

1 EMPHASIS ADDED BY EB5AN

2
3 Title: To reauthorize the EB–5 Regional Center Program in order to prevent fraud and to
4 promote and reform foreign capital investment and job creation in American communities.
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7 Be it enacted by the Senate and House of Representatives of the United States of America in
8 Congress assembled,

9 SECTION 1. SHORT TITLE.

10 This Act may be cited as the “EB–5 Reform and Integrity Act of 2022”.

11 SEC. 2. EB–5 VISA REFORMS.

12 (a) Employment Creation.—Section 203(b)(5) of the Immigration and Nationality Act (8
13 U.S.C. 1153(b)(5)) is amended—

14 (1) in subparagraph (A)—

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

17 (B) in clause (ii)—

18 (i) by striking “and create” and inserting “by creating”; and

19 (ii) by inserting “, United States nationals,” after “citizens”;

20 (2) by amending subparagraph (B) to read as follows:

21 “(B) DESIGNATIONS AND RESERVED VISAS .—

22 “(i) Reserved Visas

23 (I) IN GENERAL.— Of the visas made available under this
24 paragraph in each fiscal year (aa) 20 percent shall be reserved for
25 qualified immigrants who invest in a rural area;

26 (bb) 10 percent shall be reserved for qualified immigrants who
27 invest in an area designated by the Secretary of Homeland Security
28 under subparagraph (ii) as a high unemployment area; and

29 (cc) 2 percent shall be reserved for qualified immigrants who
30 invest in infrastructure projects.

31 (II) UNUSED VISAS –

32 (aa) At the end of each fiscal year, any unused visas reserved for
33 qualified immigrants investing in each of the categories described
34 in subclauses (I)(aa) through (cc) shall remain available within the
35 same such category for the immediately succeeding fiscal year.

36 (bb) Visas described in subclauses (I)(aa) through (cc) that have
37 not been used at the end of such succeeding fiscal year shall be

1 made available to qualified immigrants described under
2 subparagraph (A).

3 “(ii) DESIGNATION OF HIGH UNEMPLOYMENT AREA.—

4 “(I) IN GENERAL.—The Secretary of Homeland Security, or a designee of
5 the Secretary who is an employee of the Department of Homeland Security,
6 may designate as a high unemployment area a census tract, or contiguous
7 census tracts, in which—

8 “(aa) the new commercial enterprise is principally doing business;
9 and

10 “(bb) the weighted average of the unemployment rate for the census
11 tracts, based on the labor force employment measure for each applicable
12 census tract and any adjacent tract included under subclause (III), is not
13 less than 150 percent of the national average unemployment rate.

14 “(II) PROHIBITION ON DESIGNATION BY ANY OTHER OFFICIAL.—A targeted
15 employment area may not be designated as a high unemployment area by—

16 “(aa) a Federal official other than the Secretary of Homeland Security
17 or a designee of the Secretary; or

18 “(bb) any official of a State or local government.

19 “(III) INCLUSION.—In making a designation under subclause (I), the
20 Secretary of Homeland Security may include a census tract directly adjacent
21 to a census tract or contiguous census tracts described in that subclause.

22 “(IV) DURATION.—

23 “(aa) IN GENERAL.—A designation under this clause shall be in effect
24 for the 2-year period beginning on—

25 “(AA) the date on which an application under subparagraph (F) is
26 filed; or

27 “(BB) in the case of an alien who is not subject to subparagraph
28 (F), at the time of investment.

29 “(bb) RENEWAL.—A designation under this clause may be renewed
30 for 1 or more additional 2-year periods if the applicable area continues
31 to meet the criteria described in subclause (I).

32 “(V) ADDITIONAL INVESTMENT NOT REQUIRED.—An immigrant investor
33 who has invested the amount of capital required by subparagraph (C) in a
34 targeted employment area designated as a high unemployment area during
35 the period in which the area is so designated shall not be required to increase
36 the amount of investment due to the expiration of the designation.”

37 “(iii) INFRASTRUCTURE PROJECTS —

38 “(I) IN GENERAL.—The Secretary shall determine whether a specific
39 capital investment project is an infrastructure project under the criteria described
40 in subparagraph (D)(iv).

1 “(II) PROHIBITION ON DESIGNATION BY ANY OTHER OFFICIAL.—A
2 determination under subclause (I) may not be made by—

3 “(aa) a Federal official other than the Secretary of Homeland Security
4 or a designee of the Secretary; or

5 “(bb) any official of a State or local government.
6

7 (3) in subparagraph (C)—

8 (A) in clause (i), by striking “\$1,000,000” and all that follows through “previous
9 sentence” and inserting “\$1,050,000 ”;

10 (B) by amending clause (ii) to read as follows:

11 “(ii) ADJUSTMENT FOR TARGETED EMPLOYMENT AREAS AND INFRASTRUCTURE
12 PROJECTS.—The amount of capital required under subparagraph (A) for an
13 investment in a targeted employment area or in an infrastructure project shall be
14 \$800,000 .”;

15 (C) by redesignating clause (iii) as clause (iv);

16 (D) by inserting after clause (ii) the following:

17 “(iii) AUTOMATIC ADJUSTMENT IN MINIMUM INVESTMENT AMOUNT.—

18 “(I) IN GENERAL.—Beginning on January 1, 2027, and every 5 years
19 thereafter, the amount in clause (i) shall automatically adjust for petitions
20 filed on or after the effective date of each adjustment, based on the
21 cumulative annual percentage change in the unadjusted consumer price index
22 for all urban consumers (all items; U.S. city average) reported by the Bureau
23 of Labor Statistics between January 1, 2022, and the date of adjustment. The
24 qualifying investment amounts shall be rounded down to the nearest
25 \$50,000. The Secretary of Homeland Security shall update such amounts by
26 publication of a technical amendment in the Federal Register.

