enterprise, an affiliated job-creating entity, or issuer of securities under common control with the regional center shall comply with the rules and standards prescribed by the Secretary of Homeland Security and any applicable Federal or State securities laws, to oversee regional center promotion, including—

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

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

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

“(cc) the list of such registered promoters shall not be made publicly available by the Secretary;

“(II) certification by each promoter that such promoter meets each of the minimum qualifications set forth at paragraph (H)(i);

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

“(IV) permissible fee arrangements, if applicable.

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

“(iii) COMPLIANCE.—Each regional center shall maintain a written agreement between the regional center, the new commercial enterprise, any affiliated job-creating entity, or any issuer of securities under common control with the regional center, and each direct or third-party promoter operating on behalf of such entities or issuer that outlines the rules and standards prescribed under clause (i).

“(L) SOURCE OF FUNDS.—

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

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

“(I) business and tax records, including—

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

“(bb) corporate or partnership tax returns (or tax returns of any other entity in any form filed in any country or subdivision of such country), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind, filed within 7 years, with any taxing jurisdiction in or outside the United States by or on behalf of the alien investor, if applicable; and

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

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

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

“(aa) any funds that are used to meet the capital requirement under subparagraph (A); and

“(bb) any funds that are used to pay administrative costs and fees

associated with the alien's investment.

"(iii) GIFT RESTRICTIONS.—Gifted funds may be counted toward the minimum capital investment requirement under subparagraph (C) only if such funds were gifted to the alien investor in good faith and not to circumvent any limitations imposed on permissible sources of capital under this subparagraph. If a significant portion of the capital invested under subparagraph (A) was gifted to the alien investor, the Secretary shall require the alien investor's petition under this paragraph to include records described in subclauses (I) and (II) of clause (ii) from the donor.

"(M) TREATMENT OF INVESTORS IF A REGIONAL CENTER HAS BEEN TERMINATED.—

"(i) IN GENERAL.—Upon the termination or debarment, as applicable, from the program under this paragraph of a regional center, new commercial enterprise, or job-creating entity under this paragraph—

"(I) except as provided in subclause (II), an otherwise qualified approved petition under section 204(a)(1)(H) or the conditional permanent residence of an alien who has been admitted to the United States pursuant to section 216A(a)(1) based on an investment in a terminated regional center, new commercial enterprise, or job-creating entity shall remain valid or continue to be authorized, as applicable, consistent with this subparagraph; and

"(II) if the Secretary has reason to believe the alien was a knowing participant in the conduct that led to the termination of such regional center, new commercial enterprise, or job-creating entity, the Secretary shall notify the alien of such belief and, subject to section 216A(b)(2), shall terminate the permanent resident status of the alien (and the alien's spouse and child) as of the date of such determination.

"(ii) NEW REGIONAL CENTER OR INVESTMENT.—The petition under section 204(a)(1)(H) of an alien described in clause (i)(I) shall be denied or revoked or the conditional permanent resident status of an alien described in clause (i)(I) shall be terminated 180 days after the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job creating entity unless—

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

"(aa) the new commercial enterprise associates with an approved regional center, regardless of the geography of its designation;

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

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

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

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

“(N) THREATS TO THE NATIONAL INTEREST.—

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

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

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

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

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

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

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

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

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

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

of such immigrant), as provided in clause (i) as of the date of such determination.

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

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

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

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

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

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

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

“(P) ADMINISTRATIVE APPELLATE REVIEW.—

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

- “(I) an application for regional center designation or regional center amendment;
- “(II) an application for approval of a business plan under subparagraph (F);
- “(III) a petition by an alien investor for status as an immigrant under this paragraph;
- “(IV) the termination or suspension of any benefit accorded under this paragraph; and
- “(V) any sanction imposed by the Secretary of Homeland Security pursuant to this paragraph.

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

(c) Effective Dates.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Inspector General Report.—Not later than December 31, 2018, the Inspector General of the Intelligence Community, in coordination with the Inspector General of the Department of Homeland Security and after consultation with relevant Federal agencies, including United States Immigration and Customs Enforcement, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives concerning the immigrant visa program set forth in section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) that describes—

- (1) the vulnerabilities within the program that may undermine the national security of the United States;
- (2) the actual or potential use of the program to facilitate export of sensitive technology;
- (3) the actual or potential use of the program to facilitate economic espionage;
- (4) the actual or potential use of the program by foreign government agents; and
- (5) the actual or potential use of the program to facilitate terrorist activity, including funding terrorist activity or laundering terrorist funds.

(f) Review of Job Creation Methodologies.—Not later than 1 year after the date of the

enactment of this Act, the Secretary of Homeland Security, in consultation with the Bureau of Economic Analysis of the Department of Commerce, or another component within the Department of Commerce, as determined by the Secretary of Commerce, shall publish regulations to determine economically and statistically valid general economic methodologies that are in compliance with section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

(g) Technical Amendment.—Section 203(b)(5)(C) of such Act (8 U.S.C. 1153(b)(5)(C)) is amended—

(1) in clause (iii), by striking “Attorney General” and inserting “Secretary”.

(h) Definitions.—

(1) IN GENERAL.—Section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), is by striking subparagraph (D) and inserting the following

“(D) DEFINITIONS.—In this paragraph:

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

“(ii) CAPITAL.—The term ‘capital’—

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

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

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

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

“(iv) FULL-TIME EMPLOYMENT.—The term ‘full-time employment’ means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

“(v) JOB-CREATING ENTITY.—The term ‘job-creating entity’ means any

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

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

(i) Effective Dates.—The amendments made by this section shall be effective upon the date of the enactment of this Act.

SEC. 3. TRANSPARENCY.

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

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

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

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

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

(c) Reporting of Communications.—

(1) WRITTEN COMMUNICATION.—Employees of the Department of Homeland Security,

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

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

(A) the conversation shall be recorded; or

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

(3) NOTIFICATION.—

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

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

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

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

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

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

(d) Consideration of Evidence.—

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

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

(e) Channels of Communication.—

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

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

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

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

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

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

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

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

(B) DIRECTION OF INCOMING COMMUNICATIONS.—

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

communication or offices listed in subparagraph (A).

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

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

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

(C) LOG.—

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

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

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

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

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

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

(f) Penalty.—

(1) IN GENERAL.—Any person who intentionally violates the prohibition on preferential

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

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

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

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

(i) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.