DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 106 and 216

[CIS No. 2777–24; DHS Docket No. USCIS–2025–0139]

RIN 1615–AC93

U.S. Citizenship and Immigration Services Employment-Based Immigrant Visa, Fifth Preference (EB–5) Fee Rule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust Employment-Based Immigration, Fifth Preference (EB–5) immigration benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). This rule also proposes to codify certain elements of the EB–5 Reform and Integrity Act of 2022 and implement new statutory requirements. DHS intends for the rule to provide USCIS with the resources necessary to accomplish the goals of the EB–5 Reform and Integrity Act of 2022 and enhance and maintain the integrity of the EB–5 program.

DATES: *Submission of Public Comments:* Written comments must be submitted on this proposed rule on or before December 22, 2025. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit comments on the entirety of this proposed rule package, identified by DHS Docket No. USCIS–2025–0139, through the Federal eRulemaking Portal: *https://www.regulations.gov.* In accordance with 5 U.S.C. 553(b)(4), the summary of this rule found above may also be found at *https://www.regulations.gov.* Follow the website instructions for submitting comments. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed earlier, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 240–721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000.

SUPPLEMENTARY INFORMATION:

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Table of Abbreviations

ABC Activity-Based Costing
BLS Bureau of Labor Statistics
CEQ Council on Environmental Quality
CFO Chief Financial Officer
CFR Code of Federal Regulations
CPI–U Consumer Price Index for All Urban Consumers
DHS Department of Homeland Security
DOL Department of Labor
EB–5 Employment-Based Immigration Visa Classification, Fifth Preference
E.O. Executive Order
FDNS Fraud Detection and National Security Directorate
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
IEFA Immigration Examinations Fee Account
INA Immigration and Nationality Act of 1952
IOAA Independent Offices Appropriations Act
IPO Immigrant Investor Program Office
IRFA Initial Regulatory Flexibility Analysis
JCE Job-Creating Entity
NAICS North American Industry Classification System
NCE New Commercial Enterprise
NEPA National Environmental Policy Act
OIRA Office of Information and Regulatory Affairs
OPQ Office of Performance and Quality
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SBA Small Business Administration
SOC Standard Occupational Code
TEA Targeted Employment Area
UMRA Unfunded Mandates Reform Act
USCIS U.S. Citizenship and Immigration Services
VPC Volume Projection Committee

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed earlier, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2025–0139 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *https://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *https://www.regulations.gov,* referencing DHS Docket No. USCIS–2025–0139. The docket includes additional documents that support the analysis contained in this proposed rule to determine the specific fees that are proposed. You may also sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

II. Executive Summary

A. Purpose and Major Provisions of the Regulatory Action

DHS proposes to adjust EB–5 immigration benefit request fees to meet certain requirements provided in the EB–5 Reform and Integrity Act of 2022, div. BB of the Consolidated Appropriations Act, 2022, Public Law 117–103 (EB–5 Reform Act), and continue to adequately fund the cost of administering the EB–5 program. DHS proposes the following major changes:

- Adjusting EB–5 program fees according to the schedule in Table 1;
- Establishing the USCIS EB–5 technology fee;
- Codifying EB–5 Integrity Fund fees and penalties; and
- Establishing Form I–527, Amendment to Legacy Form I–526.
- Clarifying the process by which an alien investor's spouse and children file separate Form I–829 petitions when they are not included in the Form I–829 filed by the alien investor.

B. Summary of the Proposed EB–5 Program Fees

Table 1 summarizes the fees that DHS is proposing in this rule to meet EB–5 Reform Act requirements. The fees in the column titled Current Fees are the fees that DHS currently collects. *See* 8 CFR part 106. The fees in the column titled Proposed Fee(s) are the fees DHS proposes in this rule. The final two columns display the difference between current and proposed fees, based on dollar value and percentage. In addition, the draft version of USCIS Form G–1055, USCIS Fee Schedule, included in the docket for this rulemaking uses these proposed fees.

In certain cases, the proposed fee may be the sum of several fees. For example, as described in Section IV.D.2 of this preamble, the initial I–526 and I–526E EB–5 immigration benefit requests require an additional technology fee under this proposed rule. The table includes rows with the technology fee added to the Proposed Fee(s) column for clarity.

TABLE 1—COMPARISON OF CURRENT AND PROPOSED EB–5 FEES

Immigration benefit request	Current fee(s)	Proposed fee(s)	$ Difference	% Difference
I–526 Immigrant Petition by Standalone Investor—Initial (with $95 technology fee)	$11,160	$9,625	($1,535)	−14
I–526E Immigrant Petition by Regional Center Investor—Initial (with $95 technology fee)	11,160	9,625	(1,535)	−14
I–526E Immigrant Petition by Regional Center Investor—Amendment	11,160	9,530	(1,630)	−15
I–527 Amendment to Legacy Form I–526	0	8,000	8,000	N/A
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status	9,525	7,860	(1,665)	−17
I–956 Application for Regional Center Designation—Initial (with Regional Center Termination cost)	47,695	28,895	(18,800)	−39
I–956 Application for Regional Center Designation—Amendment (with Regional Center Termination cost)	47,695	18,480	(29,215)	−61
I–956F Application for Approval of an Investment in a Commercial Enterprise—Initial or amendment (with Regional Center Termination cost)	47,695	29,935	(17,760)	−37
I–956G Regional Center Annual Statement—Initial, amendment, or supplement	4,470	2,740	(1,730)	−39
I–956H Bona Fides of Persons Involved with Regional Center Program	0	55	55	N/A
I–956K Registration for Direct and Third-Party Promoters	0	2,740	2,740	N/A

The EB–5 Reform Act established a special fund to be known as the EB–5 Integrity Fund. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The EB–5 Reform Act requires the Integrity Fund to be financed through the collection of an annual fee ($10,000 or $20,000 annually) paid by and collected from designated regional centers in relation to the number of total investors. INA sec. 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii). In addition, the

Integrity Fund is financed by the collection of $1,000 from each regional center petitioner with their filing of a Form I–526E. *Id.*

DHS also proposes imposing penalties for failing to pay and for late payments of the EB–5 Integrity Fund fees. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J) requires a reasonable penalty fee for a regional center that does not pay the annual Integrity Fund fee within 30 days after the date on which such fee is due, and termination of a regional center that does not pay the fee within 90 days. DHS proposes to impose the following:

- Ten percent of the required integrity fee (*e.g.* 10 percent of $10,000 or $20,000 prior to adjusting such required amounts for inflation) for a regional center that pays its fees on day 31 through and including day 60 after the due date.
- Twenty percent of the required integrity fee for a regional center if their fee is paid on day 61 through and including day 90 after it is due.
- Termination of a regional center's designation if it fails to pay the fee within 90 days of the date on which such fee is due.

This rule proposes to codify in regulation the fees and penalties associated with the Integrity Fund, as explained in Section V of this preamble.

Finally, the rule clarifies when an immigrant investor's derivatives should be included in the principal alien investor's Form I–829 petition.[1] The regulations currently in effect do not clearly define the process by which derivatives may file a Form I–829 petition when they are not included on the principal's petition, including whether each derivative in such cases should file their own separate Form I–829 petition or whether the derivatives should jointly file on the same petition. This rule proposes: (1) when the principal is deceased, all derivatives (spouse and children) of the deceased investor may be included on a single Form I–829 petition, (2) each derivative must otherwise file a separate Form I–829 petition when the spouse and children are not included on the investor's Form I–829 petition, and (3) for any derivative beneficiary who files a Form I–829 petition separately from the principal investor, the deadline to file is the same as would have applied to the principal investor.

C. Summary of Economic Impacts

The fee schedule DHS is proposing would impact about 11,260[2] EB–5 program form filings annually and decrease form fees by about 14.7 percent, or by about $2,259 based on a projected volume-weighted per form average. The impact for these 11,260 filings could accrue to individual investors,[3] regional centers,[4] and other persons or businesses involved in promoting program investments.

DHS estimates that the 10-year and annualized monetized costs would be about $42.1 million and $4.2 million, in order, in undiscounted terms. At a 3 percent discount rate, the figures would be $35.9 million and $3.6 million, in order. At a 7 percent discount rate, the figures would be $29.6 million and $3.0 million, in order. Impacts associated with filing the new Form I–527, as well as a few expected Form I–829 filings from dependents separate from the principal filers, are categorized as costs, as are changes in forms' burdens. The proposed fee changes (for EB–5 program forms that currently exist) would constitute transfer payments from DHS to requestors, estimated to be $830.7 million over a 10-year period (a reduction of $244.1 million from current filing fees).[5] Penalties and fees would also be classified as costs but are not estimated and quantified. There are also likely to be familiarization costs associated with the proposed rule.

Based on limited data and information, DHS analysis suggests that most regional centers and almost all new commercial enterprises (NCEs)[6] and job-creating entities (JCEs) involved in program investment activity would be small entities under the Regulatory Flexibility Act of 1980 (RFA). Complete details on the possible impacts, a formal accounting statement, and important caveats to the initial small entity determination are provided in Section VI, Parts A and B, of this document.

III. Background and Purpose

A. The EB–5 Program

Congress created the EB–5 program in 1990 to stimulate the U.S. economy through job creation and capital investment by immigrant investors. Public Law 101–649, 104 Stat. 4978 (Nov. 29, 1990). Subsequently, the EB–5 regional center program was added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, sect. 610, 106 Stat 1828 (Oct. 6, 1992) (repealed 2022). As amended by the EB–5 Reform Act, the EB–5 program makes approximately 10,000 visas available annually to qualified immigrants (and their dependents) who invest at least $1,050,000, or a discounted amount of $800,000 if the investment is in a targeted employment area (TEA) (which includes certain rural areas and areas of high unemployment) or an infrastructure project, in a U.S. business that will create at least 10 full-time jobs in the United States for qualifying employees. *See* INA sec. 203(b)(5)(A)–(C), 8 U.S.C. 1153(b)(5)(A)–(C). Investors may satisfy up to 90 percent of the job creation requirements with jobs that are estimated to be created indirectly through qualifying investments within a new commercial enterprise associated with a regional center designated by USCIS for participation in the regional center program. INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv).

USCIS is committed to maintaining the integrity and efficient administration of the EB–5 program.[7] As

[1] DHS proposed and finalized this change as part of the EB–5 Immigrant Investor Program Modernization rulemaking. *See* 82 FR 4738 (Jan. 13, 2017) (proposed rule); 84 FR 35750 (July 24, 2019) (final rule). On June 22, 2021, a U.S. district court vacated the rule on grounds unrelated to this provision. *Behring Regional Center LLC* v. *Wolf,* 544 F. Supp. 3d 937 (N.D. Cal. 2021).

[2] Volume is rounded from 11,262, comprising 10,805 projected FY 2024/2025 current forms and 457 new Form I–527 filings, (see Table 3, Projected Average Annual Receipts for EB–5 Immigration Benefit Requests in FY 2024/2025 Fee Review).

[3] For most investors the impact would be a lower fee; however, a new fee would accrue to investors who file an amendment on proposed new Form I–527.

[4] Regional centers would pay lower fees for their applications; however, they could be impacted by the new fee for those involved with the regional center program filing the Form I–956H.

[5] Transfer payments are monetary payments from one group to another that do not affect total resources available to society. *See* OMB Circular A–4 pp. 14 and 38 for further discussion of transfer payments and distributional effects. OMB Circular A–4 is available at: *https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[6] A ''new commercial enterprise'' is ''any for-profit organization formed in the United States for the ongoing conduct of lawful business . . . that receives, or is established to receive, capital investment from [employment-based immigrant] investors.'' INA sec. 203(b)(5)(D)(vi).

[7] The DHS Office of the Inspector General (OIG) and U.S. Government Accountability Office (GAO) previously reviewed the EB–5 program and made recommendations. *See* OIG, OIG–14–19, ''United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB–5) Regional Center Program'' (Dec. 2013), *https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2014/OIG_14-19_Dec13.pdf;* GAO, GAO–15–696, ''Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit'' (Aug. 12, 2015), *https://www.gao.gov/products/gao-15-696;* GAO, GAO–16–828, ''Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts'' (Sept. 13, 2016), *https://www.gao.gov/products/gao-16-828.* GAO also reviewed USCIS fraud detection efforts, including those for EB–5. *See* GAO, GAO–22–105328, ''U.S. Citizenship and Immigration Services: Additional Actions Needed to Manage

part of that commitment, beginning in fiscal year (FY) 2013, USCIS created the Immigrant Investor Program Office (IPO) in Washington, DC, to manage EB–5 matters. IPO consists of staff with expertise in economics, law, business, finance, securities, and banking to enhance consistency, timeliness, and integrity within the program. Since its creation, IPO has added staff and technology focused on managing the program, identifying and preventing fraud, and ensuring national security, public safety, and compliance within the program, and developed employees' expertise in financial investigations, anti-money laundering, and global sanctions.

IPO also hired auditors to complete regional center compliance reviews of annual certification filings. *See* INA sec. 203(b)(5)(G), 8 U.S.C. 1153(b)(5)(G); 8 CFR 204.6(m)(6). Section 203(b)(5)(E)(vii) of the INA, as added by the EB–5 Reform Act, requires USCIS to audit each designated regional center at least once every 5 years. Regional center audits enhance EB–5 program integrity by verifying information in regional center applications, annual certifications, and associated investor petitions.[8] Currently, IPO generally conducts regional center audits in accordance with Generally Accepted Government Auditing Standards.[9] USCIS plans and performs the audits to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. An audit provides USCIS the opportunity to verify the information submitted by designated regional centers in applications, petitions, and annual statements, and to confirm compliance with applicable laws and authorities to ensure continued eligibility for regional center designation. The audit includes, for example, researching information in government systems, reviewing commercial and public records, and substantiating evidence that accompanies regional center applications and certifications. It also includes obtaining information, on a consensual basis, through requests for evidence, virtual meetings, and if necessary, an in-person audit.

The EB–5 Reform Act specifically supports or requires new fraud, national security and public safety functions for EB–5 adjudications. INA sec. 203(b)(5)(F)(iv), 8 U.S.C. 1153((b)(5)(F)(iv) (site visits); INA sec. 203(b)(5)(H)(iii), 8 U.S.C. 1153(b)(5)(H)(iii) (background checks); INA sec. 203(b)(5)(N)–(O), 8 U.S.C. 1153(b)(5)(N)–(O) (national security/fraud determinations); INA sec. 203(b)(5)(R), 8 U.S.C. 1153(b)(5)(R) (Office of Foreign Asset Control checks). In addition, DHS has the general authority to verify any information submitted to establish eligibility for immigration benefits at any time to ensure compliance with laws and authorities that authorize or govern the benefit, program, process, or status. *See, e.g.,* INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3); 8 CFR 103.2(b)(1).

USCIS will verify information and validate the assertions made and evidence provided in EB–5-related immigration benefit requests. USCIS verifies the eligibility of the requestor and validates the information they submitted using various methods of investigation, which include reviewing public records and information; contacting requesters, investors, employees, and related entities; reviewing information in the requestors' U.S. government records; and accessing publicly available records. USCIS conducts random and for-cause site visits and shares information with law enforcement agencies. USCIS intelligence research specialists assess national security concerns, review annual filings of regional centers, and audit regional centers to ensure ongoing compliance with the program. If adverse or derogatory information results from an audit, compliance review, verification, or site visit, USCIS generally will deny the request, revoke approval, or terminate the requestor's current status.[10]

The EB–5 Reform Act authorizes DHS to propose fees in this rule that will, among other things, recover the costs of adjudicating EB–5 immigration benefit requests. *See* Public Law 117–103, div. BB, sec. 106(b) and 106(c). Those costs include primary adjudication staff, supporting staff, technology for managing the EB–5 program, conducting audits, and the relevant portion of the costs of the Administrative Site Visit and Verification Program.[11] These costs are described in the remaining sections of this rule and the fee study that is published as an addendum to this rule for the public to review and comment on.

B. USCIS Fees

USCIS is primarily funded by fees charged to applicants, petitioners, and requestors for immigration and naturalization benefit requests. USCIS manages the following four fee accounts:

- The Immigration Examinations Fee Account (IEFA), which includes premium processing revenues (INA secs. 286(m), (n), (t), and (u); 8 U.S.C. 1356(m), (n), (t), and (u));
- The Fraud Prevention and Detection Account (INA secs. 214(c)(12) and (13), 286(v); 8 U.S.C. 1184(c)(12) and (13), 1356(v));
- The H–1B Nonimmigrant Petitioner Account (INA secs. 214(c)(9) and (11), 286(s); 8 U.S.C. 1184(c)(9) and (11), 1356(s)); and
- The EB–5 Integrity Fund (INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J)).

When USCIS provides adjudication and naturalization services, it is authorized to set IEFA fees at a level that will ensure recovery of the full costs of providing all such services. *See* INA sec. 286(m), 8 U.S.C. 1356(m). The fees that are collected from individuals and entities filing immigration benefit requests are deposited into the IEFA. *Id.* These fees fund the cost of adjudicating immigration benefit requests, including those provided without charge to refugee, asylum, and certain other applicants or petitioners. The IEFA accounted for approximately 94 percent of total funding for USCIS in FY 2023. The IEFA includes premium and non-premium processing revenues. Premium processing refers to the additional fees for expedited processing established under section 286(u) of the INA, 8 U.S.C. 1356(u). Non-premium processing refers to all other adjudication and naturalization services that USCIS funds from the IEFA account, including the costs of similar services provided without charge. IEFA non-premium funding represented approximately 73 percent, and IEFA premium funding represented approximately 21 percent of USCIS' FY 2023 total funding.[12] The remaining

Fraud Risks'' (Sept. 19, 2022), *https://www.gao.gov/products/gao-22-105328;* GAO, GAO–23–106452, ''Immigrant Investor Program: Opportunities Exist to Improve Fraud and National Security Risk Monitoring'' (Mar. 18, 2023), *https://www.gao.gov/products/gao-23-106452.*

[8] *See* USCIS, ''EB–5 Regional Center Audits,'' *https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits* (last updated Apr. 9, 2024).

[9] *See* GAO, GAO–24–106786, ''Yellow Book: Government Auditing Standards: 2024 Revision'' (Feb. 1, 2024), *https://www.gao.gov/yellowbook.*

[10] USCIS provides an opportunity to address any adverse or derogatory information before denial, revocation, or termination. *See* 8 CFR 103.2(b)(16)(i).

[11] *See* USCIS, ''Administrative Site Visit and Verification Program,'' *https://www.uscis.gov/about-us/organization/directorates-and-program-offices/fraud-detection-and-national-security-directorate/administrative-site-visit-and-verification-program* (last updated May 13, 2025).

[12] *See* DHS, USCIS Budget Overview: FY 2025 Congressional Justification, *https://www.dhs.gov/*

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USCIS funding came from appropriations (approximately 5 percent) or other fee accounts (approximately 1 percent) in FY 2023.[13] While premium processing funds are also IEFA fees, this rule does not propose premium processing fee changes or consider premium processing costs or revenue as part of the EB–5 fee setting approach described in this preamble.

The Fraud Prevention and Detection Account [14] and H–1B Nonimmigrant Petitioner Account [15] are both funded by fees for which the dollar amount is set by statute. DHS has no authority to adjust the fees for these accounts. The EB–5 Integrity Fund, a new account established in FY 2023, is discussed in a separate section of this preamble. *See* Section V of this preamble.

Since its inception, the EB–5 program has been funded by fees set by DHS under the IEFA authority. Historically, the fees that USCIS charges for its services that are deposited into the IEFA are generally described as ''IEFA fees,'' while the costs to provide such services—which are generally used as the basis to develop the IEFA fees—are described as ''IEFA costs.'' *See, e.g.,* FY 2022/2023 fee rule, 89 FR 6194 (Jan. 31, 2024).

DHS issued a final rule to adjust the USCIS fee schedule on August 3, 2020. *See* 2020 fee rule, 85 FR 46788 (Aug. 3, 2020). The rule was scheduled to become effective on October 2, 2020. However, the rule was preliminarily enjoined, and USCIS did not implement the fees set out in the 2020 fee rule, though the provisions remained in the CFR until they were replaced by the FY 2022/2023 fee rule, effective April 1, 2024.[16]

C. Legal Authority and Guidance

1. EB–5 Reform and Integrity Act of 2022

DHS publishes this proposed rule under the authority of the EB–5 Reform Act. Among other things, the EB–5 Reform Act immediately repealed the former authorizing statutory provisions for the Regional Center Program under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, 106 Stat. 1828, sec. 610, and added new authorizing provisions to the Immigration and Nationality Act of 1952 (INA), substantially reforming the Regional Center Program effective May 14, 2022. The reformed Regional Center Program is authorized through September 30, 2027.[17]

The EB–5 Reform Act also directed DHS to conduct a fee study and set fees for EB–5 program-related immigration benefit requests.[18] Thus, DHS proposes the fees in this rule as authorized in section 106 of the Reform Act.

Specifically, the EB–5 Reform Act provides discretion for DHS to set fees to sufficiently recover the costs of providing such services, and attaining the goal of completing adjudications, on average, not later than:

- 180 days after receiving a regional center application (Form I–956) or application for approval of an investment in an NCE (Form I–956F);
- 90 days after receiving an application for approval of an investment in an NCE (Form I–956F) with respect to an investment that is located in a TEA;
- 240 days after receiving an immigrant investor petition for classification under INA sec. 203(b)(5)(E) (Form I–526E) or a petition to remove conditions under INA sec. 216A (Form I–829); and
- 120 days after receiving an immigrant investor petition for classification under INA sec. 203(b)(5)(E) (Form I–526E) with respect to an investment in a TEA.

See Public Law 117–103, div. BB, sec. 106(b).

In addition to setting the fees with the processing time goals of Public Law 117–103, div. BB, sec. 106(c), the EB–5 Reform Act also authorizes DHS to include the following costs in the EB–5 fees:

- An amount equal to the amount paid by all other fee-paying applicants to cover or reduce the costs of reduced or no fee applications (such as asylum applications), and
- An amount not greater than one percent of the immigrant investor petition filing fee to improve the information technology systems used to process, adjudicate, and archive EB–5 petitions and applications, and convert EB–5 petitions and applications to electronic formats.

See Public Law 117–103, div. BB, sec. 106(c).

In addition, as explained in more detail later in this preamble, the EB–5 Reform Act requires DHS to collect fees for the EB–5 Integrity Fund. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The EB–5 Reform Act established a fund in the U.S. Department of the Treasury for DHS to investigate international activities and compliance, conduct site visits, and detect fraud, among other integrity measures. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). Specifically, DHS must collect $10,000 or $20,000 from each designated regional center (depending on the number of total investors) annually, must collect $1,000 from each regional center petitioner with their filing of a Form I–526E, may increase such fees by regulation as necessary to ensure sufficient amounts in the fund, and may impose penalties for failure to pay the fee after it is due. INA sec. 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii).

In connection with implementation and administration of the Integrity

sites/default/files/2024-04/2024_0325_us_citizenship_and_immigration_services.pdf.