27 “(II) Beginning on January 1, 2027, and every 5 years thereafter, the
28 amount in clause (ii) shall automatically adjust for petitions filed on or after
29 the effective date of each adjustment, to be equal to 60 percent of the
30 standard investment amount under subclause (I).”; and

31 (E) in clause (iv), as redesignated, in the undesignated matter following subclause
32 (II)—

33 (i) by striking “Attorney General” and inserting “Secretary of Homeland
34 Security”; and

35 (ii) by inserting “, as adjusted under clause (iii)” before the period at the end;
36 and

37 (4) by amending subparagraph (D) to read as follows:

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

39 “(i) AFFILIATED JOB-CREATING ENTITY.—The term ‘affiliated job-creating

1 entity’ means any job-creating entity that is controlled, managed, or owned by any
2 of the people involved with the regional center or new commercial enterprise
3 under section 203(b)(5)(H)(v).

4 “(ii) CAPITAL.—The term ‘capital’—

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

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

12 “(III) does not include—

13 “(aa) assets directly or indirectly acquired by unlawful means,
14 including any cash proceeds of indebtedness secured by such assets;

15 “(bb) capital invested in exchange for a note, bond, convertible debt,
16 obligation, or any other debt arrangement between the alien investor
17 and the new commercial enterprise;

18 “(cc) capital invested with a guaranteed rate of return on the amount
19 invested by the alien investor; or

20 “(dd) except as provided in subclause (IV), capital invested that is
21 subject to any agreement between the alien investor and the new
22 commercial enterprise that provides the investor with a contractual right
23 to repayment, such as a mandatory redemption at a certain time or upon
24 the occurrence of a certain event, or a put or sell-back option held by
25 the alien investor, even if such contractual right is contingent on the
26 success of the new commercial enterprise, such as having sufficient
27 available cash flow; and

28 “(IV) includes capital invested that—

29 “(aa) is subject to a buy back option that may be exercised solely at
30 the discretion of the new commercial enterprise; and

31 “(bb) results in the alien investor withdrawing his or her petition
32 unless the alien investor has fulfilled his or her sustainment period and
33 other requirements under this paragraph.

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

40 (iv) INFRASTRUCTURE PROJECT – The term ‘infrastructure project’ means a
41 capital investment project in a filed or approved business plan, which is

1 administered by a governmental entity, such as a Federal, State, or local agency or
2 authority, where the governmental entity is the job-creating entity which contracts
3 with a regional center or new commercial enterprise to receive capital investment
4 under the regional center program described in subparagraph (E) from alien
5 investors or the new commercial enterprise as financing for maintaining,
6 improving, or constructing a public works project.

7 “(v) JOB-CREATING ENTITY.—The term ‘job-creating entity’ means any
8 organization formed in the United States for the ongoing conduct of lawful
9 business, including sole proprietorship, partnership (whether limited or general),
10 corporation, limited liability company, business trust, or other entity, which may
11 be publicly or privately owned, including an entity consisting of a holding
12 company and its wholly owned subsidiaries or affiliates (provided that each
13 subsidiary or affiliate is engaged in an activity formed for the ongoing conduct of
14 a lawful business) that receives, or is established to receive, capital investment
15 from alien investors or a new commercial enterprise under the regional center
16 program described in subparagraph (E) and which is responsible for creating jobs
17 to satisfy the requirement under subparagraph (A)(ii).

18 “(vi) NEW COMMERCIAL ENTERPRISE.—The term ‘new commercial enterprise’
19 means any for-profit organization formed in the United States for the ongoing
20 conduct of lawful business, including sole proprietorship, partnership (whether
21 limited or general), holding company and its wholly owned subsidiaries (provided
22 that each subsidiary is engaged in a for-profit activity formed for the ongoing
23 conduct of a lawful business), joint venture, corporation, business trust, limited
24 liability company, or other entity (which may be publicly or privately owned) that
25 receives, or is established to receive, capital investment from investors under this
26 paragraph.

27 “(vii) RURAL AREA.—The term ‘rural area’ means any area other than an area
28 within a metropolitan statistical area (as designated by the Director of the Office
29 of Management and Budget) or within the outer boundary of any city or town
30 having a population of 20,000 or more (based on the most recent decennial census
31 of the United States).

32 “(viii) TARGETED EMPLOYMENT AREA.—The term ‘targeted employment area’
33 means, at the time of investment, a rural area or an area designated by the
34 Secretary of Homeland Security under subparagraph (B)(ii) as a high
35 unemployment area.”.

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

38 “(5) AGE DETERMINATION FOR CHILDREN OF ALIEN INVESTORS.—An alien who has
39 reached 21 years of age and has been admitted under subsection (d) as a lawful permanent
40 resident on a conditional basis as the child of an alien lawfully admitted for permanent
41 residence under subsection (b)(5), whose lawful permanent resident status on a conditional
42 basis is terminated under section 216A or subsection (b)(5)(M), shall continue to be
43 considered a child of the principal alien for the purpose of a subsequent immigrant petition
44 by such alien under subsection (b)(5) if the alien remains unmarried and the subsequent

1 petition is filed by the principal alien not later than 1 year after the termination of
2 conditional lawful permanent resident status. No alien shall be considered a child under this
3 paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.”.

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

9 (d) Concurrent Filing of EB–5 Petitions and Applications for Adjustment of Status.—Section
10 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

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

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

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

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

20 SEC. 3. REAUTHORIZATION AND REFORM OF THE 21 REGIONAL CENTER PROGRAM.

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

24 (b) Authorization.—

25 (1) IN GENERAL.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C.
26 1153(b)(5)) is amended by adding at the end the following:

27 “(E) REGIONAL CENTER PROGRAM.—

28 “(i) IN GENERAL.—Visas under this subparagraph shall be made available
29 through September 30, 2027 , to qualified immigrants (and the eligible spouses
30 and children of such immigrants) pooling their investments with 1 or more
31 qualified immigrants participating in a program implementing this paragraph that
32 involves a regional center in the United States, which has been designated by the
33 Secretary of Homeland Security on the basis of a proposal for the promotion of
34 economic growth, including prospective job creation and increased domestic
35 capital investment.

