

117TH CONGRESS
1ST SESSION

H. R. 2901

To reauthorize the EB–5 Regional Center Program in order to prevent fraud and to promote and reform foreign capital investment and job creation in American communities.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2021

Mr. STANTON (for himself and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reauthorize the EB–5 Regional Center Program in order to prevent fraud and to promote and reform foreign capital investment and job creation in American communities.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EB–5 Reform and In-
5 tegrity Act of 2021”.

1 **SEC. 2. REAUTHORIZATION AND REFORM OF THE RE-**
2 **GIONAL CENTER PROGRAM.**

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6 is repealed.

7 (b) **AUTHORIZATION.**—Section 203(b)(5) of the Im-
8 migration and Nationality Act (8 U.S.C. 1153(b)(5)) is
9 amended by adding at the end the following:

10 “(E) **REGIONAL CENTER PROGRAM.**—

11 “(i) **IN GENERAL.**—Visas under this
12 paragraph shall be made available through
13 September 30, 2026, to qualified immi-
14 grants (and the eligible spouses and chil-
15 dren of such immigrants) pooling their in-
16 vestments with 1 or more qualified immi-
17 grants participating in a program imple-
18 menting this paragraph that involves a re-
19 gional center in the United States, which
20 has been designated by the Secretary of
21 Homeland Security on the basis of a pro-
22 posal for the promotion of economic
23 growth, including prospective job creation
24 and increased domestic capital investment.

25 “(ii) **PROCESSING.**—In processing pe-
26 titions under section 204(a)(1)(H) for clas-

1 sification under this paragraph, the Sec-
2 retary of Homeland Security—

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

6 “(II) shall deem such petitions to
7 include records previously filed with
8 the Secretary pursuant to subpara-
9 graph (F) if the alien petitioner cer-
10 tifies that such records are incor-
11 porated by reference into the alien’s
12 petition.

13 “(iii) ESTABLISHMENT OF A RE-
14 GIONAL CENTER.—A regional center shall
15 operate within a defined, contiguous, and
16 limited geographic area, which shall be de-
17 scribed in the proposal and be consistent
18 with the purpose of concentrating pooled
19 investment within such area. The proposal
20 to establish a regional center shall dem-
21 onstrate that the pooled investment will
22 have a substantive economic impact on
23 such geographic area, and shall include—

24 “(I) reasonable predictions, sup-
25 ported by economically and statis-

1 tically valid and transparent fore-
2 casting tools, concerning the amount
3 of investment that will be pooled, the
4 kinds of commercial enterprises that
5 will receive such investments, details
6 of the jobs that will be created di-
7 rectly or indirectly as a result of such
8 investments, and other positive eco-
9 nomic effects such investments will
10 have;

11 “(II) a description of the policies
12 and procedures in place reasonably
13 designed to monitor new commercial
14 enterprises and any associated job-
15 creating entity to seek to ensure com-
16 pliance with—

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

22 “(bb) all securities laws of
23 each State in which securities of-
24 ferings will be conducted, invest-

1 ment advice will be rendered, or
2 the offerors or offerees reside;

3 “(III) attestations and informa-
4 tion confirming that all persons in-
5 volved with the regional center meet
6 the requirements under clauses (i)
7 and (ii) of subparagraph (H);

8 “(IV) a description of the policies
9 and procedures in place that are rea-
10 sonably designed to ensure program
11 compliance; and

12 “(V) the identities of all natural
13 persons involved in the regional cen-
14 ter, as described in subparagraph
15 (H)(v).

16 “(iv) INDIRECT JOB CREATION.—

17 “(I) IN GENERAL.—The Sec-
18 retary of Homeland Security shall
19 permit aliens seeking admission under
20 this subparagraph to satisfy only up
21 to 90 percent of the requirement
22 under subparagraph (A)(ii) with jobs
23 that are estimated to be created indi-
24 rectly through investment under this
25 paragraph in accordance with this

1 subparagraph. An employee of the
2 new commercial enterprise or job-cre-
3 ating entity may be considered to hold
4 a job that has been directly created.

5 “(II) CONSTRUCTION ACTIVITY
6 LASTING LESS THAN 2 YEARS.—If the
7 jobs estimated to be created are cre-
8 ated by construction activity lasting
9 less than 2 years, the Secretary shall
10 permit aliens seeking admission under
11 this subparagraph to satisfy only up
12 to 75 percent of the requirement
13 under subparagraph (A)(ii) with jobs
14 that are estimated to be created indi-
15 rectly through investment under this
16 paragraph in accordance with this
17 subparagraph.

18 “(v) COMPLIANCE.—

19 “(I) IN GENERAL.—In deter-
20 mining compliance with subparagraph
21 (A)(ii), the Secretary of Homeland Se-
22 curity shall permit aliens seeking ad-
23 mission under this subparagraph to
24 rely on economically and statistically
25 valid methodologies for determining

1 the number of jobs created by the pro-
2 gram, including—

3 “(aa) jobs estimated to have
4 been created directly, which may
5 be verified using such methodolo-
6 gies; and

7 “(bb) consistent with this
8 subparagraph, jobs estimated to
9 have been directly or indirectly
10 created through capital expendi-
11 tures, revenues generated from
12 increased exports, improved re-
13 gional productivity, job creation,
14 and increased domestic capital
15 investment resulting from the
16 program.

17 “(II) JOB AND INVESTMENT RE-
18 QUIREMENTS.—

19 “(aa) RELOCATED JOBS.—
20 In determining compliance with
21 the job creation requirement
22 under subparagraph (A)(ii), the
23 Secretary of Homeland Security
24 may include jobs estimated to be
25 created under a methodology that

1 attributes jobs to prospective ten-
2 ants occupying commercial real
3 estate created or improved by
4 capital investments if the number
5 of such jobs estimated to be cre-
6 ated has been determined by an
7 economically and statistically
8 valid methodology and such jobs
9 are not existing jobs that have
10 been relocated.

11 “(bb) PUBLICLY AVAILABLE
12 BONDS.—The Secretary of
13 Homeland Security shall pre-
14 scribe regulations to ensure that
15 alien investor capital may not be
16 utilized, by a new commercial en-
17 terprise or otherwise, to purchase
18 municipal bonds or any other
19 bonds, if such bonds are available
20 to the general public, either as
21 part of a primary offering or
22 from a secondary market.

23 “(cc) CONSTRUCTION ACTIV-
24 ITY JOBS.—If the number of di-
25 rect jobs estimated to be created

1 has been determined by an eco-
2 nomically and statistically valid
3 methodology, and such direct
4 jobs are created by construction
5 activity lasting less than 2 years,
6 the number of such jobs that
7 may be considered direct jobs for
8 purposes of clause (iv) shall be
9 calculated by multiplying the
10 total number of such jobs esti-
11 mated to be created by the frac-
12 tion of the 2-year period that the
13 construction activity lasts.

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

16 “(I) require a regional center—

17 “(aa) to notify the Sec-
18 retary, not later than 120 days
19 before the implementation of sig-
20 nificant proposed changes to its
21 organizational structure, owner-
22 ship, or administration, including
23 the sale of such center, or other
24 arrangements which would result
25 in individuals not previously sub-

1 ject to the requirements under
2 subparagraph (H) becoming in-
3 volved with the regional center;
4 or

5 “(bb) if exigent cir-
6 cumstances are present, to pro-
7 vide the notice described in item
8 (aa) to the Secretary not later
9 than 5 business days after a
10 change described in such item;
11 and

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

19 “(vii) RECORD KEEPING AND AU-
20 DITS.—

21 “(I) RECORD KEEPING.—Each
22 regional center shall make and pre-
23 serve, during the 5-year period begin-
24 ning on the last day of the Federal
25 fiscal year in which any transactions

1 occurred, books, ledgers, records, and
2 other documentation from the regional
3 center, new commercial enterprise, or
4 job-creating entity used to support—

5 “(aa) any claims, evidence,
6 or certifications contained in the
7 regional center’s annual state-
8 ments under subparagraph (G);
9 and

10 “(bb) associated petitions by
11 aliens seeking classification under
12 this section or removal of condi-
13 tions under section 216A.

14 “(II) AUDITS.—The Secretary
15 shall audit each regional center not
16 less frequently than once every 5
17 years. Each such audit shall include a
18 review of any documentation required
19 to be maintained under subclause (I)
20 for the preceding 5 years and a review
21 of the flow of alien investor capital
22 into any capital investment project.
23 To the extent multiple regional cen-
24 ters are located at a single site, the

1 Secretary may audit multiple regional
2 centers in a single site visit.

3 “(III) TERMINATION.—The Sec-
4 retary shall terminate the designation
5 of a regional center that fails to con-
6 sent to an audit under subclause (II)
7 or deliberately attempts to impede
8 such an audit.

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

11 “(i) APPLICATION FOR APPROVAL OF
12 AN INVESTMENT IN A COMMERCIAL EN-
13 TERPRISE.—A regional center shall file an
14 application with the Secretary of Home-
15 land Security for each particular invest-
16 ment offering through an associated new
17 commercial enterprise before any alien files
18 a petition for classification under this
19 paragraph by reason of investment in that
20 offering. The application shall include—

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

24 “(II) a credible economic analysis
25 regarding estimated job creation that

1 is based upon economically and statis-
2 tically valid and transparent meth-
3 odologies;

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

10 “(IV) any investment and offer-
11 ing documents, including subscription,
12 investment, partnership, and oper-
13 ating agreements, private placement
14 memoranda, term sheets, biographies
15 of management, officers, directors,
16 and any person with similar respon-
17 sibilities, the description of the busi-
18 ness plan to be provided to potential
19 alien investors, and marketing mate-
20 rials used, or drafts prepared for use,
21 in connection with the offering, which
22 shall contain references, as appro-
23 priate, to—

24 “(aa) all material invest-
25 ment risks associated with the

1 new commercial enterprise and
2 the job-creating entity;

3 “(bb) any conflicts of inter-
4 est that currently exist or may
5 arise among the regional center,
6 the new commercial enterprise,
7 the job-creating entity, or the
8 principals, attorneys, or individ-
9 uals responsible for recruitment
10 or promotion of such entities;

11 “(cc) any pending material
12 litigation or bankruptcy, or mate-
13 rial adverse judgments or bank-
14 ruptcy orders issued during the
15 most recent 10-year period, in
16 the United States or in another
17 country, affecting the regional
18 center, the new commercial enter-
19 prise, any associated job-creating
20 entity, or any other enterprise in
21 which any principal of any of the
22 aforementioned entities held ma-
23 jority ownership at the time; and

24 “(dd)(AA) any fees, ongoing
25 interest, or other compensation

1 paid, or to be paid by the re-
2 gional center, the new commer-
3 cial enterprise, or any issuer of
4 securities intended to be offered
5 to alien investors, to agents, find-
6 ers, or broker dealers involved in
7 the offering of securities to alien
8 investors in connection with the
9 investment;

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

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

18 “(V) a description of the policies
19 and procedures, such as those related
20 to internal and external due diligence,
21 reasonably designed to cause the re-
22 gional center and any issuer of securi-
23 ties intended to be offered to alien in-
24 vestors in connection with the relevant
25 capital investment project, to comply,

1 as applicable, with the securities laws
2 of the United States and the laws of
3 the applicable States in connection
4 with the offer, purchase, or sale of its
5 securities; and

6 “(VI) a certification from the re-
7 gional center, and any issuer of secu-
8 rities intended to be offered to alien
9 investors in connection with the rel-
10 evant capital investment project, that
11 their respective agents and employees,
12 and any parties associated with the
13 regional center and such issuer of se-
14 curities affiliated with the regional
15 center are in compliance with the se-
16 curities laws of the United States and
17 the laws of the applicable States in
18 connection with the offer, purchase, or
19 sale of its securities, to the best of the
20 certifier’s knowledge, after a due dili-
21 gence investigation.