[13] *Id.*

[14] The Fraud Prevention and Detection fees charged to certain employers petitioning for nonimmigrant workers in the H–1B, H–2B, and L–1 visa classifications are set by statute. Revenue is used for activities related to preventing and detecting fraud in immigration benefit requests. *See* 8 U.S.C. 1356(v)(2)(B) (''One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including fraud with respect to petitions filed under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in subparagraph (H) or (L) of section 1101(a)(15) of this title.''). Revenue is shared equally among USCIS, Department of State, and DOL. Effective July 25, 2018, USCIS also collects and retains the $50 Commonwealth of the Northern Mariana Islands fraud fee. *See* 48 U.S.C. 1806(a)(6)(iv). DHS interprets Fraud Prevention and Detection Account authority as providing supplemental funding to cover activities related to fraud prevention and detection and not prescribing that only those funds may be used for that purpose. The Fraud Detection and National Security Directorate (FDNS) is funded out of both the IEFA and the Fraud Prevention and Detection Account. The fees deposited in the Fraud Prevention and Detection Account are fixed by statute and are insufficient to cover the full costs of FDNS. Therefore, USCIS uses both Fraud Prevention and Detection Account and IEFA funds for FDNS costs.

[15] Certain H–1B fees are required by other laws. Revenue is shared among USCIS, DOL, and the National Science Foundation. USCIS receives 5 percent of these funds. USCIS uses the H–1B Nonimmigrant Petitioner Account as supplemental funding for the limited H–1B petition and petition for immigrant worker adjudication activities authorized by statute. *See* 8 U.S.C. 1356(s)(5). The H–1B Nonimmigrant Petitioner Account does not fully fund the H–1B program at USCIS. As such, USCIS also uses IEFA fees to administer the program. IEFA fees are not required for those limited purposes authorized or required by sec. 1356(s)(5).

[16] *Immigrant Legal Res. Ctr.* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. 2020) (*ILRC*); *Nw. Immigrant Rights Project* v. *USCIS,* 496 F. Supp. 3d 31 (D.D.C. 2020) (*NWIRP*).

[17] This rule and its supporting analysis assume that the program will be extended and will not sunset on this date, as Congress has a history of reauthorizing the program when it is set to end. *See, e.g.,* Public Law 112–176, 126 Stat. 1325.

[18] Although the deadline provided in section 106(b) for promulgation of the regulations has passed, the Supreme Court has repeatedly held that ''if a statute does not specify a consequence for noncompliance with statutory timing provisions''—which the EB–5 Reform Act does not—the agency is not deprived of its power to act. *Barnhart* v. *Peabody Coal Co.,* 537 U.S. 149, 159 (2003) (quoting *United States* v. *James Daniel Good Real Prop.,* 510 U.S. 43, 63 (1993)).

Fund, USCIS must pursue collection of nonpayments from designated regional centers by imposing reasonable penalties for nonpayment within certain periods of time and terminating the designation of a regional center that fails to pay the Integrity Fund fee as required. INA sec. 203(b)(5)(J)(iv), 8 U.S.C. 1153(b)(5)(J)(iv).

2. Other Legal Authorities

This proposed rule is also consistent with nonstatutory guidance on fees, the budget process, and Federal accounting principles.[19] DHS uses Office of Management and Budget (OMB) Circular A–25 as guidance for determining user fees for immigration benefit requests.[20] DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs. USCIS used the activity-based costing (ABC) methodology supported in OMB Circulars A–25 and A–11 to conduct the EB–5 fee study and develop the proposed EB–5 program fee schedule.

In the future, if the fees proposed in this rule are established, USCIS will review the EB–5 program fees in accordance with the Chief Financial Officer (CFO) Act, 31 U.S.C. 901–903, which requires each agency's CFO to review, on a biennial basis, the fees imposed by the agency for services it provides and recommend changes to the agency's fees as necessary.

D. Full Cost Recovery

As noted previously, DHS publishes this proposed rule under the EB–5 Reform Act, which, as a general matter, authorizes DHS to set EB–5 program fees ''at a level sufficient to ensure the full recovery *only* of the costs of providing such services'' (emphasis added), plus the cost of meeting the goal of completing adjudications within prescribed time frames, plus an ''equal'' amount for processing benefit requests with no fee or a reduced fee. *See* Public Law 117–103, div. BB, sec. 106(b) and 106(c).

DHS proposes this rule to address the projected fiscal effect of implementing the EB–5 Reform Act consistent with the EB–5 fee study described in Section IV of this preamble and fee study in the docket. DHS has examined recent USCIS budget history, service levels, and immigration trends to forecast EB–5 program costs, revenue, and operational metrics to determine the fees USCIS must collect to generate sufficient revenue to fund the anticipated EB–5 program operating costs and to meet the EB–5 Reform Act processing time goals. This assessment included EB–5 program support costs such as physical overhead, information technology, management and oversight, human resources, national security vetting and investigations,[21] accounting and budgeting, and legal support. As explained in this rule and the supporting documents, the projected costs of administering the EB–5 program will be lower than projected fee revenue with the current fees, indicating a need for a fee adjustment. However, USCIS estimates that the cost of administering the EB–5 program is increasing. For example, in the 2024 final rule, USCIS estimated the total cost of Form I–526 was approximately $30.3 million.[22] In the EB–5 fee study, USCIS estimates that the total cost of Forms I–526/I–526E is approximately $35.5 million, or a $5.2 million increase. The primary cost driver responsible for this cost increase is payroll, predominately because of the hiring of additional staff to meet, on average, the new processing time goals. However, as discussed later, the proposed fees are lower than the current fees because the proposed fees do not include any additional costs for processing benefit requests with no fee or a reduced fee, thus reducing the fees overall. As such, the proposed EB–5 fees would not fund a proportionate share of workload without fees and workload below full cost, and, thus, would not recover what DHS defined as full cost in previous fee rules. See section IV.B.4 for more information. Consistent with the EB–5 Reform Act, this proposed rule would ensure that USCIS recovers full EB–5 program operating costs by setting EB–5 fees at a level sufficient to fund overall requirements and general operations related to the EB–5 program.

E. EB–5 Fee Schedule

1. Current EB–5 Fees

On April 1, 2024, the FY 2022/2023 fee rule replaced the 2020 fee rule in its entirety by revising the regulatory changes codified by the enjoined 2020 fee rule. *See* 89 FR 6194 (Jan. 31, 2024). The fees that this rule proposes would replace the EB–5 fees set by the FY 2022/2023 fee rule. Throughout this proposed rule, the phrases ''current fees'' or ''current fee schedule'' refer to the fees in effect from the FY 2022/2023 fee rule. Table 2 summarizes the IEFA EB–5 immigration benefit requests currently in effect. Through this rule, DHS is proposing fees that would replace the EB–5 fees that were set in the FY 2022/2023 fee rule.

TABLE 2—CURRENT IEFA EB–5 IMMIGRATION BENEFIT REQUEST FEES

Form No.[23]	Immigration benefit request	Fee
I–526	Immigrant Petition by Standalone Investor	$11,160
I–526E[24]	Immigrant Petition by Regional Center Investor	11,160
I–829	Petition by Investor to Remove Conditions on Permanent Resident Status	9,525
I–956	Application for Regional Center Designation (formerly Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program).	47,695
I–956F	Application for Approval of an Investment in a Commercial Enterprise	47,695

[19] *See* OMB, Circular A–25, ''User Charges,'' 58 FR 38142 (July 15, 1993) (revising Federal policy guidance regarding fees assessed by Federal agencies for Government services). *See also* Federal Accounting Standards Advisory Board Handbook, Version 22 (12/23), Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts, SFFAS 4, *http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (generally describing cost accounting concepts and standards, and defining ''full cost'' to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *id.* At 49–66 (July 31, 1995). *See also* OMB, Circular A–11, ''Preparation, Submission, and Execution of the Budget,'' sec. 20.7(d), (g), *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf* (Jul. 2024) (providing guidance on the FY 2026 budget and instructions on budget execution, offsetting collections, and user fees).

[20] For the purposes of this rule, OMB Circular A–25 is appropriate for the requirements to set fees that will fund the EB–5 program, but USCIS lacks cost data associated with the goal of achieving certain processing times. Thus, this proposed rule also seeks to address the projected fiscal impact of the processing time requirements using other methods.

[21] Congress recommended that DHS establish an organization ''responsible for developing, implementing, directing, and overseeing the joint USCIS-Immigration and Customs Enforcement anti-fraud initiative and conducting law enforcement/background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.'' *See* Conference Report to accompany H.R. 4567 [Report 108–774], ''Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2005,'' p. 74, *https://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf.*

[22] *See* USCIS, FY 2022/2023 IEFA Fee Review Supporting Documentation with Addendum (Nov. 2023), available at *https://www.regulations.gov/document/USCIS-2021-0010-8176.* Specifically, see Appendix Table 3: Projected Total Cost by Immigration Benefit Request, pg. 41–45.

TABLE 2—CURRENT IEFA EB–5 IMMIGRATION BENEFIT REQUEST FEES—Continued

Form No.[23]	Immigration benefit request	Fee
I–956G	Regional Center Annual Statement (formerly Form I–924A, Annual Certification of Regional Center)	4,470
I–956H[25]	Bona Fides of Persons Involved with Regional Center Program	No Fee
I–956K[26]	Registration for Direct and Third-Party Promoters	No Fee

2. State of EB–5 Fee Schedule Regulations

In the FY 2022/2023 fee rule, DHS adjusted the USCIS fee schedule and made changes to certain immigration benefit request requirements, including EB–5 program fees. *See* 89 FR 6194 (Jan. 31, 2024). The EB–5 fees in the FY 2022/2023 fee rule were calculated by using the full cost recovery model described in that rule. In the same manner as DHS and USCIS used in their fee rules since the EB–5 program's inception, the methodology used to determine the proposed EB–5 program fees was consistent with the fees proposed for other benefit requests. Generally, the fee amounts indicated by the full cost recovery model for the immigrant investor program forms were not capped or decreased below the estimated amount that resulted in full cost recovery. As described in the FY 2022/2023 fee rule, 88 FR 402, 418 (Jan. 4, 2023), DHS applied the discretion provided in section 286(m) of the INA, 8 U.S.C. 1356(m), to: (1) use ABC to establish a model for assigning costs to specific benefit requests consistent with OMB Circular A–25; (2) allocate costs for programs for which a fee is not charged or a law limits the fee amount; (3) distribute costs that are not attributed to, or driven by, specific adjudication and naturalization services; and (4) make additional adjustments to effectuate specific policy objectives.[27] Because the fee study had not yet been completed at the time, the EB–5 fees in the FY 2022/2023 fee rule were not set according to the fee study parameters and processing time goals of the EB–5 Reform Act, which are narrower in scope than the full cost recovery model that USCIS normally employs when determining IEFA fees through the authority of section 286(m) of the INA, 8 U.S.C. 1356(m). However, the EB–5 fees proposed in this rule are set using the parameters in the EB–5 Reform Act.[28]

F. Severability

DHS believes that the provisions in this rule can function independently of each other, like other USCIS fees under current regulations. *See* 89 FR 6194, 6237–6238 (Jan. 31, 2024); *see also* 8 CFR 106.6. For example, the EB–5 Integrity Fund penalty fees could be stalled while a new rule is undertaken without affecting all other fees generally. If DHS were prohibited from collecting any new fee for any reason, DHS believes this rule is structured so that a stay, injunction, or vacatur of a fee set by this rule could be narrowly tailored to remedy the specific harm that a court may determine exists from the specific fee or fees challenged. USCIS would be able to continue operations, perhaps at a reduced level or by shifting resources in the absence of the fee until DHS is able to conduct new rulemaking to re-set fees and correct the deficiencies that resulted in the court order. Operating without one or a few of the new fees would be preferable to an invalidation of all the new fees, which may disrupt and deteriorate the EB–5 program at USCIS and would go against Congress' goal of timely processing EB–5 petitions.

IV. Fee Setting Approach

As noted previously, the EB–5 Reform Act directed DHS to conduct a fee study and set fees for EB–5 program-related immigration benefit requests at a level sufficient to recover the costs of providing such services and attain the goal of completing adjudications, on average, within certain time frames. *See* Public Law 117–103, div. BB, sec. 106(b). This rule proposes fees and provides data and supporting documents that serve as the basis for the EB–5 fee adjustments outlined in this rule. After considering comments on this rule, DHS will complete and publish a final fee study that will take effect 60 days after publication as required by Public Law 117–103, div. BB, sec. 106(b).

A. The Processing Times Referenced in the Integrity Reform Act

In accordance with the EB–5 Reform Act, DHS proposes fees in this rule with ''the goal of completing adjudications, on average,'' within 90, 120, 180, or 240 days, as applicable, after the relevant immigration benefit request is received in accordance with 8 CFR 103.2(a)(7)(ii). *See* Public Law 117–103, div. BB, sec. 106(b) (''including the cost of attaining the goal of completing adjudications, on average, not later than . . .'').

1. USCIS Efficiency Improvements

DHS and USCIS appreciate the processing times expectations expressed in the EB–5 Reform Act and agree that our current backlogs are excessive. As explained in the FY 2022/2023 fee rule, DHS appreciates the need for operational improvements regarding processing times, process improvement, customer service, interviews, streamlined filings, online filing, prioritization of certain requests,

[23] ''Form, when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in a paper format or an electronic format as prescribed by USCIS on its official [website].'' 8 CFR 1.2 The term ''Form'' followed by an immigration form number includes an approved electronic equivalent of such form as made available by USCIS on its official website. *See* 8 CFR 1.2 and 299.1. The word ''form'' is used in this proposed rule in both the specific and general sense.

[24] Note that the Immigrant Petition by Regional Center Investor (I–526E), Application for Approval of an Investment in a Commercial Enterprise (I–956F), Bona Fides of Persons Involved with Regional Center Program (I–956H), and Registration for Direct and Third-Party Promoters (I–956K) were a result of the EB–5 Reform Act and did not exist during the FY 2016/2017 fee rule. *See* 81 FR 73292 (Oct. 24, 2016). The current fees were set in the FY 2022/2023 fee rule. *See* 89 FR 6194 (Jan. 31, 2024). For new EB–5 workloads where a comparable benefit request was available, USCIS applied the same fee as that comparable form. Specifically, the fee for Form I–526E is the same as the fee for Form I–526, and the fee for Form I–956F is the same as the fee for Form I–956. For new EB–5 workloads where no comparable form existed (Forms I–956H and 956K), USCIS determined not to charge a fee at that time. Form I–527 is a new form being proposed now. Thus, Forms I–527, I–956H, and I–956K do not currently have any associated fees.

[25] *Id.*

[26] *Id.*

[27] DHS may provide services for free and fund those free services with the fees charged to other, unrelated filings. 8 U.S.C. 1356(m). Relatedly, short of providing services for free, DHS may adjust certain fees downward based on value judgments and public policy reasons and shift the unrecovered costs to the fees charged to other, unrelated filings.

[28] DHS, ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' 89 FR 6194, 6287 (Jan. 31, 2024) (stating, ''DHS interprets '[N]otwithstanding' in section 106(b) of the EB–5 Reform and Integrity Act of 2022 to mean that section 106 requires DHS to establish fees to achieve the processing time goals set out in section 106(b), but that authority and its separate study requirements exist separately from (or 'notwithstanding') INA sec. 286(m), 8 U.S.C. 1356(m), and, therefore, do not preclude USCIS from instituting new EB–5 program fees while that effort is undertaken'').

training, and other steps to address the USCIS processing backlog. 89 FR 6194, 6254 (Jan. 31, 2024). As explained in the proposed fee rule, USCIS is reviewing its adjudication and administrative policies to find deficiencies, while strengthening the integrity of the immigration system. *See* 88 FR 402, 455 (Jan. 4, 2023). More recently, DHS sought to make changes to individual programs for employment-based immigration without making changes to fees. *See e.g.,* 89 FR 103054 (Dec. 18, 2024).

In the EB–5 program specifically, USCIS had made significant gains recently in EB–5-related requests processing times and backlogs, while strictly complying with Congress' anti-fraud and integrity provisions.[29] For example, by hiring new staff and making other important investments at IPO, the backlog of Form I–829s decreased from 9,989 pending forms at the end of FY23 to 7,249 by the end of Q3 in FY24, a decrease of 27.4 percent.[30]

2. Completion Goals Are Not Requirements

DHS notes, however, that the law does not prescribe hard deadlines for adjudications, nor does it impose specific consequences on USCIS (such as any requirement to refund fees) if the processing time for a specific request exceeds those goals. Therefore, consistent with the statute, DHS is not proposing to codify any processing deadlines, or any consequences for missing those processing time goals. USCIS will strive to process EB–5 requests as quickly and efficiently as possible to meet the time goals referenced in the EB–5 Reform Act and on which the fees in this rule are based, while keeping the integrity of the program utmost in mind.

B. EB–5 Fee Study Methodology

Generally, USCIS does not perform fee reviews for individual programs, thus the EB–5 Reform Act requires that the agency depart somewhat from its normal fee setting practices. Nevertheless, some of USCIS' historical practices were still helpful here. DHS and USCIS use the biennial fee review process to capture any changes in operating costs and non-premium form fees across the USCIS enterprise. When conducting a fee review to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund the anticipated operating costs associated with administering the nation's legal immigration system, USCIS usually assesses its recent operating environment to determine the appropriate method to assign costs to immigration benefit requests. One of the primary methods that USCIS uses is ABC, a business management tool that assigns resource costs to operational activities and then to products, services, or both. USCIS uses commercially available ABC software to create financial models. These models determine the cost of each major step toward processing immigration benefit requests. This is the same methodology that USCIS has used in conducting five of the most recent previous IEFA fee reviews.[31] For this rule, USCIS conducted a FY 2024/2025 fee review for the biennial period to determine the fees needed to recover the full costs of operating the entirety of USCIS with certain modifications required to meet the new statutory requirements in the EB–5 Reform Act. The results are the basis for the EB–5 fee study. That study provided EB–5 program fees needed to recover EB–5 program costs relative to their contribution to the total operating costs of USCIS following our usual fee study methodology. Throughout this proposed rule, DHS may use the terms FY 2024/2025 fee review or EB–5 fee study interchangeably.

To assess whether the current EB–5 fees meet full operating-cost recovery consistent with the EB–5 Reform Act requirements, USCIS determined the EB–5 program projected workload receipts, developed cost estimates for staffing and other direct costs, and estimated the adjudication hours per completion (completion rates) for each EB–5 immigration benefit request form.

USCIS and its personnel have considerable expertise in conducting fee studies and analyzing the fees required to recover the full costs of administering programs and entire agencies. Nevertheless, the EB–5 Reform Act is new, and it establishes distinct requirements and reforms for the EB–5 program. Therefore, USCIS is unable to strictly follow the same methodology for the EB–5 program it has used in conducting past IEFA fee reviews, because IEFA fees are generally based on workload, processing time, completion rates, staffing, and indirect costs of programs that are relatively well established and known. USCIS has studied and estimated the EB–5 program workload based on the processing burden estimates of experts in administering the legacy EB–5 program with certain modifications to meet new and reformed EB–5 program statutory requirements. The EB–5 Reform Act does not prescribe a method for its required fee study. However, the fees proposed in this rule adhere to OMB Circulars A–11 and A–25. DHS reviewed the EB–5 program fees using ABC, consistent with previous fee rules. DHS believes the fees proposed in this rule represent reasonable fees following fee study practices and incorporating adjustments based on public policy reasons as explained in this rule and its supporting documents. DHS cannot predict every policy change that may occur at all levels of the U.S. Government or court decisions that may affect this rule but has used the best data available during this rule's development. As stated previously, any shortcoming caused by the lack of information and newness of the program reforms are mitigated by the requirement that USCIS review the EB–5 program fees in accordance with the CFO Act, 31 U.S.C. 901–03, 2 years after they take effect and recommend changes to the agency's fees as necessary.

1. Volume

USCIS generally uses two types of volume data to conduct fee reviews: workload and fee-paying volume. Workload volume is a projection of the total number of immigration benefit requests that USCIS will receive in a fiscal year. Fee-paying volume, on the other hand, is a projection of the number of customers that will pay a fee when filing requests for immigration benefits.[32] Given that EB–5 immigration benefit request fees are not eligible for fee waivers or fee exemptions, the entire annual EB–5 workload volume was considered for the EB–5 fee study.[33]

The workload volume forecasts are agreed upon by the USCIS Volume

[29] USCIS, Progress on USCIS Processing Times, *https://www.uscis.gov/newsroom/stakeholder-messages/progress-on-uscis-processing-times* (last reviewed/updated Apr. 30, 2024).

[30] USCIS, All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 3), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q3.xlsx* (Aug. 29, 2024).

[31] Two of the last seven fee reviews did not result in fee changes. However, DHS revised USCIS fees five times based on fee review results that used similar methodology to this one. *See* 72 FR 29851 (May 30, 2007); 75 FR 58962 (Sept. 24, 2010); 81 FR 73292 (Oct. 24, 2016); 85 FR 46788 (Aug. 3, 2020); 89 FR 6194 (Jan. 31, 2024).

[32] There are a number of immigration benefit requests that USCIS provides at no or reduced cost to the benefit requestor, such as filing for asylum. *See, e.g.,* USCIS, ''Application for Asylum and for Withholding of Removal,'' *https://www.uscis.gov/i-589* (last updated Apr. 9, 2024). Other benefit requests fees may be waived. *See* 8 CFR 106.3(a).

[33] Please note that the volumes discussed in this section and used to estimate the proposed fees may be different than those used to estimate the public burden in the Paperwork Reduction Act section. *See* section VI.J. of this preamble.

Projection Committee (VPC).[34] The mission of the VPC is to facilitate workload and fee projection data stakeholder collaboration, communication, and coordination of critical business decisions about projected workload. This group provides a forum for making enterprise-wide decisions about projected workload supported by input from knowledgeable subject matter experts from within USCIS, other governmental agencies, and the private sector. The scope of authority of the VPC includes but is not limited to:

- Assessing and documenting current USCIS workload projection methodologies;
- Benchmarking and documentation of workload projection methodologies, assumptions, or projection methodologies applied to similar entities in use by other government agencies and the private sector;
- Comparing VPC projections versus actual figures to determine what factors may account for material variances and to better refine its forecasting approach;
- Vetting each identified projection methodology through the use of legacy USCIS workload data to determine its efficacy for use in developing workload projections up to 7 years in the future; and
- Initiating and maintaining biannual meetings to update workload forecasts.