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

38 “(I) shall prioritize the processing and adjudication of petitions for rural
39 areas as defined in subparagraph (D)(vii)

1 (II) may process petitions in a manner and order established by the
2 Secretary; and

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

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

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

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

21 “(aa) all applicable laws, regulations, and Executive orders of the
22 United States, including immigration laws, criminal laws, and securities
23 laws; and

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

27 “(III) attestations and information confirming that all persons involved
28 with the regional center meet the requirements under clauses (i) and (ii) of
29 subparagraph (H);

30 “(IV) a description of the policies and procedures in place that are
31 reasonably designed to ensure program compliance; and

32 “(V) the identities of all natural persons involved in the regional center, as
33 described in subparagraph (H)(v).

34 “(iv) INDIRECT JOB CREATION.—

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

1 “(II) CONSTRUCTION ACTIVITY LASTING LESS THAN 2 YEARS.—If the jobs
2 estimated to be created are created by construction activity lasting less than 2
3 years, the Secretary shall permit aliens seeking admission under this
4 subparagraph to satisfy only up to 75 percent of the requirement under
5 subparagraph (A)(ii) with jobs that are estimated to be created indirectly
6 through investment under this paragraph in accordance with this
7 subparagraph.

8 “(v) COMPLIANCE.—

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

14 “(aa) jobs estimated to have been created directly, which may be
15 verified using such methodologies; and

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

21 “(II) JOB AND INVESTMENT REQUIREMENTS.—

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

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

36 “(cc) CONSTRUCTION ACTIVITY JOBS.—If the number of direct jobs
37 estimated to be created has been determined by an economically and
38 statistically valid methodology, and such direct jobs are created by
39 construction activity lasting less than 2 years, the number of such jobs
40 that may be considered direct jobs for purposes of clause (iv) shall be
41 calculated by multiplying the total number of such jobs estimated to be
42 created by the fraction of the 2-year period that the construction activity
43 lasts.

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

2 “(I) require a regional center—

3 “(aa) to notify the Secretary, not later than 120 days before the
4 implementation of significant proposed changes to its organizational
5 structure, ownership, or administration, including the sale of such
6 center, or other arrangements which would result in individuals not
7 previously subject to the requirements under subparagraph (H)
8 becoming involved with the regional center; or

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

12 “(II) adjudicate business plans under subparagraph (F) and petitions under
13 section 204(a)(1)(H) during any notice period as long as the amendment to
14 the business or petition does not negatively impact program eligibility.

15 “(vii) RECORD KEEPING AND AUDITS.—

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

21 “(aa) any claims, evidence, or certifications contained in the regional
22 center’s annual statements under subparagraph (G); and

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

25 “(II) AUDITS.—The Secretary shall audit each regional center not less
26 frequently than once every 5 years. Each such audit shall include a review of
27 any documentation required to be maintained under subclause (I) for the
28 preceding 5 years and a review of the flow of alien investor capital into any
29 capital investment project. To the extent multiple regional centers are located
30 at a single site, the Secretary may audit multiple regional centers in a single
31 site visit.

32 “(III) TERMINATION.—The Secretary shall terminate the designation of a
33 regional center that fails to consent to an audit under subclause (II) or
34 deliberately attempts to impede such an audit.

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

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

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

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

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

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

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

18 “(bb) any conflicts of interest that currently exist or may arise among
19 the regional center, the new commercial enterprise, the job-creating
20 entity, or the principals, attorneys, or individuals responsible for
21 recruitment or promotion of such entities;

22 “(cc) any pending material litigation or bankruptcy, or material
23 adverse judgments or bankruptcy orders issued during the most recent
24 10-year period, in the United States or in another country, affecting the
25 regional center, the new commercial enterprise, any associated job-
26 creating entity, or any other enterprise in which any principal of any of
27 the aforementioned entities held majority ownership at the time; and

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

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

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

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

1 applicable States in connection with the offer, purchase, or sale of its
2 securities; and

3 “(VI) a certification from the regional center, and any issuer of securities
4 intended to be offered to alien investors in connection with the relevant
5 capital investment project, that their respective agents and employees, and
6 any parties associated with the regional center and such issuer of securities
7 affiliated with the regional center are in compliance with the securities laws
8 of the United States and the laws of the applicable States in connection with
9 the offer, purchase, or sale of its securities, to the best of the certifier’s
10 knowledge, after a due diligence investigation.

11 “(ii) EFFECT OF APPROVAL OF A BUSINESS PLAN FOR AN INVESTMENT IN A
12 REGIONAL CENTER’S COMMERCIAL ENTERPRISE.—The approval of an application
13 under this subparagraph, including an approval before the date of the enactment
14 of this subparagraph, shall be binding for purposes of the adjudication of
15 subsequent petitions seeking classification under this paragraph by immigrants
16 investing in the same offering described in such application, and of petitions by
17 the same immigrants filed under section 216A unless—

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

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

20 “(III) there has been a material change that affects eligibility;

21 “(IV) the discovery of other evidence affecting program eligibility was not
22 disclosed by the applicant during the adjudication process; or

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

24 “(iii) AMENDMENTS.—

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

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

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

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

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

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

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

6 (v) PARAMETERS FOR CAPITAL REDEPLOYMENT –

7 “(I) IN GENERAL.—The Secretary of Homeland Security shall prescribe
8 regulations, in accordance with subchapter II of chapter 5 and chapter 7 of
9 title 5, United States Code (commonly known as the “Administrative
10 Procedure Act”), that allow a new commercial enterprise to redeploy
11 investment funds anywhere within the United States or its territories for the
12 purpose of maintaining the investors’ capital at risk, only if:

13 “(aa) The new commercial enterprise has executed the business plan for a
14 capital investment project in good faith without a material change;

15 “(bb) The new commercial enterprise has created a sufficient number of
16 new full time positions to satisfy the job creation requirements of the
17 program for all investors in the new commercial enterprise, either directly
18 or indirectly, as evidenced by the methodologies set forth in this act;

19 “(cc) The job creating entity has repaid the capital initially deployed in
20 conformity with the initial investment contemplated by the business plan;
21 and

22
23 “(dd) The capital, after repayment by the job creating entity, remains at
24 risk and it is not redeployed in passive investments such as stocks or
25 bonds.