22 “(ii) EFFECT OF APPROVAL OF A
23 BUSINESS PLAN FOR AN INVESTMENT IN A
24 REGIONAL CENTER’S COMMERCIAL ENTER-
25 PRISE.—The approval of an application

1 under this subparagraph, including an ap-
2 proval before the date of the enactment of
3 this subparagraph, shall be binding for
4 purposes of the adjudication of subsequent
5 petitions seeking classification under this
6 paragraph by immigrants investing in the
7 same offering described in such applica-
8 tion, and of petitions by the same immi-
9 grants filed under section 216A unless—

10 “(I) the applicant engaged in
11 fraud, misrepresentation, or criminal
12 misuse;

13 “(II) such approval would threat-
14 en public safety or national security;

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

17 “(IV) the discovery of other evi-
18 dence affecting program eligibility was
19 not disclosed by the applicant during
20 the adjudication process; or

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

24 “(iii) AMENDMENTS.—

1 “(I) APPROVAL.—The Secretary
2 of Homeland Security may establish
3 procedures by which a regional center
4 may seek approval of an amendment
5 to an approved application under this
6 subparagraph that reflects changes
7 specified by the Secretary to any in-
8 formation, documents, or other as-
9 pects of the investment offering de-
10 scribed in such approved application
11 not later than 30 days after any such
12 changes.

13 “(II) INCORPORATION.—Upon
14 the approval of a timely filed amend-
15 ment to an approved application, any
16 changes reflected in such amendment
17 may be incorporated into and consid-
18 ered in determining program eligibility
19 through adjudication of—

20 “(aa) pending petitions from
21 immigrants investing in the offer-
22 ing described in the approved ap-
23 plication who are seeking classi-
24 fication under this paragraph;
25 and

1 “(bb) petitions by immi-
2 grants described in item (aa)
3 that are filed under section
4 216A.

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

7 “(I) perform site visits to re-
8 gional centers not earlier than 24
9 hours after providing notice of such
10 site visit; and

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

16 “(G) REGIONAL CENTER ANNUAL STATE-
17 MENTS.—

18 “(i) IN GENERAL.—Each regional cen-
19 ter designated under subparagraph (E)
20 shall submit an annual statement, in a
21 manner prescribed by the Secretary of
22 Homeland Security. Each such statement
23 shall include—

24 “(I) a certification stating that,
25 to the best of the certifier’s knowl-

1 edge, after a due diligence investiga-
2 tion, the regional center is in compli-
3 ance with clauses (i) and (ii) of sub-
4 paragraph (H);

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

7 “(III) a certification stating that,
8 to the best of the certifier’s knowl-
9 edge, after a due diligence investiga-
10 tion, the regional center is in compli-
11 ance with subparagraph (K)(iii);

12 “(IV) a description of any pend-
13 ing material litigation or bankruptcy
14 proceedings, or material litigation or
15 bankruptcy proceedings resolved dur-
16 ing the preceding fiscal year, involving
17 the regional center, the new commer-
18 cial enterprise, or any affiliated job-
19 creating entity;

20 “(V) an accounting of all indi-
21 vidual alien investor capital invested
22 in the regional center, new commercial
23 enterprise, and job-creating entity;

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

4 “(aa) an accounting of the
5 aggregate capital invested in the
6 new commercial enterprise and
7 any job-creating entity by alien
8 investors under this paragraph
9 for each capital investment
10 project being undertaken by the
11 new commercial enterprise;

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

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

21 “(dd) detailed evidence of
22 the progress made toward the
23 completion of each capital invest-
24 ment project;

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

4 “(ff) to the best of the re-
5 gional center’s knowledge, for all
6 fees, including administrative
7 fees, loan monitoring fees, loan
8 management fees, commissions
9 and similar transaction-based
10 compensation, collected from
11 alien investors by the regional
12 center, the new commercial enter-
13 prise, any affiliated job-creating
14 entity, any affiliated issuer of se-
15 curities intended to be offered to
16 alien investors, or any promoter,
17 finder, broker-dealer, or other en-
18 tity engaged by any of the afore-
19 mentioned entities to locate indi-
20 vidual investors—

21 “(AA) a description of
22 all fees collected;

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

1 “(CC) the purpose for
2 which such fees were col-
3 lected;

4 “(gg) any documentation re-
5 ferred to in subparagraph
6 (F)(i)(IV) if there has been a
7 material change during the pre-
8 ceding fiscal year; and

9 “(hh) a certification by the
10 regional center that the informa-
11 tion provided under items (aa)
12 through (gg) is accurate, to the
13 best of the certifier’s knowledge,
14 after a due diligence investiga-
15 tion; and

16 “(VII) a description of the re-
17 gional center’s policies and procedures
18 that are designed to enable the re-
19 gional center to comply with applica-
20 ble Federal labor laws.

21 “(ii) AMENDMENT OF ANNUAL STATE-
22 MENTS.—The Secretary of Homeland Se-
23 curity—

24 “(I) shall require the regional
25 center to amend or supplement an an-

1 nual statement required under clause
2 (i) if the Secretary determines that
3 such statement is deficient; and

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

9 “(iii) SANCTIONS.—

10 “(I) EFFECT OF VIOLATION.—

11 The Director shall sanction any re-
12 gional center entity in accordance
13 with subclause (II) if the regional cen-
14 ter fails to submit an annual state-
15 ment or if the Director determines
16 that the regional center—

17 “(aa) knowingly submitted
18 or caused to be submitted a
19 statement, certification, or any
20 information submitted pursuant
21 to this subparagraph that con-
22 tained an untrue statement of
23 material fact; or

24 “(bb) is conducting itself in
25 a manner inconsistent with its

1 designation under subparagraph
2 (E), including any willful, undis-
3 closed, and material deviation by
4 new commercial enterprises from
5 any filed business plan for such
6 new commercial enterprises.

7 “(II) AUTHORIZED SANCTIONS.—
8 The Director shall establish a grad-
9 uated set of sanctions based on the
10 severity of the violations referred to in
11 subclause (I), including—

12 “(aa) fines equal to not
13 more than 10 percent of the total
14 capital invested by alien investors
15 in the regional center’s new com-
16 mercial enterprises or job-cre-
17 ating entities directly involved in
18 such violations, the payment of
19 which shall not in any cir-
20 cumstance utilize any of such
21 alien investors’ capital invest-
22 ments, and which shall be depos-
23 ited into the EB–5 Integrity
24 Fund established under subpara-
25 graph (J);

1 “(bb) temporary suspension
2 from participation in the pro-
3 gram described in subparagraph
4 (E), which may be lifted by the
5 Director if the individual or enti-
6 ty cures the alleged violation
7 after being provided such an op-
8 portunity by the Director;

9 “(cc) permanent bar from
10 participation in the program de-
11 scribed in subparagraph (E) for
12 1 or more individuals or business
13 entities associated with the re-
14 gional center, new commercial
15 enterprise, or job-creating entity;
16 and

17 “(dd) termination of re-
18 gional center designation.

19 “(iv) AVAILABILITY OF ANNUAL
20 STATEMENTS TO INVESTORS.—Not later
21 than 30 days after a request from an alien
22 investor, a regional center shall make
23 available to such alien investor a copy of
24 the filed annual statement and any amend-
25 ments filed to such statement, which shall

1 be redacted to exclude any information un-
2 related to such alien investor or the new
3 commercial enterprise or job creating enti-
4 ty into which the alien investor invested.

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

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

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

14 “(aa) a criminal or civil of-
15 fense involving fraud or deceit
16 within the previous 10 years;

17 “(bb) a civil offense involv-
18 ing fraud or deceit that resulted
19 in a liability in excess of
20 \$1,000,000; or

21 “(cc) a crime for which the
22 person was convicted and sen-
23 tenced to a term of imprisonment
24 of more than 1 year;

1 “(II) the person is subject to a
2 final order, for the duration of any
3 penalty imposed by such order, of a
4 State securities commission (or an
5 agency or officer of a State per-
6 forming similar functions), a State
7 authority that supervises or examines
8 banks, savings associations, or credit
9 unions, a State insurance commission
10 (or an agency or officer of a State
11 performing similar functions), an ap-
12 propriate Federal banking agency, the
13 Commodity Futures Trading Commis-
14 sion, the Securities and Exchange
15 Commission, a financial self-regu-
16 latory organization recognized by the
17 Securities and Exchange Commission,
18 or the National Credit Union Admin-
19 istration, which is based on a violation
20 of any law or regulation that—

21 “(aa) prohibits fraudulent,
22 manipulative, or deceptive con-
23 duct; or

24 “(bb) bars the person
25 from—

1 “(AA) association with
2 an entity regulated by such
3 commission, authority, agen-
4 cy, or officer;

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

8 “(CC) engaging in the
9 business of securities, insur-
10 ance, or banking; or

11 “(DD) engaging in sav-
12 ings association or credit
13 union activities;

14 “(III) the Secretary determines
15 that the person is engaged in, has
16 ever been engaged in, or seeks to en-
17 gage in—

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

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

1 “(cc) any activity related to
2 money laundering (as described
3 in section 1956 or 1957 of title
4 18, United States Code);

5 “(dd) any terrorist activity
6 (as defined in section
7 212(a)(3)(B));

8 “(ee) any activity consti-
9 tuting or facilitating human traf-
10 ficking or a human rights of-
11 fense;

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

14 “(gg) the violation of any
15 statute, regulation, or Executive
16 order regarding foreign financial
17 transactions or foreign asset con-
18 trol; or

19 “(IV) the person—

20 “(aa) is, or during the pre-
21 ceding 10 years has been, in-
22 cluded on the Department of
23 Justice’s List of Currently Dis-
24 ciplined Practitioners; or

1 “(bb) during the preceding
2 10 years, has received a rep-
3 rimand or has otherwise been
4 publicly disciplined for conduct
5 related to fraud or deceit by a
6 State bar association of which
7 the person is or was a member.