The VPC predicts USCIS annual workload volumes using historical and recent volume trends, statistical forecasts, and subject-matter expertise from various USCIS directorates and program offices, including the IPO, USCIS service centers, the National Benefits Center, and regional, district, and field offices. Workload volume is a key element used to determine the USCIS resources needed to process EB–5 benefit requests on average within the processing time goals established in the EB–5 Reform Act. EB–5 program workload volume is the primary cost driver for assigning activity costs to EB–5 immigration benefit requests. Table 3 displays the projected average annual receipts for EB–5 immigration benefit requests:

TABLE 3—PROJECTED AVERAGE ANNUAL RECEIPTS FOR EB–5 IMMIGRATION BENEFIT REQUESTS IN THE FY 2024/2025 FEE REVIEW

Immigration benefit request	Projected average annual receipts
I–526 Immigrant Petition by Standalone Investor	225
I–526E Immigrant Petition by Regional Center Investor	3,500
I–527 Amendment to Legacy Form I–526	457
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status	3,430
I–956 Application for Regional Center Designation	200
I–956F Application for Approval of an Investment in a Commercial Enterprise	450
I–956G Regional Center Annual Statement	500
I–956H Bona Fides of Persons Involved with Regional Center Program	2,100
I–956K Registration for Direct and Third-Party Promoters	400

2. Completion Rates

USCIS completion rates identify the adjudicative time required to complete (render a decision on) specific immigration benefit requests. The completion rate for each benefit type represents an average. Completion rates reflect what is termed ''touch time,'' or the time an employee with adjudicative responsibilities handles the case. This rate does not reflect ''queue time,'' or time spent waiting, for example, for additional evidence or supervisory approval. Completion rates do not reflect the total processing time applicants, petitioners, and requestors can expect to wait for a decision on their case after USCIS accepts it.

In the EB–5 program context, USCIS uses subject-matter expertise to estimate completion rates. The completion rates for this EB–5 fee study are estimates developed by USCIS' Office of Performance and Quality (OPQ), using historical data and subject matter expert input from IPO. The EB–5 fee study completion rate estimates were also guided by the processing time goals contemplated by the EB–5 Reform Act, shown in Table 4 below.[35]

TABLE 4—EB–5 REFORM ACT AVERAGE PROCESSING TIME GOALS FOR EB–5 IMMIGRATION BENEFIT REQUESTS

Immigration benefit request	Processing time goal (in days)
I–526E Immigrant Petition by Regional Center Investor	240 (120 for TEA investments).
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status	240.
I–956 Application For Regional Center Designation	180.
I–956F Application for Approval of Investment in a Commercial Enterprise	180 (90 if NCE is located in TEA).

USCIS was able to estimate the completion rates of the EB–5 forms by extrapolating staff hours spent on EB–5 adjudications and estimates from subject matter experts on EB–5 request processing. USCIS identified and defined the activities required to support the relevant adjudications and the time personnel spent conducting

[34] *See* USCIS Volumes Projection Committee Consolidated Meeting Notes for EB–5 Fee Study in the docket for this proposed rule.

[35] For completion rates without these processing time goals or other changes from the EB–5 Reform Act, see Table 5 in this proposed rule and its comparison to information from the proposed rule for the FY 2022/2023 fee rule. *See* 88 FR 402, 448–450 (Jan. 4, 2023). Processing time goals are not the only change in the completion rates. The EB–5 Reform Act or DHS implementation of it may also have changed purpose or adjudication requirements of some forms. For example, Form I–526 was previously used by the old regional center program. USCIS revised Form I–526 and created Form I–526E as a result of the EB–5 Reform Act. Now Form I–526 is used for standalone investors. As such, Form I–526 receipts from previous years may be less comparable to future estimates.

each activity to estimate relevant completion rates. USCIS determined that, in general, it conducts the following activities when adjudicating EB–5 forms:

- Intake of documents;
- Sending receipt notices;
- Performing background checks;
- Inputting filing information into systems;
- Reviewing and analyzing evidence, information on forms, results of database searches, and interviews (if applicable);
- Drafting decisions;
- Reviewing decisions at a supervisory level;
- Issuing decisions;
- Updating systems;
- Conducting quality reviews, administrative investigations, site visits, and audits as applicable;
- Processing records; and
- Issuing documents.

The extrapolation of staff hours spent on these activities for the EB–5 program served as an input to determine the times required to adjudicate the subject forms. In addition, depending on the particular benefit request, USCIS may conduct additional activities. For example, Forms I–829 and I–956H may include conducting fingerprint-based background checks.

In addition to using these data to set EB–5 fees, completion rates help determine appropriate staffing allocations to handle projected workload. Completion rates may change between IEFA fee reviews based on more recent estimates, data availability, or subsequent regulatory or policy changes. Table 5 displays the completion rates for EB–5 immigration benefit requests in this proposed rule.

TABLE 5—EB–5 COMPLETION RATES PER BENEFIT REQUEST

[In hours]

Immigration benefit request	FY 2022/2023 fee rule	EB–5 fee study	Difference	% Difference
I–526 Immigrant Petition by Standalone Investor	5.01	16.30	11.29	225
I–526E Immigrant Petition by Regional Center Investor	5.01	16.30	11.29	225
I–527 Amendment to Legacy Form I–526	N/A	13.30	N/A	N/A
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status	12.13	12.13	0	0
I–956 Application for Regional Center Designation	108.50	N/A	N/A	N/A
I–956 Application for Regional Center Designation—Initial	N/A	37.50	N/A	N/A
I–956 Application for Regional Center Designation—Amendment	N/A	12.50	N/A	N/A
I–956F Application for Approval of Investment in a Commercial Enterprise	N/A	40.00	N/A	N/A
I–956G Regional Center Annual Statement	4.60	N/A	N/A	N/A
I–956H Bona Fides of Persons Involved with Regional Center Program	N/A	N/A	N/A	N/A
I–956K Registration for Direct and Third-Party Promoters	N/A	N/A	N/A	N/A
Regional Center Terminations	N/A	108.00	N/A	N/A

For Forms I–956G, Regional Center Annual Statement; I–956H, Bona Fides of Persons Involved with Regional Center Program; and I–956K, Registration for Direct and Third-Party Promoters, USCIS did not use completion rates in the analysis of those immigration benefit request fees which results in proposed fees that are lower than they would be if a completion rate was used.[36] In the ABC model for this proposed rule, Forms I–956G, I–956H, and I–956K include fewer activities, and thus lower costs, than other EB–5 workloads. For example, Forms I–956G, I–956H, and I–956K do not use the Make Determination activity, which is the adjudication activity in the fee review. As such, these proposed fees are much lower than other proposed fees in this rule. This analysis is consistent with other USCIS fee rules, which do not use completion rates for every workload. *See, e.g.,* 88 FR 402, 446–447 (Jan. 4, 2023). While proposed fees for I–956G, I–956H, and I–956K are significantly lower than other proposed fees in this rule, it is still important for USCIS to recover these costs through the proposed fees. As noted previously, DHS is authorized by the EB–5 Reform Act to charge for ''fees for services provided under sections 203(b)(5) and 216A of such Act (8 U.S.C. 1153(b)(5) and 1186b) at a level sufficient to ensure the full recovery only of the costs of such services'' and additional fees. *See* Public Law 117–103, div. BB, sec. 106(b) and 106(c). Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone meet processing time goals. By proposing separate fees for Forms I–956G, I–956H, and I–956K, DHS ensures that USCIS will have the resources to complete these workloads rather than force USCIS to make trade-offs or shift resources to complete these workloads.

[36] Although there is work involved in the review of each of these forms, the ''completion rate'' is not captured the same way as the other EB–5 workloads. Specifically, Form I–956G submissions are reviewed and then administratively closed. Form I–956K registrations are approved, but USCIS processes them as registrations and not applications or petitions to be adjudicated. Form I–956H is submitted as part of a Form I–956 or I–956F filing and is reviewed when those filings are adjudicated. Therefore, the ''completion rate,'' or time involved for processing Form I–956H submissions, is already captured in the Form I–956 or I–956F completion rates.

3. Legacy Workloads

DHS includes the cost of legacy EB–5 workloads in the FY 2024/2025 fee review because of their significant effect on the EB–5 fee study results. USCIS estimates that it may terminate 300 regional centers in FY 2024 and FY25, and the average completion rate for each is 108 hours. As explained later in this preamble, DHS proposed to distribute the cost of regional center terminations to the costs of applying for a regional center or seeking investment in a commercial enterprise activity, Forms I–956 and I–956F. Future fee reviews will reevaluate the effects of legacy EB–5 workload and whether it affects USCIS fees.

4. Cost Reallocation

As noted previously, the EB–5 Reform Act directed DHS to conduct a fee study and set fees for EB–5 program-related immigration benefit requests at a level sufficient to recover the costs of providing such services and attaining the goal of completing adjudications, on average, within certain time frames. *See* Public Law 117–103, div. BB, sec. 106(c). The EB–5 Reform Act did not prescribe a method for how DHS was to

determine the fees and generally delegated the responsibility to DHS.

The EB–5 Reform Act also authorizes DHS to add an amount to EB–5 program fees by providing that DHS can charge fees in excess of the fee levels described in section 106(c), in an amount equal to the amount paid by all other classes of fee-paying applicants for immigration benefits, to cover or reduce the costs of processing benefit requests that are processed with no fee or a reduced fee. Public Law 117–103, div. BB, sec. 106(c):

Fees in excess of the fee levels described in subsection (b) may be charged only—(1) in an amount that is equal to the amount paid by all other classes of fee-paying applicants for immigration-related benefits, to contribute to the coverage or reduction of the costs of processing or adjudicating classes of immigration benefit applications that Congress, or the Secretary of Homeland Security in the case of asylum applications, has authorized to be processed or adjudicated at no cost or at a reduced cost to the applicant.

Because section 106(c) states that fees *may* be charged, DHS has decided not to use that authority to add an amount to EB–5 fees to support costs incurred to process all forms for which the fees are waived, exempted, or held below projected cost. As a result, the proposed EB–5 fees would not fund a proportionate share of workload without fees and workload with fees that do not recover full cost.

DHS interprets section 106(c) to authorize USCIS to charge EB–5 program filers for costs that USCIS incurs to adjudicate certain fee exempt, fee waived, reduced fee, and humanitarian immigration benefits. Next, that provision recognizes that DHS sets USCIS fees at the level required to recover immigration adjudication and naturalization service costs, while also requiring fee-paying applicants to cover some of the costs of applications processed at no or reduced cost (through fee reductions exemptions or fee waivers). *See, e.g.,* 88 FR 402, 450–451 (Jan. 4, 2023). Thus, section 106(c) recognizes that DHS historically sets fees as authorized by INA section 286(m), 8 U.S.C. 1356(m), in a manner that allows some filers to not pay any fees, or pay lower fees, while requiring others to pay higher fees that may otherwise be needed to cover the costs associated with processing their benefit requests. *Id.*

However, section 106(c)(1) contains inconsistencies with how DHS has historically set USCIS fees. First, section 106(c)(1) states, in relevant part (emphasis added), ''amount *equal* to the *amount* paid . . . to cover . . . requests . . . processed with no fee or a reduced fee . . . .'' However, there is no such ''equal'' amount.[37] Instead, DHS proportionally assigns costs incurred to provide services for which USCIS does not receive revenue based on the ability-to-pay principle in Government Accountability Office (GAO) fee setting guidance [38] and the full cost recovery authority in 8 U.S.C. 1356(m), balancing access, affordability, equity, and benefits to the national interest while providing USCIS with the funding necessary to maintain adequate services.[39] For example, the cost reallocation to cover free or reduced fee services added in the FY 2016/2017 fee rule ranged from a negative amount (reduced below cost) to $5,016. The cost reallocation assigned to Form I–140, Petition for Immigrant Worker, was $197; Form N–600, Application for Certificate of Citizenship, was $330; and Form I–485, Application to Register Permanent Residence or Adjust Status, was $321.[40] Because there is no equal amount to impose, DHS must interpret what constitutes an amount ''equal'' for the EB–5 fees.

Second, section 106(c)(1), states, in part, ''classes of immigration benefit applications that Congress, or the Secretary of Homeland Security in the case of *asylum applications*.'' (Underlining added). As stated earlier, DHS uses cost reallocation to assign costs of all fee exemptions and waivers under INA section 286(m). Because section 106(c)(1) only mentions asylum applications, it could be interpreted to preclude the transfer of the costs of other fee exemptions to the EB–5 workload.[41] Because the language describing what no cost and reduced costs may be covered by EB–5 fee filers is inconsistent with how USCIS has historically set fee, DHS must interpret what costs are recoverable.

DHS believes that exercising the section 106(c)(1) authority would likely result in litigation, thus preventing or delaying USCIS from implementing the new fees, meeting the processing time goals, complying with the EB–5 Reform Act, and receiving the revenue from the new fee schedule. Because the total estimated amount of free and reduced service costs that the EB–5 fees would fund is only around $47 million, and that amount is not a significant portion of the USCIS budget, DHS has determined that amount can be borne by a commiserate reduction in USCIS carryover balances and reserves. Furthermore, the One Big Beautiful Bill Act [42] establishes additional fees for asylum applications, which may provide USCIS with supplementary revenue to cover asylum costs. Therefore, after considering that costs caused by such litigation could exceed the fees that would be collected by our exercise of the section 106(c)(1) authority, DHS is proposing no cost reallocation in this rule. This proposed action would result in USCIS not recovering its full costs because the amount that the EB–5 fees would contribute to covering the costs of free services (and currently funded with the existing fees) could not be recovered from other fee payers in this rule. DHS appreciates comments specifically on the authority provided in section 106(c)(1) to use EB–5 program fees to fund the processing of other USCIS requests.

5. Regional Center Termination Costs

As stated previously, INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J), requires DHS to terminate a regional center that does not pay the Integrity Fund fee. DHS may also terminate a regional center based on non-compliance with other applicable

[37] *See, e.g.,* 85 FR 46788, 46869 (Aug. 3, 2020) (stating, ''For the fees that DHS does not limit, we use the total cost for each form to reallocate the cost of limited fee increases or workload without fees.''); 75 FR 58962, 58973 (Sept. 24, 2010) (stating, ''To the extent not supported by appropriations, the cost of providing free or reduced services must be transferred to all other fee-paying applicants.''); 72 FR 29851, 29865 (May 30, 2007) (stating, ''As with any other waiver, the loss of that fee revenue would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.''). While the costs are ''transferred'' or ''spread'' to all other fee-paying applicants, they are not necessarily spread by assigning an ''equal'' ''amount.''

[38] *See* GAO, GAO–08–386SP, ''Federal User Fees: A Design Guide,'' pp. 7–12 (May 29, 2008), *https://www.gao.gov/products/GAO-08-386SP.*

[39] Appendix Table 1 of the fee study included in this docket includes the cost estimate for various USCIS workloads without fees.

[40] The cost reallocation amounts come from Appendix Table 4 of the FY 2016/2017 fee review supporting documentation for the final rule. *See* USCIS, ''FY 2016/2017 IEFA Fee Review Supporting Documentation with Addendum,'' p. 53 (Oct. 2016), *https://www.regulations.gov/document/USCIS-2016-0001-0466.*

[41] For example, Congress has codified fee exemptions for military personnel who naturalize. *See, e.g.,* INA section 328(b)(4), 8 U.S.C. 1439(b)(4) (fee exemption for Military Naturalization Based on Peacetime Service); 8 CFR 106.2(b)(3)(i). The FY 2022/2023 fee rule maintained the existing fee exemptions for the military and added fee exemptions Form I–765, Application for Employment Authorization. *See* 89 FR 6194, 6214, 6226–6227; 8 CFR 106.2(a)(44)(ii)(I). Current and former military service may also qualify for fee waivers. *See* 89 FR 6194, 6214, 6232; 8 CFR 106.2(c).

[42] To provide for reconciliation pursuant to title II of H. Con. Res. 14., Public Law 119–21, 139 Stat. 72 (2025) *https://www.congress.gov/119/bills/hr1/BILLS-119hr1eas.pdf.*

requirements. *See e.g.* INA 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III). Terminations are integral to maintain the integrity of the program. USCIS incurs costs for termination, and those costs have generally been funded from EB–5 request fees. USCIS previously used revenue from Forms I–956 and I–956F to recover the cost of regional center terminations. In previous fee rules, the time spent to terminate the designation of regional centers was part of the completion rate along with other adjudicative work. For example, the proposed fee rule used a completion rate of 108.5 hours for Form I–956 and it included hours spent on regional center terminations. *See* 88 FR 402, 509 (Jan. 4, 2023).

In this rule, DHS proposes to continue recovering the cost of regional center terminations with the fees for Forms I–956 and I–956F. In the EB–5 fee study, USCIS estimated the cost of regional center terminations separate from any other benefit request. USCIS determined the cost of regional center terminations by using the same methodology as other IPO workloads in the ABC model for the EB–5 fee study. USCIS estimated a completion rate of 108 hours for regional center terminations. *See* Table 5 of this preamble. The average annual total cost of these terminations is approximately $6.8 million in the ABC model.[43] *See* the fee study in the docket for more information.

It would not be practical for USCIS to collect a fee specifically for terminations. It would be administratively burdensome for USCIS to attempt to collect a fee for terminations from regional centers during the process of termination, after already collecting fees relating to the filing of Forms I–956 and I–956F. USCIS also anticipates that collection of such a fee at the termination stage is impractical because entities facing termination of regional center designation may opt not to pay the fee at that stage, especially given that the termination itself may be based on failure to pay the Integrity Fund fee. For example, USCIS may terminate a regional center if it does not consent to an audit. *See* INA 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III). USCIS may also terminate the designation of any regional center that does not pay the EB–5 Integrity Fund fee within 90 days of the due date. *See* INA 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II).

While the EB–5 Reform Act created the EB–5 Integrity Fund, the listed uses of the fund do not explicitly include typical adjudication activities. Instead, it explicitly mandates use for various compliance, fraud investigation, audit, and site visit activities. *See* INA 203(b)(5)(J)(iii), 8 U.S.C. 1153(b)(5)(J)(iii). As stated later in this preamble, USCIS will also use the EB–5 Integrity Fund to audit regional centers to ensure compliance with EB–5 requirements and review the flow of investor capital into capital investment projects. *See* section V of this preamble. Terminations of regional center designations are a function of administering the EB–5 program generally for which USCIS incurs costs and which may occur for a variety of reasons ranging from voluntary withdrawal to non-compliance with various legal requirements (which may be either discretionary or mandatory). *See e.g.* 8 CFR 204.6(m)(6)(vi); INA 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III); INA 203(b)(5)(F)(v)(II), 8 U.S.C. 1153(b)(5)(F)(v)(II); INA 203(b)(5)(G)(iii)(II)(dd), 8 U.S.C. 1153(b)(5)(G)(iii)(II)(dd); INA 203(b)(5)(H)(iv), 8 U.S.C. 1153(b)(5)(H)(iv); INA 203(b)(5)(I)(iv), 8 U.S.C. 1153(b)(5)(I)(iv); INA 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II); INA 203(b)(5)(N), 8 U.S.C. 1153(b)(5)(N); and INA 203(b)(5)(O), 8 U.S.C. 1153(b)(5)(O). Prior to enactment of the EB–5 Reform Act and creation of the EB–5 Integrity Fund, DHS paid for the costs of terminating regional center designations through request fees for the former Form I–924. DHS has continued to fund these costs through request fees for Form I–956 and Form I–956F after the enactment of the EB–5 Reform Act. The EB–5 Integrity Fund does not explicitly provide a separate revenue stream to pay for such costs. Consequently, DHS will continue with its historic practice and fund those costs from the request fees proposed in this rule.

C. EB–5 Fee Study Projected Costs and Revenue

1. EB–5 Fee Study Cost Projections

In developing the EB–5 fee study cost projection, IEFA non-premium costs were considered in addition to EB–5 program costs.[44] Therefore, the EB–5 fee study cost projection accounts for payroll and non-payroll for on-board and new staff, inflation, resource requirements or adjustments, and the removal of costs associated with temporary programs. USCIS started with its general FY 2024 Operating Plan. USCIS then made the following adjustments in the EB–5 fee study:

- Added $317,000 to account for COVID–19 mandatory cuts to IPO expenses, including general expenditures, which represents all costs that are not related to pay or employee benefits (*e.g.,* supplies, training, and travel);
- Added staffing to support the EB–5 program, for a total of approximately 334 employees (FTEs) across multiple USCIS offices (237 FTEs in IPO, nine (9) FTEs in Administrative Appeals Office, two (2) FTEs in Office of the Chief Counsel, 86 FTEs in Fraud Detection and National Security Directorate). This new staffing[45] is necessary to meet the processing time goals of the EB–5 Reform Act;
- Accounted for pay inflation and promotions/within-grade increases, which includes annual Federal employee pay, cost of living adjustments, and new employees who are not related to the EB–5 program. The assumed inflation rate was 2 percent for FY 2024 and FY 2025; and
- Considered net additional costs, such as the costs of additional budget items. For example, USCIS added $50 million to the operating plan in each year to increase the budget for the interagency agreement with U.S. Department of State.[46]

Table 6 below is a summary from the FY 2024 IEFA non-premium cost projection to the FY 2024/2025 annual average cost projection. The FY 2024/2025 annual average cost projection is estimated to be approximately $5,315.9 million.

[43] In whole dollars, the average annual total cost of regional center terminations is $6,846,310 in the ABC model for the FY 2024/2025 fee review.

[44] IEFA non-premium refers to USCIS costs and revenue in the IEFA account excluding premium processing costs and revenue.

[45] The additional staffing figures are not current staffing totals; the figures reflect the number of additional positions that were estimated at the time of the EB–5 fee study.

[46] USCIS has executed formal interagency agreements (IAA) to govern the reimbursement of costs under the Economy Act, 31 U.S.C. 1535 and 1536. An IAA governs costs incurred by the State Department in providing goods or services for or on behalf of USCIS in areas where USCIS has no capacity or USCIS may receive reimbursement for goods and services it provides. *See* 48 CFR 17.5; 31 U.S.C. 1535–1536.

TABLE 6—COST PROJECTION—FY 2024/2025 EB–5 FEE STUDY COST PROJECTION

[In millions]

Total FY 2024 IEFA Non-Premium Cost Projection	$5,095.4
Plus: Additional IPO Staffing	56.8
Plus: Additional IPO Expenses[47]	0.3
Plus: FY 2024 Additional Non-IPO EB–5 Staffing	2.5
Total FY 2024 EB–5 Cost Projection	5,155.0
Plus: Pay Inflation and Promotions/Within-Grade Increases	43.3
Plus: Net Additional Costs	278.5
Total FY 2025 IEFA Non-Premium Cost Projection	5,476.8
FY 2024/2025 Annual Average EB–5 Cost Projection	5,315.9

Additionally, USCIS incorporated biometric services costs into proposed EB–5 fees, consistent with the approach in the FY 2022/2023 fee rule. *See* 88 FR 402, 484–485 (Jan. 4, 2023); 89 FR 6194, 6277–6278 (Jan. 31, 2024).

2. EB–5 Fee Study Revenue Projections

USCIS' revenue projections are informed by internal immigration benefit request receipt forecasts agreed upon by the VPC.[48] To project EB–5 program revenue, USCIS develops petition volume projections using all available data at the time. USCIS uses statistical modeling, immigration receipt data, and internal assessments of future developments (such as planned immigration policy initiatives) to develop workload volume projections. All relevant USCIS directorates and program offices are represented on the VPC. The VPC forecasts USCIS workload volume using statistical forecasts and subject-matter expertise from various directorates and program offices. Input from these offices helps refine the statistical volume projections. The VPC reviews short- and long-term volume trends. In most cases, time series models provide volume projections by form type. Time series models use historical receipt data to determine patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. When possible, other, more detailed models are also used to determine relationships within and between different benefit request types. At VPC meetings, the committee members deliberate on the provided forecast, consider alternatives, and agree to forecast by group consensus.

