

INA: ACT 203 - ALLOCATION OF IMMIGRANT VISAS

Sec. 203. [[8 U.S.C. 1153: Allocation of immigrant visas](#)]

(a) Preference Allocation for Family-Sponsored Immigrants. - Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allotted visas as follows:

(1) Unmarried sons and daughters of citizens. - Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens. - Qualified immigrants -

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence, shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

(3) Married sons and married daughters of citizens. - Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) Brothers and sisters of citizens. - Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) Preference Allocation for Employment-Based Immigrants. - Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) Priority workers. - Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. - An alien is described in this subparagraph if -

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

(B) Outstanding professors and researchers. -An alien is described in this subparagraph if -

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States-

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) Certain multinational executives and managers. An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. -

(A) In general. - Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) (i) National interest waiver - Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii)(I) Physicians working in shortage areas or veterans facilities –

(I) In general. - The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if--

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(II) Prohibition. - No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 204(b), and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 245, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 101(a)(15)(J)), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(III) Statutory construction. - Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 204(a), or the filing of an application for adjustment of status under section 245, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

(IV) Effective Date. - The requirements of this subsection do not affect waivers on behalf of alien physicians approved under subsection (b)(2)(B) before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under subsection (b)(2)(B) prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to subsection (b)(2)(B) except that the alien is required to have worked full time as a physician for an aggregate of 3 years (not including time served in the status of an alien described in section 1101(a)(15)(J) of this title) before a visa can be issued to the alien under section 1154(b) of this title or the status of the alien is adjusted to permanent resident under section 1255 of this title.

(C) Determination of exceptional ability. - In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) Skilled workers, professionals, and other workers. -

(A) In general. - Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals. - Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(iii) Other workers. - Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(B) Limitation on other workers. - Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

(C) Labor certification required. - An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(5)(A) of this title.

(4) Certain special immigrants. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section

101(a)(27) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii), 2/ and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 101(a)(27)(M).

(5) Employment creation. -

(A) In general. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial 4/ enterprise (including a limited partnership)--

(i) in which such alien has invested (after November 29, 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C) and which is expected to remain invested for not less than 2 years; and

(ii) which will benefit the United States economy by creating full-time employment for not fewer than 10 United States citizens, United States nationals, or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

(B) Designations and reserved visas. -

(i) Reserved visas

(I) In general. - Of the visas made available under this paragraph in each fiscal year-

(aa) 20 percent shall be reserved for qualified immigrants who invest in a rural area;

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

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

(II) Unused visas. -

(aa) Carryover. - At the end of each fiscal year, any unused visas reserved for qualified immigrants investing in each of the categories described in items (aa) through (cc) of subclause (I) shall remain available within the same category for the immediately succeeding fiscal year.

(bb) General availability. - Visas described in items (aa) through (cc) of subclause (I) that are not issued by the end of the succeeding fiscal year referred to in item (aa) shall be made available to qualified immigrants described under subparagraph (A).

(ii) Designation of high unemployment area

(I) In general. - The Secretary of Homeland Security, or a designee of the Secretary who is an employee of the Department of Homeland Security, may designate, as a high unemployment area, a census tract, or contiguous census tracts, in which-

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

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

(II) Prohibition on designation by any other official. - A targeted employment area may not be designated as a high unemployment area by-

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

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

(III) Inclusion. - In making a designation under subclause (I), the Secretary of Homeland Security may include a census tract directly adjacent to a census tract or contiguous census tracts described in that subclause.

(IV) Duration

(aa) In general. - A designation under this clause shall be in effect for the 2-year period beginning on-

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

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

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

(V) Additional investment not required. - An immigrant investor who has invested the amount of capital required by subparagraph (C) in a targeted employment area designated as a high unemployment area during the period in which the area is so designated shall

not be required to increase the amount of investment due to the expiration of the designation.

(iii) Infrastructure projects

(I) In general. - The Secretary of Homeland Security shall determine whether a specific capital investment project meets the definition of "infrastructure project" set forth in subparagraph (D)(iv).

(II) Prohibition on designation by any other official. - A determination under subclause

(I) may not be made by-

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

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

(C) Amount of capital required

(i) In general. - Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,050,000.

(ii) Adjustment for targeted employment areas and infrastructure projects. - The amount of capital required under subparagraph (A) for an investment in a targeted employment area or in an infrastructure project shall be \$800,000.

(iii) Automatic adjustment in minimum investment amount

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

(II) Beginning on January 1, 2027, and every 5 years thereafter, the amount in clause (ii) shall automatically adjust for petitions filed on or after the effective date of each adjustment, to be equal to 75 percent of the standard investment amount under subclause (I).

(iv) Adjustment for high employment areas. - In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment-

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate, the Secretary of Homeland Security may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (i), as adjusted under clause (iii).

(D) Definitions. - In this paragraph:

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

(ii) Capital. - The term "capital"-

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

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

(III) does not include-

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

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

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

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

(IV) includes capital invested that-

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

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

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

(iv) Infrastructure project. - The term "infrastructure project" means a capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the regional center program described in subparagraph (E) from alien investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project.

(v) Job-creating entity. - The term "job-creating entity" means any organization formed in the United States for the ongoing conduct of lawful business, including sole proprietorship, partnership (whether limited or general), corporation, limited liability company, business trust, or other entity, which may be publicly or privately owned, including an entity consisting of a holding company and its wholly owned subsidiaries or affiliates (provided that each subsidiary or affiliate is engaged in an activity formed for the ongoing conduct of a lawful business) that receives, or is established to receive, capital investment from alien investors or a new commercial enterprise under the regional center program described in this subparagraph and which is responsible for creating jobs to satisfy the requirement under subparagraph (A)(ii).

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

(vii) Rural area. - The term "rural area" means any area other than an area within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

(viii) Targeted employment area. - The term "targeted employment area" means, at the time of investment, a rural area or an area designated by the Secretary of Homeland Security under subparagraph (B)(ii) as a high unemployment area.

(E) Regional center program

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

(ii) Processing. - In processing petitions under section 1154(a)(1)(H) of this title for classification under this paragraph, the Secretary of Homeland Security-

(I) shall prioritize the processing and adjudication of petitions for rural areas;

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

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

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

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

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

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

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

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

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

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

(iv) Indirect job creation

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

(II) Construction activity lasting less than 2 years. - If the jobs estimated to be created are created by construction activity lasting less than 2 years, the Secretary shall permit aliens seeking admission under this subparagraph to satisfy only up to 75 percent of the requirement under subparagraph (A)(ii) with jobs that are estimated to be created indirectly through investment under this paragraph in accordance with this subparagraph.

(v) Compliance

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

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

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

(II) Job and investment requirements

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

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

(cc) Construction activity jobs. - If the number of direct jobs estimated to be created has been determined by an economically and statistically valid methodology, and such direct jobs are created by construction activity lasting less than 2 years, the number of such jobs that may be considered direct jobs for purposes of clause (iv) shall be calculated by multiplying the total number of such jobs estimated to be created by the fraction of the 2-year period that the construction activity lasts.

(vi) Amendments. - The Secretary of Homeland Security shall-

(I) require a regional center-

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

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

(II) adjudicate business plans under subparagraph (F) and petitions under section 1154(a)(1)(H) of this title during any notice period as long as the amendment to the business or petition does not negatively impact program eligibility.

(vii) Record keeping and audits

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

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

(bb) associated petitions by aliens seeking classification under this section or removal of conditions under section 1186b of this title.

(II) Audits. - The Secretary shall audit each regional center not less frequently than once every 5 years. Each such audit shall include a review of any documentation required to be maintained under subclause (I) for the preceding 5 years and a review of the flow of alien investor capital into any capital investment project. To the extent multiple regional

centers are located at a single site, the Secretary may audit multiple regional centers in a single site visit.

(III) Termination. - The Secretary shall terminate the designation of a regional center that fails to consent to an audit under subclause (II) or deliberately attempts to impede such an audit.

(F) Business plans for regional center investments

(i) Application for approval of an investment in a commercial enterprise. - A regional center shall file an application with the Secretary of Homeland Security for each particular investment offering through an associated new commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in that offering. The application shall include-

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

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

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

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

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

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

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

(dd)(AA) any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the new commercial enterprise, or any issuer of securities intended to be

offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien investors in connection with the investment;

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

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

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

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

(ii) Effect of approval of a business plan for an investment in a regional center's commercial enterprise. - The approval of an application under this subparagraph, including an approval before the date of the enactment of this subparagraph, shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same offering described in such application, and of petitions by the same immigrants filed under section 1186b of this title unless-

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

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

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

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

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

(iii) Amendments

(I) Approval. - The Secretary of Homeland Security may establish procedures by which a regional center may seek approval of an amendment to an approved application under

this subparagraph that reflects changes specified by the Secretary to any information, documents, or other aspects of the investment offering described in such approved application not later than 30 days after any such changes.