8 “(ii) FOREIGN INVOLVEMENT IN RE-
9 GIONAL CENTER PROGRAM.—

10 “(I) LAWFUL STATUS RE-
11 QUIRED.—A person may not be in-
12 volved with a regional center unless
13 the person—

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

21 “(bb) is not the subject of
22 rescission or removal pro-
23 ceedings.

24 “(II) FOREIGN GOVERNMENTS.—
25 No agency, official, or other similar

1 entity or representative of a foreign
2 government entity may provide capital
3 to, or be directly or indirectly involved
4 with the ownership or administration
5 of, a regional center, a new commer-
6 cial enterprise, or a job-creating enti-
7 ty, except that a foreign or domestic
8 investment fund or other investment
9 vehicle that is wholly or partially
10 owned, directly or indirectly, by a
11 bona fide foreign sovereign wealth
12 fund or a foreign state-owned enter-
13 prise otherwise permitted to do busi-
14 ness in the United States may be in-
15 volved with the ownership, but not the
16 administration, of a job-creating enti-
17 ty that is not an affiliated job-creating
18 entity.

19 “(III) RULEMAKING.—Not later
20 than 270 days after the date of the
21 enactment of the EB–5 Reform and
22 Integrity Act of 2021, the Secretary
23 shall issue regulations implementing
24 subparagraphs (I) and (II).

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

3 “(I) shall require such attesta-
4 tions and information, including the
5 submission of fingerprints or other
6 biometrics to the Federal Bureau of
7 Investigation with respect to a re-
8 gional center, a new commercial enter-
9 prise, and any affiliated job creating
10 entity, and persons involved with such
11 entities (as described in clause (v)), as
12 may be necessary to determine wheth-
13 er such entities are in compliance with
14 clauses (i) and (ii);

15 “(II) shall perform such criminal
16 record checks and other background
17 and database checks with respect to a
18 regional center, a new commercial en-
19 terprise, and any affiliated job-cre-
20 ating entity, and persons involved
21 with such entities (as described in
22 clause (v)), as may be necessary to de-
23 termine whether such entities are in
24 compliance with clauses (i) and (ii);
25 and

1 “(III) may, at the Secretary’s
2 discretion, require the information de-
3 scribed to in subclause (I) and may
4 perform the checks described in sub-
5 clause (II) with respect to any job cre-
6 ating entity and persons involved with
7 such entity if there is a reasonable
8 basis to believe such entity or person
9 is not in compliance with clauses (i)
10 and (ii).

11 “(iv) TERMINATION.—

12 “(I) IN GENERAL.—The Sec-
13 retary of Homeland Security may sus-
14 pend or terminate the designation of
15 any regional center, or the participa-
16 tion under the program of any new
17 commercial enterprise or job-creating
18 entity under this paragraph if the
19 Secretary determines that such enti-
20 ty—

21 “(aa) knowingly involved a
22 person with such entity in viola-
23 tion of clause (i) or (ii) by fail-
24 ing, within 14 days of acquiring
25 such knowledge—

1 “(AA) to take commer-
2 cially reasonable efforts to
3 discontinue the prohibited
4 person’s involvement; or

5 “(BB) to provide notice
6 to the Secretary;

7 “(bb) failed to provide an
8 attestation or information re-
9 quested by the Secretary under
10 clause (iii)(I); or

11 “(cc) knowingly provided
12 any false attestation or informa-
13 tion under clause (iii)(I).

14 “(II) LIMITATION.—The Sec-
15 retary’s authorized sanctions under
16 subclause (I) shall be limited to enti-
17 ties that have engaged in any activity
18 described in subclause (I).

19 “(III) INFORMATION.—

20 “(aa) NOTIFICATION.—The
21 Secretary, after performing the
22 criminal record checks and other
23 background checks described in
24 clause (iii), shall notify a regional
25 center, new commercial enter-

1 prise, or job-creating entity
2 whether any person involved with
3 such entities is not in compliance
4 with clause (i) or (ii), unless the
5 information that provides the
6 basis for the determination is
7 classified or disclosure is other-
8 wise prohibited under law.

9 “(bb) EFFECT OF FAILURE
10 TO RESPOND.—If the regional
11 center, new commercial enter-
12 prise, or job-creating entity fails
13 to discontinue the prohibited per-
14 son’s involvement with the re-
15 gional center, new commercial
16 enterprise, or job-creating entity,
17 as applicable, within 30 days
18 after receiving such notification,
19 such entity shall be deemed to
20 have knowledge under subclause
21 (I)(aa) that the involvement of
22 such person with the entity is in
23 violation of clause (i) or (ii).

24 “(v) PERSONS INVOLVED WITH A RE-
25 GIONAL CENTER, NEW COMMERCIAL EN-

1 TERPRISE, OR JOB-CREATING ENTITY.—
2 For the purposes of this paragraph, unless
3 otherwise determined by the Secretary of
4 Homeland Security, a person is involved
5 with a regional center, a new commercial
6 enterprise, any affiliated job-creating enti-
7 ty, as applicable, if the person is, directly
8 or indirectly, in a position of substantive
9 authority to make operational or manage-
10 rial decisions over pooling, securitization,
11 investment, release, acceptance, or control
12 or use of any funding that was procured
13 under the program described in subpara-
14 graph (E). An individual may be in a posi-
15 tion of substantive authority if the person
16 serves as a principal, a representative, an
17 administrator, an owner, an officer, a
18 board member, a manager, an executive, a
19 general partner, a fiduciary, an agent, or
20 in a similar position at the regional center,
21 new commercial enterprise, or job-creating
22 entity, respectively.

23 “(I) COMPLIANCE WITH SECURITIES
24 LAWS.—

25 “(i) JURISDICTION.—

1 “(I) IN GENERAL.—The United
2 States has jurisdiction, including sub-
3 ject matter jurisdiction, over the pur-
4 chase or sale of any security offered
5 or sold, or any investment advice pro-
6 vided, by any regional center or any
7 party associated with a regional cen-
8 ter for purposes of the securities laws.

9 “(II) COMPLIANCE WITH REGU-
10 LATION S.—For purposes of section 5
11 of the Securities Act of 1933 (15
12 U.S.C. 77e), a regional center or any
13 party associated with a regional cen-
14 ter is not precluded from offering or
15 selling a security pursuant to Regula-
16 tion S (17 C.F.R. 230.901 et seq.) to
17 the extent that such offering or selling
18 otherwise complies with that regula-
19 tion.

20 “(III) SAVINGS PROVISION.—
21 Subclause (I) is not intended to mod-
22 ify any existing rules or regulations of
23 the Securities and Exchange Commis-
24 sion related to the application of sec-
25 tion 15(a) of the Securities and Ex-

1 change Act of 1934 (15 U.S.C.
2 780(a)) to foreign brokers or dealers.

3 “(ii) REGIONAL CENTER CERTIFI-
4 CATIONS REQUIRED.—

5 “(I) INITIAL CERTIFICATION.—

6 The Secretary of Homeland Security
7 may not approve an application for re-
8 gional center designation or regional
9 center amendment unless the regional
10 center certifies that, to the best of the
11 certifier’s knowledge, after a due dili-
12 gence investigation, the regional cen-
13 ter is in compliance with and has poli-
14 cies and procedures, including those
15 related to internal and external due
16 diligence, reasonably designed to con-
17 firm, as applicable, that all parties as-
18 sociated with the regional center are
19 and will remain in compliance with
20 the securities laws of the United
21 States and of any State in which—

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

24 “(bb) the issuer of securities
25 was located; or

1 “(cc) the investment advice
2 was provided by the regional cen-
3 ter or parties associated with the
4 regional center.

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

11 “(aa) the certification is
12 made by a certifier;

13 “(bb) to the best of the cer-
14 tifier’s knowledge, after a due
15 diligence investigation, all such
16 offers, purchases, and sales of se-
17 curities or the provision of invest-
18 ment advice complied with the se-
19 curities laws of the United States
20 and the securities laws of any
21 State in which—

22 “(AA) the offer, pur-
23 chase, or sale of securities
24 was conducted;

1 “(BB) the issuer of se-
2 curities was located; or

3 “(CC) the investment
4 advice was provided; and

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

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

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

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

1 “(cc) certify that the re-
2 gional center and all parties asso-
3 ciated with the regional center
4 are currently in compliance, to
5 the best of the certifier’s knowl-
6 edge, after a due diligence inves-
7 tigation.

8 “(iii) OVERSIGHT REQUIRED.—Each
9 regional center shall—

10 “(I) use commercially reasonable
11 efforts to monitor and supervise com-
12 pliance with the securities laws in re-
13 lations to all offers, purchases, and
14 sales of, and investment advice relat-
15 ing to, securities made by parties as-
16 sociated with the regional center;

17 “(II) maintain records, data, and
18 information relating to all such offers,
19 purchases, sales, and investment ad-
20 vice during the 5-year period begin-
21 ning on the date of their creation; and

22 “(III) make the records, data,
23 and information described in sub-
24 clause (II) available to the Secretary

1 or to the Securities and Exchange
2 Commission upon request.