USCIS then assumes a 100-percent fee-paying rate for each EB–5 petition type to reflect the fact that IEFA EB–5 fees are not eligible for fee waivers or exemptions. Therefore, the projected revenue is based on the IEFA fees USCIS currently charges for EB–5 immigration benefits, which were established by the FY 2022/2023 fee rule, and the anticipated EB–5 petition volumes for FY 2024 and FY 2025. USCIS' current IEFA fees are expected to yield $4,192.3 million of average annual revenue during FY 2024/2025, as seen in Table 7 of this preamble.

TABLE 7—FY 2024/2025 FEE REVIEW ANNUAL AVERAGE REVENUE WITH CURRENT IEFA FEES

Immigration benefit request	Current IEFA fees (FY 2022/2023)	Projected annual receipts	Revenue with current IEFA fees (in millions)
I–526 Immigrant Petition by Standalone Investor	$11,160	225	$2.5
I–526E Immigrant Petition by Regional Center Investor	11,160	3,500	39.1
I–527 Amendment to Legacy Form I–526	0	457	0.0
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status	9,525	3,430	32.7
I–956 Application for Regional Center Designation—Initial	47,695	50	2.4
I–956 Application for Regional Center Designation—Amendment	47,695	150	7.2
I–956F Application for Approval of Investment in a Commercial Enterprise	47,695	450	21.5
I–956G Regional Center Annual Statement	4,470	500	2.2
I–956H Bona Fides of Persons Involved with Regional Center Program	0	2,100	0.0
I–956K Registration for Direct and Third-Party Promoters	0	400	0.0
EB–5 Subtotal	.....	11,262	[49] 107.5
All other IEFA non-premium revenue	.....	.....	4,084.8
Grand Total	.....	.....	4,192.3

3. EB–5 Fee Study Cost and Revenue Differential

The EB–5 fee study identified the difference between anticipated costs and revenue, assuming no changes in fees, to determine whether the existing EB–5 fee schedule is sufficient to recover the projected full cost of providing EB–5 immigration adjudication services or whether a fee adjustment is necessary. Following a fee review, if the revenue forecast is less than the budget forecast, then DHS will generally propose new or increased USCIS fees to cover the budget-revenue

[47] $0.3 million is the reestablishment of IPO general expense funds that were cut during the COVID–19 pandemic.

[48] VPC receipt projections change based on the data trends (seasonality, overall trend, etc.) for each form type, or if there is a change in policy surrounding a form or an anticipated policy change to take into account.

[49] The sum of the rounded amounts in the Revenue with Current IEFA Fees column for EB–5 is $107.6. However, the EB–5 projected revenue of $107,478,500 is $107.5 in millions. The difference is from rounding the other amounts in the table.

shortfall. Otherwise, USCIS may reduce certain costs or services or reduce reserves to cover the difference. Table 8 later in this preamble summarizes the projected EB–5 program cost and current revenue differential.

D. EB–5 Fee Study Results and Proposed Fee Adjustments

Through the EB–5 fee study, USCIS determined that, at current fee levels, projected costs for EB–5 workload in the FY 2024/2025 fee review exceed projected revenue but are lower than projected revenue in other cases. One example of projected costs that exceed projected revenue are the workloads for Forms I–956H and I–956K, which do not have fees and thus do not generate revenue. DHS proposes to adjust the fee schedule at a level that will enable USCIS to better align the costs of administering the EB–5 program, attain the EB–5 processing time goals as provided in the EB–5 Reform Act, and make improvements to the information technology systems used to administer the EB–5 program. In most cases, the proposed fees are lower than the current fees because the proposed fees do not include cost reallocation, as explained earlier in this preamble. *See* section IV.B.4.

After resource costs are identified, the ABC model distributes them to USCIS' primary processing activities. See the fee study in the docket of this rulemaking for more information on the ABC model, activities, and results described in this section.

Next, the ABC model distributes activity costs to immigration benefit requests. Each total cost result is based on the resources, activities, and various drivers that contribute to the estimated cost of its completion. The ABC model estimates total cost before calculating unit costs. For total costs for EB–5 and other USCIS workloads, see Appendix Table 1 of the fee study included in this docket. For total cost by activity as unit costs, see Appendix Table 2 of the fee study included in this docket.

To focus the ABC model and study specifically on the EB–5 program forms, the Department developed Table 8 of this preamble. Table 8 shows the revenue estimate, by EB–5 benefit requests, based on the current fees (set in the FY 2022/2023 fee rule), the total cost of adjudication by EB–5 form type, and the dollar and percent difference between the cost of adjudication and the revenue received for each EB–5 form type. This difference shows that the revenue estimate with current fees exceeds the full cost for these forms in most cases; in other cases, the cost is higher than the revenue because the workload does not have a current fee. As such, DHS is proposing to adjust the EB–5 benefit request fees. Most proposed fees are lower than the current fees while other proposed fees would recover the cost of EB–5 workloads that do not have fees. *See* Table 1 earlier in this preamble. DHS is proposing the fees in this rule to be aligned with EB–5 workloads, recover projected costs, and achieve the processing time goals of the EB–5 Reform Act, as detailed in the fee study.

TABLE 8—REVENUE WITH CURRENT IEFA FEES COMPARED TO TOTAL COSTS FROM EB–5 FEE STUDY RESULTS

Immigration benefit request	Revenue with current IEFA fees	Total cost from ABC model	$ Difference	% Difference
I–526/I–526E Immigrant Petition by Standalone/Regional Center Investor	$41,571,000	$35,498,584	($6,072,416)	(15)
I–527 Amendment to Legacy Form I–526	0	3,656,842	3,656,842	N/A
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status	32,670,750	26,963,151	(5,707,599)	(18)
I–956 Application for Regional Center Designation—Initial	2,384,750	918,041	(1,466,709)	(62)
I–956 Application for Regional Center Designation—Amendment	7,154,250	1,192,033	(5,962,217)	(83)
I–956F Application for Approval of Investment in a Commercial Enterprise	21,462,750	8,730,992	(12,731,758)	(59)
I–956G Regional Center Annual Statement	2,235,000	1,369,965	(865,035)	(39)
I–956H Bona Fides of Persons Involved with Regional Center Program	0	118,387	118,387	N/A
I–956K Registration for Direct and Third-Party Promoters	0	1,095,971	1,095,971	N/A
Regional Center Terminations	0	6,846,310	6,846,310	N/A
EB–5 Total (IEFA only)	107,478,500	86,390,276	(21,088,224)	(20)

1. Proposed EB–5 Immigration Benefit Request Fee Adjustments

The EB–5 program currently encompasses Forms I–526, I–526E, I–829, I–956, I–965F, I–956G, I–956H, and I–956K. In addition, DHS proposes to create a new Form I–527, for legacy workloads, as described later in this section. In accordance with the EB–5 Reform Act and the INA, DHS proposes the following EB–5 immigration benefit request fee adjustments in this rule:

- DHS calculated a proposed fee for Form I–526, Immigrant Petition by Standalone Investor, and Form I–526E, Immigrant Petition by Regional Center Investor, as $9,530 to recover full cost. *See* proposed 8 CFR 106.2(d)(2)(i). DHS is also proposing the EB–5 Technology Fee, in the amount of $95, be added to the fees for Forms I–526 and I–526E. *See* proposed 8 CFR 106.2(d)(2)(iii). The total proposed fee for Forms I–526 and I–526E is $9,625 in most cases. Later in this section, the Department further discusses the EB–5 Technology Fee.
- DHS calculated a proposed fee for Form I–527, Amendment to Legacy Form I–526, as $8,000. *See* proposed 8 CFR 106.2(d)(3). The Department discusses the purpose of the proposed amendment in section IV.B.3 of this preamble.
- DHS calculated a proposed fee for Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status, as $7,860. *See* proposed 8 CFR 106.2(d)(4).
- DHS calculated a proposed fee for Form I–956, Application for Regional Center Designation, as $28,895 for initial filings and $18,480 for amendments. *See* proposed 8 CFR 106.2(d)(5).
- DHS also proposes a $29,935 fee for Form I–956F, Application for Approval of Investment in a Commercial Enterprise. *See* proposed 8 CFR 106.2(d)(6).
- The proposed fee for Form I–956G, Regional Center Annual Statement, is $2,740. *See* proposed 8 CFR 106.2(d)(7).
- The proposed fee for Form I–956H, Bona Fides of Persons Involved with Regional Center Program, is $55. *See* proposed 8 CFR 106.2(d)(8).
- The proposed fee for Form I–956K, Registration for Direct and Third-Party Promoters, is $2,740. *See* proposed 8 CFR 106.2(d)(9).

As discussed earlier, projected volumes and completion rates are two of

the main drivers in the EB–5 fee study results. Staffing requirements and costs change as volume or completion rate estimates change. The proposed fees represent consistent application of the methodologies previously outlined in this preamble. In each case, the EB–5 proposed fees are based on the ABC model outputs that meet EB–5 Reform Act processing guidelines.

2. EB–5 Technology Fee

The EB–5 Reform Act authorized USCIS to begin charging a technology fee ''. . . in an amount that is not greater than one percent of the fee . . . to make improvements to the information technology systems used by the Secretary of Homeland Security to process, adjudicate, and archive applications and petitions.'' *See* Public Law 117–103, div. BB, sec. 106(c).

Through this rule, DHS proposes that the EB–5 technology fee will only apply to Form I–526, Immigrant Petition by Standalone Investor, and Form I–526E, Immigrant Petition by Regional Center Investor.[50] First, DHS calculated the proposed fee of $9,530 for Forms I–526 and I–526E, as described earlier in the preamble. One percent of $9,530 is $95.30. DHS rounded $95.30 down to the nearest $5 increment to calculate the proposed $95 EB–5 technology fee.[51] As such, the proposed $95 EB–5 technology fee is approximately 0.997 percent of the proposed fees for forms I–526 and I–526E. This approach ensured that the applicable immigration benefit requests did not exceed 1 percent of the form fee and yielded a technology fee of $95 per form. *See* proposed 8 CFR 106.2(d)(2)(iii). This amount is included in the total form fee for initial applications of Forms I–526 and I–526E, as noted in Table 1 of this preamble.

USCIS will use this fee revenue to move IPO from a paper-based filing system to a modern electronic process for the entire IPO case life cycle and make other technological and infrastructure improvements. DHS will review the adequacy of the technology fee along with all other fees in each biennial fee review as required by the CFO Act.

3. Form I–527, Amendment to Legacy Form I–526

Under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), certain good faith investors may retain eligibility following termination of their regional center or debarment of their NCE or JCE. USCIS interprets section 203(b)(5)(M) of the INA to apply to investors who filed Form I–526 petitions for classification before the EB–5 Reform Act was enacted. Therefore, USCIS proposes to create Form I–527, Amendment to Legacy Form I–526, for investors who filed their petitions before the EB–5 Reform Act was enacted who choose to amend their petition in order to retain their eligibility under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), where their regional center is terminated or their NCE or JCE is debarred. *See* section VI.J, Paperwork Reduction Act (PRA), for a more complete description of Form I–527.

V. EB–5 Integrity Fund Fees and Penalties

A. EB–5 Integrity Fund

The EB–5 Reform Act established a special fund to be known as the EB–5 Integrity Fund. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The Integrity Fund is to be used by DHS for the following:

(1) Conducting investigations based outside of the United States, including monitoring and investigating program-related events and promotional activities and ensuring that an investor's funds were obtained from a lawful source and through lawful means;

(2) Detecting and investigating fraud or other crimes;

(3) Determining whether regional centers, NCEs, JCEs, and investors (and their spouses and children) comply with U.S. immigration laws;

(4) Conducting audits and site visits; and

(5) For other purposes as DHS determines necessary.

INA sec. 203(b)(5)(J)(iii), 8 U.S.C. 1153(b)(5)(J)(iii).

In FY 2023, USCIS issued a statement of policy and interpretive rule in the **Federal Register** regarding the EB–5 Integrity Fund Fee of $20,000 or $10,000. *See* 88 FR 13141 (Mar. 2, 2023). The notice explained how regional centers should determine the amount of the fee and provided the process for how to pay it. USCIS imposed the EB–5 Integrity Fund Fee without soliciting public comment because the fees are explicitly provided for in the EB–5 Reform Act.

B. Current EB–5 Integrity Fund Fees

The EB–5 Integrity Fund is a separate fund maintained at the U.S. Department of the Treasury for collecting the fees designated in the EB–5 Reform Act. The INA makes the funds available to the Secretary for the permissible purposes outlined earlier. As USCIS solely administers the EB–5 program, DHS proposes that USCIS will continue to determine how to use these funds as appropriate to meet the statutory requirements.

These fees are to be used by USCIS to execute auditing activities for regional centers to ensure compliance with EB–5 requirements and review the flow of investor capital into capital investment projects. Table 9 identifies the fees as delineated in the EB–5 Reform Act.

Each Form I–526E filer is required to pay $1,000 to the EB–5 Integrity Fund, in addition to any form fees. USCIS began collecting the new fee in 2022, as required by the EB–5 Reform Act. *See* 88 FR 13141, 13142 n.1 (Mar. 2, 2023). Each regional center is required to make an annual payment into the EB–5 Integrity Fund in relation to the number of total investors in its new commercial enterprises in the preceding fiscal year. Per the new provisions of the INA added by the EB–5 Reform Act, regional centers with 21 or more total investors are required to pay $20,000 annually to the EB–5 Integrity Fund. Regional centers with 20 or fewer total investors are required to pay $10,000 annually to the EB–5 Integrity Fund. The INA authorizes the Secretary to increase these amounts by regulation as may be necessary to ensure that the amounts in the EB–5 Integrity Fund are sufficient to carry out its designated purposes. *See* INA sec. 203(b)(5)(J)(ii)(III), 8 U.S.C. 1153(b)(5)(J)(ii)(III). DHS is proposing to increase these amounts, as discussed in the next section.

The measurement of the number of investors in a regional center and the timing of EB–5 Integrity Fund Fee payments is discussed in Section V.D.2.

[50] Section 106(c)(2) permits the charging of the EB–5 technology for filing ''a petition under section 203(b)(5) of the [INA],'' which DHS interprets to mean only petitions for classification under section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5) (Form I–526 and Form I–526E). Other filings under that section of the INA are not referred to as petitions (*e.g.,* Form I–956F, Application for Approval of an Investment in a Commercial Enterprise) and the only other type of EB–5 petition (Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status) is filed under section 216A of the INA, 8 U.S.C. 1186b.

[51] In other fee rules, DHS typically rounds USCIS fees to the nearest $5 increment. *See, e.g.,* 88 FR 402, 450–451 (Jan. 4, 2023); 81 FR 73292, 73303 n.43, 73304 n.45 (Oct. 24, 2016); 72 FR 29851, 29866 (May 30, 2007). In this case, DHS rounded down to $95 to propose an EB–5 technology fee that is less than 1 percent of the proposed fees for Forms I–526 and I–526E.

TABLE 9—CURRENT EB–5 INTEGRITY FUND FEES

	Amount
I–526E EB–5 Integrity Fund Fee	$1,000.
Regional Center Integrity Fund Fee (88 FR 13141 (Mar. 2, 2023))	$20,000 or $10,000.

DHS believes that the INA's language is plain and clear that each designated regional center must pay the Integrity Fund Fee annually to avoid the penalties required by the Act. *See* INA sec. 203(b)(5)(J)(iv)(I), 8 U.S.C. 1153(b)(5)(J)(iv)(I) (''if *any regional center* does not pay the fee required'') (emphasis added); INA sec. 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II) (''terminate the designation of *any regional center* that does not pay the fee required under clause (ii)'') (emphasis added). DHS notes that some stakeholders have read the INA's language as excluding regional centers designated before the EB–5 Reform Act from needing to pay the Integrity Fund Fee because the INA orders DHS to collect the annual fee ''from each regional center designated under subparagraph (D).'' INA sec. 203(b)(5)(J)(ii)(I), 8 U.S.C. 1153(b)(5)(J)(iv)(I). They state that because pre-EB–5 Reform Act regional centers were not designated under subparagraph (D), they are not subject to the new provisions and requirements.[52]

DHS reiterates that the statutory language is clear in that these new provisions of the INA added by the EB–5 Reform Act, including the required fees and penalties, also apply to previously designated regional centers as of the date of enactment. Section 103(a) of the EB–5 Reform Act repealed section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), which was the authority that established and formerly authorized the Regional Center Program, and under which regional centers were previously designated. Public Law 117–103, div. BB, sec. 103. The EB–5 Reform Act moved the relevant provisions regarding regional centers, including the authority for their designation, to section 203(b)(5)(E) of the INA, 8 U.S.C. 1153(b)(5)(E), titled ''Regional Center Program.'' Section 203(b)(5)(E)(i) of the INA, 8 U.S.C. 1153(b)(5)(E)(i), then provides for visa allocations for post-EB–5 Reform Act regional center investors participating in the program involving regional centers ''which [have] been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth.'' The EB–5 Reform Act also added various new provisions to the INA to regulate designated regional centers in accordance with this newly codified statutory designation authority, including the requirement to file an annual statement under section 203(b)(5)(G)(i) of the INA, 8 U.S.C. 1153(b)(5)(G)(i), and to then pay an annual fee into the EB–5 Integrity Fund under section 203(b)(5)(J)(ii)(I) of the INA, 8 U.S.C. 1153(b)(5)(J)(ii)(I). Applying these provisions of the INA added by the EB–5 Reform Act, specifically the EB–5 Integrity Fund Fee and penalties, prospectively to existing regional centers is the best reading of the statute because they are designated regional centers under (E), as there is no longer any other existing authority under which they may be designated. Further, to deem them previously designated, and not designated under (E), could create a legal fiction and lead to arbitrary results. For example, that could mean that DHS has no legal authority to regulate those entities, verify compliance with EB–5 laws, protect the investors, and penalize regional centers that commit fraud, among other important measures.

Lastly, DHS does not believe applying these provisions of the INA added by the EB–5 Reform Act in this manner is impermissibly retroactive. Although previously designated regional centers became regional centers before the EB–5 Reform Act's enactment, the EB–5 Reform Act did not explicitly exclude them from meeting the new requirements. A regional center is unlike a typical petitioner or applicant who generally submits one benefit request and establishes eligibility; rather, a regional center seeks a designation that they must actively maintain and for which they must annually demonstrate compliance to DHS.[53] Because the previous regional center statutory authority was repealed, those that seek to maintain their designation must comply with the new requirements added to the INA by the EB–5 Reform Act. In accordance with the statute, DHS is proposing to continue to apply these requirements prospectively, as of the date of the EB–5 Reform Act's enactment, to all regional centers.

C. Proposed Inflation Adjustment to EB–5 Integrity Fund Fees

DHS proposes to increase EB–5 Integrity Fund fees by the rate of inflation since enactment of the EB–5 Reform Act on March 15, 2022. The EB–5 Reform Act authorized DHS to adjust the Integrity Fund fees as necessary to ensure that amounts in the Fund are sufficient to carry out the permissible uses of the fund. *See* INA sec. 203(b)(5)(J)(ii)(III), 8 U.S.C. 1153(b)(5)(J)(ii)(III); *see also* 8 U.S.C. 1153(b)(5)(J)(iii). While the authority for these fees is fairly new, and USCIS is adjusting to this new revenue stream, increasing the fees by the amount of inflation will allow USCIS to recover more of its operating costs associated with maintaining the integrity of the EB–5 program and help sustain USCIS efforts in future years.

DHS has a long history of adjusting fees by inflation; therefore, the rate of inflation is a particularly rational method on which to base an adjustment of those fees. DHS regularly increases certain fees by inflation because of specific statutory authority to do so. *See, e.g.,* 88 FR 89539 (Dec. 28, 2023) and 87 FR 18227 (Mar. 30, 2022). For over 24 years,[54] Congress has indicated that an increase in costs through inflation, more specifically the

[52] Regional centers have sought to enjoin DHS's collection of the EB–5 Integrity Fund fee from regional centers designated before enactment of the EB–5 Reform Act. Following denial of the regional centers' motions for preliminary injunction, U.S. District Courts in the Southern District of Florida and District of Columbia subsequently rejected this interpretation advanced by these regional centers and granted DHS's motions to dismiss these lawsuits. *Sunshine State Reg'l Ctr., Inc.* v. *Jaddou,* 23–cv–60795 (S.D. Fla. Dec. 29, 2023) (order granting DHS's motion to dismiss), appeal filed Jan. 1, 2024; *EB5 Holdings, Inc.* v. *Jaddou,* 23–cv–1180 (D.D.C. Feb. 20, 2024) (order granting DHS's motion to dismiss).

[53] *See, e.g.,* INA sec. 203(b)(5)(E) (providing authority to designate regional centers for ongoing participation in the regional center program and requiring, among other things, periodic amendments to designation based on specified changes and ongoing recordkeeping and audit obligations), INA sec. 203(b)(5)(G) (requiring the submission of annual statements to provide recertification of compliance with particular requirements and provide periodic information regarding associated NCEs), INA sec. 203(b)(5)(I) (requiring periodic recertification of compliance with securities laws), and INA sec. 203(b)(5)(J) (requiring the annual payment of EB–5 Integrity Fund fees).

[54] *See* Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

Consumer Price Index for All Urban Consumers (CPI–U), is a rational reason for DHS to adjust a USCIS fee.[55] In the FY 2022/2023 fee rule, DHS limited some fee increases by inflation. *See* 89 FR 6194, 6212 (Jan. 31, 2024). In that same fee rule, DHS finalized a regulatory mechanism to adjust USCIS fees by inflation when they are not set by statute. *See* 89 FR 6194, 6281–6282 (Jan. 31, 2024); *see also* 8 CFR 106.2(d).

DHS proposes to adjust Integrity Act fees by using the change in the CPI–U from the first half of 2022 to the first half of 2024. In the first half of 2022, the CPI–U was 288.347, and in the first half of 2024, it was 312.145.[56] Therefore, between the first halves of 2022 and 2024 respectively, the CPI–U increased by 8.25 percent.[57] If this percentage increase were applied to the current fees, the I–526E EB–5 Integrity Fund Fee of $1,000 would increase to $1,085; the $10,000 Regional Center Integrity Fund Fee would increase to $10,825; and the $20,000 Regional Center Integrity Fund Fee would increase to $21,650.[58] *See* proposed 8 CFR 106.2(d).