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

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

(bb) petitions by immigrants described in item (aa) that are filed under section 1186b of this title.

(iv) Site visits. - The Secretary of Homeland Security shall-

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

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

(v) Parameters for capital redeployment

(I) In general. - The Secretary of Homeland Security shall prescribe regulations, in accordance with subchapter II of chapter 5 and chapter 7 of title 5 (commonly known as the "Administrative Procedure Act"), that allow a new commercial enterprise to redeploy investment funds anywhere within the United States or its territories for the purpose of maintaining the investors' capital at risk if-

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

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

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

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

(II) Termination. - The Secretary of Homeland Security shall terminate the designation of a regional center if the Secretary determines that a new commercial enterprise has

violated any of the requirements under subclause (I) in the redeployment of funds invested in such regional center.

(G) Regional center annual statements

(i) In general. - Each regional center designated under subparagraph (E) shall submit an annual statement, in a manner prescribed by the Secretary of Homeland Security. Each such statement shall include-

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

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

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

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

(V) an accounting of all individual alien investor capital invested in the regional center, new commercial enterprise, and job-creating entity;

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

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

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

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

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

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

(ff) to the best of the regional center's knowledge, for all fees, including administrative fees, loan monitoring fees, loan management fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, the new

commercial enterprise, any affiliated job-creating entity, any affiliated issuer of securities intended to be offered to alien investors, or any promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors-

(AA) a description of all fees collected;

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

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

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

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

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

(ii) Amendment of annual statements. - The Secretary of Homeland Security-

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

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

(iii) Sanctions

(I) Effect of violation. - The Director shall sanction any regional center entity in accordance with subclause (II) if the regional center fails to submit an annual statement or if the Director determines that the regional center-

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

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

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

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

(bb) temporary suspension from participation in the program described in subparagraph

(E), which may be lifted by the Director if the individual or entity cures the alleged violation after being provided such an opportunity by the Director;

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

(dd) termination of regional center designation.

(iv) Availability of annual statements to investors. - Not later than 30 days after a request from an alien investor, a regional center shall make available to such alien investor a copy of the filed annual statement and any amendments filed to such statement, which shall be redacted to exclude any information unrelated to such alien investor or the new commercial enterprise or job creating entity into which the alien investor invested.

(H) Bona fides of persons involved with regional center program

(i) In general. - The Secretary of Homeland Security may not permit any person to be involved with any regional center, new commercial enterprise, or job-creating entity if-

(I) the person has been found to have committed-

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

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

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

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

Commission, or the National Credit Union Administration, which is based on a violation of any law or regulation that-

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

(bb) bars the person from-

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

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

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

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

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

(aa) any illicit trafficking in any controlled substance or in any listed chemical (as defined in section 802 of title 21);

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

(cc) any activity related to money laundering (as described in section 1956 or 1957 of title 18);

(dd) any terrorist activity (as defined in section 1182(a)(3)(B) of this title);

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

(ff) any activity described in section 1182(a)(3)(E) of this title; or

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

(IV) the person-

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

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

(ii) Foreign involvement in regional center program

(I) Lawful status required. - A person may not be involved with a regional center unless the person-

(aa) is a national of the United States or an individual who has been lawfully admitted for permanent residence (as such terms are defined in paragraphs (20) and (22) of section 1101(a) of this title); and

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

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

(III) Rulemaking. - Not later than 270 days after March 15, 2022, the Secretary shall issue regulations implementing subparagraphs (I) and (II).

(iii) Information required. - The Secretary of Homeland Security-

(I) shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation with respect to a regional center, a new commercial enterprise, and any affiliated job creating entity, and persons involved with such entities (as described in clause (v)), as may be necessary to determine whether such entities are in compliance with clauses (i) and (ii);

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

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

(iv) Termination

(I) In general. - The Secretary of Homeland Security may suspend or terminate the designation of any regional center, or the participation under the program of any new

commercial enterprise or job-creating entity under this paragraph if the Secretary determines that such entity-

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

(AA) to take commercially reasonable efforts to discontinue the prohibited person's involvement; or

(BB) to provide notice to the Secretary;

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

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

(II) Limitation. - The Secretary's authorized sanctions under subclause (I) shall be limited to entities that have engaged in any activity described in subclause (I).

(III) Information

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

(bb) Effect of failure to respond

If the regional center, new commercial enterprise, or job-creating entity fails to discontinue the prohibited person's involvement with the regional center, new commercial enterprise, or job-creating entity, as applicable, within 30 days after receiving such notification, such entity shall be deemed to have knowledge under subclause (I)(aa) that the involvement of such person with the entity is in violation of clause (i) or (ii).

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

(I) Compliance with securities laws

(i) Jurisdiction

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

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

(III) Savings provision. - Subclause (I) is not intended to modify any existing rules or regulations of the Securities and Exchange Commission related to the application of section 78o(a) of title 15 to foreign brokers or dealers.

(ii) Regional center certifications required

(I) Initial certification. - The Secretary of Homeland Security may not approve an application for regional center designation or regional center amendment unless the regional center certifies that, to the best of the certifier's knowledge, after a due diligence investigation, the regional center is in compliance with and has policies and procedures, including those related to internal and external due diligence, reasonably designed to confirm, as applicable, that all parties associated with the regional center are and will remain in compliance with the securities laws of the United States and of any State in which-

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

(bb) the issuer of securities was located; or

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

(II) Reissue. - A regional center shall annually reissue a certification described in subclause (I), in accordance with subparagraph (G), to certify compliance with clause (iii) by stating that-

(aa) the certification is made by a certifier;

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

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

(BB) the issuer of securities was located; or

(CC) the investment advice was provided; and

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

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

(aa) describe the activities that led to noncompliance;

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

(cc) certify that the regional center and all parties associated with the regional center are currently in compliance, to the best of the certifier's knowledge, after a due diligence investigation.

(iii) Oversight required. - Each regional center shall-

(I) use commercially reasonable efforts to monitor and supervise compliance with the securities laws in relations to all offers, purchases, and sales of, and investment advice relating to, securities made by parties associated with the regional center;

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

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

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

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

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

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

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

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

(v) Defined term. - In this subparagraph, the term "parties associated with a regional center" means-

(I) the regional center;

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

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

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

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

(J) EB-5 Integrity Fund

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

(ii) Fees

(I) Annual fee. - On October 1, 2022, and each October 1 thereafter, the Secretary of Homeland Security shall collect for the Fund an annual fee-

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

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

(II) Petition fee. - Beginning on October 1, 2022, the Secretary shall collect a fee of \$1,000 for the Fund with each petition filed under section 1154(a)(1)(H) of this title for classification under subparagraph (E). The fee under this subclause is in addition to the fee that the Secretary is authorized to establish and collect for each petition to recover the costs of adjudication and naturalization services under section 1356(m) of this title.

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

(iii) Permissible uses of fund. - The Secretary shall-

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

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

(bb) ensuring an alien investor's compliance with subparagraph (L); and

(II) use amounts deposited into the Fund-

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

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

(cc) to conduct audits and site visits; and

(dd) as the Secretary determines to be necessary, including monitoring compliance with the requirements under section 1153a of this title.

(iv) Failure to pay fee. - The Secretary of Homeland Security shall-

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

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

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

(K) Direct and third-party promoters

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

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

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

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

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

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

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

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

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

(iv) Disclosure. - Each petition filed under section 1154(a)(1)(H) of this title shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (F).

(L) Source of funds

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

(ii) Required information. - The Secretary of Homeland Security shall require that an alien investor's petition under this paragraph contain, as applicable-

(I) business and tax records, or similar records, including-

(aa) foreign business registration records;

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

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

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

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

(iii) Gift and loan restrictions

(I) In general. - Gifted and borrowed funds may not be counted toward the minimum capital investment requirement under subparagraph (C) unless such funds-

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

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

(II) Records requirement. - If funds invested under subparagraph (A) are gifted or loaned to the alien investor, the Secretary shall require that the alien investor's petition under this paragraph includes the records described in subclauses (I) and (II) of clause (ii) from the donor or, if other than a bank, the lender.