26 “(II) TERMINATION.—The Secretary of Homeland Security shall terminate
27 the designation of a regional center if the Secretary determines that a new
28 commercial enterprise has violated any of the requirements of subclause (I)
29 in the redeployment of funds invested in such regional center.

30
31 “(G) REGIONAL CENTER ANNUAL STATEMENTS.—

32 “(i) IN GENERAL.—Each regional center designated under subparagraph (E)
33 shall submit an annual statement, in a manner prescribed by the Secretary of
34 Homeland Security. Each such statement shall include—

35 “(I) a certification stating that, to the best of the certifier’s knowledge,
36 after a due diligence investigation, the regional center is in compliance with
37 clauses (i) and (ii) of subparagraph (H);

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

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

1 subparagraph (K)(iii);

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

6 “(V) an accounting of all individual alien investor capital invested in the
7 regional center, new commercial enterprise, and 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 any job-creating entity by alien investors
12 under this paragraph for each capital investment project being
13 undertaken by 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, the new
26 commercial enterprise, any affiliated job-creating entity, any affiliated
27 issuer of securities intended to be offered to alien investors, or any
28 promoter, finder, broker-dealer, or other entity engaged by any of the
29 aforementioned entities to 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 the information
36 provided under items (aa) through (gg) is accurate, to the best of the
37 certifier’s knowledge, after a due diligence 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 Secretary of Homeland
2 Security—

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

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

9 “(iii) SANCTIONS.—

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

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

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

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

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

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

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

38 “(dd) termination of regional center designation.

39 “(iv) AVAILABILITY OF ANNUAL STATEMENTS TO INVESTORS.—Not later than 30
40 days after a request from an alien investor, a regional center shall make available
41 to such alien investor a copy of the filed annual statement and any amendments

1 filed to such statement, which shall be redacted to exclude any information
2 unrelated to such alien investor or the new commercial enterprise or job creating
3 entity into which the alien investor invested.

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

5 “(i) IN GENERAL.—The Secretary of Homeland Security may not permit any
6 person to be involved with any regional center, new commercial enterprise, or
7 job-creating entity if—

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

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

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

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

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

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

26 “(bb) bars the person from—

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

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

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

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

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

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

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

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

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

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

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

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

9 “(IV) the person—

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

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

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

17 “(I) LAWFUL STATUS REQUIRED.—A person may not be involved with a
18 regional center unless the person—

19 “(aa) is a national of the United States or an individual who has been
20 lawfully admitted for permanent residence (as such terms are defined in
21 paragraphs (20) and (22) of section 101(a)); and

22 “(bb) is not the subject of rescission or removal proceedings.

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

33 “(III) RULEMAKING.—Not later than 270 days after the date of the
34 enactment of the EB–5 Reform and Integrity Act of 2022, the Secretary shall
35 issue regulations implementing subparagraphs (I) and (II).

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

37 “(I) shall require such attestations and information, including the
38 submission of fingerprints or other biometrics to the Federal Bureau of
39 Investigation with respect to a regional center, a new commercial enterprise,
40 and any affiliated job creating entity, and persons involved with such entities

1 (as described in clause (v)), as may be necessary to determine whether such
2 entities are in compliance with clauses (i) and (ii);

3 “(II) shall perform such criminal record checks and other background and
4 database checks with respect to a regional center, a new commercial
5 enterprise, and any affiliated job-creating entity, and persons involved with
6 such entities (as described in clause (v)), as may be necessary to determine
7 whether such entities are in compliance with clauses (i) and (ii); and

8 “(III) may, at the Secretary’s discretion, require the information described
9 to in subclause (I) and may perform the checks described in subclause (II)
10 with respect to any job creating entity and persons involved with such entity
11 if there is a reasonable basis to believe such entity or person is not in
12 compliance with clauses (i) and (ii).

13 “(iv) TERMINATION.—

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

18 “(aa) knowingly involved a person with such entity in violation of
19 clause (i) or (ii) by failing, within 14 days of acquiring such
20 knowledge—

21 “(AA) to take commercially reasonable efforts to discontinue the
22 prohibited person’s involvement; or

23 “(BB) to provide notice to the Secretary;

24 “(bb) failed to provide an attestation or information requested by the
25 Secretary under clause (iii)(I); or

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

28 “(II) LIMITATION.—The Secretary’s authorized sanctions under subclause
29 (I) shall be limited to entities that have engaged in any activity described in
30 subclause (I).

31 “(III) INFORMATION.—

32 “(aa) NOTIFICATION.—The Secretary, after performing the criminal
33 record checks and other background checks described in clause (iii),
34 shall notify a regional center, new commercial enterprise, or job-
35 creating entity whether any person involved with such entities is not in
36 compliance with clause (i) or (ii), unless the information that provides
37 the basis for the determination is classified or disclosure is otherwise
38 prohibited under law.

39 “(bb) EFFECT OF FAILURE TO RESPOND.—If the regional center, new
40 commercial enterprise, or job-creating entity fails to discontinue the
41 prohibited person’s involvement with the regional center, new

1 commercial enterprise, or job-creating entity, as applicable, within 30
2 days after receiving such notification, such entity shall be deemed to
3 have knowledge under subclause (I)(aa) that the involvement of such
4 person with the entity is in violation of clause (i) or (ii).