DHS considered different date ranges and the resulting percentage change in CPI–U before determining the proposed inflation adjustment. For example, DHS considered using the change in CPI–U from March 2022 to November 2024, which was approximately 9.74 percent.[59] This approach would use the most recent data at the time of this writing, but it would also be subject to monthly volatility. Yet another alternative approach would be to use June 2022 to June 2024, similar to a premium processing fee increase, which would be approximately 6.03 percent.[60] DHS proposes to use the 8.25 percent change from the first half of 2022 to the first half of 2024 because it marks the 2-year anniversary of the EB–5 Reform Act without relying on monthly variation in the index. The proposed percentage increase may be considered a midrange estimate for inflation because it is less than the inflation changes using monthly data but more than the change between June 2022 and June 2024. In any case, it is likely that inflation will continue to increase before DHS could adopt this proposed increase in a final rule. Therefore, the fee amounts in the final rule will be based on inflation as of the date the final rule is scheduled to take effect, and they may increase slightly to account for the time required to address comments, draft and publish a final rule. That increase will be foreseeable and based on a non-variable calculation and a well-known published source, and will, therefore, be a logical outgrowth of the proposed rule. Otherwise, DHS would set fees in the final rule at a level that would not recover the cost of inflation at the time of a final rule.

Integrity Fund revenue has varied significantly, making it harder for USCIS to plan how to use it. In FY 2023 and FY 2024, the Integrity Fund collected approximately $8 million and $11 million, respectively. In FY 2025, forecasts with the current Integrity Fund fees range from approximately $10 to $14 million, which includes back payments from FY 2023 and FY 2024. The proposed increase to Integrity Fund fees may provide approximately $1 million in additional revenue and better protect the purchasing power of USCIS investments in staffing and information technology for the EB–5 program.

D. EB–5 Integrity Fund Penalties

The EB–5 Reform Act directs DHS to impose penalties for failing to pay and for late payments of the EB–5 Integrity Fund fees. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). Specifically, the law requires a reasonable penalty fee (to be paid to USCIS and deposited into the Integrity Fund when collected) on a regional center that does not pay the annual Integrity Fund fee within 30 days after the date on which such fee is due. INA sec. 203(b)(5)(J)(iv), 8 U.S.C. 1153(b)(5)(J)(iv). USCIS must terminate the designation of any regional center that does not pay the fee within 90 days after the date on which such fee is due. INA sec. 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II).

In its notice of March 2, 2023, USCIS articulated these requirements. *See* 88 FR 13141, 13143–13144 (Mar. 2, 2023). USCIS announced that it would comply with the requirement that it terminate the designation of any regional center that does not pay the full required fee within 90 days after the date on which such fee is due, after providing a notice of intent to terminate and the opportunity for a regional center to prove that the fee was paid in the proper amount by the due date before sending a notice of termination. *Id.* However, USCIS decided that, as a matter of discretionary enforcement policy, it will not begin charging a late fee until the amount of the late fee, as well as the process for collecting the late fee is finalized. *Id.* DHS proposes the late fee as required in this rule and explains its rationale for the amount of the late fee in the section that follows.

1. Proposed Penalties

DHS proposes to impose the following penalties for paying the Integrity Fund fee late (31 days or more after it is due):

- Ten percent of the required integrity fee (*e.g.,* 10 percent of $10,000 or $20,000, subject to adjusting such required amounts for inflation) for a regional center that pays its fees on day 31 through and including day 60 after the due date.
- Twenty percent of the required integrity fee for a regional center if their fee is paid on day 61 through and including day 90 after it is due.
- Terminate a regional center designation if it fails to pay the fee within 90 days of the date on which such fee is due.

By requiring a ''reasonable'' penalty fee in section 203(b)(5)(J)(iv) of the INA, 8 U.S.C. 1153(b)(5)(J)(iv), Congress has assigned DHS the authority to give meaning to that statutory term. *See Loper Bright Enterprises* v. *Raimondo,* 144 S. Ct. 2244, 2263 (2024) (''In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes 'expressly delegate' to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to 'fill up the details' of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.' '') (internal citations omitted).

In determining what would constitute a reasonable penalty, DHS considered two main factors. First, DHS looked to the EB–5 Reform Act to find whether Congress codified any penalty percentages for this program. The EB–5 Reform Act authorizes graduated sanctions of up to 10 percent of

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[55] *See, e.g.,* 8 U.S.C. 1356(u) (premium processing fees), 48 U.S.C. 1806(a)(6)(A)(ii) (Commonwealth of the Northern Mariana Islands education fee).

[56] The latest CPI–U data are available at *https://data.bls.gov/toppicks?survey=bls* (last visited Dec. 11, 2024). Select CPI–U 1982–84=100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button.

[57] DHS calculated this by subtracting the first half of 2022 CPI–U (288.347) from the first half of 2024 CPI–U (312.145), then dividing the result (23.80) by the first half of 2022 CPI–U (288.347). Calculation: $(312.145 - 288.347)/288.347 = 0.0825 \times 100 = 8.25$ percent.

[58] DHS rounds all fees to the nearest $5 increment.

[59] DHS calculated this by subtracting the March 2022 CPI–U (287.504) from November 2024 CPI–U (315.493), then dividing the result (27.99) by the March 2022 CPI–U (287.504). Calculation: $(315.293 - 287.504)/287.504 = 0.0974 \times 100 = 9.74$ percent.

[60] Congress specified that DHS use CPI–U from June when adjusting premium processing fees by inflation. *See* INA sec. 286(u)(3)(C), 8 U.S.C. 1356(u)(3)(C); *see also* 8 CFR 106.4(d). DHS calculated this by subtracting the June 2022 CPI–U (296.311) from June 2024 CPI–U (314.175), then dividing the result (17.86) by the June 2022 CPI–U (296.311). Calculation: $(314.175 - 296.311)/296.311 = 0.0603 \times 100 = 6.03$ percent.

petitioner capital for regional centers that fail to submit an annual statement or that commit certain violations. INA sec. 203(b)(5)(G)(iii), 8 U.S.C. 1153(b)(5)(G)(iii). Although the 10-percent penalty in the EB–5 Reform Act is a capped percentage of petitioner capital per regional center, because Congress has designated that percentage as appropriate, DHS believed that 10 percent was a reasonable starting point in setting a penalty. Second, DHS considered whether the dollar amount itself was reasonable. In this case, the 10 percent would amount to $1,000 or $2,000 based on the required amounts prior to adjusting for inflation depending on the regional center, which DHS believes is a reasonable late charge for failing to pay the fee after 30 days. The 20 percent would amount to $2,000 or $4,000 based on the required amounts prior to adjusting for inflation depending on the regional center, which DHS believes is a reasonable late charge for failing to pay the fee after 60 days. The goal of the proposed penalties program is to ensure that penalties are effective in deterring noncompliance. In addition to the amount being consistent with penalties that the law requires in similar contexts, DHS believes that the proposed penalties effectuate the authority of the statute by providing an amount that balances affordability, ability to pay, and some measure of accountability for the violation. The amounts will encourage payment and ensure timely collection of the EB–5 Integrity Fund fees.[61]

DHS recognizes that the statute did not explicitly set a separate 60-day penalty for failing to timely pay the fee. DHS proposes a graduated fee structure because it is common that late fees for payments of debts and fees generally increase as the delinquency period increases and subsequent missed or delayed payments occur.[62] Thus, DHS decided to increase the late fee to 20 percent when the fee became more than 31 days past due. As stated earlier, the proposed penalties effectuate the authority of the statute and are sufficient to encourage payment and ensure timely collection of the EB–5 Integrity Fund fees. There is an operational burden on USCIS if it is forced to expend resources on program integrity without timely receiving the funds needed to administer the EB–5 program. As such, DHS believes there is justification for a higher fee after 31 days.

DHS believes it is equitable to provide another opportunity for regional centers to remedy the failure to pay before proceeding to termination. Further, a graduated late penalty will further support the goal of encouraging payment and ensure timely collection of the Integrity Fund fee, without resulting in a significant burden to the agency. DHS believes that the proposed penalties are reasonable because they strike the necessary balance between the need for the fees and the financial ability of a regional center to pay them when required.

2. Calculation of Investors To Determine Amount Owed

The EB–5 Reform Act sets the standard annual fee at $20,000 for each designated regional center. INA sec. 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii). However, for those with ''20 or fewer total investors in its new commercial enterprises'' during the preceding fiscal year (October 1–September 30), the annual fee is reduced to $10,000. *Id.* Although ''investor'' is not specifically defined for purposes of INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5), it is used extensively throughout that section to refer to individuals seeking classification, or classified, under INA sec. 203(b)(5) 8 U.S.C. 1153(b)(5) (*i.e.* I–526 and I–526E petitioners). For purposes of INA sec. 216A, ''alien investor'' is defined as ''an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)'' under INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5). *See* INA 216A(f)(1), 8 U.S.C. 1186b(f)(1). DHS recognizes that there is no legal requirement that an investor remain invested in an NCE within a specific time period after they file Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status. *See* INA sec. 216A(d)(1)(A), 8 U.S.C. 1186b(d)(1)(A). DHS has, therefore, determined that the filing of the Form I–829 is an appropriate demarcation for purposes of determining the number of ''total investors in the preceding fiscal year'' as intended by the EB–5 Reform Act.[63] The Department welcomes public comments on that determination.

Accordingly, DHS proposes to define ''total investors'' in this context to include investors from the point of filing a petition for classification (Forms I–526, Immigrant Petition by Standalone Investor, or I–526E, Immigrant Petition by Regional Center Investor) through the point of filing a petition for removal of conditions (Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status). To calculate the total, DHS proposes to subtract the number of Forms I–829 associated with the regional center filed at any time on or before September 30 of that fiscal year (including filings from prior fiscal years) from the total number of pending and approved Forms I–526 associated with the regional center (filed on or before June 30, 2021) and Forms I–526E, Immigrant Petition by Regional Center Investor (filed on or after June 1, 2022, the date USCIS published the form) associated with the regional center filed at any time on or before September 30 of that same fiscal year (including filings from prior fiscal years). Proposed 8 CFR 106.2(d)(10)(i)(C). A Form I–829 that is filed separately by a spouse or child of an investor that obtained conditional permanent resident status based on their relationship to the investor and was not included on the principal investor's Form I–829 will be excluded from the total investor calculation. For example, if a regional center had 30 associated Form I–526 petitions, 10 associated Form I–526E petitions, and 20 associated Form I–829 petitions filed on or before September 30, of a given year, USCIS would estimate that regional center has 20 total investors in its NCEs for the applicable fiscal year for purposes of calculating the applicable Integrity Fund fee.

USCIS has followed this policy since it was initially developed through the Notice of EB–5 Regional Center Integrity Fund Fee. As described in the Notice of EB–5 Regional Center Integrity Fund Fee, USCIS considered alternative methods of calculating the number of investors; however, it determined that those options generally would either not capture the entire population or involve manual calculations that USCIS believes would place an unreasonable burden on the Agency's limited resources and be confusing and burdensome to the investor or regional center populations.

[61] As discussed in more detail below, regional centers derive revenue from several different sources including administrative fees from each associated investor. This administrative fee is typically 10 percent of the individual investment amount, which would typically equal $80,000 per investor based on the reduced required investment amount of $800,000.

[62] *See, e.g.,* Consumer Financial Protection Bureau, ''Why did my credit card issuer increase my late payment fee?'' *https://www.consumerfinance.gov/ask-cfpb/why-did-my-credit-card-issuer-increase-my-late-payment-fee-en-56/* (last reviewed Sept. 23, 2022).

[63] Though DHS recognizes that some EB–5 investors may remain invested in a new commercial enterprise even after filing or adjudication of their Form I–829 petition, determining when such investment ceases would be impractical as it would require the collection and validation of information regarding continued investment beyond that which is required to be submitted to establish eligibility for removal of conditions under section 216A of the INA, 8 U.S.C. 1186b.

See 88 FR 13141, 13143 (Mar. 2, 2023). For example, USCIS considered generally counting only the Forms I–526 that were filed within 2 years of the applicable period used for determining the EB–5 Integrity Fund fee given the expected 2-year minimum timeframe for the investment, or sustainment period, under the EB–5 Reform Act. INA sec. 203(b)(5)(A)(i); 8 U.S.C. 1153(b)(5)(A)(i). However, that method would likely be underinclusive given that many investors are actively in the process of investing (*i.e.,* not yet fully invested) when they file their Form I–526 petition as permitted under applicable requirements and, additionally, would not align with the sustainment period for those who filed before the EB–5 Reform Act, which runs approximately to the point of the Form I–829 filing, regardless of when they filed their Form I–526 or made their investment. For Form I–526E petitions filed after the EB–5 Reform Act, USCIS also considered generally counting only Form I–526E petitions whose investments were still within the 2-year period of investment expected under section 203(b)(5)(A)(i) of the INA; however, manual verification of the time period of investment for each regional center investor, rather than conducting a systems inquiry for total petition filings, would exhaust valuable and significant USCIS resources that the agency believes, in the balance, are better used in ensuring timely processing.

USCIS acknowledges the practical limitations of determining how many total investors may be in an NCE during any given fiscal year to ensure that the correct fee is paid. Nonetheless, the Department believes the proposed formula reflects the best interpretation of the statute, ensures that USCIS' limited resources are used most efficiently to ensure compliance with the EB–5 Reform Act, and minimizes the burden on the affected regional centers. DHS notes that 445 Regional Centers successfully paid their FY 2023 Integrity Fund Fees. 473 Regional Centers successfully paid their FY 2024 Integrity Fund Fees. 531 Regional Centers successfully paid their FY 2025 Integrity Fund Fees. There have been no public concerns nor operational concerns with the fee calculation process.

3. Timeline and Payment Process

The INA, as amended by the EB–5 Reform Act, provides that the Integrity Fee is due each year on October 1. INA sec. 203(b)(5)(J)(ii)(I); 8 U.S.C. 1153(b)(5)(J)(ii)(I). As proposed in this rule, the fee would be considered paid timely (*i.e.,* without penalty) if paid between October 1 and October 31, after which a late payment penalty would apply. Each designated regional center would need to pay the fee to USCIS online via the online form hosted on *Pay.gov* at *Pay.gov* EB5—Annual Fee for Regional Center.[64] Payment of this fee would need to be made by an authorized individual on behalf of a regional center. Proposed 8 CFR 106.2(d)(10)(i)(D). Each designated regional center would need to pay the fee with either a valid credit or debit card [65] or by authorizing an Automated Clearing House Debit transaction where the regional center provides its U.S. bank routing and checking account numbers to have money debited directly from its U.S. bank account. *Id.* DHS proposes to codify that fees must be paid using these methods to reduce administrative burdens and processing errors associated with fee payments. Requiring the use of a specific form of payment would not prevent regional centers from paying the required fees. Other payment methods, such as money orders and checks, require time-intensive procedures to input, reconcile, and verify receipts and deposits. USCIS can spend the time it would use for complying with payment processing requirements to adjudicate requests for benefits.

For each fiscal year after this rule becomes final, payments received November 1 through November 30 would require a late fee equal to 10 percent of the Integrity Fee amount to be paid in addition to the Integrity Fee. Payments received December 1 through December 30 would require an additional 20 percent to be added to the Integrity fee amount as a late fee.

If the regional center does not pay the full required fee, including the relevant 10 or 20 percent late fee, if assessed, before December 31, USCIS would initiate termination of the regional center. Proposed 8 CFR 106.2(d)(10)(ii)(A)–(B). USCIS would terminate the designation of any regional center that does not pay the full required fee within 90 days after the date on which such fee is due (*e.g.,* a regional center does not make payment, or a regional center pays $10,000 when it owes $20,000, by December 31 of the year the annual fee is due). Proposed 8 CFR 106.2(d)(10)(ii)(C). Termination would not be automatic and USCIS would provide a notice of intent to terminate and the opportunity for a regional center to prove that the fee, and all late fees if applicable, were paid in the proper amount by December 31 before sending a notice of termination. Proposed 8 CFR 106.2(d)(10)(ii)(C)(1). The termination of a regional center may be appealed as provided by 8 CFR 103.3. Proposed 8 CFR 106.2(d)(10)(ii)(C)(2).

E. Technical Change

The proposed rule would clarify the process by which an immigrant investor's spouse and children file separate Form I–829 petitions when they are not included in the Form I–829 filed by the immigrant investor.[66] Generally, an immigrant investor's derivatives should be included in the principal immigrant investor's Form I–829 petition. However, there are situations in which derivatives may not be included on the principal immigrant investor's Form I–829 petition, such as when the immigrant investor dies during the conditional residence period, or when the immigrant investor decides not to continue their conditional permanent resident status. In such circumstances, if the immigrant investor would have otherwise been eligible to have their conditions on status removed, then the derivatives would remain eligible to apply to remove the conditions on their status even if the immigrant investor cannot or will not file a Form I–829 petition.[67]

The regulations currently in effect do not clearly define the process by which derivatives may file a Form I–829 petition when they are not included on the principal's petition, including whether each derivative in such cases should file their own separate Form I–829 petition or whether the derivatives should jointly file on the same petition. This proposed technical change specifies that where the dependent family members cannot be included in the Form I–829 petition filed by the principal investor because that principal is deceased, all dependents (spouse and children) of the deceased investor may

[64] *See Pay.gov,* ''EB5—Annual Fee for Regional Center,'' *https://www.pay.gov/public/form/start/1055128580* (last visited Feb. 14, 2024).

[65] U.S. Department of Treasury guidelines permit USCIS to accept a maximum payment amount of $24,999 from one credit card in one day, and a single obligation cannot be split into multiple credit card payments over multiple days in order to evade this limit.

[66] DHS proposed and finalized this change as part of the EB–5 Immigrant Investor Program Modernization rulemaking. *See* 82 FR 4738 (Jan. 13, 2017) (proposed rule); 84 FR 35750 (July 24, 2019) (final rule). On June 22, 2021, a U.S. district court vacated the rule on grounds unrelated to this provision. *Behring Regional Center LLC* v. *Wolf,* 544 F. Supp. 3d 937 (N.D. Cal. 2021).

[67] *See* INA sec. 204(l), 8 U.S.C. 1154(l) (providing that upon the death of the principal beneficiary, surviving relative petitions and ''related applications'' must be adjudicated notwithstanding the death of the principal beneficiary).

be included on a single Form I–829 petition. *See* proposed 8 CFR 216.6(a)(1)(ii). DHS also proposes that each dependent must file a separate Form I–829 petition in all other situations in which the investor's spouse and children are not included in the investor's Form I–829 petition. *See id.* DHS notes that the Form I–829 Instructions indicate that if one's spouse and children are not included on their petition to remove conditions, ''each dependent must file [their] own petition separately.'' [68] DHS also recognizes that, for the less than 20 cases potentially impacted annually, there may have been an inconsistent agency practice with respect to when dependents were required to file a separate Form I–829 and seeks to clarify any inconsistency through this rulemaking. Lastly, these technical changes also propose to clarify that when a derivative beneficiary files a Form I–829 petition separately from the principal investor who does not file a Form I–829 petition (whether because of death or otherwise), the timeframe to file such petition is any time within which the principal investor would have been required to make such filing. This clarification aligns with and accords derivative beneficiaries the same process as the principal investor under the statutory requirements for petition filing. *See* INA sec. 216A(d)(2), 8 U.S.C. 1186b(d)(2).

VI. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that ''any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.''

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. See OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation' '' (Mar. 26, 2025).

1. Summary

The Department proposes to adjust Employment-Based Immigration, Fifth Preference (EB–5) immigration benefit request fees charged by USCIS. USCIS conducted an EB–5-specific fee study, as required by the EB–5 Reform Act. The fees are proposed to be set at a level that USCIS has determined would enable it to recover the costs of administering the EB–5 program and to allow it to attain the processing time goals and to ensure there are internal procedures and controls in place to try to maximize the likelihood that the statutory goals are met. It would also make improvements to the information technology systems used by DHS to administer the EB–5 program. This rule also proposes to codify elements of the EB–5 Reform Act in regulations, including the establishment of Form I–527.

The fee schedule DHS is proposing could impact approximately 11,260 EB–5 program filings (FY 2024/2025 projected estimate) annually across nine current forms and one new form. For the nine current forms (amounting to 10,805 projected filings), the collective fees would decrease from their current level by about 14.7 percent, or by about $2,259.[69] DHS estimates that the 10-year and annualized monetized costs could be about $42.1 million and $4.2 million, in order, in undiscounted terms. At a 3 percent discount rate, the figures would be $35.9 million and $3.6 million, in order. At a 7 percent discount rate, the figures would be $29.6 million and $3.0 million, in order. The impacts are summarized in Table 10, in which population figures reflect annualized averages over the 10-year period of analysis and the monetized figures reflect the average annualized equivalence discounted at 7 percent.

TABLE 10—SUMMARY OF POSSIBLE IMPACTS OF THE PROPOSED RULE

Summary of proposed change	Potential impact
• Fee changes for current EB–5 program forms	• Population: 10,805 filings. • Impact type: Transfers from requestors to DHS.[70] • Estimate: $24.4 million.
• Creation of Form I–527, Amendment to Legacy Form I–526	• Population: 457 individual filers. • Impact type: Costs applicable to the filing fee and time burden. • Estimate: $3.72 million.
• Penalties for late filing of the Integrity Fund fee	• Population: Maximum of 640 annual regional centers plus 3,500 investors affiliated with regional centers. • Impact type: Costs. • Impact estimate: Unquantified; unknown how many regional centers or affiliated investors would incur penalties, as the penalties are intended to act as an incentive for compliance.

[68] USCIS, Form I–829, ''Instructions for Petition by Investor to Remove Conditions on Permanent Resident Status,'' p. 1 (expires Mar. 31, 2027), *https://www.uscis.gov/i-829.*

[69] Volume presented is rounded from 11,262, comprising 10,805 projected current forms and 457 new Form I–527 filings.

TABLE 10—SUMMARY OF POSSIBLE IMPACTS OF THE PROPOSED RULE—Continued

Summary of proposed change	Potential impact
• Projected changes (increases) in forms' time burdens	• Population: 10,805 (across current forms). • Impact type: Costs. • Impact estimate: $403,722.
• Dependents filing Form I–829 separate from principal investor applicant.	• Population: Less than 20 annually based on past volumes. • Impact type: Costs applicable to the filing fee and time burden. • Impact estimate: $88,591.

Source: USCIS analysis (Apr. 28, 2024).

In addition to the impacts summarized in Table 10, and as required by OMB Circular A–4, DHS presents the accounting statement showing the anticipated costs and benefits associated with this proposed regulation.[71]

TABLE 11—OMB CIRCULAR A–4 ACCOUNTING STATEMENT

[Millions, $2024; period of analysis: FY 2024 through FY 2033]

Category	Primary estimate	Minimum estimate	Maximum estimate	Notes	Source/ citations
Benefits	N/A	N/A	N/A	Not estimated	NA.
Annualized monetized benefits:					
3%	N/A	N/A	N/A	Not estimated	NA.
7%	N/A	N/A	N/A		
Unquantified benefits	The proposed fees would recover the costs of administering the EB–5 program including the costs to hire staff and put internal procedures and controls in place within the program office with the intent of maximizing the likelihood that the statutory goals are met. It would make improvements to the information technology systems used by DHS to administer the EB–5 program.			.....	RIA.
Costs	$4.17	N/A	N/A	Applicable to filing costs and time burdens associated with the new Form I–527 and a small number of dependents who file their Form I–829 separately from the principal (investor); Increase in forms' time burdens.	RIA.
Annualized monetized costs:					
3%	3.6	N/A	N/A	N/A	RIA.
7%	3.0	N/A	N/A		
Unquantified costs	.....	.....	.....	Penalties and fines applicable to late Integrity Fund payments are not estimated; Rule familiarization costs.	RIA.
Transfers	N/A	N/A	N/A	Applicable to proposed fee changes for the EB–5 program forms.	RIA.
Annualized monetized transfers (2%):					
3%	24.41	N/A	N/A	Transfers from requestors to DHS	RIA.
7%	24.41	N/A	N/A		
Effects on State, local, and tribal governments.	No significant impacts to national labor force or to the labor force of individual States is expected; DHS does not expect impacts to tribal governments.				RIA.
Effects on small businesses	Based on available, but limited, data and information, most regional centers and almost all NCEs and JCEs directly involved in EB–5 investment activity would be small entities according to Small Business Administration (SBA) size standards.[72] However, DHS cannot determine how the impacts found in this analysis (comprising costs and transfers) would affect small entities, or how they might respond to such impacts. As such, DHS cannot determine how the impacts could possibly affect downstream effects to investment activity or job creation. An important caveat is that the number and proportion of the entities that are truly small is likely to be lower than that found in the initial determination, as DHS does not have complete data on the income accruing to the EB–5 businesses.				RFA.
Effects on wages	None	None	None	None	NA.
Effects on growth	None	None	None	None	NA.