(M) Treatment of good faith investors following program noncompliance

(i) Termination or debarment of EB-5 entity. - Except as provided in clause (vi), upon the termination or debarment, as applicable, from the program under this paragraph of a regional center, a new commercial enterprise, or a job-creating entity-

(I) an otherwise qualified petition under section 1154(a)(1)(H) of this title or the conditional permanent residence of an alien who has been admitted to the United States pursuant to section 1186b(a)(1) of this title based on an investment in a terminated regional center, new commercial enterprise, or job-creating entity shall remain valid or continue to be authorized, as applicable, consistent with this subparagraph; and

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

(ii) New regional center or investment. - The petition under section 1154(a)(1)(H) of this title of an alien described in clause (i) and the conditional permanent resident status of an alien described in clause (i) shall be terminated 180 days after notification of the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job creating entity (but not sooner than 180 days after March 15, 2022) unless-

(I) in the case of the termination of a regional center-

(aa) the new commercial enterprise associates with an approved regional center, regardless of the approved geographical boundaries of such regional center's designation; or

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

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

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

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

(iii) Amendments

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

(II) Determination of eligibility. - For purposes of determining eligibility under subclause (I) -

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

(bb) may deem any funds obtained or recovered by an alien investor, directly or indirectly, from claims against third parties, including insurance proceeds, or any additional investment capital provided by the alien, to be such alien's investment capital for the purposes of subparagraph (A) if such investment otherwise complies with the requirements under this paragraph and section 1186b of this title.

(iv) Removal of conditions. - Aliens described in subclauses (I)(bb) and (II) of clause (ii) shall be eligible to have their conditions removed pursuant to section 1186b of this title beginning on the date that is 2 years after the date of the subsequent investment.

(v) Remedies. - For petitions approved under clause (ii), including following an amendment filed under clause (iii), the Secretary-

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

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

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

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

(II) the Secretary shall-

(aa) notify the alien of such belief; and

(bb) subject to section 1186b(b)(2) of this title, shall deny or initiate proceedings to revoke the approval of such alien's petition, application, or benefit (and that of any spouse or child, if applicable) described in this paragraph.

(N) Threats to the national interest

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

(ii) Documents. - The documents described in this clause are-

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

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

(III) a petition to remove conditions under section 1186b of this title;

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

(V) a document evidencing conditional permanent resident status that was issued to an alien pursuant to section 1186b of this title.

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

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

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

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

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

(v) Judicial review. - Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a denial or revocation under this subparagraph. Nothing in this clause may be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with section 1252 of this title.

(O) Fraud, misrepresentation, and criminal misuse

(i) Denial or revocation. - Subject to subparagraph (M), the Secretary of Homeland Security shall deny or revoke the approval of a petition, application, or benefit described in this paragraph, including the documents described in subparagraph (N)(ii), if the Secretary determines, in the Secretary's discretion, that such petition, application, or benefit was predicated on or involved fraud, deceit, intentional material misrepresentation, or criminal misuse.

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

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

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

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

(P) Administrative appellate review

(i) In general. - The Director of U.S. Citizenship and Immigration Services shall provide an opportunity for an administrative appellate review by the Administrative Appeals

Office of U.S. Citizenship and Immigration Services of any determination made under this paragraph, including-

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

(ii) Judicial review. - Subject to subparagraph (N)(v) and section 1252(a)(2) of this title, and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a determination under this paragraph until the regional center, its associated entities, or the alien investor has exhausted all administrative appeals.

(Q) Fund administration

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

(ii) Use of funds. - Amounts in a separate account may only-

- (I) be transferred to another separate account or a job creating entity;
- (II) otherwise be deployed into the capital investment project for which the funds were intended; or
- (III) be transferred to the alien investor who contributed the funds as a refund of that investor's capital investment, if otherwise permitted under this paragraph.

(iii) Deployment of funds into an affiliated job-creating entity. - If amounts are transferred to an affiliated job-creating entity pursuant to clause (ii)(I)-

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

(II) not later than 30 days after such amounts are deployed pursuant to subclause (I), the affiliated job-creating entity shall provide written notice to the fund administrator retained pursuant to clause (iv) that a construction consultant or other individual

authorized by the Secretary has verified that such amounts have been deployed into the project.

(iv) Fund administrator. - Except as provided in clause (v), the new commercial enterprise shall retain a fund administrator to fulfill the requirements under this subparagraph. The fund administrator-

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

(II) shall be licensed, active, and in good standing as-

(aa) a certified public accountant;

(bb) an attorney;

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

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

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

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

(V) before any transfer of amounts from a separate account, shall-

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

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

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

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

(bb) the history of the account; and

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

(VII) shall make and preserve, during the 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred, books, ledgers, records, and other

documentation necessary to comply with this clause, which shall be provided to the Secretary upon request.

(v) Waiver

(I) Waiver permitted. - The Secretary of Homeland Security, after consultation with the Securities and Exchange Commission, may waive the requirements under clause (iv) for any new commercial enterprise or affiliated job-creating entity that is controlled by or under common control of an investment adviser or broker-dealer that is registered with the Securities and Exchange Commission if the Secretary, in the Secretary's discretion, determines that the Securities and Exchange Commission provides comparable protections and transparency for alien investors as the protections and transparency provided under clause (iv).

(II) Waiver required. - The Secretary of Homeland Security shall waive the requirements under clause (iv) for any new commercial enterprise that commissions an annual independent financial audit of such new commercial enterprise or job creating entity conducted in accordance with Generally Accepted Auditing Standards, which audit shall be provided to the Secretary and all investors in the new commercial enterprise.

(vi) Defined term. - In this subparagraph, the term "separate account" means an account that-

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

(II) is insured; and

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

(R) Required checks. - Any petition filed by an alien under section 1154(a)(1)(H) of this title may not be approved under this paragraph unless the Secretary of Homeland Security has searched for the alien and any associated employer of such alien on the Specially Designated Nationals List of the Department of the Treasury Office of Foreign Assets Control.

(S) Protection from expired legislation. - Notwithstanding the expiration of legislation authorizing the regional center program under subparagraph (E), the Secretary of Homeland Security –

(i) shall continue processing petitions under sections 1154(a)(1)(H) and 1186b of this title based on an investment in a new commercial enterprise associated with a regional center that were filed on or before September 30, 2026;

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

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

(6) Special rules for "K" special immigrants

(A) Not counted against numerical limitation in year involved

Subject to subparagraph (B), the number of immigrant visas made available to special immigrants under section 1101(a)(27)(K) of this title in a fiscal year shall not be subject to the numerical limitations of this subsection or of section 1152(a) of this title.

(B) Counted against numerical limitations in following year

(i) Reduction in employment-based immigrant classifications

The number of visas made available in any fiscal year under paragraphs (1), (2), and (3) shall each be reduced by 1/3 of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title.

(ii) Reduction in per country level

The number of visas made available in each fiscal year to natives of a foreign state under section 1152(a) of this title shall be reduced by the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(iii) Reduction in employment-based immigrant classifications within per country ceiling

In the case of a foreign state subject to section 1152(e) of this title in a fiscal year (and in the previous fiscal year), the number of visas made available and allocated to each of paragraphs (1) through (3) of this subsection in the fiscal year shall be reduced by 1/3 of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(c) Diversity immigrants

(1) In general. - Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 1151(e) of this title for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) Determination of preference immigration. - The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 1151(a) of this title (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful

permanent resident status as an immediate relative or other alien described in section 1151(b)(2) of this title.

(B) Identification of high-admission and low-admission regions and high-admission and low-admission states. - The Attorney General -

(i) shall identify-

(I) each region (each in this paragraph referred to as a "high-admission region") for which the total of the numbers determined under subparagraph (A) for states in the region is greater than 1/6 of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a "low-admission region"); and

(ii) shall identify-

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a "high-admission state"), and

(II) each other foreign state (each such state in this paragraph referred to as a "low-admission state").

(C) Determination of percentage of worldwide immigration attributable to high-admission regions. - The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

(D) Determination of regional populations excluding high-admission states and ratios of populations of regions within low-admission regions and high-admission regions
The Attorney General shall determine-

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) Distribution of visas

(i) No visas for natives of high-admission states. - The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) For low-admission states in low-admission regions. - Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of-

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) For low-admission states in high-admission regions
Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of-

(I) 100 percent minus the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) Redistribution of unused visa numbers. - If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) Limitation on visas for natives of a single foreign state
The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

(F) "Region" defined. - Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

(i) Africa.

(ii) Asia.

(iii) Europe.

(iv) North America (other than Mexico).

(v) Oceania.

(vi) South America, Mexico, Central America, and the Caribbean.

(2) Requirement of education or work experience. - An alien is not eligible for a visa under this subsection unless the alien-

(A) has at least a high school education or its equivalent, or

(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

(3) Maintenance of information. - The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

(d) Treatment of family members. - A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 1101(b)(1) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

(e) Order of consideration

(1) Immigrant visas made available under subsection (a) or (b) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 1101(a)(27)(D) of this title, with the Secretary of State) as provided in section 1154(a) of this title.