5 “(v) PERSONS INVOLVED WITH A REGIONAL CENTER, NEW COMMERCIAL
6 ENTERPRISE, OR JOB-CREATING ENTITY.—For the purposes of this paragraph,
7 unless otherwise determined by the Secretary of Homeland Security, a person is
8 involved with a regional center, a new commercial enterprise, any affiliated job-
9 creating entity, as applicable, if the person is, directly or indirectly, in a position
10 of substantive authority to make operational or managerial decisions over pooling,
11 securitization, investment, release, acceptance, or control or use of any funding
12 that was procured under the program described in subparagraph (E). An
13 individual may be in a position of substantive authority if the person serves as a
14 principal, a representative, an administrator, an owner, an officer, a board
15 member, a manager, an executive, a general partner, a fiduciary, an agent, or in a
16 similar position at the regional center, new commercial enterprise, or job-creating
17 entity, respectively.

18 “(I) COMPLIANCE WITH SECURITIES LAWS.—

19 “(i) JURISDICTION.—

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

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

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

33 “(ii) REGIONAL CENTER CERTIFICATIONS REQUIRED.—

34 “(I) INITIAL CERTIFICATION.—The Secretary of Homeland Security may
35 not approve an application for regional center designation or regional center
36 amendment unless the regional center certifies that, to the best of the
37 certifier’s knowledge, after a due diligence investigation, the regional center
38 is in compliance with and has policies and procedures, including those
39 related to internal and external due diligence, reasonably designed to
40 confirm, as applicable, that all parties associated with the regional center are
41 and will remain in compliance with the securities laws of the United States
42 and of any State in which—

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

- 1 “(bb) the issuer of securities was located; or
2 “(cc) the investment advice was provided by the regional center or
3 parties associated with the regional center.
- 4 “(II) REISSUE.—A regional center shall annually reissue a certification
5 described in subclause (I), in accordance with subparagraph (G), to certify
6 compliance with clause (iii) by stating that—
- 7 “(aa) the certification is made by a certifier;
8 “(bb) to the best of the certifier’s knowledge, after a due diligence
9 investigation, all such offers, purchases, and sales of securities or the
10 provision of investment advice complied with the securities laws of the
11 United States and the securities laws of any State in which—
- 12 “(AA) the offer, purchase, or sale of securities was conducted;
13 “(BB) the issuer of securities was located; or
14 “(CC) the investment advice was provided; and
15 “(cc) records, data, and information related to such offers, purchases,
16 and sales have been maintained.
- 17 “(III) EFFECT OF NONCOMPLIANCE.—If a regional center, through its due
18 diligence, discovered during the previous fiscal year that the regional center
19 or any party associated with the regional center was not in compliance with
20 the securities laws of the United States or the securities laws of any State in
21 which the securities activities were conducted by any party associated with
22 the regional center, the certifier shall—
- 23 “(aa) describe the activities that led to noncompliance;
24 “(bb) describe the actions taken to remedy the noncompliance; and
25 “(cc) certify that the regional center and all parties associated with
26 the regional center are currently in compliance, to the best of the
27 certifier’s knowledge, after a due diligence investigation.
- 28 “(iii) OVERSIGHT REQUIRED.—Each regional center shall—
- 29 “(I) use commercially reasonable efforts to monitor and supervise
30 compliance with the securities laws in relations to all offers, purchases, and
31 sales of, and investment advice relating to, securities made by parties
32 associated with the regional center;
- 33 “(II) maintain records, data, and information relating to all such offers,
34 purchases, sales, and investment advice during the 5-year period beginning
35 on the date of their creation; and
- 36 “(III) make the records, data, and information described in subclause (II)
37 available to the Secretary or to the Securities and Exchange Commission
38 upon request.
- 39 “(iv) SUSPENSION OR TERMINATION.—In addition to any other authority

1 provided to the Secretary under this paragraph, the Secretary, in the Secretary’s
2 discretion, may suspend or terminate the designation of any regional center or
3 impose other sanctions against the regional center if the regional center, or any
4 parties associated with the regional center that the regional center knew or
5 reasonably should have known—

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

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

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

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

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

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

24 “(I) the regional center;

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

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

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

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

38 “(J) EB–5 INTEGRITY FUND.—

39 “(i) ESTABLISHMENT.—There is established in the United States Treasury a
40 special fund, which shall be known as the ‘EB–5 Integrity Fund’ (referred to in
41 this subparagraph as the ‘Fund’). Amounts deposited into the Fund shall be

1 available to the Secretary of Homeland Security until expended for the purposes
2 set forth in clause (iii).

3 “(ii) FEES.—

4 “(I) ANNUAL FEE.—On October 1, 2022, and each October 1 thereafter,
5 the Secretary of Homeland Security shall collect for the Fund an annual
6 fee—

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

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

12 “(II) PETITION FEE.—Beginning on October 1, 2022, the Secretary shall
13 collect a fee of \$1,000 for the Fund with each petition filed under section
14 204(a)(1)(H) for classification under subparagraph (E). The fee under this
15 subclause is in addition to the fee that the Secretary is authorized to establish
16 and collect for each petition to recover the costs of adjudication and
17 naturalization services under section 286(m).

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

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

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

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

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

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

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

31 “(bb) to determine whether regional centers, new commercial
32 enterprises, job-creating entities, and alien investors (and their alien
33 spouses and alien children) comply with the immigration laws;

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

35 “(dd) as the Secretary determines to be necessary, including
36 monitoring compliance with the requirements under section 7 of the
37 EB–5 Reform and Integrity Act of 2022.

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

39 “(I) impose a reasonable penalty, which shall be deposited into the Fund,

1 if any regional center does not pay the fee required under clause (ii) within
2 30 days after the date on which such fee is due; and

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

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

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

11 “(i) RULES AND STANDARDS.—Direct and third-party promoters (including
12 migration agents) of a regional center, any new commercial enterprise, an
13 affiliated job-creating entity, or an issuer of securities intended to be offered to
14 alien investors in connection with a particular capital investment project shall
15 comply with the rules and standards prescribed by the Secretary of Homeland
16 Security and any applicable Federal or State securities laws, to oversee promotion
17 of any offering of securities related to the EB–5 Program, including—

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

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

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

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

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

28 “(IV) guidelines describing permissible fee arrangements under applicable
29 securities and immigration laws.