Source: DHS, USCIS analysis (Feb. 14, 2024).

[70] Transfer payments are monetary payments from one group to another that do not affect total resources available to society. *See* OMB Circular A–4 pp. 14 and 38 for further discussion of transfer payments and distributional effects. OMB Circular A–4 is available at: *https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[71] OMB, Circular A–4, ''Regulatory Analysis,'' p. 44 (Nov. 9, 2023), *https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

2. Economic Impacts

a. Monetized Impact Estimates

In introducing the analysis, DHS presents in Table 12 information captured from the preamble (Tables 1–3) to show the current and projected fees for the EB–5 program forms. As is shown, we calculate weighting factor based on the volume for each form relative to the annualized total to generate a weighted average change in fees (which are accounted for as transfers), exclusive of the Form I–527, which this rule is introducing.[73]

TABLE 12—EB–5 PROGRAM FORMS WITH PROPOSED FEE CHANGES

Form	Volume	Weight	Current	Proposed	% Diff.	Change	Weight %	Weight
I–526	225	2.1	$11,160.0	$9,625.0	−13.8	−$1,535.0	−0.3	−$32.0
I–526E(i)	3,395	31.4	11,160.0	9,625.0	−13.8	−1,535.0	−4.3	−482.3
I–829	3,430	31.7	9,525.0	7,860.0	−17.5	−1,665.0	−5.5	−528.5
I–956(i)	50	0.5	47,695.0	28,895.0	−39.4	−18,800.0	−0.2	−87.0
I–956(a)	150	1.4	47,695.0	18,480.0	−61.3	−29,215.0	−0.9	−405.6
I–956F	450	4.2	47,695.0	29,935.0	−37.2	−17,760.0	−1.6	−739.7
I–956G	500	4.6	4,470.0	2,740.0	−38.7	−1,730.0	−1.8	−80.1
I–956H	2,100	19.4	0.0	55.0	0.0	55.0	0.0	10.7
I–956K	400	3.7	0.0	2,740.0	0.0	2,740.0	0.0	101.4
							−14.7	−2,258.8

Source: USCIS analysis (Jan. 13, 2025).

As is shown in the final columns of Table 12, based on the projected volumes in Table 3, and proposed fees, the fees decrease by $2,259 or by 14.7 percent.

The volumes shown represent the average annual forecasts based on the USCIS VPC. The VPC predicts USCIS annual workload volumes using various factors, including statistical forecasts, and subject-matter expertise from various USCIS directorates and program offices, including the IPO, USCIS service centers, the National Benefits Center, and regional, district, and field offices.

The VPC makes projections 7 years out (FY 2024 through FY 2030). In many rulemakings DHS uses a baseline of previous years, usually between three and six. In this case, however, we think that projected volumes present a more salient baseline because there are new forms involved, and the EB–5 Reform Act made substantial changes in key areas of the program. As a result, we cannot be reasonably certain that the past will represent the future. Since the changes are not fully implemented yet, there could be variation in the projections, but we rely on the projected volumes.

Because DHS is normally required to estimate impacts over a 10-year time horizon, for FY 2031 through FY 2033, we simply extend the forecasted value to FY 2034 out from the VPC FY 2024 through FY 2030 Figures.[74] Table 13 builds the economic impacts applicable to the proposed fee changes for current forms. The final columns report the annual total across all impacted forms, while the final rows report the 10-year average annual figures for each form, in order. While there is a single Form I–956, we have included two columns to account for initial filings (''i'') and amendments (''a''). The reason for parsing them out is that while their current fee is the same ($47,695) their proposed fees will be different ($44,600 and $28,525, in order). It is noted that the new Form I–527, Amendment to Legacy Form I–526, with a projected annual volume of 457, is not included in Table 13. The reason is that this form will incur a different accounting protocol from the other forms and is treated in a separate module. Specifically, the fee impacts associated with this form will be accounted for as a cost while the others will constitute transfers.

Table 13 presents the projected annual volumes as well as the filing fees at the current and proposed levels. Table 13 is set up this way because the volumes are projected to be the same each FY, and for brevity each actual year is therefore not shown. The table also presents the impact as the difference between current and future filing fees, and the final column shows the 10-year totals per form.

TABLE 13—EB–5 PROGRAM PROJECTED FILING COST IMPACTS

[Millions, FY 2024 through FY 2033]

Form No.	Annual volume projection	Current filing fees	Future filing fees	Impact (difference)	Ten year-total
I–526	225	$2.51	$2.17	−$0.35	−$3.45
I–526E(i)	3,395	37.89	32.68	−5.21	−52.11
I–526E(a)	105	1.17	1.00	−0.17	−1.71
I–829	3,430	32.67	26.96	−5.71	−57.11
I–956(i)	50	2.38	1.44	−0.94	−9.40
I–956(a)	150	7.15	2.77	−4.38	−43.82
I–956F	450	21.46	13.47	−7.99	−79.92
I–956G	500	2.24	1.37	−0.87	−8.65
I–956H	2,100	0.00	0.12	0.12	1.16
I–956K	400	0.00	1.10	1.10	10.96

[72] SBA size standards are found at: *https://www.sba.gov/document/support-table-size-standards.*

[73] While there is a single Form I–526E, we have included two columns to account for initial filings (''i'') and amendments (''a''). The reason for parsing them out is that while their current fee is the same, their proposed fees will be different (as is explained below). In addition, the form I–956 is broken out the same way.

[74] The VPC is situated in the DHS, USCIS, OPQ, Workload Analysis and Resource Modeling (WARM) Division.

TABLE 13—EB–5 PROGRAM PROJECTED FILING COST IMPACTS—Continued

[Millions, FY 2024 through FY 2033]

Form No.	Annual volume projection	Current filing fees	Future filing fees	Impact (difference)	Ten year-total
Annual		107.48	83.07	−24.41	
Ten-year total		1,074.8	830.72	−244.07	
Annual average	10,805	107.48	83.07	−24.41	

Source: USCIS Analysis (Jul. 20, 2024).

As Table 13 reports, based on the volume projections, at current fee rates the costs associated with filing forms for the EB–5 program would be $1,074.8 million over 10 years or $107.5 million annually in undiscounted terms. Based on the proposed future fees, the filing costs could be $830.7 million over 10 years or $83.1 million on an annually in undiscounted terms. The impact (difference) could be a decrease of $244.1 million over 10 years or a decrease of $24.4 million on an annual basis (Table 13). The impacts attributable to the proposed fee changes would represent a net decrease in transfers from requestors to DHS.

b. Costs of the Proposed Rule

In addition to potential impacts pertinent to form related fees, several expected impacts are accounted for as costs. DHS has determined that there would be minor time burden changes applicable to the existing EB–5 Program forms due to this rule. To estimate the opportunity cost of time impacts, we need to rely on a wage bound. This is difficult because EB–5 entities can involve complex business activities. DHS does not have salient information on the jobs the individual filers are involved in, but we assess that most individuals involved in the program investments are primarily involved (for regional centers, NCEs, and JCEs) in the business of arranging loans and financing and managing these efforts applicable to business plans. Therefore, we selected 20 occupations from the Bureau of Labor Statistics (BLS) Standard Occupational Codes (SOC) that we think reasonably capture the individuals involved in these activities. These SOC titles and associated terms mean hourly wage for the detailed industries are reported in Table 14.

TABLE 14—OCCUPATION TITLES AND HOURLY WAGES FOR EB–5 PROGRAM FORM FILERS

BLS SOC title	Wage ($)
General and Operations Managers	$64.00
Advertising and Promotions Managers	71.76
Marketing Managers	82.46
Sales Managers	77.37
Public Relations Managers	78.61
Fundraising Managers	66.01
Administrative Services Managers	60.59
Financial Managers	86.76
Managers, All Other	72.06
Project Management Specialists	51.97
Management Analysts	55.15
Market Research & Marketing Specialists	41.58
Business Operations Specialists	43.76
Accountants and Auditors	44.96
Financial and Investment Analysts	56.01
Financial Risk Specialists	57.66
Financial Examiners	49.83
Financial Specialists, All Other	45.14
Lawyers	87.86
Real Estate Brokers	44.07
Midpoint wage	64.72

Source: U.S. Department of Labor (DOL), BLS, Occupational Employment and Wage Statistics, National Occupational Employment and Wage Estimates: *https://data.bls.gov/oes/#/industry/000000.* (May 2024 data; analysis updated July 1, 2025).

The minimum, mid-point, and maximum of the above range are $41.58, $64.72,[75] and $87.86, in order. However, working recursively, the resulting monetized impacts are only very slightly affected by the wage range and thus, for brevity we will rely on the midpoint to base our estimates. DHS accounts for employee benefits by calculating a benefits-burden applicable to the most recent BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. The current burden to compensation from benefits is 45 percent.[76] DHS will rely on this burden

[75] This midpoint obtained by adding the minimum and maximum value and dividing by two; it is proximate to the true mean of $61.87. The wage data obtained from BLS, BLS, Occupational Employment Statistics, ''May 2024 Occupational Employment and Wage Estimates, United States,'' *https://data.bls.gov/oes/#/industry/000000* (last visited July 1, 2025).

[76] *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation—December

to estimate the full costs incurred by new employees, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, and other benefits. With a benefits-burden multiple of 1.45, hourly compensation is $93.84.[77]

The current, projected, and change in the time burdens (in hours) are provided in Table 15.

TABLE 15—EB–5 PROGRAM FORM TIME BURDEN IMPACTS

Form	Annual volume	Current burden hours	Projected burden hours	Burden hour difference	Impact/opportunity cost (annual)	Impact/opportunity cost (ten-year)	Weight factor
Heading	A	B	C	D	E	F	G
I–526	225	1.650	2.400	0.750	$15,836.2	$158,361.8	0.0158
I–526E(i)	3,395	1.650	2.270	0.620	197,532.2	1,975,322.0	0.1947
I–526E(a)	105	1.650	2.270	0.620	6,109.2	61,092.4	0.1947
I–829	3,430	3.620	4.090	0.470	151,285.9	1,512,859	0.1490
I–956(i)	50	22.820	23.290	0.470	2,205.3	22,053.3	0.0024
I–956(a)	150	22.820	23.290	0.470	6,616.0	66,160.0	0.0066
I–956F	450	24.820	25.000	0.180	7,601.4	76,013.6	0.0076
I–956G	500	15.850	16.180	0.330	15,484.3	154,842.6	0.0152
I–956H	2,100	1.470	1.470	0.000	0.0	0.0	0.0000
I–956K	400	2.042	2.070	0.028	1,051.1	10,510.5	0.0010
Total					403,721.6	4,037,215.80	0.5869

Source: PRA and USCIS Analysis (Jul. 1, 2025). Column G value is product of the form-volume weight (Table 12, third column, ''weight'') and the ''Burden hour Difference'' in the current table (column D).

To obtain the impact (opportunity cost) reported in Column E, the volume is multiplied by the change in the burden and by the mid-point compensation ($93.84). Columns F report the annual and 10-year impacts per form, while the bottom rows provide the totals across forms. Based on the information provided, the annual total cost could be $403,721.60 and about $4.04 million over ten years. In addition to the totals, a weight factor is provided in the final column (G), which reflects the weight factor per-form (see Table 12) multiplied by the projected burden change (column D table 15). The weight factors sum to 0.5869 hours, which equates to about 35.2 minutes.

The new Form I–527 impacts would accrue to the direct cost of filing plus the opportunity costs associated with the time burden of filing. The proposed fee is $8,000 and the time burden is estimated at 1.44 hours, which, based on the burdened mid-point compensation (discussed above of $93.84) yields a time-related impact of $135.14 per submission. Adding the two components amounts to $8,135.14 per filing, which, at the projected annual volume (see Table 7, projected receipts 457), generates possible impacts of $3.718 million annually or $37.18 million over 10 years.

For the few cases in which an immigrant investor's spouse and children file separate Form I–829 petitions when they are not included in the Form I–829 filed by the immigrant investor, as is stipulated in the preamble, the proposed revisions to the existing regulations would not impose any additional biometric, travel, or associated opportunity costs. The only costs expected from the rule would be the separate filing fee and associated opportunity cost. The proposed fee for Form I–829 is $7,860 and the time burden is projected to be 4.09 hours. For the dependents we would use a lower wage than was utilized for investors. Without salient information concerning the wages these applicable filers would earn, we will assume they are working at various levels and will rely on the current average wage across all occupations, which is currently $32.66, and is $47.36 when burdened for benefits.[78] Each filer would face a time burden cost of $176.48, which when added to the filing fee would be $8,053.7. Based on 11 annualized filings' average over 9 years (FY 2015 through FY 2023),[79] the monetized impact that could accrue to the individual Form I–829 filers would be $88,590.73 annually, or about $.089 million over 10 years.

c. Total Monetized Impacts

We can now compile the monetized potential impacts of the proposed rule based on the impacts for which we can reasonably develop a quantified estimate. The impacts associated with the current forms' fee changes are categorized as transfers from requestors to DHS. They are accounted for as transfers because a filing fee currently exists (inclusive of the two forms in which it is currently $0) and the requestor expects to recoup a direct benefit from filing. The impacts associated with the new Form I–527 are classified as costs, as are the changes in the forms' burdens and filings applicable to the Form I–829, as discussed earlier.

In Table 16 the transfers and costs are listed individually since they are categorized differently under the OMB Circular A–4 framework. The transfers, payments made by EB–5 requestors when filing forms to DHS (IEFA), reflect the fee changes proposed. The costs column comprises the annual impacts, mainly to EB–5 requestors, accruing to the new Form I–527 and the small number of separate I–829 dependent filers, as well as the forms' burdens. The monetized impacts are presented in Table 16 in order of terms undiscounted, then discounted at 3 and 7 percent, in order.[80] In Table 16 each FY is shown, since the discounted terms for each year are not the same.

2022,'' Table 1. Employer costs for employer compensation by ownership, p. 4, *https://www.bls.gov/news.release/archives/ecec_03172023.pdf* (last visited Nov. 4, 2023). The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $42.48/$29.32 = 1.45 (rounded). *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' Table 1. Employer costs for employer compensation by ownership, p. 4, *https://www.bls.gov/news.release/archives/ecec_03172023.pdf* (last visited Nov. 4, 2023).

[77] Calculation: Midpoint hourly wage of $64.72 × multiplier of 1.45 = $93.84.

[78] U.S. DOL, BLS, Occupational Employment and Wage Statistics, National Occupational Employment and Wage Estimates, All Occupations, May 2024, available at: *https://data.bls.gov/oes/#/industry/000000.* (Jul. 8, 2024). Calculation: $32.66 × multiplier of 1.45 = $47.36.

[79] USCIS IPO Office, Claims 3 and Global tracking system (Oct. 12, 2023).

[80] *See* OMB, Circular A–4, ''Regulatory Analysis,''*https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

TABLE 16—MONETIZED IMPACTS OF THE PROPOSED RULE

[Millions]

FY	Transfers	Costs
16a. Undiscounted		
2024	($24.41)	$4.21
2025	(24.41)	4.21
2026	(24.41)	4.21
2027	(24.41)	4.21
2028	(24.41)	4.21
2029	(24.41)	4.21
2030	(24.41)	4.21
2031	(24.41)	4.21
2032	(24.41)	4.21
2033	(24.41)	4.21
10-year Total	(244.07)	42.1
10-year Annual Average	(24.41)	4.21
16b. 3% Discount Rate		
2024	(23.70)	4.09
2025	(23.01)	3.97
2026	(22.34)	3.85
2027	(21.68)	3.74
2028	(21.05)	3.63
2029	(20.44)	3.53
2030	(19.84)	3.42
2031	(19.27)	3.32
2032	(18.71)	3.23
2033	(18.16)	3.13
10-year Total	(208.19)	35.91
10-year Annual Average	(20.82)	3.59
16c. 7% Discount Rate		
2024	(22.81)	3.93
2025	(21.32)	3.68
2026	(19.92)	3.44
2027	(18.62)	3.21
2028	(17.40)	3.00
2029	(16.26)	2.81
2030	(15.20)	2.62
2031	(14.20)	2.45
2032	(13.28)	2.29
2033	(12.41)	2.14
10-year Total	(171.42)	29.57
10-year Annual Average	(17.14)	2.96

USCIS Analysis (July 1, 2025).

d. Unquantified Impacts

There are some other impacts that DHS has evaluated applicable to the proposed rule, and while these cannot be monetized, DHS offers a qualitative discussion concerning them. Foremost, there are likely to be familiarization costs associated with reading and understanding the rule. The costs of familiarization would accrue to the opportunity costs of the time embodied, which would constitute the number of hours spent on familiarization multiplied by the hourly compensation of the reviewer(s). DHS does not know who (in terms of what occupation) would review the rule but will attribute the costs to lawyers trained in reading and interpreting the rule's changes. The average hourly compensation would be $87.86 which, at a benefits-burden multiple of 1.45, is $127.40 per hour.[81] This reflects the cost of an in-house attorney. For outsourced attorneys, we utilize a multiplier of 2.5, which yields an hourly rate of $219.65.[82] By relying on the earnings of lawyers, which are substantially higher than that of most occupations, DHS is being liberal in its estimates. DHS does not know how

[81] Calculation: The average hourly wage for Lawyers of $87.86 × the benefits burden multiplier of 1.45 = $127.407. The wage reflects the May 2024 data published by the BLS, cited in Table 14.

[82] Calculation: The average hourly wage for Lawyers of $87.86 × the benefits burden multiplier of 2.5 = $219.65. *See* ICE, Final Small Entity Impact Analysis, ''Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' for the basis of the multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule: *https://www.regulations.gov/document/ICEB-2006-0004-0922,* p. G–4.

much time would be expended on such familiarization.

The EB–5 Reform Act authorizes graduated sanctions for regional centers that fail to submit an annual statement or that commit certain violations. Considering this authorization, DHS proposes to impose the following penalties for paying the Integrity Fund fee late:

- Ten percent of the required integrity fee (*e.g.,* 10 percent of $10,000 or $20,000, subject to adjusting such required amounts for inflation) [83] for a regional center that pays its fees on day 31 through and including day 60 after the due date.
- Twenty percent of the required integrity fee for a regional center if their fee is paid on day 61 through and including day 90 after it is due.
- Terminate a regional center designation if it fails to pay the fee within 90 days of the date on which such fee is due.

In determining the proposed penalties, as is discussed in the preamble, DHS believed that 10 percent was a reasonable starting point in setting a penalty. DHS also considered whether the dollar amount itself was reasonable. In this case, the 10 percent would amount to $1,000 or $2,000 depending on the regional center, which DHS believes is a reasonable late charge for failing to pay the fee after 30 days. The 20 percent would amount to $2,000 or $4,000 depending on the regional center (based on the number of investors), which DHS believes is a reasonable late charge for failing to pay the fee after 60 days.

The goal of the proposed penalties is to effectively deter noncompliance. DHS believes that the proposed penalties would be sufficient to encourage payment and ensure timely collection of the Integrity Fund fees, while not being so large as to be punitive or financially damaging. DHS cannot make an estimate of how many entities would pay penalties or how much they would pay.

Because the EB–5 program fees are proposed to decrease, on average, it may result in a question of whether this proposed rule would fully accomplish the authority that DHS proposes to exercise in this rule by adjusting EB–5 immigration benefit request fees to adequately fund the cost of administering the EB–5 program. In addition, would the decision to not utilize cost reallocation to recover other USCIS costs impact USCIS' ability to continue to provide no cost services. The proposed fees are not lower through intentionally or artificially capping them but result from employing the cost and fee calculations described throughout this rule. The fees may be somewhat lower than current fees because the proposed fees do not include any additional costs for processing benefit requests with no fee or a reduced fee, thus reducing the fees overall. As such, the proposed EB–5 fees would not fund a proportionate share of workload without fees and workload below full cost, and, thus, would not recover what DHS defined as full cost in previous fee rules. *See, e.g.,* 88 FR 402, 450–451 (Jan. 4, 2023). However, as authorized by the EB–5 Reform Act, this proposed rule would recover full EB–5 program operating costs by setting EB–5 fees at a level sufficient to fund overall requirements and general operations related to the EB–5 program. As for funding the costs for processing benefit requests with no fee or a reduced fee, DHS does not believe the adjudication of such services will be impacted. As stated earlier, while the estimated $47 million impact of the proposal to not utilize the authority in section 106(c)(1) is not negligible, DHS has determined that USCIS reserves can withstand a depletion in this amount without a noticeable hinderance of its operational capabilities.

The proposed rule would be expected to generate benefits to the public. The fees proposed would meet the level that would enable DHS to recover the costs of administering the EB–5 program; enable USCIS to attain the statutory processing time goals; and ensure there would be internal procedures/controls in place within the program office to maximize the likelihood that the statutory goals would be met. It would make improvements to the information technology systems used by DHS to administer the EB–5 program.

B. Regulatory Flexibility Act (RFA)

1. Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 and 602, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, tit. II, 110 Stat. 847 (5 U.S.C. 601 note)), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[84]

DHS has reviewed this proposed regulation in accordance with the RFA. As is explained in the Regulatory Impact Analysis (RIA), the fee changes applicable to the EB–5 program are accounted for as transfers from requestors to DHS, while there are costs associated with certain filings and form burdens. There are four types of entities that were evaluated in terms of the RFA as it pertains to the EB–5 program and the proposed rule: (1) regional centers; (2) NCEs; (3) JCEs; and (4) investors. DHS has determined that the investors in the program are individuals who willingly choose to invest their capital in the program and are not considered small entities for purposes of the RFA. An ''individual'' is not defined by the RFA as a small entity and costs to an individual from a rule are not considered for RFA purposes.[85] As a result of this determination, individuals are not covered in this Initial Regulatory Flexibility Analysis (IRFA), and DHS focuses this analysis on the business components pertinent to the EB–5 program directly involved in its investments.

a. Description of the Reasons Why the Action by the Agency Is Being Considered

DHS conducted an EB–5-specific fee study, as required by EB–5 Reform Act. The determination from the study is that the proposed fees applicable to the EB–5 program will be set at a level that the Department has determined would enable it to: recover the costs of administering the EB–5 program; allow the Agency to attain the processing times goals; and ensure there are internal procedures/controls in place within the program office to maximize the likelihood that the statutory goals are met. It is intended, further, to make improvements to the information technology systems used by DHS to administer the EB–5 program.