(2) Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(f) Authorization for issuance. - In the case of any alien claiming in his application for an immigrant visa to be described in section 1151(b)(2) of this title or in subsection (a), (b), or (c) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 1154 of this title.

(g) Lists. - For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration

of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

(h) Rules for determining whether certain aliens are children

(1) In general. - For purposes of subsections (a)(2)(A) and (d), a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using-

(A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent), but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability; reduced by

(B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

(2) Petitions described. - The petition described in this paragraph is-

(A) with respect to a relationship described in subsection (a)(2)(A), a petition filed under section 1154 of this title for classification of an alien child under subsection (a)(2)(A); or

(B) with respect to an alien child who is a derivative beneficiary under subsection (d), a petition filed under section 1154 of this title for classification of the alien's parent under subsection (a), (b), or (c).

(3) Retention of priority date. - If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.

(4) Application to self-petitions. - Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

(5) Age determination for children of alien investors. - An alien who has reached 21 years of age and has been admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose lawful permanent resident status on a conditional basis is terminated under section 1186b of this title or subsection (b)(5)(M), shall continue to be considered a child of the principal alien for the purpose of a subsequent immigrant petition by such alien under subsection (b)(5) if the alien remains unmarried and the

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

([June 27, 1952, ch. 477, title II, ch. 1, §203, 66 Stat. 178](#) ; [Pub. L. 85–316, §3, Sept. 11, 1957, 71 Stat. 639](#) ; [Pub. L. 86–363, §§1–3, Sept. 22, 1959, 73 Stat. 644](#) ; [Pub. L. 89–236, §3, Oct. 3, 1965, 79 Stat. 912](#) ; [Pub. L. 94–571, §4, Oct. 20, 1976, 90 Stat. 2705](#) ; [Pub. L. 95–412, §3, Oct. 5, 1978, 92 Stat. 907](#) ; [Pub. L. 95–417, §1, Oct. 5, 1978, 92 Stat. 917](#) ; [Pub. L. 96–212, title II, §203\(c\), \(i\), Mar. 17, 1980, 94 Stat. 107](#) , [108](#); [Pub. L. 101–649, title I, §§111, 121\(a\), 131, 162\(a\)\(1\), title VI, §603\(a\)\(3\), Nov. 29, 1990, 104 Stat. 4986](#) , [4987](#), [4997](#), [5009](#), [5082](#); [Pub. L. 102–110, §2\(b\), Oct. 1, 1991, 105 Stat. 555](#) ; [Pub. L. 102–232, title III, §302\(b\)\(2\), \(e\)\(3\), Dec. 12, 1991, 105 Stat. 1743](#) , [1745](#); [Pub. L. 103–416, title II, §§212\(b\), 219\(c\), Oct. 25, 1994, 108 Stat. 4314](#) , [4316](#); [Pub. L. 106–95, §5, Nov. 12, 1999, 113 Stat. 1318](#) ; [Pub. L. 106–113, div. B, §1000\(a\)\(1\) \[title I, §117\], Nov. 29, 1999, 113 Stat. 1535](#) , [1501A-21](#); [Pub. L. 106–536, §1\(b\)\(1\), Nov. 22, 2000, 114 Stat. 2560](#) ; [Pub. L. 107–208, §3, Aug. 6, 2002, 116 Stat. 928](#) ; [Pub. L. 107–273, div. C, title I, §§11035, 11036\(a\), Nov. 2, 2002, 116 Stat. 1846](#) ; [Pub. L. 109–162, title VIII, §805\(b\)\(2\), Jan. 5, 2006, 119 Stat. 3056](#) ; [Pub. L. 117–103, div. BB, §§102\(a\), \(b\), 103\(b\)\(1\), \(c\)\(1\), 108, Mar. 15, 2022, 136 Stat. 1070](#) , [1074](#), [1075](#), [1100](#), [1109](#).)

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8 CFR

[Sec. 204.6 Petitions for employment creation immigrants.](#)

(a) General. An EB-5 immigrant petition to classify an alien under section 203(b)(5) of the Act must be properly filed in accordance with the form instructions. The petition must be accompanied by the appropriate fee. Before a petition is considered properly filed, the petition must be signed by the petitioner, and the initial supporting documentation required by this section must be attached. Legible photocopies of supporting documents will ordinarily be acceptable for initial filing and approval. However, at the discretion of the director, original documents may be required.

(b) Jurisdiction. The petition must be filed with the Service Center having jurisdiction over the area in which the new commercial enterprise is or will be principally doing business.

(c) Eligibility to file. An alien may file a petition for classification as an investor on his or his own behalf.

(d) Priority date. The priority date of a petition for classification as an investor is the date the petition is properly filed with the Service Center or, if filed prior to the effective date

of these regulations, the date the Form I-526 was received at the appropriate Service Center.

(e) Definitions. As used in this section:

Capital

means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

Commercial enterprise

means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a noncommercial activity such as owning and operating a personal residence.

Employee

means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Immigrant Investor Pilot Program, "employee" also means an individual who provides services or labor in a job which has been created indirectly through investment in the new commercial enterprise. This definition shall not include independent contractors.

Full-time employment

means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the Immigrant Investor Pilot Program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly through revenues generated from increased exports resulting from the Pilot Program that requires a minimum of 35 working hours per week. A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met. This definition shall not include

combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week.

High employment area

means a part of a metropolitan statistical area that at the time of investment:

- (i) Is not a targeted employment area; and
- (ii) Is an area with an unemployment rate significantly below the national average unemployment rate.

Invest

means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

New

means established after November 29, 1990.

Qualifying employee

means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Regional center

means any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

Regional Center Program

means the program established by Public Law 102-395, Section 610, as amended.

Rural area

means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a

population of 20,000 or more based on the most recent decennial census of the United States..

Targeted employment area

means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 per cent of the national average rate.

Troubled business

means a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty per cent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

(f) Required amounts of capital.

(1) General. Unless otherwise specified, for EB-5 immigrant petitions filed on or after November 21, 2019, the amount of capital necessary to make a qualifying investment in the United States is one million eight hundred thousand United States dollars (\$1,800,000).

(2) Targeted employment area. Unless otherwise specified, for EB-5 immigrant petitions filed on or after November 21, 2019, the amount of capital necessary to make a qualifying investment in a targeted employment area within the United States is nine hundred thousand United States dollars (\$900,000).

(3) High employment area. Unless otherwise specified, for EB-5 immigrant petitions filed on or after November 21, 2019, the amount of capital necessary to make a qualifying investment in a high employment area within the United States, as defined in section 203(b)(5)(C)(iii) of the Act, is one million eight hundred thousand United States dollars (\$1,800,000).

(g) Multiple investors --

(1) General. The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien investor by more than one investor, provided each petitioning investor has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees. The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien investor

even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.

(2) Employment creation allocation. The total number of full-time positions created for qualifying employees shall be allocated solely to those alien investors who have used the establishment of the new commercial enterprise as the basis of a petition. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. USCIS shall recognize any reasonable agreement made among the alien investors in regard to the identification and allocation of such qualifying positions.

(h) Establishment of a new commercial enterprise. The establishment of a new commercial enterprise may consist of:

(1) The creation of an original business;

(2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or

(3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

(i) Special designation of a high unemployment area. The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be provided to a prospective alien investor for submission with Form I-526. Before any such designation is made, an official of the state must notify the Associate Commissioner for Examinations of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.

(j) Initial evidence to accompany petition. A petition submitted for classification as an alien entrepreneur must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees. In the case of petitions submitted under the Immigrant Investor Pilot Program, a petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital obtained through lawful means within a regional center designated by the Service in accordance with paragraph (m)(4) of this section. The petitioner may be required to submit information or documentation that the Service deems appropriate in addition to that listed below.

(1) To show that a new commercial enterprise has been established by the petitioner in the United States, the petition must be accompanied by:

(i) As applicable, articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document for the new commercial enterprise;

(ii) A certificate evidencing authority to do business in a state or municipality or, if the form of the business does not require any such certificate or the state or municipality does not issue such a certificate, a statement to that effect; or

(iii) Evidence that, as of a date certain after November 29, 1990, the required amount of capital for the area in which an enterprise is located has been transferred to an existing business, and that the investment has resulted in a substantial increase in the net worth or number of employees of the business to which the capital was transferred. This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records, or any similar instruments, agreements, or documents evidencing the investment in the commercial enterprise and the resulting substantial change in the net worth, number of employees.

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient

information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

(4) Job creation --

(i) General. To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

(ii) Troubled business. To show that a new commercial enterprise which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years. Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.