3 “(iv) SUSPENSION OR TERMI-
4 NATION.—In addition to any other author-
5 ity provided to the Secretary under this
6 paragraph, the Secretary, in the Sec-
7 retary’s discretion, may suspend or termi-
8 nate the designation of any regional center
9 or impose other sanctions against the re-
10 gional center if the regional center, or any
11 parties associated with the regional center
12 that the regional center knew or reason-
13 ably should have known—

14 “(I) are permanently or tempo-
15 rarily enjoined by order, judgment, or
16 decree of any court of competent ju-
17 risdiction in connection with the offer,
18 purchase, or sale of a security or the
19 provision of investment advice;

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

24 “(aa) bars such person from
25 association with an entity regu-

1 lated by the Securities and Ex-
2 change Commission or a State
3 securities regulator; or

4 “(bb) constitutes a final
5 order based on a finding of an in-
6 tentional violation or a violation
7 related to fraud or deceit in con-
8 nection with the offer, purchase,
9 or sale of, or investment advice
10 relating to, a security; or

11 “(III) submitted, or caused to be
12 submitted, a certification described in
13 clause (ii) that contained an untrue
14 statement of a material fact or omit-
15 ted to state a material fact necessary
16 in order to make the statements
17 made, in light of the circumstances
18 under which they were made, not mis-
19 leading.

20 “(v) DEFINED TERM.—In this sub-
21 paragraph, the term ‘parties associated
22 with a regional center’ means—

23 “(I) the regional center;

24 “(II) any new commercial enter-
25 prise or affiliated job-creating entity

1 or issuer of securities associated with
2 the regional center;

3 “(III) the regional center’s and
4 new commercial enterprise’s owners,
5 officers, directors, managers, partners,
6 agents, employees, promoters and at-
7 torneys, or similar position, as deter-
8 mined by the Secretary; and

9 “(IV) any person under the con-
10 trol of the regional center, new com-
11 mercial enterprise, or issuer of securi-
12 ties associated with the regional cen-
13 ter who is responsible for the mar-
14 keting, offering, or sale of any secu-
15 rity offered in connection with the
16 capital investment project.

17 “(vi) SAVINGS PROVISION.—Nothing
18 in this subparagraph may be construed to
19 impair or limit the authority of the Securi-
20 ties and Exchange Commission under the
21 Federal securities laws or any State securi-
22 ties regulator under State securities laws.

23 “(J) EB-5 INTEGRITY FUND.—

24 “(i) ESTABLISHMENT.—There is es-
25 tablished in the United States Treasury a

1 special fund, which shall be known as the
2 ‘EB–5 Integrity Fund’ (referred to in this
3 subparagraph as the ‘Fund’). Amounts de-
4 posited into the Fund shall be available to
5 the Secretary of Homeland Security until
6 expended for the purposes set forth in
7 clause (iii).

8 “(ii) FEES.—

9 “(I) ANNUAL FEE.—On October
10 1, 2021, and each October 1 there-
11 after, the Secretary of Homeland Se-
12 curity shall collect for the Fund an
13 annual fee—

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

18 “(bb) of \$10,000 from each
19 such regional center with 20 or
20 fewer total investors in the pre-
21 ceding fiscal year in its new com-
22 mercial enterprises.

23 “(II) PETITION FEE.—Beginning
24 on October 1, 2021, the Secretary
25 shall collect a fee of \$1,000 for the

1 Fund with each petition filed under
2 section 204(a)(1)(H) for classification
3 under subparagraph (E). The fee
4 under this subclause is in addition to
5 the fee that the Secretary is author-
6 ized to establish and collect for each
7 petition to recover the costs of adju-
8 dication and naturalization services
9 under section 286(m).

10 “(III) INCREASES.—The Sec-
11 retary may increase the amounts
12 under this clause by prescribing such
13 regulations as may be necessary to en-
14 sure that amounts in the Fund are
15 sufficient to carry out the purposes
16 set forth in clause (iii).

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

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

23 “(aa) monitoring and inves-
24 tigating program-related events
25 and promotional activities; and

1 “(bb) ensuring an alien in-
2 vestor’s compliance with subpara-
3 graph (L); and

4 “(II) use amounts deposited into
5 the Fund—

6 “(aa) to detect and inves-
7 tigate fraud or other crimes;

8 “(bb) to determine whether
9 regional centers, new commercial
10 enterprises, job-creating entities,
11 and alien investors (and their
12 alien spouses and alien children)
13 comply with the immigration
14 laws;

15 “(cc) to conduct audits and
16 site visits; and

17 “(dd) as the Secretary de-
18 termines to be necessary, includ-
19 ing monitoring compliance with
20 the requirements under section 7
21 of the EB–5 Reform and Integ-
22 rity Act of 2021.

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

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

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

12 “(v) REPORT.—The Secretary shall
13 submit an annual report to the Committee
14 on the Judiciary of the Senate and the
15 Committee on the Judiciary of the House
16 of Representatives that describes how
17 amounts in the Fund were expended dur-
18 ing the previous fiscal year.

19 “(K) DIRECT AND THIRD-PARTY PRO-
20 MOTERS.—

21 “(i) RULES AND STANDARDS.—Direct
22 and third party promoters (including mi-
23 gration agents) of a regional center, any
24 new commercial enterprise, an affiliated
25 job-creating entity, or an issuer of securi-

1 ties intended to be offered to alien inves-
2 tors in connection with a particular capital
3 investment project shall comply with the
4 rules and standards prescribed by the Sec-
5 retary of Homeland Security and any ap-
6 plicable Federal or State securities laws, to
7 oversee promotion of any offering of secu-
8 rities related to the EB-5 Program, in-
9 cluding—

10 “(I) registration with U.S. Citi-
11 zenship and Immigration Services,
12 which—

13 “(aa) includes identifying
14 and contact information for such
15 promoter and confirmation of the
16 existence of the written agree-
17 ment required under clause (iii);
18 and

19 “(bb) may be made publicly
20 available at the discretion of the
21 Secretary;

22 “(II) certification by each pro-
23 moter that such promoter is not ineli-
24 gible under subparagraph (H)(i);

1 “(III) guidelines for accurately
2 representing the visa process to for-
3 eign investors; and

4 “(IV) guidelines describing per-
5 missible fee arrangements under ap-
6 plicable securities and immigration
7 laws.

8 “(ii) EFFECT OF VIOLATION.—If the
9 Secretary determines that a direct or
10 third-party promoter has violated clause
11 (i), the Secretary shall suspend or perma-
12 nently bar such individual from participa-
13 tion in the program described in subpara-
14 graph (E).

15 “(iii) COMPLIANCE.—Each regional
16 center, new commercial enterprise, and af-
17 filiated job-creating entity shall maintain a
18 written agreement between or among such
19 entities and each direct or third-party pro-
20 moter operating on behalf of such entities
21 that outlines the rules and standards pre-
22 scribed under clause (i).

23 “(iv) DISCLOSURE.—Each petition
24 filed under section 204(a)(1)(H) shall in-
25 clude a disclosure, signed by the investor,

1 that reflects all fees, ongoing interest, and
2 other compensation paid to any person
3 that the regional center or new commercial
4 enterprise knows has received, or will re-
5 ceive, in connection with the investment,
6 including compensation to agents, finders,
7 or broker dealers involved in the offering,
8 to the extent not already specifically identi-
9 fied in the business plan filed under sub-
10 paragraph (F).

11 “(L) SOURCE OF FUNDS.—

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

19 “(ii) REQUIRED INFORMATION.—The
20 Secretary of Homeland Security shall re-
21 quire that an alien investor’s petition
22 under this paragraph contain, as applica-
23 ble—

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

1 “(aa) foreign business reg-
2 istration records;

3 “(bb) corporate or partner-
4 ship tax returns (or tax returns
5 of any other entity in any form
6 filed in any country or subdivi-
7 sion of such country), and per-
8 sonal tax returns, including in-
9 come, franchise, property (wheth-
10 er real, personal, or intangible),
11 or any other tax returns of any
12 kind, filed during the past 7
13 years (or another period to be de-
14 termined by the Secretary to en-
15 sure that the investment is ob-
16 tained from a lawful source of
17 funds) with any taxing jurisdic-
18 tion within or outside the United
19 States by or on behalf of the
20 alien investor; and

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

24 “(II) evidence related to mone-
25 tary judgments against the alien in-

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

11 “(III) the identity of all persons
12 who transfer into the United States,
13 on behalf of the investor, any funds
14 that are used to meet the capital re-
15 quirement under subparagraph (A).

16 “(iii) GIFT AND LOAN RESTRIC-
17 TIONS.—

18 “(I) IN GENERAL.—Gifted and
19 borrowed funds may not be counted
20 toward the minimum capital invest-
21 ment requirement under subpara-
22 graph (C) unless such funds—

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

1 “(bb) were not gifted or
2 loaned to circumvent any limita-
3 tions imposed on permissible
4 sources of capital under this sub-
5 paragraph, including but not lim-
6 ited to proceeds from illegal ac-
7 tivity.

8 “(II) RECORDS REQUIREMENT.—

9 If funds invested under subparagraph
10 (A) are gifted or loaned to the alien
11 investor, the Secretary shall require
12 that the alien investor’s petition under
13 this paragraph includes the records
14 described in subclauses (I) and (II) of
15 clause (ii) from the donor or, if other
16 than a bank, the lender.

17 “(M) TREATMENT OF GOOD FAITH INVES-
18 TORS FOLLOWING PROGRAM NONCOMPLI-
19 ANCE.—

20 “(i) TERMINATION OR DEBARMENT
21 OF EB-5 ENTITY.—Except as provided in
22 clause (vi), upon the termination or debar-
23 ment, as applicable, from the program
24 under this paragraph of a regional center,

1 a new commercial enterprise, or a job-cre-
2 ating entity—

3 “(I) an otherwise qualified peti-
4 tion under section 204(a)(1)(H) or
5 the conditional permanent residence of
6 an alien who has been admitted to the
7 United States pursuant to section
8 216A(a)(1) based on an investment in
9 a terminated regional center, new
10 commercial enterprise, or job-creating
11 entity shall remain valid or continue
12 to be authorized, as applicable, con-
13 sistent with this subparagraph; and

14 “(II) the Secretary of Homeland
15 Security shall notify the alien bene-
16 ficiaries of such petitions of such ter-
17 mination or debarment.