[83] DHS is not accounting for the integrity fund payments for regional centers and regional center investors because they were enacted in the FY 2022 EB–5 Reform Act and also a **Federal Register** notice (88 FR 13141 (Mar. 2, 2023)).

[84] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[85] An investor who wishes to immigrate to the United States through the EB–5 program must file an Immigrant Petition by Alien Investor (Form I–526). Individuals who file Form I–526 petitions apply for immigration benefits on their own behalf and thus do not meet the definition of a small entity.

b. Succinct Statement of the Objectives and Legal Basis of the Proposed Rule

The objective of this proposed rule is for DHS to adjust EB–5 benefit request fees to meet the requirements provided in the EB–5 Reform Act and adequately fund the cost of administering the EB–5 program. DHS seeks to meet this objective by: (i) adjusting fees according to the schedule presented in the preamble; (ii) establishing the USCIS EB–5 Technology Fee; and (iii) codifying EB–5 Integrity Fund Fees and Penalties.

In accordance with the EB–5 Reform Act, DHS is proposing the fees to sufficiently recover the costs of providing such services, and attaining the goal of completing adjudications, on average, not later than:

(1) 180 days after receiving a regional center application or application for investment in an new commercial enterprise (NCE); [86]

(2) 90 days after receiving an application for investment in an NCE that is located in a targeted employment area (TEA); [87]

(3) 240 days after receiving an immigrant investor petition for classification under section 203(b)(5)(E) of the Act or a petition to remove conditions under section 216A of the Act; and

(4) 120 days after receiving an immigrant investor petition for classification under section 203(b)(5)(E) of the Act with respect to an investment in a TEA.

DHS proposes this rule under the authority of the EB–5 Reform Act. Among other things, the EB–5 Reform Act immediately repealed the former authorizing statutory provisions for the Regional Center Program under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, sec. 610, and added new authorizing provisions to the INA, substantially reforming the Regional Center Program effective May 14, 2022. The reformed Regional Center Program is authorized through September 30, 2027.

This proposed rule is also consistent with non-statutory guidance on fees, the budget process, and Federal accounting principles.[88] DHS uses OMB Circular A–25 as guidance for determining user fees for immigration benefit requests. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs. DHS used the ABC methodology supported in OMB Circulars A–25 and A–11 to develop the proposed EB–5 program fee schedule.

c. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply and a Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

A person wishing to immigrate to the United States under the EB–5 program is required to file an Immigrant Petition by Standalone Investor (Form I–526) or Immigrant Petition by Regional Center Investor (Form I–526E), containing information about their investment. The investment must be made into either an NCE within a designated regional center in accordance with the regional center program or a standalone NCE outside of the regional center program. A regional center is a business entity in the United States designated by DHS based on a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. Regional centers pool the capital of multiple investors together and arrange them typically as investments in NCEs under their purview. The NCE may create jobs directly (required for non-regional center investments) or serve as a source of funding for separate JCEs (allowable for regional center investments).

DHS cannot provide a precise assessment of the number of small entities that could be impacted by the proposed changes, nor can the Department determine what such impacts might be to small entities involved in the program or how they might respond to them.[89] EB–5 investment and business structures tend to be complex and involve multiple layers of business and financial activity. The Department has limited information and data to support a small entity analysis. However, based on data that are available, DHS can provide some criteria for an initial assessment. As noted earlier, investors are not considered under the purview of the RFA. Further, neither the amount of a typical individual investment itself—which is the reduced minimum investment amount of $800,000—nor the pool of total investment capital, is appropriate to consider as income for this assessment.[90] Therefore, with these two caveats regional centers are assessed first, followed by other EB–5 businesses associated with the program.

i. Regional Centers

Based on the Department's thirty years of experience administering the regional center program, it determined that regional centers earn income through three primary mechanisms. In the next three paragraphs DHS describes these three mechanisms.

First, regional centers charge investors an administrative fee earmarked to expenses for marketing and operations

[86] A ''new commercial enterprise'' is ''any for-profit organization formed in the United States for the ongoing conduct of lawful business . . . that receives, or is established to receive, capital investment from [employment-based immigrant] investors.'' INA sec. 203(b)(5)(D)(vi).

[87] A targeted employment area (TEA) is a rural area, or an area designated by the Secretary of Homeland Security under INA sec. 203(b)(5)(B)(ii), 8 U.S.C. 1153(b)(5)(B)(ii) as a high unemployment area. Public Law 117–103, Division BB, sec. 102(a)(4), 136 Stat. 1070, 1074 (2022).

[88] *See* OMB, Circular A–25, ''User Charges,'' 58 FR 38142 (July 15, 1993) (revising Federal policy guidance regarding fees assessed by Federal agencies for Government services). *See also* Federal Accounting Standards Advisory Board Handbook, Version 23, ''Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts,'' SFFAS 4 (Sept. 2024), *http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (generally describing cost accounting concepts and standards, and defining ''full cost'' to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *Id.* at 49–66 (July 31, 1995). *See also* OMB, Circular A–11, ''Preparation, Submission, and Execution of the Budget,'' sec. 20.7(d), (g) (June 29, 2018), *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf* (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees).

[89] U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, see 89 FR 6194, Jan. 31, 2024, See Section V.B. Final Regulatory Flexibility Analysis, pages 6374–6376 explains the difficulty of assessing regional centers and on how they are structured in a variety of different ways, and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprise (NCEs), and job-creating projects or entities. Regional centers also pose a challenge for analysis as the structure is often complex and can involve many related business and financial activities not directly involved with EB–5 activities. Regional centers can be made up of several complex layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above market return differentials. DHS did consider the information provided by regional center applicants as part of the Forms I–956; however, it does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants. Although regional center applicants typically report the NAICS codes associated with the sectors they plan to direct investor funds toward, these codes do not necessarily apply to the regional centers themselves. In addition, information provided to DHS concerning regional centers generally does not include regional center revenues or employment.

[90] See Section C.I.—Regional Centers investments made in FY 2021 and at the reduced amount, of $800,000.

pertinent to the investment offering. The fee may also cover expenses related to document preparation, legal oversight, and the economic analysis utilized to model and estimate impacts and job creation. This administrative fee is typically 10 percent of the individual investment amount; hence DHS will rely on the typical percentage applied to most expected investments of $800,000 to estimate an amount of $80,000 per investor as a baseline.[91] This reliance is justified on grounds that almost all EB–5 activity has accrued to investments at the reduced threshold—which qualify for the current reduced investment requirement of $800,000 as opposed to the standard amount of $1,050,000.[92] For the period FY 2016 through FY 2021, there were 31,805 investments made under regional centers, of which 31,372, or 98.6 percent, were made at the reduced amount.[93]

Second, regional centers can also collect marketing, sales fees and other charges and income owed to arrangements with their affiliated NCEs and JCEs. Some regional centers provide information concerning these activities in their business plans or amendments submitted to DHS, but it is not required, and DHS does not have sufficient official data on this source of income to support an analysis.

Third, regional centers can earn residual income. They may capture income from the differential on the terms of the loans they bundle and what is returned to investors. There may also be return on investment in the forms of profit from the end-state economic activity being conducted by the JCE. Some of this return on investment may be split with other business entities involved, but DHS does not have an adequate amount of data involving interest or profit accruing to regional centers to assess this type of income.[94]

To conduct the IRFA analysis, DHS utilized the 640 approved regional centers that were in approval status at date the analysis was conducted (November 14, 2023).[95] to run their respective regional center names in subscription-based, open-source business data providers to obtain income information on the regional centers. The search yielded 339 viable record matches that included an income figure and a North American Industry Classification System (NAICS) code. The income data point provided is deemed ''sales revenue'' and it is our assessment that the income reported in these data is most likely revenue attributed to sales, marketing, and other related charges involved, and neither the administrative fees charged to investors nor profits on loans or investment. While the sample size of 339 is more than sufficient to satisfy a 95-percent level of confidence level and a 5-percent confidence interval based on the population size (640), the data pose a constraint. The NAICS codes are provided at the 6-digit detailed industry level, but half the entities (173, or 51.0 percent) reported code 999990, which benchmarks ''Non-Classifiable Establishments.'' There is thus no Small Business Administration (SBA) size standard to weigh against for small entity status.[96] As a result, there would only be 166 entities to support an analysis. To attempt to mitigate this shortcoming, DHS extended the search query for regional centers approved from FY 2016 through FY 2022. From the matches, DHS culled the results to remove duplicates from the initial search result (339 of the of the 640 current regional centers), plus records that did not include both or either of a NAICS code (including non-classifiable) or a sales figure. This cleansing process yielded 32 additional entities, which when added to the 166 initial valid matches, resulted in 198 entities. This figure is still below the optimal sample size of 241, but the charge to precision is not overly debilitating, as the margin of error is 5.8 percent instead of the desired 5.0 percent.

As DHS will discuss, out of necessity of the constraints faced, the assessment is conducted along several different and unconventional paths. Hence, Table 17 presents metrics (in terms of the income alone from the web-based data) for both the ''full'' sample group (339 currently approved regional centers that are both classifiable and non-classifiable plus the 32 records obtained in the ancillary search) as well as the ''restricted'' (classifiable-only) group.

TABLE 17—METRICS FOR REVENUE DATA FOR RCS

[FY 2016 through FY 2022]

Group	Full	Restricted
Entities (RCs)	371	198
Median	$129,275	$89,380
Mean	$447,811	$276,695
Minimum	$12,980	$12,980
Maximum	$12,370,000	$12,370,000

USCIS analysis (Nov. 14, 2023).

[91] The administrative fee is provided by regional centers in information provided to DHS. Almost all charge 10 percent though there are a few instances in which the fee is different. Information on the fees are captured in several DHS datasets, including Infact.

[92] TEAs that qualify for the reduced amount apply to either rural areas or to areas with unemployment rates at least 150 percent of the national average. DHS makes the determination that an investment qualifies for the reduced amount when the Investor files the I–526 form. Investor petitions therefore need to contain sufficient evidence that the location of the actual job creation project meets the standards for the reduced investment threshold. Additional information can be found at: *https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-the-eb-5-visa-classification.* As a result of the 2022 Reform Act, the reduced investment threshold also applies to infrastructure investments.

[93] USCIS C3, Electronic Immigration System (ELIS), Infact Databases (Aug. 2, 2023). While there is no guarantee that the same percentage will apply to the future, at this time the Department does not have evidence to suggest it would be substantially smaller. Some projects might not qualify for the high-unemployment threshold, but this does not necessarily mean that they would not qualify for the reduced amount, as they could potentially substitute into a rural or infrastructure project. DHS welcomes public input on this subject.

[94] Another reason that it is difficult to assess income to regional centers from downstream projects, is that the affiliated NCE could be set up as limited partnership, and the regional center loan income accrues to a general partner that may not be the regional center itself. Stated differently, there can be a degree of separation in linking the regional center and its residual income.

[95] USCIS, ''Approved EB–5 Immigrant Investor Regional Centers,'' *https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/approved-eb-5-immigrant-investor-regional-centers* (last updated Feb. 13, 2025).

[96] In addition to the NAICS code and concomitant industry, the data providers also can provide a ''business description'' based on their assessment of the business. For the non-classifiable entities, there was no additional information provided that could be useful in making an industry inference.

The large differences captured as the medians being below the means are indicative of non-normal, positively skewed data structures in which a small number of large values exert disproportionate weight on the means, as is further indicated by the extreme ranges. As is seen in Table 18, there are also differences between the means and the medians across the two sample-groups.

Having valid data on regional center sales revenue, DHS turns to the next income source, administrative fees charged to investors. To conduct this module of the assessment, DHS queried internal EB–5 data repositories to obtain a figure for the number of investors for the regional centers acquired in the above module.[97] A proxy for the number of investors is developed as the number of Form I–526 filings submitted under the purview of the regional center.[98] Key statistics applicable to investors are provided in Table 18.

TABLE 18—STATISTICS FOR INVESTORS PER-RC

Group	Full	Restricted
Entities (RCs)	371	198
Median	13	17
Mean	122	181
Minimum	1	1
Maximum	4, 430	4,430

USCIS analysis (Nov. 14, 2023).

As was the case with regional center sales revenue, the substantial differences between the means and medians, as well as the extreme range, demonstrate that the number of investors per regional center is also a non-normal distribution that is positively skewed.

DHS multiplied the number of investors by the reduced $80,000 fee to capture an estimate of total administrative fees by regional center.[99] DHS next added this figure to sales revenue found in the subscription-based data. In addition, it cannot be ruled out that regional centers pass the Integrity Fund fees onto the investors as well. For regional centers with 20 or fewer total investors, DHS included the $10,000 fee and for those with more than 20 total investors, a $20,000 fee was added. By combining these components, DHS was able to make a revenue estimate for the sample of regional centers. Of the full sample, it is determined that 48.5 percent pay the $10,000 fee and that 51.5 percent pay $20,000, which based on the annual population of 640 (at the time the analysis was conducted), would be 310 and 330 regional centers, in order. The breakdown could be slightly different, as the number of investors is based on the Form I–526 submissions under the purview of the regional center, as DHS did not calculate the total based on the proposed adjustment applicable to Form I–829 filings associated with the regional center discussed in the preamble.

Given the data constraints discussed thus far, for robustness we will assess the entities' small entity status along three different methodological approaches. While DHS has the listed NAICS codes for the 198 classifiable entities, DHS extensively reviewed various NAICS codes and determined that the 6-digit, detailed industry NAICS code 522310, Mortgage and Nonmortgage Loan Brokers, defined as an ''industry [that] comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis,'' is an appropriate NAICS code under which regional centers operate.[100] By this DHS means that while the NAICS code provided in the data often applies to the types of downstream projects that the regional centers gear loans toward, the regional center is usually not involved directly in those activities, and is rather involved in bundling the investors' funds into loans. The year 2022 SBA size standard for the NAICS category chosen is based on revenue of $15.0 million.[101] Of the actual NAICS codes provided for classifiable industries, half accrued to several 6-digit codes under the 3-digit subsector 523, ''Securities, Commodity Contracts, and Other Financial Investments and Related Activities.'' The data providers describe these entities as ''investment services'' in the ''business description'' tab and all the individual industries in NAICS subsector 523 ensconce a size standard of $47.0 million. The difference between the size standards ($15.0 million and $47.0 million) is large, and therefore for purposes of robustness we will evaluate the full sample of entities under each of the respective amounts. DHS also evaluates the restricted sample based on the actual NAICS code listed in the data. The results are presented in Table 19.

[97] The internal EB–5 program data set we relied on is known as *Infact.*

[98] There is a caveat to relying on the number of Form I–526 approvals as a proxy for regional center investors. Some individual investors may file more than one Form I–526, which could arise when an initial investment filing is denied for some reason or is not undertaken and a new investment under the regional center is promulgated. DHS does not know if the regional center would collect an additional administrative fee under this scenario, so it is possible that the basing such fee revenue on the number of investor petitions under their purview may overstate this revenue.

[99] DHS notes that a small portion (1.36 percent) of RC investments were made at the standard investment amount of $1.05 million. Therefore, based on a standard 10 percent administrative fee, $10.8 million can be thought of as the maximum amount by which our ensuing estimates of RC income are understated. This discrepancy alone would not likely change the ensuing small entity determination. This maximum amount would be allocated along some type of distribution to all RCs that actively invested between FY 2016 through FY 2021 and then extrapolated to our small pool of RCs. If Some RCs had multiple investments in non-TEA areas (which is generally very rare) then it is possible that some individual RCs may have their total income understated.

[100] Where NAICs codes for regional centers were provided in the data, some were different than 522310, but we believe that this singular code is appropriate. While the regional center loans apply to different types of projects under different industries, as a general matter the regional center itself is not involved in those activities and is responsible for arranging and structuring the loans for the involved parties. The description can be found at: *https://www.census.gov/naics/.*

[101] SBA size standards effective: March 17, 2023, located at SBA, ''Table of size standards,'' *https://www.sba.gov/document/support-table-size-standards* (last updated Dec. 26, 2024).

TABLE 19—METRICS FOR REGIONAL CENTER INCOME

Group	Full	Full	Restricted
RCs	371	371	198.
Business Activity	Mortgage & Nonmortgage Loan Brokers.	Investment Services	Actual NAICS code provided.
Size standard	$15.0 M	$47.0 M	Varies.
Median	$1,302,810	$1,302,810	$1,725,660.
Mean	$10,028,770	$10,028,770	$14,973,215.
Minimum	$107,495	$107,495	$107,495.
Maximum	$359,685,572	$359,685,572	$359,685,572.
Small Entities:			
Number	323	356	173.
Percent	87.1	96.0	87.4.

USCIS analysis (Nov. 14, 2023).

As can be seen from Table 19 the median and means for the restricted sample-group are smaller than that for the full sample-group. As would be expected, the percentage of regional centers that are small is larger at the higher size standard of $47 million under general investment services. However, still the large majority is small at the lower size standard. Based on these data, DHS can determine that a majority—at a minimum, 87.1 percent—of EB–5 regional centers are small entities in the context of the RFA.[102]

There are two important caveats to the determination made above; however, which taken together could have a net effect of reducing or increasing the number and percentage of regional centers that are small entities. As was noted earlier, this determination did not consider income accruing to interest income on loans or end-user derived profit that regional centers could collect, as DHS does not have sufficient data to support an analysis concerning such income. Such loan differential or profit income could be substantial and could reduce the true small entity share. But a limitation of this analysis that could have a countervailing effect owes to the timing of investments and administrative fees. In practice the administrative fees need not be collected in 1 year, as investments and fees could be collected over multiple years. However, DHS abridged all the regional center income to 1 year. It would be extremely difficult given the data structures we queried for this analysis to attempt to incorporate a time dimension to the income stream as it pertains to administrative fees. DHS is unable to conduct a distributional analysis of the potential impacts to regional center small entities. Specifically, for the set of 173-found small entities with matched revenue data, it is conceptually possible to divide into the income for each entity, the impacts from the rule, to derive a percentage of income the impact could embody. DHS estimates that a seven percent rate of discount, the impacts that could accrue to EB–5 entities (*i.e.,* filing fees and increases in form time burdens) could be about $3 million annually. In practice, the costs would be higher, but DHS cannot estimate costs. However, we have no way of distributing the quantified costs across regional centers and therefore cannot determine how they will be impacted.

As it relates to regional centers, the fee changes applicable to the Form I–956 (initial and amendment) could be divided against entity income—although this would rest on the tenuous assumption that the initial and amendment filing were in the same year. However, this would constitute only a partial impact because DHS does not know how activity related to the other forms applicable to regional center activity would impact the business entity. The other forms would be filed by individuals, and we do not know if some of the impacts would be borne by the regional center, transferred to them, or passed through to other entities. As a result, DHS cannot determine what the impact to small entity regional centers would be.

ii. Other EB–5 Businesses

For nonregional center businesses involved in investment activity, DHS employed out of necessity an unconventional, multi-step approach to the small entity analysis. First, DHS was able to obtain about 5,000 unique NCE names and about 3,000 JCE names that were approved between FY 2018 through FY 2022 from the internal EB–5 program data and tracking databases. These entities were pooled and randomly scrambled to source and to run searches in the subscription-based, open-source business information providers on 400 of them, to attempt to satisfy a 95-percent level of confidence.[103] The searches yielded only 111 results that could reasonably be validated as matches. One of the challenges is that it can be difficult to match syntax in the entity names between DHS records and that in the other sources. The data providers relied upon match queries to results with close-fitting precision, but because there can be minor syntax differences in the names of the businesses in these providers and DHS record systems, there is a strong likelihood a match would not result.[104]

In addition to the low match-rate, two additional challenges were encountered. First, DHS faced the same issue as we did for regional centers; over one-third of the entities (42, or 37.8 percent) were non-classifiable and therefore incompatible to evaluate against an SBA size standard for status. Second, of the classifiable businesses, almost one-fifth (13, or 18.8 percent) were missing either or both of a NAICS code or a revenue

[102] In the 2022/2023 fee rule, USCIS could not determine at the time if RCs were large or small. The different determination in this IRFA (based on the data and analysis and considering the caveat noted above) is driven by two factors. First and foremost, when the FY 2022/2023 fee rule analysis was conducted, very few regional centers were found in the databases utilized to assess income (which was also the case going back to the FY 2020 EB–5 Modernization rule, at 84 FR 35750 (July 24, 2019)). In the current databases there are many more regional centers listed and there is more data on the ones that are listed. Second, USCIS economists reviewed an internal USCIS–IPO database that captures more data on regional centers and affiliated businesses/activities. This database provided more data and information to analyze for impacts, enabled better searches and matching, and allowed us to root out both false positives and false negatives. The resulting analysis is thus more robust.

[103] The annual average for NCEs was 5,672 (Table 3). NCEs do not map one-to-one to JCEs, but since there are at least as many of the latter as the former, we consider the population to be 11,344, for which the sample size required to satisfy a confidence level of 95 percent is 372.

[104] Of course, the converse—false positives—can occur as well, such as in a case where the provider matches a named entity to a DHS-recorded entity when in fact the true name is slightly different.

figure. These constraints rendered the sample size down to a mere 56 entities.

Given the challenges elucidated above, DHS employed an unconventional second-step approach. DHS ran queries against ''variations'' of the term ''EB5'' separately, which yielded 885 returns. We engaged a filtering process that first removed records with missing data (either or both of sales revenue or NAICS codes) and removed non-classifiable establishments. DHS then backed out likely regional centers first by culling any results that contained the conjoined terms ''regional'' and ''center.'' DHS next bolstered this filtering process by further eliminating any regional center names either captured in our sample of regional centers, from that above module of this RFA, or that were otherwise approved in the past but are not currently active. Finally, DHS manually appraised each remaining entity and removed those that reasonably appeared to be businesses not directly involved with program investment activity. These ancillary activities would primarily ensconce law firms, business advisories, or analytical consultancies that provide services to program businesses, but are themselves assumed to not be directly involved in the investment activity of the program. The filtering schema is summarized in Table 20, which shows the stepwise method. By adding the two subtotals shown, we obtain a viable sample of 489, which is more than sufficient to satisfy a confidence level of 95 percent.

TABLE 20—METHODOLOGY APPLICABLE TO NCES/JCES

Step 1: Search 400 random pooled NCE/JCE names (FY 2018 through FY 2022)	+111
Less:	
(a) Entities missing sales revenue or NAICS code	−42
(b) Non-classifiable establishments	−13
Step 1 Subtotal	56
Step 2: Boolean search of program terms [105]	+885
Less:	
(a) Entities missing sales revenue or NAICS code	−28
(b) Non-classifiable establishments	−316
(c) Entities with conjoined terms ''regional'' and ''center''	−62
(d) Other explicit regional center names (from DHS records)	−27
(e) Ancillary EB–5 service providers	−19
Step 2 Subtotal	433
Grand total for IRFA analysis (sum of subtotals)	489

USCIS analysis (Nov. 14, 2023).