(iii) Immigrant Investor Pilot Program. To show that the new commercial enterprise located within a regional center approved for participation in the Immigrant Investor Pilot Program meets the statutory employment creation requirement, the petition must be accompanied by evidence that the investment will create full-time positions for not fewer than 10 persons either directly or indirectly through revenues generated from increased exports resulting from the Pilot Program. Such evidence may be demonstrated by reasonable methodologies including those set forth in paragraph (m)(3) of this section.

(5) To show that the petitioner is or will be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment, the petition must be accompanied by:

(i) A statement of the position title that the petitioner has or will have in the new enterprise and a complete description of the position's duties;

(ii) Evidence that the petitioner is a corporate officer or a member of the corporate board of directors; or

(iii) If the new enterprise is a partnership, either limited or general, evidence that the petitioner is engaged in either direct management or policy making activities. For purposes of this section, if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the petitioner will be considered sufficiently engaged in the management of the new commercial enterprise.

(6) If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city

or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 CFR 204.6(i).

(k) Decision. The petitioner will be notified of the decision, and, if the petition is denied, of the reasons for the denial and of the petitioner's right of appeal to the Associate Commissioner for Examinations in accordance with the provisions of part 103 of this chapter. The decision must specify whether or not the new commercial enterprise is principally doing business within a targeted employment area.

(l) Disposition of approved petition. The approved petition will be forwarded to the United States consulate selected by the petitioner and indicated on the petition. If a consulate has not been designated, the petition will be forwarded to the consulate having jurisdiction over the place of the petitioner's last residence abroad. If the petitioner is eligible for adjustment of status to conditional permanent residence, and if the petition indicates that the petitioner intends to apply for such adjustment, the approved petition will be retained by the Service for consideration in conjunction with the application for adjustment of status.

(m) Immigrant Investor Pilot Program.

(1) Scope. The Immigrant Investor Pilot Program is established solely pursuant to the provisions of section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, and subject to all conditions and restrictions stipulated in that section. Except as provided herein, aliens seeking to obtain immigration benefits under this paragraph continue to be subject to all conditions and restrictions set forth in section 203(b)(5) of the Act and this section.

(2) Number of immigrant visas allocated. The annual allocation of the visas available under the Immigrant Investor Pilot Program is set at 300 for each of the five fiscal years commencing on October 1, 1993.

(3) Requirements for regional centers. Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;

(iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

(v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

(4) Submission of proposals to participate in the Immigrant Investor Pilot Program. On August 24, 1993, the Service will accept proposals from regional centers seeking approval to participate in the Immigrant Investor Pilot Program. Regional centers that have been approved by the Assistant Commissioner for Adjudications will be eligible to participate in the Immigrant Investor Pilot Program.

(5) Decision to participate in the Immigrant Investor Pilot Program. The Assistant Commissioner for Adjudications shall notify the regional center of his or her decision on the request for approval to participate in the Immigrant Investor Pilot Program, and, if the petition is denied, of the reasons for the denial and of the regional center's right of appeal to the Associate Commissioner for Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

(6) Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center

must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If the Assistant Commissioner for Adjudications determines that the regional center's participation in the Pilot Program should be terminated, the Assistant Commissioner for Adjudications shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the Associate Commissioner for Examinations as provided in 8 CFR 103.3.

(7) Requirements for alien entrepreneurs. An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.

(i) Exports. For purposes of this paragraph (m) of this section, the term "exports" means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States;

(ii) Indirect job creation. To show that 10 or more jobs are actually created indirectly by the business, reasonable methodologies may be used. Such methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices which indicate the likelihood that the business will result in increased employment.

(8) Time for submission of petitions for classification as an alien entrepreneur under the Immigrant Investor Pilot Program. Commencing on October 1, 1993, petitions will be accepted for filing and adjudicated in accordance with the provisions of this section if the alien entrepreneur has invested or is actively in the process of investing within a regional center which has been approved by the Service for participation in the Pilot Program.

(9) Effect of termination of approval of regional center to participate in the Immigrant Investor Pilot Program. Upon termination of approval of a regional center to participate in the Immigrant Investor Pilot Program, the director shall send a formal written notice to any alien within the regional center who has been granted lawful permanent residence on a conditional basis under the Pilot Program, and who has not yet removed the conditional basis of such lawful permanent residence, of the termination of the alien's permanent resident status, unless the alien can establish continued eligibility for alien entrepreneur classification under section 203(b)(5) of the Act.

(n) ***Offering amendments or supplements.*** Amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon changes to this section effective on November 21, 2019 shall not independently result in denial or revocation of a petition for classification under section 203(b)(5) of the Act, provided that the petitioner:

(1) Filed the petition for classification under section 203(b)(5) of the Act prior to November 21, 2019;

(2) Was eligible for classification under 203(b)(5) of the Act at the time the petition was filed; and

(3) Is eligible for classification under 203(b)(5) of the Act, including having no right to withdraw or rescind the investment or commitment to invest into such offering, at the time of adjudication of the petition.

[[56 FR 60910](#), Nov. 29, 1991, as amended at [57 FR 1860](#), Jan. 16, 1992; [58 FR 44608](#), [44609](#), Aug. 24, 1993; [74 FR 26937](#), June 5, 2009; [75 FR 58990](#), Sept. 24, 2010; [76 FR 53782](#), Aug. 29, 2011; [81 FR 73332](#), Oct. 24, 2016; [84 FR 35808](#), July 24, 2019; [85 FR 46922](#), Aug. 3, 2020]

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DIVISION BB--EB-5 REFORM AND INTEGRITY ACT OF 2022

SEC. 101. SHORT TITLE.

This division may be cited as the ``EB-5 Reform and Integrity Act of 2022''.

SEC. 102. EB-5 VISA REFORMS.

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

(1) in subparagraph (A)--

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

(B) in clause (ii)--

(i) by striking ``and create'' and inserting ``by creating''; and

(ii) by inserting `` , United States nationals,'' after ``citizens'';

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

``(B) Designations and reserved visas.--

``(i) Reserved visas.--

``(I) In general.--Of the visas made available under this paragraph in each fiscal year--

``(aa) 20 percent shall be reserved for qualified immigrants who invest in a rural area;

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

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

``(II) Unused visas.--

``(aa) Carryover.--At the end of each fiscal year, any unused visas reserved for qualified immigrants investing in each of the categories described in items (aa) through (cc) of subclause (I) shall remain available within the same category for the immediately succeeding fiscal year.

``(bb) General availability.--Visas described in items (aa) through (cc) of subclause (I) that are not issued by the end of the succeeding fiscal year referred to in item (aa) shall be made available to qualified immigrants described under subparagraph (A).

``(ii) Designation of high unemployment area.--

``(I) In general.--The Secretary of Homeland Security, or a designee of the Secretary who is an employee of the Department of Homeland Security, may designate, as a high unemployment area, a census tract, or contiguous census tracts, in which--

``(aa) the new commercial enterprise is principally doing business; and

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

``(II) Prohibition on designation by any other official.--A targeted employment area may not be designated as a high unemployment area by--

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

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

``(III) Inclusion.--In making a designation under subclause (I), the Secretary of Homeland Security may include a census tract directly adjacent to a census tract or contiguous census tracts described in that subclause.

``(IV) Duration.--

``(aa) In general.--A designation under this clause shall be in effect for the 2-year period beginning on--

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

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

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

``(V) Additional investment not required.--An immigrant investor who has invested the amount of capital required by subparagraph (C) in a targeted

employment area designated as a high unemployment area during the period in which the area is so designated shall not be required to increase the amount of investment due to the expiration of the designation.

``(iii) Infrastructure projects.--

``(I) In general.--The Secretary of Homeland Security shall determine whether a specific capital investment project meets the definition of 'infrastructure project' set forth in subparagraph (D)(iv).

``(II) Prohibition on designation by any other official.--A determination under subclause (I) may not be made by--

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

``(bb) any official of a State or local government.'';

(3) in subparagraph (C)--

(A) in clause (i), by striking ``\$1,000,000'' and all that follows through ``previous sentence'' and inserting ``\$1,050,000'';

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

``(ii) Adjustment for targeted employment areas and infrastructure projects.--The amount of capital required under subparagraph (A) for an investment in a targeted employment area or in an infrastructure project shall be \$800,000.'';

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

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

``(iii) Automatic adjustment in minimum investment amount.--

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

``(II) Beginning on January 1, 2027, and every 5 years thereafter, the amount in clause (ii) shall automatically adjust for petitions filed on or after the effective date of each adjustment, to be equal to 75 percent of the standard investment amount under subclause (I).''; and

(E) in clause (iv), as redesignated, in the undesignated matter following subclause (II)--

(i) by striking ``Attorney General'' and inserting ``Secretary of Homeland Security''; and

(ii) by inserting ``, as adjusted under clause (iii)'' before the period at the end; and

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

``(D) Definitions.--In this paragraph:

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

``(ii) Capital.--The term 'capital'--

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

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

``(III) does not include--

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

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

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

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

``(IV) includes capital invested that--

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

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

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

``(iv) Infrastructure project.--The term 'infrastructure project' means a capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or

local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the regional center program described in subparagraph (E) from alien investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project.