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

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

38 “(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall
39 include a disclosure, signed by the investor, that reflects all fees, ongoing interest,
40 and other compensation paid to any person that the regional center or new
41 commercial enterprise knows has received, or will receive, in connection with the

1 investment, including compensation to agents, finders, or broker dealers involved
2 in the offering, to the extent not already specifically identified in the business plan
3 filed under subparagraph (F).

4 “(L) SOURCE OF FUNDS.—

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

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

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

13 “(aa) foreign business registration records;

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

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

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

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

33 “(iii) GIFT AND LOAN RESTRICTIONS.—

34 “(I) IN GENERAL.—Gifted and borrowed funds may not be counted toward
35 the minimum capital investment requirement under subparagraph (C) unless
36 such funds—

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

38 “(bb) were not gifted or loaned to circumvent any limitations
39 imposed on permissible sources of capital under this subparagraph,
40 including but not limited to proceeds from illegal activity.

1 “(II) RECORDS REQUIREMENT.—If funds invested under subparagraph (A)
2 are gifted or loaned to the alien investor, the Secretary shall require that the
3 alien investor’s petition under this paragraph includes the records described
4 in subclauses (I) and (II) of clause (ii) from the donor or, if other than a bank,
5 the lender.

6 “(M) TREATMENT OF GOOD FAITH INVESTORS FOLLOWING PROGRAM
7 NONCOMPLIANCE.—

8 “(i) TERMINATION OR DEBARMENT OF EB–5 ENTITY.—Except as provided in
9 clause (vi), upon the termination or debarment, as applicable, from the program
10 under this paragraph of a regional center, a new commercial enterprise, or a job-
11 creating entity—

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

18 “(II) the Secretary of Homeland Security shall notify the alien
19 beneficiaries of such petitions of such termination or debarment.

20 “(ii) NEW REGIONAL CENTER OR INVESTMENT.—The petition under section
21 204(a)(1)(H) of an alien described in clause (i) and the conditional permanent
22 resident status of an alien described in clause (i) shall be terminated 180 days after
23 notification of the termination from the program under this paragraph of a
24 regional center, a new commercial enterprise, or a job creating entity (but not
25 sooner than 180 days after the date of the enactment of the EB–5 Reform and
26 Integrity Act of 2022) unless—

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

28 “(aa) the new commercial enterprise associates with an approved
29 regional center, regardless of the approved geographical boundaries of
30 such regional center’s designation; or

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

33 “(II) in the case of the debarment of a new commercial enterprise or job-
34 creating entity, such alien—

35 “(aa) associates with a new commercial enterprise in good standing;
36 and

37 “(bb) invests additional investment capital solely to the extent
38 necessary to satisfy remaining job creation requirements under
39 subparagraph (A)(ii).

40 “(iii) AMENDMENTS.—

41 “(I) FILING REQUIREMENT.—The Secretary shall permit a petition

1 described in clause (i)(I) to be amended to allow such petition to meet the
2 applicable eligibility requirements under clause (ii), or to notify the Secretary
3 that a pending or approved petition continues to meet the eligibility
4 requirements described in clause (ii) notwithstanding termination or
5 debarment described in clause (i) if such amendment is filed not later than
6 180 days after the Secretary provides notification of termination or
7 debarment of a regional center, a new commercial enterprise, or a job-
8 creating entity, as applicable.

9 “(II) DETERMINATION OF ELIGIBILITY.—For purposes of determining
10 eligibility under subclause (I)—

11 “(aa) the Secretary shall permit amendments to the business plan,
12 without such facts underlying the amendment being deemed a material
13 change; and

14 “(bb) may deem any funds obtained or recovered by an alien investor,
15 directly or indirectly, from claims against third parties, including
16 insurance proceeds, or any additional investment capital provided by the
17 alien, to be such alien’s investment capital for the purposes of
18 subparagraph (A) if such investment otherwise complies with the
19 requirements under this paragraph and section 216A.

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

24 “(v) REMEDIES.—For petitions approved under clause (ii), including following
25 an amendment filed under clause (iii), the Secretary—

26 “(I) shall retain the immigrant visa priority date related to the original
27 petition and prevent age-out of derivative beneficiaries; and

28 “(II) may hold such petition in abeyance and extend any applicable
29 deadlines under this paragraph.

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

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

35 “(II) the Secretary shall—

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

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

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

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

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

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

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

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

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

15 “(V) a document evidencing conditional permanent resident status that
16 was issued to an alien pursuant to section 216A.

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

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

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

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

34 “(III) provide any United States-owned regional center, new commercial
35 enterprise, or job creating entity an explanation for such determination unless
36 the relevant information is classified or disclosure is otherwise prohibited
37 under law.

38 “(v) JUDICIAL REVIEW.—Notwithstanding any other provision of law (statutory
39 or nonstatutory), including section 2241 of title 28, United States Code, or any
40 other habeas corpus provision, and sections 1361 and 1651 of such title, no court
41 shall have jurisdiction to review a denial or revocation under this subparagraph.

1 Nothing in this clause may be construed as precluding review of constitutional
2 claims or questions of law raised upon a petition for review filed with an
3 appropriate court of appeals in accordance with section 242.

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

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

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

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

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

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

29 “(P) ADMINISTRATIVE APPELLATE REVIEW.—

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

34 “(I) an application for regional center designation or regional center
35 amendment;

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

38 “(III) a petition by an alien investor for status as an immigrant under this
39 paragraph;

40 “(IV) the termination or suspension of any benefit accorded under this
41 paragraph; and

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

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

9 “(Q) FUND ADMINISTRATION.—

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

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

14 “(I) be transferred to another separate account or a job creating entity;

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

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

20 “(iii) DEPLOYMENT OF FUNDS INTO AN AFFILIATED JOB-CREATING ENTITY.—If
21 amounts are transferred to an affiliated job-creating entity pursuant to clause
22 (ii)(I)—

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

26 “(II) not later than 30 days after such amounts are deployed pursuant to
27 subclause (I), the affiliated job-creating entity shall provide written notice to
28 the fund administrator retained pursuant to clause (iv) that a construction
29 consultant or other individual authorized by the Secretary has verified that
30 such amounts have been deployed into the project.