18 “(ii) NEW REGIONAL CENTER OR IN-
19 VESTMENT.—The petition under section
20 204(a)(1)(H) of an alien described in
21 clause (i) and the conditional permanent
22 resident status of an alien described in
23 clause (i) shall be terminated 180 days
24 after notification of the termination from
25 the program under this paragraph of a re-

1 regional center, a new commercial enterprise,
2 or a job creating entity (but not sooner
3 than 180 days after the date of the enact-
4 ment of the EB-5 Reform and Integrity
5 Act of 2021) unless—

6 “(I) in the case of the termi-
7 nation of a regional center—

8 “(aa) the new commercial
9 enterprise associates with an ap-
10 proved regional center, regardless
11 of the approved geographical
12 boundaries of such regional cen-
13 ter’s designation; or

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

17 “(II) in the case of the debar-
18 ment of a new commercial enterprise
19 or job-creating entity, such alien—

20 “(aa) associates with a new
21 commercial enterprise in good
22 standing; and

23 “(bb) invests additional in-
24 vestment capital solely to the ex-
25 tent necessary to satisfy remain-

1 ing job creation requirements
2 under subparagraph (A)(ii).

3 “(iii) AMENDMENTS.—

4 “(I) FILING REQUIREMENT.—

5 The Secretary shall permit a petition
6 described in clause (i)(I) to be amend-
7 ed to allow such petition to meet the
8 applicable eligibility requirements
9 under clause (ii), or to notify the Sec-
10 retary that a pending or approved pe-
11 tition continues to meet the eligibility
12 requirements described in clause (ii)
13 notwithstanding termination or debar-
14 ment described in clause (i) if such
15 amendment is filed not later than 180
16 days after the Secretary provides noti-
17 fication of termination or debarment
18 of a regional center, a new commercial
19 enterprise, or a job-creating entity, as
20 applicable.

21 “(II) DETERMINATION OF ELIGI-
22 BILITY.—For purposes of determining
23 eligibility under subclause (I)—

24 “(aa) the Secretary shall
25 permit amendments to the busi-

1 ness plan, without such facts un-
2 derlying the amendment being
3 deemed a material change; and

4 “(bb) may deem any funds
5 obtained or recovered by an alien
6 investor, directly or indirectly,
7 from claims against third parties,
8 including insurance proceeds, or
9 any additional investment capital
10 provided by the alien, to be such
11 alien’s investment capital for the
12 purposes of subparagraph (A) if
13 such investment otherwise com-
14 plies with the requirements under
15 this paragraph and section 216A.

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

23 “(v) REMEDIES.—For petitions ap-
24 proved under clause (ii), including fol-

1 lowing an amendment filed under clause
2 (iii), the Secretary—

3 “(I) shall retain the immigrant
4 visa priority date related to the origi-
5 nal petition and prevent age-out of de-
6 rivative beneficiaries; and

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

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

16 “(I) the alien shall not be ac-
17 corded any benefit under this sub-
18 paragraph; and

19 “(II) the Secretary shall—

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

22 “(bb) subject to section
23 216A(b)(2), shall deny or initiate
24 proceedings to revoke the ap-
25 proval of such alien’s petition,

1 application, or benefit (and that
2 of any spouse or child, if applica-
3 ble) described in this paragraph.

4 “(N) THREATS TO THE NATIONAL INTER-
5 EST.—

6 “(i) DENIAL OR REVOCATION.—The
7 Secretary of Homeland Security shall deny
8 or revoke the approval of a petition, appli-
9 cation, or benefit described in this para-
10 graph, including the documents described
11 in clause (ii), if the Secretary determines,
12 in the Secretary’s discretion, that the ap-
13 proval of such petition, application, or ben-
14 efit is contrary to the national interest of
15 the United States for reasons relating to
16 threats to public safety or national secu-
17 rity.

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

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

23 “(II) a petition seeking classifica-
24 tion of an alien as an alien investor
25 under this paragraph;

1 “(III) a petition to remove condi-
2 tions under section 216A;

3 “(IV) an application for approval
4 of a business plan in a new commer-
5 cial enterprise under subparagraph
6 (F); or

7 “(V) a document evidencing con-
8 ditional permanent resident status
9 that was issued to an alien pursuant
10 to section 216A.

11 “(iii) DEBARMENT.—If a regional
12 center, new commercial enterprise, or job-
13 creating entity has its designation or par-
14 ticipation in the program under this para-
15 graph terminated for reasons relating to
16 public safety or national security, any per-
17 son associated with such regional center,
18 new commercial enterprise, or job-creating
19 entity, including an alien investor, shall be
20 permanently barred from future participa-
21 tion in the program under this paragraph
22 if the Secretary of Homeland Security, in
23 the Secretary’s discretion, determines, by a
24 preponderance of the evidence, that such

1 person was a knowing participant in the
2 conduct that led to the termination.

3 “(iv) NOTICE.—If the Secretary of
4 Homeland Security determines that the ap-
5 proval of a petition, application, or benefit
6 described in this paragraph should be de-
7 nied or revoked pursuant to clause (i), the
8 Secretary shall—

9 “(I) notify the relevant indi-
10 vidual, regional center, or commercial
11 entity of such determination;

12 “(II) deny or revoke such peti-
13 tion, application, or benefit or termi-
14 nate the permanent resident status of
15 the alien (and the alien spouse and
16 alien children of such immigrant), as
17 of the date of such determination; and

18 “(III) provide any United States-
19 owned regional center, new commer-
20 cial enterprise, or job creating entity
21 an explanation for such determination
22 unless the relevant information is
23 classified or disclosure is otherwise
24 prohibited under law.

1 “(v) JUDICIAL REVIEW.—Notwith-
2 standing any other provision of law (statu-
3 tory or nonstatutory), including section
4 2241 of title 28, United States Code, or
5 any other habeas corpus provision, and
6 sections 1361 and 1651 of such title, no
7 court shall have jurisdiction to review a de-
8 nial or revocation under this subparagraph.
9 Nothing in this clause may be construed as
10 precluding review of constitutional claims
11 or questions of law raised upon a petition
12 for review filed with an appropriate court
13 of appeals in accordance with section 242.

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

16 “(i) DENIAL OR REVOCATION.—Sub-
17 ject to subparagraph (M), the Secretary of
18 Homeland Security shall deny or revoke
19 the approval of a petition, application, or
20 benefit described in this paragraph, includ-
21 ing the documents described in subpara-
22 graph (N)(ii), if the Secretary determines,
23 in the Secretary’s discretion, that such pe-
24 tition, application, or benefit was predi-
25 cated on or involved fraud, deceit, inten-

1 tional material misrepresentation, or crimi-
2 nal misuse.

3 “(ii) DEBARMENT.—If a regional cen-
4 ter, new commercial enterprise, or job-cre-
5 ating entity has its designation or partici-
6 pation in the program under this para-
7 graph terminated for reasons relating to
8 fraud, intentional material misrepresenta-
9 tion, or criminal misuse, any person associ-
10 ated with such regional center, new com-
11 mercial enterprise, or job-creating entity,
12 including an alien investor, shall be perma-
13 nently barred from future participation in
14 the program if the Secretary determines,
15 in the Secretary’s discretion, by a prepon-
16 derance of the evidence, that such person
17 was a knowing participant in the conduct
18 that led to the termination.

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

1 “(I) notify the relevant indi-
2 vidual, regional center, or commercial
3 entity of such determination; and

4 “(II) deny or revoke such peti-
5 tion, application, or benefit or termi-
6 nate the permanent resident status of
7 the alien (and the alien spouse and
8 alien children of such immigrant), in
9 accordance with clause (i), as of the
10 date of such determination.

11 “(P) ADMINISTRATIVE APPELLATE RE-
12 VIEW.—

13 “(i) IN GENERAL.—The Director of
14 U.S. Citizenship and Immigration Services
15 shall provide an opportunity for an admin-
16 istrative appellate review by the Adminis-
17 trative Appeals Office of U.S. Citizenship
18 and Immigration Services of any deter-
19 mination made under this paragraph, in-
20 cluding—

21 “(I) an application for regional
22 center designation or regional center
23 amendment;

1 “(II) an application for approval
2 of a business plan filed under sub-
3 paragraph (F);

4 “(III) a petition by an alien in-
5 vestor for status as an immigrant
6 under this paragraph;

7 “(IV) the termination or suspen-
8 sion of any benefit accorded under
9 this paragraph; and

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

12 “(ii) JUDICIAL REVIEW.—Subject to
13 subparagraph (N)(v) and section
14 242(a)(2), and notwithstanding any other
15 provision of law (statutory or nonstatu-
16 tory), including section 2241 of title 28,
17 United States Code, or any other habeas
18 corpus provision, and sections 1361 and
19 1651 of such title, no court shall have ju-
20 risdiction to review a determination under
21 this paragraph until the regional center, its
22 associated entities, or the alien investor
23 has exhausted all administrative appeals.

24 “(Q) FUND ADMINISTRATION.—

1 “(i) IN GENERAL.—Each new com-
2 mercial enterprise shall deposit and main-
3 tain the capital investment of each alien
4 investor in a separate account, including
5 amounts held in escrow.

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

8 “(I) be transferred to another
9 separate account or a job creating en-
10 tity;

11 “(II) otherwise be deployed into
12 the capital investment project for
13 which the funds were intended; or

14 “(III) be transferred to the alien
15 investor who contributed the funds as
16 a refund of that investor’s capital in-
17 vestment, if otherwise permitted
18 under this paragraph.

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

24 “(I) the affiliated job-creating
25 entity shall maintain such amounts in

1 a separate account until they are de-
2 ployed into the capital investment
3 project for which they were intended;
4 and

5 “(II) not later than 30 days after
6 such amounts are deployed pursuant
7 to subclause (I), the affiliated job-cre-
8 ating entity shall provide written no-
9 tice to the fund administrator re-
10 tained pursuant to clause (iv) that a
11 construction consultant or other indi-
12 vidual authorized by the Secretary has
13 verified that such amounts have been
14 deployed into the project.