``(v) Job-creating entity.--The term `job-creating entity' means any organization formed in the United States for the ongoing conduct of lawful business, including sole proprietorship, partnership (whether limited or general), corporation, limited liability company, business trust, or other entity, which may be publicly or privately owned, including an entity consisting of a holding company and its wholly owned subsidiaries or affiliates (provided that each subsidiary or affiliate is engaged in an activity formed for the ongoing conduct of a lawful business) that receives, or is established to receive, capital investment from alien investors or a new commercial enterprise under the regional center program described in this subparagraph and which is responsible for creating jobs to satisfy the requirement under subparagraph (A)(ii).

``(vi) New commercial enterprise.--The term `new commercial enterprise' means any for-profit organization formed in the United States for the ongoing conduct of lawful business, including sole proprietorship, partnership (whether limited or general), holding company and its wholly owned subsidiaries (provided that each subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business), joint venture, corporation, business trust, limited liability company, or other entity (which may be publicly or privately owned) that receives, or is established to receive, capital investment from investors under this paragraph.

``(vii) Rural area.--The term `rural area' means any area other than an area within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

``(viii) Targeted employment area.--The term `targeted employment area' means, at the time of investment, a rural area or an area designated by the Secretary of Homeland Security under subparagraph (B)(ii) as a high unemployment area.''.
''.

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

``(5) Age determination for children of alien investors.--An alien who has reached 21 years of age and has been admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose lawful permanent resident status on a conditional basis is terminated under section 216A or subsection (b)(5)(M), shall continue to be considered a child of the principal alien for the purpose of a subsequent immigrant petition by such alien under subsection (b)(5) if the alien remains unmarried and the subsequent petition is filed by the principal alien not later than 1 year after the termination of conditional lawful permanent resident status. No alien shall be considered a child under this paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.''.
''.

(c) Enhanced Pay Scale for Certain Federal Employees Administering

the Employment Creation Program.--The Secretary of Homeland Security may establish, fix the compensation of, and appoint individuals to designated critical, technical, and professional positions needed to administer sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

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

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

(2) by adding at the end the following:

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

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

SEC. 103. REAUTHORIZATION AND REFORM OF THE REGIONAL CENTER PROGRAM.

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

(b) Authorization.--

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

``(E) Regional center program.--

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

``(ii) Processing.--In processing petitions under section 204(a)(1)(H) for classification under this paragraph, the Secretary of Homeland Security--

``(I) shall prioritize the processing and adjudication of petitions for rural areas;

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

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

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

``(I) reasonable predictions, supported by

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

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

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

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

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

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

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

``(iv) Indirect job creation.--

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

``(II) Construction activity lasting less than 2 years.--If the jobs estimated to be created are created by construction activity lasting less than 2 years, the Secretary shall permit aliens seeking admission under this subparagraph to satisfy only up to 75 percent of the requirement under subparagraph (A)(ii) with jobs that are estimated to be created indirectly through investment under this paragraph in accordance with this subparagraph.

``(v) Compliance.--

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

``(aa) jobs estimated to have been created

directly, which may be verified using such methodologies; and

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

``(II) Job and investment requirements.--

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

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

``(cc) Construction activity jobs.--If the number of direct jobs estimated to be created has been determined by an economically and statistically valid methodology, and such direct jobs are created by construction activity lasting less than 2 years, the number of such jobs that may be considered direct jobs for purposes of clause (iv) shall be calculated by multiplying the total number of such jobs estimated to be created by the fraction of the 2-year period that the construction activity lasts.

``(vi) Amendments.--The Secretary of Homeland Security shall--

``(I) require a regional center--

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

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

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

eligibility.

``(vii) Record keeping and audits.--

``(I) Record keeping.--Each regional center shall make and preserve, during the 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred, books, ledgers, records, and other documentation from the regional center, new commercial enterprise, or job-creating entity used to support--

``(aa) any claims, evidence, or certifications contained in the regional center's annual statements under subparagraph (G); and

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

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

``(III) Termination.--The Secretary shall terminate the designation of a regional center that fails to consent to an audit under subclause (II) or deliberately attempts to impede such an audit.

``(F) Business plans for regional center investments.--

``(i) Application for approval of an investment in a commercial enterprise.--A regional center shall file an application with the Secretary of Homeland Security for each particular investment offering through an associated new commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in that offering. The application shall include--

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

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

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

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

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

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

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

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

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

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

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

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

``(ii) Effect of approval of a business plan for an investment in a regional center's commercial enterprise.-- The approval of an application under this subparagraph, including an approval before the date of the enactment of this subparagraph, shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same offering described in such application, and of petitions by

the same immigrants filed under section 216A unless--

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

- ``(II) such approval would threaten public safety or national security;

- ``(III) there has been a material change that affects eligibility;

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

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

``(iii) Amendments.--

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

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

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

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

- ``(iv) Site visits.--The Secretary of Homeland Security shall--

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

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

``(v) Parameters for capital redeployment.--

- ``(I) In general.--The Secretary of Homeland Security shall prescribe regulations, in accordance with subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly known as the 'Administrative Procedure Act'), that allow a new commercial enterprise to redeploy investment funds anywhere within the United States or its territories for the purpose of maintaining the investors' capital at risk if--

- ``(aa) the new commercial enterprise has executed the business plan for a capital investment project in good faith without a material change;

- ``(bb) the new commercial enterprise has

created a sufficient number of new full time positions to satisfy the job creation requirements of the program for all investors in the new commercial enterprise, either directly or indirectly, as evidenced by the methodologies set forth in this Act;

``(cc) the job creating entity has repaid the capital initially deployed in conformity with the initial investment contemplated by the business plan; and

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

``(II) Termination.--The Secretary of Homeland Security shall terminate the designation of a regional center if the Secretary determines that a new commercial enterprise has violated any of the requirements under subclause (I) in the redeployment of funds invested in such regional center.

``(G) Regional center annual statements.--

``(i) In general.--Each regional center designated under subparagraph (E) shall submit an annual statement, in a manner prescribed by the Secretary of Homeland Security. Each such statement shall include--

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

``(II) a certification described in subparagraph (I)(ii)(II);

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

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

``(V) an accounting of all individual alien investor capital invested in the regional center, new commercial enterprise, and job-creating entity;

``(VI) for each new commercial enterprise associated with the regional center--

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

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

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

``(dd) detailed evidence of the progress made

toward the completion of each capital investment project;

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

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

``(AA) a description of all fees collected;

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

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

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

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

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

``(ii) Amendment of annual statements.--The Secretary of Homeland Security--

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

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

``(iii) Sanctions.--

``(I) Effect of violation.--The Director shall sanction any regional center entity in accordance with subclause (II) if the regional center fails to submit an annual statement or if the Director determines that the regional center--

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

``(bb) is conducting itself in a manner inconsistent with its designation under

subparagraph (E), including any willful, undisclosed, and material deviation by new commercial enterprises from any filed business plan for such new commercial enterprises.

``(II) Authorized sanctions.--The Director shall establish a graduated set of sanctions based on the severity of the violations referred to in subclause (I), including--

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

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

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

``(dd) termination of regional center designation.

``(iv) Availability of annual statements to investors.--Not later than 30 days after a request from an alien investor, a regional center shall make available to such alien investor a copy of the filed annual statement and any amendments filed to such statement, which shall be redacted to exclude any information unrelated to such alien investor or the new commercial enterprise or job creating entity into which the alien investor invested.