31 “(iv) FUND ADMINISTRATOR.—Except as provided in clause (v), the new
32 commercial enterprise shall retain a fund administrator to fulfill the requirements
33 under this subparagraph. The fund administrator—

34 “(I) shall be independent of, and not directly related to, the new
35 commercial enterprise, the regional center associated with the new
36 commercial enterprise, the job creating entity, or any of the principals or
37 managers of such entities;

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

39 “(aa) a certified public accountant;

40 “(bb) an attorney;

1 “(cc) a broker-dealer or investment adviser registered with the
2 Securities and Exchange Commission; or

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

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

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

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

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

11 “(bb) approve such transfer with a written or electronic signature;

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

15 “(aa) the name and location of the bank or financial institution at
16 which the account is maintained;

17 “(bb) the history of the account; and

18 “(cc) any additional information required by the Secretary; and

19 “(VII) shall make and preserve, during the 5-year period beginning on the
20 last day of the Federal fiscal year in which any transactions occurred, books,
21 ledgers, records, and other documentation necessary to comply with this
22 clause, which shall be provided to the Secretary upon request.

23 “(v) WAIVER.—

24 “(I) WAIVER PERMITTED.—The Secretary of Homeland Security, after
25 consultation with the Securities and Exchange Commission, may waive the
26 requirements under clause (iv) for any new commercial enterprise or
27 affiliated job-creating entity that is controlled by or under common control of
28 an investment adviser or broker-dealer that is registered with the Securities
29 and Exchange Commission if the Secretary, in the Secretary’s discretion,
30 determines that the Securities and Exchange Commission provides
31 comparable protections and transparency for alien investors as the
32 protections and transparency provided under clause (iv).

33 “(II) WAIVER REQUIRED.—The Secretary of Homeland Security shall
34 waive the requirements under clause (iv) for any new commercial enterprise
35 that commissions an annual independent financial audit of such new
36 commercial enterprise or job creating entity conducted in accordance with
37 Generally Accepted Auditing Standards, which audit shall be provided to the
38 Secretary and all investors in the new commercial enterprise.

39 “(vi) DEFINED TERM.—In this subparagraph, the term ‘separate account’ means
40 an account that—

1 “(I) is maintained in the United States by a new commercial enterprise or
2 job creating entity at a federally regulated bank or at another financial
3 institution (as defined in section 20 of title 18, United States Code) in the
4 United States;

5 “(II) is insured; and

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

9 (2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the
10 date that is 60 days after the date of the enactment of this Act.

11 (c) Required Checks.—

12 (1) IN GENERAL.—Section 235(b)(5) of the Immigration and Nationality Act (8 U.S.C.
13 1135(b)(5)), as amended by subsection (b), is further amended by adding at the end the
14 following:

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

20 (2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the
21 date of the enactment of this Act.

22 SEC. 4. CONDITIONAL PERMANENT RESIDENT STATUS 23 FOR ALIEN INVESTORS, SPOUSES, AND CHILDREN.

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

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

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

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

30 “(1) CONDITIONAL BASIS FOR STATUS.—An alien investor, alien spouse, and alien child
31 shall be considered, at the time of obtaining status as an alien lawfully admitted for
32 permanent residence, to have obtained such status on a conditional basis subject to the
33 provisions of this section.”;

34 (4) in subsection (b)—

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

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

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

1 (5) in subsection (c)—

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

3 (B) in paragraph (1)—

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

6 (ii) in subparagraph (A)—

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

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

9 (iii) in subparagraph (B)—

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

11 (II) by striking “Service” and inserting “Department of Homeland
12 Security”; and

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

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

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

17 (C) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

3 (6) in subsection (d)—

4 (A) in paragraph (1)—

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

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

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

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

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

10 “(ii) is actively in the process of creating the employment required under section
11 203(b)(5)(A)(ii) and will create such employment before the third anniversary of the
12 alien’s lawful admission for permanent residence, provided that such alien’s capital
13 will remain invested during such time; and”;

14 (B) in paragraph (2), by amending subparagraph (A) to read as follows:

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

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

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

23 (C) in paragraph (3)—

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

25 “(A) IN GENERAL.—The interview”;

26 (ii) by striking “Service” and inserting “Department of Homeland Security”;
27 and

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

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

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

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

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

5 (b) Effective Dates.—

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

8 (2) EXCEPTIONS.—

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

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

16 **SEC. 5. PROCEDURE FOR GRANTING IMMIGRANT** 17 **STATUS.**

18 (a) Filing Order and Eligibility.—Section 204(a)(1)(H) of the Immigration and Nationality Act
19 (8 U.S.C. 1154(a)(1)(H)) is amended to read as follows:

20 “(H)(i) Any alien seeking classification under section 203(b)(5) may file a petition for such
21 classification with the Secretary of Homeland Security. An alien seeking to pool his or her
22 investment with 1 or more additional aliens seeking classification under section 203(b)(5) shall
23 file for such classification in accordance with section 203(b)(5)(E), or before the date of the
24 enactment of the EB–5 Reform and Integrity Act of 2022, in accordance with section 203(b)(5).
25 An alien petitioning for classification under section 203(b)(5)(E) may file a petition with the
26 Secretary after a regional center has filed an application for approval of an investment under
27 section 203(b)(5)(F).

28 “(ii) A petitioner described in clause (i) shall establish eligibility at the time he or she files a
29 petition for classification under section 203(b)(5). A petitioner who was eligible for such
30 classification at the time of such filing shall be deemed eligible for such classification at the time
31 such petition is adjudicated, subject to the approval of the petitioner’s associated application
32 under section 203(b)(5)(F), if applicable.”.