15 “(iv) FUND ADMINISTRATOR.—Except
16 as provided in clause (v), the new commer-
17 cial enterprise shall retain a fund adminis-
18 trator to fulfill the requirements under this
19 subparagraph. The fund administrator—

20 “(I) shall be independent of, and
21 not directly related to, the new com-
22 mercial enterprise, the regional center
23 associated with the new commercial
24 enterprise, the job creating entity, or

1 any of the principals or managers of
2 such entities;

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

5 “(aa) a certified public ac-
6 countant;

7 “(bb) an attorney;

8 “(cc) a broker-dealer or in-
9 vestment adviser registered with
10 the Securities and Exchange
11 Commission; or

12 “(dd) an individual or com-
13 pany that otherwise meets such
14 requirements as may be estab-
15 lished by the Secretary;

16 “(III) shall monitor and track
17 any transfer of amounts from the sep-
18 arate account;

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

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

24 “(aa) verify that the trans-
25 fer complies with all governing

1 documents, including organiza-
2 tional, operational, and invest-
3 ment documents; and

4 “(bb) approve such transfer
5 with a written or electronic sig-
6 nature;

7 “(VI) shall periodically provide
8 each alien investor with information
9 about the activity of the account in
10 which the investor’s capital invest-
11 ment is held, including—

12 “(aa) the name and location
13 of the bank or financial institu-
14 tion at which the account is
15 maintained;

16 “(bb) the history of the ac-
17 count; and

18 “(cc) any additional infor-
19 mation required by the Secretary;
20 and

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

1 umentation necessary to comply with
2 this clause, which shall be provided to
3 the Secretary upon request.

4 “(v) WAIVER.—

5 “(I) WAIVER PERMITTED.—The
6 Secretary of Homeland Security, after
7 consultation with the Securities and
8 Exchange Commission, may waive the
9 requirements under clause (iv) for any
10 new commercial enterprise or affili-
11 ated job-creating entity that is con-
12 trolled by or under common control of
13 an investment adviser or broker-dealer
14 that is registered with the Securities
15 and Exchange Commission if the Sec-
16 retary, in the Secretary’s discretion,
17 determines that the Securities and
18 Exchange Commission provides com-
19 parable protections and transparency
20 for alien investors as the protections
21 and transparency provided under
22 clause (iv).

23 “(II) WAIVER REQUIRED.—The
24 Secretary of Homeland Security shall
25 waive the requirements under clause

1 (iv) for any new commercial enterprise
2 that commissions an annual inde-
3 pendent financial audit of such new
4 commercial enterprise or job creating
5 entity conducted in accordance with
6 Generally Accepted Auditing Stand-
7 ards, which audit shall be provided to
8 the Secretary and all investors in the
9 new commercial enterprise.

10 “(vi) DEFINED TERM.—In this sub-
11 paragraph, the term ‘separate account’
12 means an account that—

13 “(I) is maintained in the United
14 States by a new commercial enterprise
15 or job creating entity at a Federally
16 regulated bank or at another financial
17 institution (as defined in section 20 of
18 title 18, United States Code) in the
19 United States;

20 “(II) is insured; and

21 “(III) contains only the pooled
22 investment funds of alien investors in
23 a new commercial enterprise with re-
24 spect to a single capital investment
25 project.”.

1 (c) EFFECTIVE DATE.—Unless otherwise provided in
2 this section, the amendments made by this section shall
3 take effect on the date that is 90 days after the date of
4 the enactment of this Act.

5 **SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
6 **ALIEN INVESTORS, SPOUSES, AND CHILDREN.**

7 (a) IN GENERAL.—Section 216A of the Immigration
8 and Nationality Act (8 U.S.C. 1186b) is amended—

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

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

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

16 “(1) CONDITIONAL BASIS FOR STATUS.—An
17 alien investor, alien spouse, and alien child shall be
18 considered, at the time of obtaining status as an
19 alien lawfully admitted for permanent residence, to
20 have obtained such status on a conditional basis sub-
21 ject to the provisions of this section.”;

22 (4) in subsection (b)—

23 (A) in the subsection heading, by striking
24 “ENTREPRENEURSHIP” and inserting “INVEST-
25 MENT”; and

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

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

5 (5) in subsection (c)—

6 (A) in the subsection heading, by striking
7 “OF TIMELY PETITION AND INTERVIEW”;

8 (B) in paragraph (1)—

9 (i) in the matter preceding subpara-
10 graph (A), by striking “In order” and in-
11 sserting “Except as provided in paragraph
12 (3)(D), in order”;

13 (ii) in subparagraph (A)—

14 (I) by striking “must” and in-
15 sserting “shall”; and

16 (II) by striking “, and” and in-
17 sserting a semicolon;

18 (iii) in subparagraph (B)—

19 (I) by striking “must” and in-
20 sserting “shall”;

21 (II) by striking “Service” and in-
22 sserting “Department of Homeland Se-
23 curity”; and

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

1 (iv) by adding at the end the fol-
2 lowing:

3 “(C) the Secretary shall have performed a
4 site visit to the relevant corporate office or busi-
5 ness location described in section
6 203(b)(5)(F)(iv).”; and

7 (C) in paragraph (3)—

8 (i) in subparagraph (A), in the undes-
9 ignated matter following clause (ii), by
10 striking “the” before “such filing”; and

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

13 “(B) REMOVAL OR EXTENSION OF CONDI-
14 TIONAL BASIS.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), if the Secretary deter-
17 mines that the facts and information con-
18 tained in a petition submitted under para-
19 graph (1)(A) are true, including dem-
20 onstrating that the alien complied with
21 subsection (d)(1)(B)(i), the Secretary
22 shall—

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

1 “(II) remove the conditional
2 basis of the alien’s status effective as
3 of the second anniversary of the
4 alien’s lawful admission for permanent
5 residence.

6 “(ii) EXCEPTION.—If the petition
7 demonstrates that the facts and informa-
8 tion are true and that the alien is in com-
9 pliance with subsection (d)(1)(B)(ii)—

10 “(I) the Secretary, in the Sec-
11 retary’s discretion, may provide a 1-
12 year extension of the alien’s condi-
13 tional status; and

14 “(II)(aa) if the alien files a peti-
15 tion not later than 30 days after the
16 third anniversary of the alien’s lawful
17 admission for permanent residence
18 demonstrating that the alien complied
19 with subsection (d)(1)(B)(i), the Sec-
20 retary shall remove the conditional
21 basis of the alien’s status effective as
22 of such third anniversary; or

23 “(bb) if the alien does not file the
24 petition described in item (aa), the

1 conditional status shall terminate at
2 the end of such additional year.”;

3 (6) in subsection (d)—

4 (A) in paragraph (1)—

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

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

8 (ii) by redesignating subparagraph
9 (B) as subparagraph (C); and

10 (iii) by inserting after subparagraph
11 (A) the following:

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

14 “(ii) is actively in the process of creating
15 the employment required under section
16 203(b)(5)(A)(ii) and will create such employ-
17 ment before the third anniversary of the alien’s
18 lawful admission for permanent residence, pro-
19 vided that such alien’s capital will remain in-
20 vested during such time; and”;

21 (B) in paragraph (2), by amending sub-
22 paragraph (A) to read as follows:

23 “(A) NINETY-DAY PERIOD BEFORE SEC-
24 OND ANNIVERSARY.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii) and subparagraph (B),
3 a petition under subsection (c)(1)(A) shall
4 be filed during the 90-day period imme-
5 diately preceding the second anniversary of
6 the alien investor’s lawful admission for
7 permanent residence.

8 “(ii) EXCEPTION.—Aliens described in
9 subclauses (I)(bb) and (II) of section
10 203(b)(5)(M)(ii) shall file a petition under
11 subsection (c)(1)(A) during the 90-day pe-
12 riod before the second anniversary of the
13 subsequent investment.”; and

14 (C) in paragraph (3)—

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

17 “(A) IN GENERAL.—The interview”;

18 (ii) by striking “Service” and insert-
19 ing “Department of Homeland Security”;
20 and

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

23 “(B) WAIVER.—The Secretary of Home-
24 land Security, in the Secretary’s discretion, may
25 waive the deadline for an interview under sub-

1 section (c)(1)(B) or the requirement for such
2 an interview according to criteria developed by
3 U.S. Citizenship and Immigration Services, in
4 consultation with its Fraud Detection and Na-
5 tional Security Directorate and U.S. Immigra-
6 tion and Customs Enforcement, provided that
7 such criteria do not include a reduction of case
8 processing times or the allocation of adjudica-
9 tory resources. A waiver may not be granted
10 under this subparagraph if the alien to be inter-
11 viewed—

12 “(i) invested in a regional center, new
13 commercial enterprise, or job-creating enti-
14 ty that was sanctioned under section
15 203(b)(5); or

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

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

22 (b) EFFECTIVE DATES.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by subsection (a)

1 shall take effect on the date of the enactment of this
2 Act.

3 (2) EXCEPTIONS.—

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

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

16 **SEC. 4. EB-5 VISA REFORMS.**

17 (a) DEFINITIONS.—Section 203(b)(5)(D) of the Im-
18 migration and Nationality Act (8 U.S.C. 1153(b)(5)(D))
19 is amended to read as follows:

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

21 “(i) AFFILIATED JOB-CREATING ENTI-
22 TY.—The term ‘affiliated job-creating enti-
23 ty’ means any job-creating entity that is
24 controlled, managed, or owned by any of
25 the people involved with the regional center

1 or new commercial enterprise under section
2 203(b)(5)(H)(v).

3 “(ii) CAPITAL.—The term ‘capital’—

4 “(I) means cash and all real, per-
5 sonal, or mixed tangible assets owned
6 and controlled by the alien investor,
7 or held in trust for the benefit of the
8 alien and to which the alien has unre-
9 stricted access;

10 “(II) shall be valued at fair mar-
11 ket value in United States dollars, in
12 accordance with Generally Accepted
13 Accounting Principles or other stand-
14 ard accounting practice adopted by
15 the Securities and Exchange Commis-
16 sion, at the time it is invested under
17 this paragraph;

18 “(III) does not include—

19 “(aa) assets directly or indi-
20 rectly acquired by unlawful
21 means, including any cash pro-
22 ceeds of indebtedness secured by
23 such assets;

24 “(bb) capital invested in ex-
25 change for a note, bond, convert-

1 ible debt, obligation, or any other
2 debt arrangement between the
3 alien investor and the new com-
4 mercial enterprise;

5 “(cc) capital invested with a
6 guaranteed rate of return on the
7 amount invested by the alien in-
8 vestor; or

9 “(dd) except as provided in
10 subclause (IV), capital invested
11 that is subject to any agreement
12 between the alien investor and
13 the new commercial enterprise
14 that provides the investor with a
15 contractual right to repayment,
16 such as a mandatory redemption
17 at a certain time or upon the oc-
18 currence of a certain event, or a
19 put or sell-back option held by
20 the alien investor, even if such
21 contractual right is contingent on
22 the success of the new commer-
23 cial enterprise, such as having
24 sufficient available cash flow; and

1 “(IV) includes capital invested
2 that—

3 “(aa) is subject to a buy
4 back option that may be exer-
5 cised solely at the discretion of
6 the new commercial enterprise;
7 and

8 “(bb) results in the alien in-
9 vestor withdrawing his or her pe-
10 tition unless the alien investor
11 has fulfilled his or her
12 sustainment period and other re-
13 quirements under this paragraph.