``(H) Bona fides of persons involved with regional center program.--

``(i) In general.--The Secretary of Homeland Security may not permit any person to be involved with any regional center, new commercial enterprise, or job-creating entity if--

``(I) the person has been found to have committed--

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

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

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

``(II) the person is subject to a final order, for the duration of any penalty imposed by such order, of a State securities commission (or an agency or officer of a State performing similar functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance

commission (or an agency or officer of a State performing similar functions), an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, a financial self-regulatory organization recognized by the Securities and Exchange Commission, or the National Credit Union Administration, which is based on a violation of any law or regulation that--

- ``(aa) prohibits fraudulent, manipulative, or deceptive conduct; or
- ``(bb) bars the person from--
 - ``(AA) association with an entity regulated by such commission, authority, agency, or officer;
 - ``(BB) appearing before such commission, authority, agency, or officer;
 - ``(CC) engaging in the business of securities, insurance, or banking; or
 - ``(DD) engaging in savings association or credit union activities;

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

- ``(aa) any illicit trafficking in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act);
- ``(bb) any activity relating to espionage, sabotage, or theft of intellectual property;
- ``(cc) any activity related to money laundering (as described in section 1956 or 1957 of title 18, United States Code);
- ``(dd) any terrorist activity (as defined in section 212(a)(3)(B));
- ``(ee) any activity constituting or facilitating human trafficking or a human rights offense;
- ``(ff) any activity described in section 212(a)(3)(E); or
- ``(gg) the violation of any statute, regulation, or Executive order regarding foreign financial transactions or foreign asset control; or

``(IV) the person--

- ``(aa) is, or during the preceding 10 years has been, included on the Department of Justice's List of Currently Disciplined Practitioners; or
- ``(bb) during the preceding 10 years, has received a reprimand or has otherwise been publicly disciplined for conduct related to fraud or deceit by a State bar association of which the person is or was a member.

``(ii) Foreign involvement in regional center program.--

``(I) Lawful status required.--A person may not be involved with a regional center unless the person--

- ``(aa) is a national of the United States or an

individual who has been lawfully admitted for permanent residence (as such terms are defined in paragraphs (20) and (22) of section 101(a)); and
``(bb) is not the subject of rescission or removal proceedings.

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

``(III) Rulemaking.--Not later than 270 days after the date of the enactment of the EB-5 Reform and Integrity Act of 2022, the Secretary shall issue regulations implementing subparagraphs (I) and (II).

``(iii) Information required.--The Secretary of Homeland Security--

``(I) shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation with respect to a regional center, a new commercial enterprise, and any affiliated job creating entity, and persons involved with such entities (as described in clause (v)), as may be necessary to determine whether such entities are in compliance with clauses (i) and (ii);

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

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

``(iv) Termination.--

``(I) In general.--The Secretary of Homeland Security may suspend or terminate the designation of any regional center, or the participation under the program of any new commercial enterprise or job-creating entity under this paragraph if the Secretary determines that such entity--

``(aa) knowingly involved a person with such

entity in violation of clause (i) or (ii) by failing, within 14 days of acquiring such knowledge--

``(AA) to take commercially reasonable efforts to discontinue the prohibited person's involvement; or

``(BB) to provide notice to the Secretary;

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

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

``(II) Limitation.--The Secretary's authorized sanctions under subclause (I) shall be limited to entities that have engaged in any activity described in subclause (I).

``(III) Information.--

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

``(bb) Effect of failure to respond.--If the regional center, new commercial enterprise, or job-creating entity fails to discontinue the prohibited person's involvement with the regional center, new commercial enterprise, or job-creating entity, as applicable, within 30 days after receiving such notification, such entity shall be deemed to have knowledge under subclause (I)(aa) that the involvement of such person with the entity is in violation of clause (i) or (ii).

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

``(I) Compliance with securities laws.--

``(i) Jurisdiction.--

``(I) In general.--The United States has jurisdiction, including subject matter jurisdiction, over the purchase or sale of any security offered or

sold, or any investment advice provided, by any regional center or any party associated with a regional center for purposes of the securities laws.

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

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

``(ii) Regional center certifications required.--

``(I) Initial certification.--The Secretary of Homeland Security may not approve an application for regional center designation or regional center amendment unless the regional center certifies that, to the best of the certifier's knowledge, after a due diligence investigation, the regional center is in compliance with and has policies and procedures, including those related to internal and external due diligence, reasonably designed to confirm, as applicable, that all parties associated with the regional center are and will remain in compliance with the securities laws of the United States and of any State in which--

``(aa) the offer, purchase, or sale of securities was conducted;
``(bb) the issuer of securities was located; or
``(cc) the investment advice was provided by the regional center or parties associated with the regional center.

``(II) Reissue.--A regional center shall annually reissue a certification described in subclause (I), in accordance with subparagraph (G), to certify compliance with clause (iii) by stating that--

``(aa) the certification is made by a certifier;
``(bb) to the best of the certifier's knowledge, after a due diligence investigation, all such offers, purchases, and sales of securities or the provision of investment advice complied with the securities laws of the United States and the securities laws of any State in which--
``(AA) the offer, purchase, or sale of securities was conducted;
``(BB) the issuer of securities was located; or
``(CC) the investment advice was provided;
and
``(cc) records, data, and information related to such offers, purchases, and sales have been maintained.

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

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

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

``(cc) certify that the regional center and all parties associated with the regional center are currently in compliance, to the best of the certifier's knowledge, after a due diligence investigation.

``(iii) Oversight required.--Each regional center shall--

``(I) use commercially reasonable efforts to monitor and supervise compliance with the securities laws in relations to all offers, purchases, and sales of, and investment advice relating to, securities made by parties associated with the regional center;

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

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

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

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

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

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

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

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

``(v) Defined term.--In this subparagraph, the term 'parties associated with a regional center' means--

``(I) the regional center;

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

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

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

``(vi) Savings provision.--Nothing in this subparagraph may be construed to impair or limit the authority of the Securities and Exchange Commission under the Federal securities laws or any State securities regulator under State securities laws.

``(J) EB-5 integrity fund.--

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

``(ii) Fees.--

``(I) Annual fee.--On October 1, 2022, and each October 1 thereafter, the Secretary of Homeland Security shall collect for the Fund an annual fee--

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

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

``(II) Petition fee.--Beginning on October 1, 2022, the Secretary shall collect a fee of \$1,000 for the Fund with each petition filed under section 204(a)(1)(H) for classification under subparagraph (E). The fee under this subclause is in addition to the fee that the Secretary is authorized to establish and collect for each petition to recover the costs of adjudication and naturalization services under section 286(m).

``(III) Increases.--The Secretary may increase the

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

``(iii) Permissible uses of fund.--The Secretary shall--

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

``(aa) monitoring and investigating program-related events and promotional activities; and
``(bb) ensuring an alien investor's compliance with subparagraph (L); and

``(II) use amounts deposited into the Fund--

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

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

``(cc) to conduct audits and site visits; and

``(dd) as the Secretary determines to be necessary, including monitoring compliance with the requirements under section 107 of the EB-5 Reform and Integrity Act of 2022.

``(iv) Failure to pay fee.--The Secretary of Homeland Security shall--

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

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

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

``(K) Direct and third-party promoters.--

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

``(I) registration with U.S. Citizenship and Immigration Services, which--

``(aa) includes identifying and contact

information for such promoter and confirmation of the existence of the written agreement required under clause (iii); and
``(bb) may be made publicly available at the discretion of the Secretary;

``(II) certification by each promoter that such promoter is not ineligible under subparagraph (H)(i);
``(III) guidelines for accurately representing the visa process to foreign investors; and
``(IV) guidelines describing permissible fee arrangements under applicable securities and immigration laws.

``(ii) Effect of violation.--If the Secretary determines that a direct or third-party promoter has violated clause (i), the Secretary shall suspend or permanently bar such individual from participation in the program described in subparagraph (E).

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

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

``(L) Source of funds.--

``(i) In general.--An alien investor shall demonstrate that the capital required under subparagraph (A) and any funds used to pay administrative costs and fees associated with the alien's investment were obtained from a lawful source and through lawful means.

``(ii) Required information.--The Secretary of Homeland Security shall require that an alien investor's petition under this paragraph contain, as applicable--

``(I) business and tax records, or similar records, including--

``(aa) foreign business registration records;

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

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

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

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

``(iii) Gift and loan restrictions.--

``(I) In general.--Gifted and borrowed funds may not be counted toward the minimum capital investment requirement under subparagraph (C) unless such funds--

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

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

``(II) Records requirement.--If funds invested under subparagraph (A) are gifted or loaned to the alien investor, the Secretary shall require that the alien investor's petition under this paragraph includes the records described in subclauses (I) and (II) of clause (ii) from the donor or, if other than a bank, the lender.