33 (b) Effective Dates.—

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

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

1 (c) Adjudication of Petitions.—The Secretary of Homeland Security shall continue to
2 adjudicate petitions and benefits under sections 203(b)(5) and 216A of the Immigration and
3 Nationality Act (8 U.S.C. 1153(b)(5) and 1186b) during the implementation of this Act and the
4 amendments made by this Act.

5 SEC. 6. TIMELY PROCESSING.

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

10 (b) Adjustment of Fees To Achieve Efficient Processing.—Notwithstanding section 286(m) of
11 the Immigration and Nationality Act (8 U.S.C. 1356(m)), and except as provided under
12 subsection (c), the Director, not later than 60 days after the completion of the study under
13 subsection (a), shall set fees for services provided under sections 203(b)(5) and 216A of such Act
14 (8 U.S.C. 1153(b)(5) and 1186b) at a level sufficient to ensure the full recovery only of the costs
15 of providing such services, including the cost of attaining the goal of completing adjudications,
16 on average, not later than—

17 (1) 180 days after receiving a proposal for the establishment of a regional center
18 described in section 203(b)(5)(E) of such Act;

19 (2) 180 days after receiving an application for approval of an investment in a new
20 commercial enterprise described in section 203(b)(5)(F) of such Act;

21 (3) 90 days after receiving an application for approval of an investment in a new
22 commercial enterprise described in section 203(b)(5)(F) of such Act that is located in a
23 targeted employment area (as defined in section 203(b)(5)(D) of such Act);

24 (4) 240 days after receiving a petition from an alien desiring to be classified under section
25 203(b)(5)(E) of such Act;

26 (5) 120 days after receiving a petition from an alien desiring to be classified under section
27 203(b)(5)(E) of such Act with respect to an investment in a targeted employment area (as
28 defined in section 203(b)(5)(D) of such Act); and

29 (6) 240 days after receiving a petition from an alien for removal of conditions described
30 in section 216A(c) of such Act.

31 (c) Additional Fees.—Fees in excess of the fee levels described in subsection (b) may be
32 charged only—

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

39 (2) in an amount that is not greater than 1 percent of the fee for filing a petition under
40 section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), to make
41 improvements to the information technology systems used by the Secretary of Homeland

1 Security to process, adjudicate, and archive applications and petitions under such section,
2 including the conversion to electronic format of documents filed by petitioners and
3 applicants for benefits under such section.

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

11 (e) Rule of Construction Regarding Adjudication Delays.—Nothing in this subtitle may be
12 construed to limit the authority of the Secretary of Homeland Security to suspend the
13 adjudication of any application or petition under section 203(b)(5) or 216A of the Immigration
14 and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b) pending the completion of a national
15 security or law enforcement investigation relating to such application or petition.

16 (f) Rule of Construction Regarding Modification of Fees.—Nothing in this section may be
17 construed to require any modification of fees before the completion of—

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

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

22 SEC. 7. TRANSPARENCY.

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

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

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

37 (A) a regional center;

38 (B) a new commercial enterprise;

39 (C) a job-creating entity; or

40 (D) any person or entity associated with such regional center, new commercial

1 enterprise, or job-creating entity; and

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

5 (c) Reporting of Communications.—

6 (1) WRITTEN COMMUNICATION.—Employees of the Department of Homeland Security,
7 including the officials listed in subsection (a), shall include, in the record of proceeding for
8 a case under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C.
9 1153(b)(5)), actual or electronic copies of all case-specific written communication,
10 including emails from government and private accounts, with non-Department persons or
11 entities advocating for regional center applications or individual petitions under such
12 section that are pending on or after the date of the enactment of this Act (other than routine
13 communications with other agencies of the Federal Government regarding the case,
14 including communications involving background checks and litigation defense).

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

21 (A) the conversation shall be recorded; or

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

24 (3) NOTIFICATION.—

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

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

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

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

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

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

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

3 (d) Consideration of Evidence.—

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

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

12 (e) Channels of Communication.—

13 (1) EMAIL ADDRESS OR EQUIVALENT.—The Director of U.S. Citizenship and Immigration
14 Services shall maintain an email account (or equivalent means of communication) for
15 persons or entities—

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

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

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

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

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

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

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

37 (B) DIRECTION OF INCOMING COMMUNICATIONS.—

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

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

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

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

10 (C) LOG.—

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

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

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

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

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

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

35 (f) Penalty.—

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

39 (2) SANCTIONS.—Not later than 90 days after the date of the enactment of this Act, the
40 Secretary of Homeland Security shall establish a graduated set of sanctions based on the
41 severity of the violation referred to in paragraph (1), which may include, in addition to any

1 criminal or civil penalties that may be imposed, written reprimand, suspension, demotion, or
2 removal.

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

6 (h) Rule of Construction Regarding Private Right of Action.—Nothing in this section may be
7 construed to create or authorize a private right of action to challenge a decision of an employee
8 of the Department of Homeland Security.

9 (i) Effective Date.—This section, and the amendments made by this section, shall take effect
10 on the date of the enactment of this Act.

11 **SEC. 8. PROTECTION FROM EXPIRED LEGISLATION.**

12 Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), as amended by
13 this Act, is further amended by adding at the end the following:

14 “(S) PROTECTION FROM EXPIRED LEGISLATION.—Notwithstanding the expiration of
15 legislation authorizing the regional center program under subparagraph (E), the Secretary of
16 Homeland Security—

17 “(i) shall continue processing petitions under sections 204(a)(1)(H) and 216A based on an
18 investment in a new commercial enterprise associated with a regional center that were
19 filed on or before September 30, 2026;

20 “(ii) may not deny a petition described in clause (i) based on the expiration of such
21 legislation; and

22 “(iii) shall not suspend or terminate the allocation of visas to the beneficiaries of
23 approved petitions described in clause (i).

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