14 “(iii) CERTIFIER.—The term ‘cer-
15 tifier’ means a person in a position of sub-
16 stantive authority for the management or
17 operations of a regional center, new com-
18 mercial enterprise, affiliated job-creating
19 entity, or issuer of securities, such as a
20 principal executive officer or principal fi-
21 nancial officer, with knowledge of such en-
22 tities’ policies and procedures related to
23 compliance with the requirements under
24 this paragraph.

1 “(iv) **JOB-CREATING ENTITY.**—The
2 term ‘job-creating entity’ means any orga-
3 nization formed in the United States for
4 the ongoing conduct of lawful business, in-
5 cluding sole proprietorship, partnership
6 (whether limited or general), corporation,
7 limited liability company, business trust, or
8 other entity, which may be publicly or pri-
9 vately owned, including an entity con-
10 sisting of a holding company and its whol-
11 ly-owned subsidiaries or affiliates (provided
12 that each subsidiary or affiliate is engaged
13 in an activity formed for the ongoing con-
14 duct of a lawful business) that receives, or
15 is established to receive, capital investment
16 from alien investors or a new commercial
17 enterprise under the regional center pro-
18 gram described in subparagraph (E) and
19 which is responsible for creating jobs to
20 satisfy the requirement under subpara-
21 graph (A)(ii).

22 “(v) **NEW COMMERCIAL ENTER-**
23 **PRISE.**—The term ‘new commercial enter-
24 prise’ means any for-profit organization
25 formed in the United States for the ongo-

1 ing conduct of lawful business, including
2 sole proprietorship, partnership (whether
3 limited or general), holding company and
4 its wholly-owned subsidiaries (provided
5 that each subsidiary is engaged in a for-
6 profit activity formed for the ongoing con-
7 duct of a lawful business), joint venture,
8 corporation, business trust, limited liability
9 company, or other entity (which may be
10 publicly or privately owned) that receives,
11 or is established to receive, capital invest-
12 ment from investors under this para-
13 graph.”.

14 (b) AGE DETERMINATION FOR CHILDREN OF ALIEN
15 INVESTORS.—Section 203(h) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1153(h)) is amended by adding
17 at the end the following:

18 “(5) AGE DETERMINATION FOR CHILDREN OF
19 ALIEN INVESTORS.—An alien who has reached 21
20 years of age and has been admitted under subsection
21 (d) as a lawful permanent resident on a conditional
22 basis as the child of an alien lawfully admitted for
23 permanent residence under subsection (b)(5), whose
24 lawful permanent resident status on a conditional
25 basis is terminated under section 216A or subsection

1 (b)(5)(M), shall continue to be considered a child of
2 the principal alien for the purpose of a subsequent
3 immigrant petition by such alien under subsection
4 (b)(5) if the alien remains unmarried and the subse-
5 quent petition is filed by the principal alien not later
6 than 1 year after the termination of conditional law-
7 ful permanent resident status. No alien shall be con-
8 sidered a child under this paragraph with respect to
9 more than 1 petition filed after the alien reaches 21
10 years of age.”.

11 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
12 EMPLOYEES ADMINISTERING THE EMPLOYMENT CRE-
13 ATION PROGRAM.—The Secretary of Homeland Security
14 may establish, fix the compensation of, and appoint indi-
15 viduals to designated critical, technical, and professional
16 positions needed to administer sections 203(b)(5) and
17 216A of the Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5) and 1186b).

19 (d) CONCURRENT FILING OF EB–5 PETITIONS AND
20 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
21 245 of the Immigration and Nationality Act (8 U.S.C.
22 1255) is amended—

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

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

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

9 (e) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1153(b)(5)(A)), as amended by subsection (a)(2), is fur-
12 ther amended—

13 (1) in clause (i), by striking “(C), and” and in-
14 serting “(C) and which is expected to remain in-
15 vested for not less than 2 years; and”;

16 (2) in clause (ii)—

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

19 (B) by inserting “, United States nation-
20 als,” after “citizens”.

21 (f) REQUIRED CHECKS.—Section 203(b)(5) of the
22 Immigration and Nationality Act, as amended by this sec-
23 tion and section 2, is further amended by adding at the
24 end the following:

1 “(R) REQUIRED CHECKS.—Any petition
2 filed by an alien under section 204(a)(1)(H)
3 may not be approved under this paragraph un-
4 less the Secretary of Homeland Security has
5 searched for the alien and any associated em-
6 ployer of such alien on the Specially Designated
7 Nationals List of the Department of Treasury
8 Office of Foreign Assets Control.”.

9 (g) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date of the enactment
11 of this Act.

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

13 (a) FILING ORDER AND ELIGIBILITY.—Section
14 204(a)(1)(H) of the Immigration and Nationality Act (8
15 U.S.C. 1154(a)(1)(H)) is amended to read as follows:

16 “(H)(i) Any alien seeking classification under section
17 203(b)(5) may file a petition for such classification with
18 the Secretary of Homeland Security. An alien seeking to
19 pool his or her investment with 1 or more additional aliens
20 seeking classification under section 203(b)(5) shall file for
21 such classification in accordance with section
22 203(b)(5)(E), or before the date of the enactment of the
23 EB–5 Reform and Integrity Act of 2021, in accordance
24 with section 203(b)(5). An alien petitioning for classifica-
25 tion under section 203(b)(5)(E) may file a petition with

1 the Secretary after a regional center has filed an applica-
2 tion for approval of an investment under section
3 203(b)(5)(F).

4 “(ii) A petitioner described in clause (i) shall estab-
5 lish eligibility at the time he or she files a petition for
6 classification under section 203(b)(5). A petitioner who
7 was eligible for such classification at the time of such fil-
8 ing shall be deemed eligible for such classification at the
9 time such petition is adjudicated, subject to the approval
10 of the petitioner’s associated application under section
11 203(b)(5)(F).”.

12 (b) EFFECTIVE DATES.—

13 (1) IN GENERAL.—The amendment made by
14 subsection (a) shall take effect on the date of the en-
15 actment of this Act.

16 (2) APPLICABILITY TO PETITIONS.—Section
17 204(a)(1)(H)(i) of the Immigration and Nationality
18 Act, as added by subsection (a), shall apply to any
19 petition for classification pursuant to section
20 203(b)(5)(E) of such Act (8 U.S.C. 1153(b)(5)(E))
21 that is filed with the Secretary of Homeland Secu-
22 rity on or after the date of the enactment of this
23 Act.

24 (c) ADJUDICATION OF PETITIONS.—The Secretary of
25 Homeland Security shall continue to adjudicate petitions

1 and benefits under sections 203(b)(5) and 216A of the
2 Immigration and Nationality Act (8 U.S.C. 1153(b)(5)
3 and 1186b) during the implementation of this Act and the
4 amendments made by this Act.

5 **SEC. 6. TIMELY PROCESSING.**

6 (a) FEE STUDY.—Not later than 1 year after the
7 date of the enactment of this Act, the Director of U.S.
8 Citizenship and Immigration Services shall complete a
9 study of fees charged in the administration of the program
10 described in sections 203(b)(5) and 216A of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1153(b)(5) and
12 1186b).

13 (b) ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT
14 PROCESSING.—Notwithstanding section 286(m) of the
15 Immigration and Nationality Act (8 U.S.C. 1356(m)), and
16 except as provided under subsection (c), the Director, not
17 later than 60 days after the completion of the study under
18 subsection (a), shall set fees for services provided under
19 sections 203(b)(5) and 216A of such Act (8 U.S.C.
20 1153(b)(5) and 1186b) at a level sufficient to ensure the
21 full recovery only of the costs of providing such services,
22 including the cost of attaining the goal of completing adju-
23 dications, on average, not later than—

1 (1) 180 days after receiving a proposal for the
2 establishment of a regional center described in sec-
3 tion 203(b)(5)(E) of such Act;

4 (2) 180 days after receiving an application for
5 approval of an investment in a new commercial en-
6 terprise described in section 203(b)(5)(F) of such
7 Act;

8 (3) 90 days after receiving an application for
9 approval of an investment in a new commercial en-
10 terprise described in section 203(b)(5)(F) of such
11 Act that is located in a targeted employment area
12 (as defined in section 203(b)(5)(B) of such Act);

13 (4) 240 days after receiving a petition from an
14 alien desiring to be classified under section
15 203(b)(5)(E) of such Act;

16 (5) 120 days after receiving a petition from an
17 alien desiring to be classified under section
18 203(b)(5)(E) of such Act with respect to an invest-
19 ment in a targeted employment area (as defined in
20 section 203(b)(5)(B) of such Act); and

21 (6) 240 days after receiving a petition from an
22 alien for removal of conditions described in section
23 216A(c) of such Act.

24 (c) ADDITIONAL FEES.—Fees in excess of the fee lev-
25 els described in subsection (b) may be charged only—

1 (1) in an amount that is equal to the amount
2 paid by all other classes of fee-paying applicants for
3 immigration-related benefits, to contribute to the
4 coverage or reduction of the costs of processing or
5 adjudicating classes of immigration benefit applica-
6 tions that Congress, or the Secretary of Homeland
7 Security in the case of asylum applications, has au-
8 thorized to be processed or adjudicated at no cost or
9 at a reduced cost to the applicant; and

10 (2) in an amount that is not greater than 1
11 percent of the fee for filing a petition under section
12 203(b)(5) of the Immigration and Nationality Act (8
13 U.S.C. 1153(b)(5)), to make improvements to the
14 information technology systems used by the Sec-
15 retary of Homeland Security to process, adjudicate,
16 and archive applications and petitions under such
17 section, including the conversion to electronic format
18 of documents filed by petitioners and applicants for
19 benefits under such section.