``(M) Treatment of good faith investors following program noncompliance.--

``(i) Termination or debarment of eb-5 entity.--Except as provided in clause (vi), upon the termination or debarment, as applicable, from the program under this paragraph of a regional center, a new commercial enterprise, or a job-creating entity--

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

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

``(ii) New regional center or investment.--The petition under section 204(a)(1)(H) of an alien described in clause (i) and the conditional permanent resident status of an alien described in clause (i) shall be terminated 180 days after notification of the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job creating entity (but not sooner than 180 days after the date of the enactment of the EB-5 Reform

and Integrity Act of 2022) unless--

``(I) in the case of the termination of a regional center--

``(aa) the new commercial enterprise associates with an approved regional center, regardless of the approved geographical boundaries of such regional center's designation; or

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

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

``(aa) associates with a new commercial enterprise in good standing; and

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

``(iii) Amendments.--

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

``(II) Determination of eligibility.--For purposes of determining eligibility under subclause (I)--

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

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

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

``(v) Remedies.--For petitions approved under clause (ii), including following an amendment filed under clause (iii), the Secretary--

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

``(II) may hold such petition in abeyance and

extend any applicable deadlines under this paragraph.

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

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

``(II) the Secretary shall--

``(aa) notify the alien of such belief; and

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

``(N) Threats to the national interest.--

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

``(ii) Documents.--The documents described in this clause are--

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

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

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

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

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

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

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

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

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

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

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

``(O) Fraud, misrepresentation, and criminal misuse.--

``(i) Denial or revocation.--Subject to subparagraph (M), the Secretary of Homeland Security shall deny or revoke the approval of a petition, application, or benefit described in this paragraph, including the documents described in subparagraph (N)(ii), if the Secretary determines, in the Secretary's discretion, that such petition, application, or benefit was predicated on or involved fraud, deceit, intentional material misrepresentation, or criminal misuse.

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

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

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

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

``(P) Administrative appellate review.--

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

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

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

``(Q) Fund administration.--

``(i) In general.--Each new commercial enterprise shall deposit and maintain the capital investment of each alien investor in a separate account, including amounts held in escrow.

``(ii) Use of funds.--Amounts in a separate account may only--

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

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

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

``(iii) Deployment of funds into an affiliated job-creating entity.--If amounts are transferred to an affiliated job-creating entity pursuant to clause (ii)(I)--

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

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

``(iv) Fund administrator.--Except as provided in clause (v), the new commercial enterprise shall retain a fund administrator to fulfill the requirements under this subparagraph. The fund administrator--

``(I) shall be independent of, and not directly related to, the new commercial enterprise, the regional center associated with the new commercial enterprise, the job creating entity, or any of the principals or

managers of such entities;
``(II) shall be licensed, active, and in good standing as--

- ``(aa) a certified public accountant;
- ``(bb) an attorney;
- ``(cc) a broker-dealer or investment adviser registered with the Securities and Exchange Commission; or
- ``(dd) an individual or company that otherwise meets such requirements as may be established by the Secretary;

``(III) shall monitor and track any transfer of amounts from the separate account;
``(IV) shall serve as a cosignatory on all separate accounts;
``(V) before any transfer of amounts from a separate account, shall--

- ``(aa) verify that the transfer complies with all governing documents, including organizational, operational, and investment documents; and
- ``(bb) approve such transfer with a written or electronic signature;

``(VI) shall periodically provide each alien investor with information about the activity of the account in which the investor's capital investment is held, including--

- ``(aa) the name and location of the bank or financial institution at which the account is maintained;
- ``(bb) the history of the account; and
- ``(cc) any additional information required by the Secretary; and

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

``(v) Waiver.--

``(I) Waiver permitted.--The Secretary of Homeland Security, after consultation with the Securities and Exchange Commission, may waive the requirements under clause (iv) for any new commercial enterprise or affiliated job-creating entity that is controlled by or under common control of an investment adviser or broker-dealer that is registered with the Securities and Exchange Commission if the Secretary, in the Secretary's discretion, determines that the Securities and Exchange Commission provides comparable protections and transparency for alien investors as the protections and transparency provided under clause (iv).

``(II) Waiver required.--The Secretary of Homeland Security shall waive the requirements under clause (iv) for any new commercial enterprise that commissions an annual independent financial audit of such new

commercial enterprise or job creating entity conducted in accordance with Generally Accepted Auditing Standards, which audit shall be provided to the Secretary and all investors in the new commercial enterprise.

``(vi) Defined term.--In this subparagraph, the term 'separate account' means an account that--

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

``(II) is insured; and

``(III) contains only the pooled investment funds of alien investors in a new commercial enterprise with respect to a single capital investment project.''.

(2) Effective date.--The amendment made by this subsection shall take effect on the date that is 60 days after the date of the enactment of this Act.

(c) Required Checks.--

(1) In general.--Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), as amended by subsection (b), is further amended by adding at the end the following:

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

(2) Effective date.--The amendment made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 104. CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIEN INVESTORS, SPOUSES, AND CHILDREN.

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

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

(2) by striking ``entrepreneur'' each place such term appears and inserting ``investor'';

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

``(1) Conditional basis for status.--An alien investor, alien spouse, and alien child shall be considered, at the time of obtaining status as an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.'';

(4) in subsection (b)--

(A) in the subsection heading, by striking ``Entrepreneurship'' and inserting ``Investment''; and

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

``(B) the alien did not invest the requisite capital; or'';

(5) in subsection (c)--

(A) in the subsection heading, by striking ``of Timely Petition and Interview'';

(B) in paragraph (1)--

(i) in the matter preceding subparagraph (A), by striking ``In order'' and inserting ``Except as provided in paragraph (3)(D), in order'';

(ii) in subparagraph (A)--

(I) by striking ``must'' and inserting ``shall'';
and
(II) by striking `` , and'' and inserting a
semicolon;

(iii) in subparagraph (B)--

(I) by striking ``must'' and inserting ``shall'';
(II) by striking ``Service'' and inserting
``Department of Homeland Security''; and
(III) by striking the period at the end and
inserting ``; and''; and

(iv) by adding at the end the following:

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

(C) in paragraph (3)--

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

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

``(B) Removal or extension of conditional basis.--

``(i) In general.--Except as provided in clause (ii),
if the Secretary determines that the facts and information
contained in a petition submitted under paragraph (1)(A)
are true, including demonstrating that the alien complied
with subsection (d)(1)(B)(i), the Secretary shall--

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

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

``(ii) Exception.--If the petition demonstrates that
the facts and information are true and that the alien is in
compliance with subsection (d)(1)(B)(ii)--

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

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

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

(6) in subsection (d)--

(A) in paragraph (1)--

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

``(A) invested the requisite capital;'';

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

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

``(B)(i) created the employment required under section

203(b)(5)(A)(ii); or

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

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

“(A) Ninety-day period before second anniversary.--

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

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

(C) in paragraph (3)--

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

“(A) In general.--The interview”;

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

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

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

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

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

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

(b) Effective Dates.--

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

(2) Exceptions.--

(A) Site visits.--The amendment made by subsection (a)(5)(B)(iv) shall take effect on the date that is 2 years after the date of the enactment of this Act.

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

SEC. 105. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

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

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

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

(b) Effective Dates.--

(1) In general.--The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

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

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

SEC. 106. TIMELY PROCESSING.

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

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

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

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

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

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

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

in section 203(b)(5)(D) of such Act); and

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

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

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

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

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

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

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

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

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

SEC. 107. TRANSPARENCY.

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

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

(1) working on, or in any way attempting to influence, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under the immigrant visa

program referred to in subsection (a), the standard processing of an application, petition, or benefit for--

(A) a regional center;

(B) a new commercial enterprise;

(C) a job-creating entity; or

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

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

(c) Reporting of Communications.--

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

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

(A) the conversation shall be recorded; or

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

(3) Notification.--

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

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

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

(B) Information from law enforcement, intelligence agencies, or confidential sources.--

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

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

(d) Consideration of Evidence.--

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

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

(e) Channels of Communication.--

(1) Email address or equivalent.--The Director of U.S. Citizenship and Immigration Services shall maintain an email account (or equivalent means of communication) for persons or entities--

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

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

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

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

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

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

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

(B) Direction of incoming communications.--

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

(ii) Rule of construction.--Nothing in this subparagraph may be construed to prevent--

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

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

(C) Log.--

(i) In general.--The Director of U.S. Citizenship and Immigration Services shall maintain a written or electronic log of--

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

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

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

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

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

(f) Penalty.--

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

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

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

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

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

SEC. 108. PROTECTION FROM EXPIRED LEGISLATION.

Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), as amended by sections 102 and 103 of this division, is further amended by adding at the end the following:

``(S) Protection from expired legislation.--Notwithstanding the expiration of legislation authorizing the regional center program under subparagraph (E), the Secretary of Homeland

Security--

- ``(i) shall continue processing petitions under sections 204(a)(1)(H) and 216A based on an investment in a new commercial enterprise associated with a regional center that were filed on or before September 30, 2026;
- ``(ii) may not deny a petition described in clause (i) based on the expiration of such legislation; and
- ``(iii) may not suspend or terminate the allocation of visas to the beneficiaries of approved petitions described in clause (i).''.