20 (d) EXEMPTION FROM PAPERWORK REDUCTION
21 ACT.—During the 1-year period beginning on the date of
22 the enactment of this Act, the requirements under chapter
23 35 of title 44, United States Code, shall not apply to any
24 collection of information required under this subtitle, any
25 amendment made by this subtitle, or any rule promulgated

1 by the Secretary of Homeland Security to implement this
2 subtitle or the amendments made by this subtitle, to the
3 extent that the Secretary determines that compliance with
4 such requirements would impede the expeditious imple-
5 mentation of this subtitle or the amendments made by this
6 subtitle.

7 (e) RULE OF CONSTRUCTION REGARDING ADJUDICA-
8 TION DELAYS.—Nothing in this subtitle may be construed
9 to limit the authority of the Secretary of Homeland Secu-
10 rity to suspend the adjudication of any application or peti-
11 tion under section 203(b)(5) or 216A of the Immigration
12 and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b)
13 pending the completion of a national security or law en-
14 forcement investigation relating to such application or pe-
15 tition.

16 (f) RULE OF CONSTRUCTION REGARDING MODIFICA-
17 TION OF FEES.—Nothing in this section may be construed
18 to require any modification of fees before the completion
19 of—

- 20 (1) the fee study described in subsection (a); or
- 21 (2) regulations promulgated by the Secretary of
22 Homeland Security, in accordance with subchapter
23 II of chapter 5 and chapter 7 of title 5, United
24 States Code (commonly known as the “Administra-

1 tive Procedure Act’), to carry out subsections (b)
2 and (c).

3 **SEC. 7. TRANSPARENCY.**

4 (a) IN GENERAL.—Employees of the Department of
5 Homeland Security, including the Secretary of Homeland
6 Security, the Secretary’s counselors, the Assistant Sec-
7 retary for the Private Sector, the Director of U.S. Citizen-
8 ship and Immigration Services, counselors to such Direc-
9 tor, and the Chief of the Immigrant Investor Programs
10 Office (or any successor to such Office) at U.S. Citizen-
11 ship and Immigration Services, shall act impartially and
12 may not give preferential treatment to any entity, organi-
13 zation, or individual in connection with any aspect of the
14 immigrant visa program described in section 203(b)(5) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1153(b)(5)).

17 (b) IMPROPER ACTIVITIES.—Activities that con-
18 stitute preferential treatment under subsection (a) shall
19 include—

20 (1) working on, or in any way attempting to in-
21 fluence, in a manner not available to or accorded to
22 all other petitioners, applicants, and seekers of bene-
23 fits under the immigrant visa program referred to in
24 subsection (a), the standard processing of an appli-
25 cation, petition, or benefit for—

- 1 (A) a regional center;
- 2 (B) a new commercial enterprise;
- 3 (C) a job-creating entity; or
- 4 (D) any person or entity associated with
- 5 such regional center, new commercial enter-
- 6 prise, or job-creating entity; and

7 (2) meeting or communicating with persons as-

8 sociated with the entities listed in paragraph (1), at

9 the request of such persons, in a manner not avail-

10 able to or accorded to all other petitioners, appli-

11 cants, and seekers of benefits under such immigrant

12 visa program.

13 (c) REPORTING OF COMMUNICATIONS.—

14 (1) WRITTEN COMMUNICATION.—Employees of

15 the Department of Homeland Security, including the

16 officials listed in subsection (a), shall include, in the

17 record of proceeding for a case under section

18 203(b)(5) of the Immigration and Nationality Act (8

19 U.S.C. 1153(b)(5)), actual or electronic copies of all

20 case-specific written communication, including e-

21 mails from government and private accounts, with

22 non-Department persons or entities advocating for

23 regional center applications or individual petitions

24 under such section that are pending on or after the

25 date of the enactment of this Act (other than rou-

1 tine communications with other agencies of the Fed-
2 eral Government regarding the case, including com-
3 munications involving background checks and litiga-
4 tion defense).

5 (2) ORAL COMMUNICATION.—If substantive oral
6 communication, including telephonic communication,
7 virtual communication, or in-person meetings, takes
8 place between officials of the Department of Home-
9 land Security and non-Department persons or enti-
10 ties advocating for regional center applications or in-
11 dividual petitions under section 203(b)(5) of such
12 Act that are pending on or after the date of the en-
13 actment of this Act (except communications exempt-
14 ed under paragraph (1))—

15 (A) the conversation shall be recorded; or

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

18 (3) NOTIFICATION.—

19 (A) IN GENERAL.—If the Secretary, in the
20 course of written or oral communication de-
21 scribed in this subsection, receives evidence
22 about a specific case from anyone other than an
23 affected party or his or her representative (ex-
24 cluding Federal Government or law enforcement
25 sources), such information may not be made

1 part of the record of proceeding and may not
2 be considered in adjudicative proceedings un-
3 less—

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

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

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

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

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

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

3 (d) CONSIDERATION OF EVIDENCE.—

4 (1) IN GENERAL.—No case-specific communica-
5 tion with persons or entities that are not part of the
6 Department of Homeland Security may be consid-
7 ered in the adjudication of an application or petition
8 under section 203(b)(5) of the Immigration and Na-
9 tionality Act (8 U.S.C. 1153(b)(5)) unless the com-
10 munication is included in the record of proceeding of
11 the case.

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

16 (e) CHANNELS OF COMMUNICATION.—

17 (1) E-MAIL ADDRESS OR EQUIVALENT.—The
18 Director of U.S. Citizenship and Immigration Serv-
19 ices shall maintain an e-mail account (or equivalent
20 means of communication) for persons or entities—

21 (A) with inquiries regarding specific peti-
22 tions or applications under the immigrant visa
23 program described in section 203(b)(5) of the
24 Immigration and Nationality Act (8 U.S.C.
25 1153(b)(5)); or

1 (B) seeking information that is not case-
2 specific about the immigrant visa program de-
3 scribed in such section 203(b)(5).

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

6 (A) ANNOUNCEMENT OF APPROPRIATE
7 CHANNELS OF COMMUNICATION.—Not later
8 than 40 days after the date of the enactment of
9 this Act, the Director of U.S. Citizenship and
10 Immigration Services shall announce that the
11 only channels or offices by which industry
12 stakeholders, petitioners, applicants, and seek-
13 ers of benefits under the immigrant visa pro-
14 gram described in section 203(b)(5) of the Im-
15 migration and Nationality Act (8 U.S.C.
16 1153(b)(5)) may communicate with the Depart-
17 ment of Homeland Security regarding specific
18 cases under such section (except for commu-
19 nication made by applicants and petitioners
20 pursuant to regular adjudicatory procedures),
21 or information that is not case-specific about
22 the visa program applicable to certain cases
23 under such section, are through—

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

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

3 (iii) the Office of Public Engagement,
4 Immigrant Investor Program Office, in-
5 cluding the Stakeholder Engagement
6 Branch, or any successors to those Offices
7 or that Branch.

8 (B) DIRECTION OF INCOMING COMMUNICA-
9 TIONS.—

10 (i) IN GENERAL.—Employees of the
11 Department of Homeland Security shall di-
12 rect communications described in subpara-
13 graph (A) to the channels of communica-
14 tion or offices listed in clauses (i) through
15 (iii) of subparagraph (A).

16 (ii) RULE OF CONSTRUCTION.—Noth-
17 ing in this subparagraph may be construed
18 to prevent—

19 (I) any person from commu-
20 nicating with the Ombudsman of U.S.
21 Citizenship and Immigration Services
22 regarding the immigrant investor pro-
23 gram under section 203(b)(5) of the
24 Immigration and Nationality Act (8
25 U.S.C. 1153(b)(5)); or

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

7 (C) LOG.—

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

12 (I) all communications described
13 in subparagraph (A) and communica-
14 tions from members of Congress,
15 which shall reference the date, time,
16 and subject of the communication,
17 and the identity of the Department of-
18 ficial, if any, to whom the inquiry was
19 forwarded;

20 (II) with respect to written com-
21 munications described in subsection
22 (c)(1), the date on which the commu-
23 nication was received, the identities of
24 the sender and addressee, and the
25 subject of the communication; and

1 (III) with respect to oral commu-
2 nications described in subsection
3 (c)(2), the date on which the commu-
4 nication occurred, the participants in
5 the conversation or meeting, and the
6 subject of the communication.

7 (ii) TRANSPARENCY.—The log of com-
8 munications described in clause (i) shall be
9 made publicly available in accordance with
10 section 552 of title 5, United States Code
11 (commonly known as the “Freedom of In-
12 formation Act”).

13 (3) PUBLICATION OF INFORMATION.—Not later
14 than 30 days after a person or entity inquiring
15 about a specific case or generally about the immi-
16 grant visa program described in section 203(b)(5) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5)) receives, as a result of a communication
19 with an official of the Department of Homeland Se-
20 curity, generally applicable and information that is
21 not case-specific about program requirements or ad-
22 ministration that has not been made publicly avail-
23 able by the Department, the Director of U.S. Citi-
24 zenship and Immigration Services shall publish such
25 information on the U.S. Citizenship and Immigra-

1 tion Services website as an update to the relevant
2 Frequently Asked Questions page or by some other
3 comparable mechanism.

4 (f) PENALTY.—

5 (1) IN GENERAL.—Any person who inten-
6 tionally violates the prohibition on preferential treat-
7 ment under this section or intentionally violates the
8 reporting requirements under subsection (c) shall be
9 disciplined in accordance with paragraph (2).

10 (2) SANCTIONS.—Not later than 90 days after
11 the date of the enactment of this Act, the Secretary
12 of Homeland Security shall establish a graduated set
13 of sanctions based on the severity of the violation re-
14 ferred to in paragraph (1), which may include, in
15 addition to any criminal or civil penalties that may
16 be imposed, written reprimand, suspension, demo-
17 tion, or removal.

18 (g) RULE OF CONSTRUCTION REGARDING CLASSI-
19 FIED INFORMATION.—Nothing in this section may be con-
20 strued to modify any law, regulation, or policy regarding
21 the handling or disclosure of classified information.

22 (h) RULE OF CONSTRUCTION REGARDING PRIVATE
23 RIGHT OF ACTION.—Nothing in this section may be con-
24 strued to create or authorize a private right of action to

1 challenge a decision of an employee of the Department of
2 Homeland Security.

3 (i) **EFFECTIVE DATE.**—This section, and the amend-
4 ments made by this section, shall take effect on the date
5 of the enactment of this Act.

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