As was mentioned above, the JCEs and NCEs were pooled in the first-step query, and for the 433 additional entities resulting from the second-step query, we assume that most or all of them are JCEs and NCEs, though DHS cannot distinguish which are specifically NCEs and which are JCEs. It is ultimately unimportant to distinguish them, because, unlike the approach to regional centers in which we relied on several evaluation methods—including imputing a NAICS codes based (twice) on the single industry description we believe best fits—for the non-regional center businesses we based the NAICS codes solely on a single trial benchmarked to the reported NAICS code. The results of the analysis are captured in Table 21.

TABLE 21—SMALL ENTITY STATISTICS FOR NON-REGIONAL CENTER EB–5 BUSINESSES

Median	$95,550
Mean	$1,505,046
Minimum	$944
Maximum	$660,424,990
Small Entities:	
Number	488
Percent	≈100

USCIS analysis (Nov. 14, 2023).

While there is an extreme range for the income, only 1 entity (the maximum) exceeded the applicable SBA size standard, which essentially means that 100 percent are small. However, as was the case with regional centers, we do not know if the income applicable to these businesses is limited to the reported sales revenue. If they receive some income from lending activity, or some other form of return in profits, the results could be quite different as potentially not all would be small entities.

DHS is unable to conduct a distributional analysis of the potential impacts to small entities. Specifically, for the set of 488 small entities with matched revenue data, it is conceptual to divide into the income for each. These gross impacts constitute transfers and costs. As it relates to the businesses, the fee changes applicable to the forms would accrue to individuals filing the petitions. DHS cannot say if and how these impacts would impact the related businesses involved and hence cannot determine what the impact to small entities would be.

iii. Concluding Remarks

The IRFA that DHS has prepared to support this proposed rule suggests that

[105] The searches included the variations: ''EB5,'' ''EB–5,'' and ''EB 5.''

the majority—at least 87 percent of regional centers and essentially all other directly involved business entities (which to the best of our assessment would comprise NCEs and JCEs) involved in EB–5 program investment activity—could be small entities. However, it is emphasized that this determination is made on incomplete information, as sufficient data are not available on certain types of income that could accrue to such entities. To provide some context to this caveat, DHS evaluated 1,402 EB–5 projects in which an investment was conducted through a JCE between FY 2018 through FY 2022, for which viable data could be extracted on the amount of capital invested. The median, average, and maximum amount of program-specific capital was $7.0 million, $67.2 million, and $11,070.0 million, in order. A little less than a quarter (22.2 percent) blended nonprogram capital. For the blended capital projects, the figures, in order again, were $52.2 million, $327.5 million, and $12,585.7 million. From the size of these figures alone, it is reasonable to conjecture that if even a small portion of the loan amount or invested capital is renumerated as residual income, the number and share of entities that are small would be lower than that found in our analysis. For example, the large financial services and advisory company, Deloitte, found that the general average rate of return on investments in 2021 was about 6.1 percent.[106] Applied to the average and maximum blended capital investments above, the return could be between $6.5 million and $767 million. If some, or all, of this potential return were captured by regional centers or other businesses, the share that would be small would almost certainly stand to be lower.

A second caveat to the determinations made in this IRFA is that DHS relied on alternative methodologies. As such, the findings are based on samples that are only partially random. The reason, it is recalled, is that the randomized procedures did not yield sufficient sample sizes, and while there is no reason to assume that there is any reporting or selection bias in the nonrandom-sampled portions, it cannot be completely ruled out either.

As is described in the associated economic analysis, the impacts of the proposed fee changes would accrue to transfers from requestors to DHS. The potential penalties associated with the Integrity Fund fees, which are not estimated, would be accounted for as costs due to the EB–5 Reform Act. As was noted in Section VI.B.2.C.i of this small entity analysis, we treated Integrity Fund fees as income to regional centers, even though it is a cost to them, on grounds that they may attempt to pass some of those costs through to investors or other businesses. It is noted here that from a double-entry accounting perspective, an income flow earmarked to a cost could be considered a net zero-value transaction. But under the RFA purview, the flow would still be considered an income credit against the applicable SBA size standard (this is the case with the administrative fees—the regional center pays for the services embodied but then passes all or some of it to investors, and it is therefore income). Therefore, any such costs and transfers that regional centers or other businesses would incur from the proposed changes that are transferred or passed through to other entities could also affect the small entity determinations for EB–5 businesses. For example, we have no evidence to suggest, but cannot rule out, that for some entities the applicable fee changes might be large enough that they might be passed to investors or other entities.

DHS welcomes public input on EB–5 small entities and the impacts that the proposals could have on such entities, as well as the methodology and determination presented herein.

d. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

DHS does not believe that there are Federal rules that may duplicate or conflict with the proposed rule. The Integrity Fund fees fund investigations and oversight to align the regional center program with applicable financial, legal, securities, compliance, and national security safeguards as warranted by other State and Federal rules, regulations, and procedures. However, such alignment is not considered duplicative in terms of the Federal regulatory framework.

In the FY 2022/2023 fee rule, DHS adjusted the USCIS fee schedule, including EB–5 program fees. For additional information on the interaction between this proposed rule and the FY 2022/2023 fee rule, please see section III.E.2 of this proposed rule.

e. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The fees proposed were determined via a specific fee study. Their level would: enable DHS to recover the costs of administering the EB–5 program; meet the EB–5 processing time goals as provided in the EB–5 Reform Act; make improvements to the information technology systems used by DHS to administer the EB–5 program.

Because the fee structure proposed is derived directly from the cost-study, which is mandated by the EB–5 Reform Act, DHS considered, but did not adopt, reduced fees for small businesses, because USCIS is almost entirely dependent on user fees. Moreover, charging less in fees (including different fees for businesses based on size) could potentially impact processing times, which could stand in contrast to process time goals outlined in the EB–5 Reform Act. Additionally, given the challenges in this RFA described above, applicable to the sampling procedures, data and information completeness, and unclassifiable entities, it would be very difficult and probably subjective for DHS to come up with an easily administrable definition of ''small business'' for the purpose of charging lower fees for small businesses vs. larger businesses. As a result, it would be challenging and subjective to attempt to present alternatives that could achieve the objectives of the EB–5 Reform Act, continue to adequately fund the cost of administering the EB–5 program, and reduce burdens on small entities such as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rule, or any part thereof, for such small entities.

The Department welcomes suggestions from the public on alternatives or ways in which small entities' burdens could be reduced.

The Department did consider a wide range of percentages for the late Integrity Fund fee penalties from zero to a higher amount. After considering and balancing the factors we discuss in that section, we settled on what we are

[106] *See* Deloitte, ''2021 Study of Economic Assumptions,'' pp. 8–9 (2021), *https://www2.deloitte.com/content/dam/Deloitte/us/Documents/human-capital/us-2021-study-of-economic-assumptions.pdf.*

proposing, but we welcome public commenters' views on what is a reasonable late fee.

C. Unfunded Mandates Reform Act of 1995 (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments.[107] Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, which includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. *See* 2 U.S.C. 1532(a). The inflation adjusted value of $100 million in 1995 is approximately $206 million in 2024 based on the CPI–U.[108]

The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6). The term ''Federal intergovernmental mandate'' means, in relevant part, a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). 2 U.S.C. 658(5). The term ''Federal private sector mandate'' means, in relevant part, a provision that would impose an enforceable duty upon the private sector except (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(7).

This proposed rule does not contain such a mandate, because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects on such entities would arise solely due to their voluntary choices and would not be a consequence of an enforceable duty. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. *See* 2 U.S.C. 1502(1), 658(6). The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. Congressional Review Act

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by section 804 of SBREFA, Public Law 104–121, 110 Stat. 847, 868, *et seq.* This proposed rule is anticipated to be a major rule, although it is not expected to result in an annual effect on the economy of $100 million or more, as defined by section 804 of SBREFA. *See* 5 U.S.C. 804(2)(A). Accordingly, absent exceptional circumstances, this proposed rule if enacted as a final rule would be effective at least 60 days after the date on which Congress receives a report submitted by DHS as required by 5 U.S.C. 801(a)(1).

E. Executive Order 13132 (Federalism)

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with sec. 6 of E.O. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities to minimize litigation and undue burden on the Federal court system. DHS has determined that this proposed rule meets the applicable standards provided in sec. 3(b)(2) of E.O. 12988.

G. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) if the regulatory action financially impacts families, is justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then an agency must prepare an impact assessment to address criteria specified in the law.

DHS has no data that indicate that this proposed rule will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS acknowledges that this proposal would increase the fees that some families must submit and thus it may affect the disposable income for certain families. However, the proposed rule would provide USCIS with funds that would be used to administer the EB–5 investor program, meet the statutory processing times, and fund free and reduced fee services USCIS provides to abused children and spouses, refugees, victims of criminal activity or human trafficking, and other populations. DHS is required to administer the EB–5 program, is authorized to set and collect fees, and receives no funding to do so aside from the revenue generated by charging fees. While those fees could have a financial impact on a family that chooses to become an investor in an EB–5 program project, DHS has no alternatives other than this rulemaking. DHS also determined that this proposed rule would not have any impact on the autonomy or integrity of the family as an institution.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule would not have ''Tribal implications'' under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal

[107] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(5), (6).

[108] *See* BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202412.pdf* (last visited Feb. 4, 2025). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2024); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2024 − Average monthly CPI–U for 1995) ÷ (Average monthly CPI–U for 1995)] × 100 = [(313.689 − 152.383) ÷ 152.383] = (161.306/152.383) = 1.059 × 100 = 105.86% percent = 106 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars × 2.06 = $206 million in 2024 dollars.

Governments, requires no further agency action or analysis.

I. National Environmental Policy Act (NEPA)

DHS and its components analyze proposed regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 ''Implementing the National Environmental Policy Act'' (Dir. 023–01 Rev. 01) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) [109] establish the policies and procedures that DHS and its components use to comply with NEPA, 42 U.S.C. 4321 *et seq.*

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[110]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[111]

This proposed rule is limited to amending DHS regulations governing the EB–5 program and its fees. As such, DHS has reviewed this proposed rule and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this proposed rule.

Accordingly, DHS finds that the promulgation of this proposed rule's amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change amending an existing regulation with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect. Therefore, the proposed regulatory amendments are categorically excluded from further NEPA review.

J. Paperwork Reduction Act (PRA)

Under the PRA, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. Table 22 shows the summary of forms that are impacted by this rule.

TABLE 22—SUMMARY OF FORMS

OMB No.	Form No.	Form name	Type of PRA action
1615–0026	I–526	Immigrant Petition by Standalone Investor	No material or nonsubstantive change to a currently approved collection.
	I–526E	Immigrant Petition by Regional Center Investor.	
1615–NEW	I–527	Amendment to Legacy Form I–526	New Collection.
1615–0045	I–829	Petition by Investor to Remove Conditions on Permanent Resident Status.	Revision of a Currently Approved Collection.
1615–0159	I–956	Application for Regional Center Designation	No material or nonsubstantive change to a currently approved collection.
	I–956F	Application for Approval of an Investment in a Commercial Enterprise.	
	I–956G	Regional Center Annual Statement.	
	I–956H	Bona Fides of Persons Involved with Regional Center Program.	
	I–956K	Registration for Direct and Third-Party Promoters.	

This rule would require nonsubstantive edits to USCIS Forms I–526 and I–526E and I–956, I–956F, I–956G, I–956H, and I–956K. These edits include an update to the estimated annualized cost to the Federal government in each Supporting Statement located under Question 14, which is calculated by multiplying the estimated number of respondents by the filing fee. These edits are due to the update to the filing fee for each form. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet to OMB for review and approval in accordance with the PRA.

USCIS consolidated all information related to form fees, fee exemptions, and how to submit fee payments into Form G–1055, Fee Schedule. 88 FR 402, 563 (Jan. 4, 2023) (proposed rule); 89 FR 6194, 6197, 6333 (Jan. 31, 2024) (final rule). Fee-related language is therefore not part of the individual Form Instructions documents.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collections of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to each information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW (I–527) or 1615–0045 (I–829) in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation sections of this rule to submit comments. Comments on the information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

[109] The Instruction Manual contains DHS's procedures for implementing NEPA and was issued November 6, 2014, *https://www.dhs.gov/ocrso/eed/epb/nepa* (last updated July 29, 2025).

[110] *See* Instruction Manual, Appendix A, Table 1.

[111] Instruction Manual at V.B(2)(a)–(c).

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

USCIS Form I–527

Background

Section 203(b)(5)(M) of the INA allows qualified immigrants in certain circumstances to amend their qualified Form I–526, Immigrant Petition by Alien Investor, petition filed before March 15, 2022, seeking classification for a visa to enter the United States for the purpose of engaging in a commercial enterprise. This form provides affected investors an avenue to establish their ongoing eligibility for an EB–5 immigrant visa by amending their originally filed Form I–526. USCIS will use the data collected on this form to determine the ongoing eligibility of an investor seeking to enter the United States to engage in an NCE.

An investor may file this form if they filed a Form I–526 before March 15, 2022, and are seeking to retain eligibility under section 203(b)(5)(M) of the INA because their regional center has been terminated or their NCE or JCE has been debarred and they do not otherwise continue to be eligible notwithstanding such termination or debarment (for example, because the requisite amount of capital has been or will continue to be invested in their original NCE and the requisite number of jobs have been or will be created in accordance with their originally filed business plan). To maintain eligibility if their regional center is terminated, an investor's NCE may associate with another designated regional center, or the investor may make a qualifying investment in another new commercial enterprise. If the investor's NCE or JCE is debarred, the investor may associate their investment with another NCE in good standing and invest additional capital necessary to satisfy any remaining job creation requirements.

This form serves the purpose of standardizing requests for certain investors to amend a Form I–526 filed before March 15, 2022.

Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Amendment to Legacy Form I–526.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–527; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form will be used by an investor to amend a Form I–526, Immigrant Petition by Alien Investor, filed before March 15, 2022, in order to retain eligibility under INA 203(b)(5)(M) where the investor's regional center is terminated, or their NCE or JCE is debarred.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–527 is 457 and the estimated hour burden per response is 1.44 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 658 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $235,355.

USCIS Form I–829

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition by Investor to Remove Conditions on Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–829; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; Business or other for-profit. This form is used by a conditional permanent resident who obtained such status through a qualifying investment to apply to remove the conditions on their conditional residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–829 is 1,010 and the estimated hour burden per response is 3.62 hours; the estimated total number of respondents for the information collection of Biometrics is 1,010 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 4,838 hours. The proposed changes to the Form I–829 instructions reflects the proposed changes in the rule to clarify the process by which an immigrant investor's derivatives file separate Form I–829 petitions when they are not included in the Form I–829 filed by the immigrant investor.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $437,330.

Differences in Information Collection Request Respondent Volume and Fee Model Filing Volume Projections

DHS notes that the estimates of annual filing volume in the PRA section of this preamble are not the same as those used in the model used to calculate the fee amounts in this final rule. For example, the fee calculation model projects 11,262 EB–5 program filings annually across eight current forms and one new form, while the estimated total number of respondents for the eight current forms and one new form is 12,289. As stated in section VI.A.2.a. of this preamble, the Volume Projection Committee forecasts USCIS workload volume based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality), changes in policies, economic conditions, or correlations with historical events to forecast receipts. Workload volume is used to determine the USCIS resources needed to process benefit requests and is the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model. DHS uses a different method for estimating the average annual number of respondents for the information collection over the 3-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3- or 5-year period, with less consideration of the volume effects on planned or past policy changes. Although the RIA uses similar historic average volumes, RIAs isolate the impacts of proposed policy using models that may use different periods of analysis and often make simplifying assumptions about costs such as information collection burdens not caused by the regulation. When the information collection request is nearing expiration USCIS will update the estimates of annual respondents based on actual results in the submission to OMB. The PRA burden estimates are generally updated at least every 3 years. Thus, DHS expects that the PRA estimated annual respondents will be

updated to reflect the actual effects of this rule within a relatively short period after a final rule takes effect.

List of Subjects and Regulatory Amendments—List of Subjects

8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

8 CFR Part 216

Administrative practice and procedure, Aliens.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 106—USCIS FEE SCHEDULE

■ 1. Revise the authority citation for part 106 to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1153, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note); Pub. L. 115–218, 132 Stat. 1547; Pub. L. 116–159, 134 Stat. 709; Pub. L. 117–103, 136 Stat. 49.

■ 2. Amend § 106.2 by:
■ a. Revising paragraphs (a)(25), (53), and (65) through (69);
■ b. Redesignating paragraph (d) as paragraph (e); and
■ c. Adding a new paragraph (d).

The revisions and addition read as follows:

§ 106.2 Fees.

(a) * * *

(25) *Immigrant Petition by Standalone or Regional Center Investor, Forms I–526 and I–526E.* To petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Act. The fee for this request is provided in paragraph (d) of this section.

* * * * *

(53) *Petition by Investor to Remove Conditions on Permanent Resident Status, Form I–829.* For a conditional permanent resident who obtained status through qualified investment to remove the conditions on their residence. The fee for this request is provided in paragraph (d) of this section.

* * * * *

(65) *Application for Regional Center Designation, Form I–956.* To request designation as a regional center or to request an amendment to an approved regional center. The fee for this request is provided in paragraph (d) of this section.

(66) *Application for Approval of Investment in a Commercial Enterprise, Form I–956F.* To request approval of each particular investment offering through an associated new commercial enterprise. The fee for this request is provided in paragraph (d) of this section.

(67) *Regional Center Annual Statement, Form I–956G.* To provide updated information and certify that a regional center under the Immigrant Investor Program has maintained its eligibility. The fee for this request is provided in paragraph (d) of this section.

(68) *Bona Fides of Persons Involved with Regional Center Program, Form I–956H.* For each person involved with a regional center to attest to their compliance with section 203(b)(5)(H) of the Act. The fee for this request is provided in paragraph (d) of this section.

(69) *Registration for Direct and Third-Party Promoters, Form I–956K.* For each person acting as a direct or third-party promoter (including migration agents) of a regional center, any new commercial enterprises, an affiliated job-creating entity, or an issuer of securities intended to be offered to immigrant investors in connection with a particular capital investment project. The fee for this request is provided in paragraph (d) of this section.

* * * * *

(d) *EB–5 fees.*

(1) *Petition Fee.* Individuals filing a petition for classification under INA section 203(b)(5)(E) must submit $1,085 in addition to any other fees associated with such petition.

(2) *Immigrant Petition by Standalone or Regional Center Investor, Forms I–526 and I–526E.* To petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Act.

(i) Immigrant Petition by Standalone Investor, Form I–526 initial filing: $9,530.

(ii) Immigrant Petition by Regional Center Investor, Form I–526E initial filing or amendments: $9,530.

(iii) Each initial filing of Form I–526 or I–526E requires an additional USCIS EB–5 Technology Fee of $95.

(3) *Amendment to Legacy Form I–526, Form I–527.* For investors who filed their petitions before the EB–5 Reform Act was enacted to amend their petition to retain their eligibility after their regional center is terminated or their new commercial enterprise or job-creating entity is debarred. $8,000.

(4) *Immigrant Petition by Investor to Remove Conditions on Permanent Resident Status, Form I–829.* For a conditional permanent resident who obtained status through qualified investment to remove the conditions on their residence. $7,860.

(5) *Application for Regional Center Designation, Form I–956.* To request designation as a regional center or to request an amendment to an approved regional center.

(i) For initial filing: $28,895.

(ii) For filing amendment: $18,480.

(6) *Application for Approval of Investment in a Commercial Enterprise, Form I–956F.* To request approval or an amendment to each particular investment offering through an associated new commercial enterprise. $29,935.

(7) *Regional Center Annual Statement, Form I–956G.* To provide updated information and certify that a Regional Center under the Immigrant Investor Program has maintained its eligibility, amend or supplement a prior filing. $2,740.

(8) *Bona Fides of Persons Involved with Regional Center Program, Form I–956H.* For each person involved with a regional center to attest to their compliance with section 203(b)(5)(H) of the Act. $55.

(9) *Registration for Direct and Third-Party Promoters, Form I–956K.* For each person acting as a direct or third-party promoter (including migration agents) of a regional center, any new commercial enterprises, an affiliated job-creating entity, or an issuer of securities intended to be offered to immigrant investors in connection with a particular capital investment project. $2,740.

(10) *EB–5 Integrity Fund Fees and Penalties.*

(i) *Regional Center Annual Fee.* On October 1 of each year, designated regional centers must submit:

(A) $21,650; or

(B) $10,825 if the regional center has 20 or fewer total investors in its new commercial enterprises as of the last day of the preceding fiscal year.

(C) For the purposes of this section, total investors:

(*1*) Means the number of individuals who have invested or are actively in the process of investing in a regional center's new commercial enterprises that have been classified or are seeking classification under section 203(b)(5) of the Act minus the number of such individuals who have filed a petition to remove conditions based on such investment under section 216A of the Act.

(*2*) Does not include any individual whose petition for classification was denied, withdrawn, or revoked or whose conditional lawful permanent resident status was otherwise terminated before filing a petition for removal of conditions.

(D) This fee must be paid online at *Pay.gov* following the instructions at that website for the Annual Fee for

Regional Center payment, or as may be provided by USCIS under section 106.1(b).

(ii) *Penalties for Failure to Submit Regional Center Integrity Fee.* (A) If a regional center does not pay the fee on or before October 31 of each year and instead pays the fee from November 1 until the end of the day on November 30, a monetary penalty equal to 10 percent of the required fee will be imposed on the regional center.

(B) If a regional center does not pay the fee on or before November 30 and instead pays the fee from December 1 until the end of the day on December 30, a monetary penalty equal to 20 percent of the required fee will be imposed on the regional center.

(C) If a regional center does not pay the fee plus any applicable penalty on or before December 30, USCIS will terminate the designation of such regional center.

(*1*) Prior to termination, USCIS will send a notice of intent to terminate and provide the opportunity for a regional center to prove that the fee and applicable late fees were paid in the proper amount on or before December 30.

(*2*) Termination of a regional center under paragraph (d)(9)(ii)(C) of this section may be appealed as provided by 8 CFR 103.3.

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PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 3. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

■ 4. Amend § 216.6 by revising paragraph (a)(1)(ii) to read as follows:

(a) * * *

(1) * * *

(ii) An investor may include their spouse and children on a petition to remove conditions if the spouse and children obtained conditional permanent resident status based on their relationship to the investor. If the investor's spouse and children are not included on the investor's petition to remove conditions, the spouse and each child must each file their own petition to remove the conditions on their permanent resident status, unless the investor is deceased. Any spouse or child not included on the investor's petition to remove conditions may file a petition to remove the conditions on their residence at any time during the period when the investor is required to file a petition to remove conditions.

(A) If the investor is deceased, the spouse and children may file separate petitions or may be included in one petition. In either case, the spouse and child must file the petition(s) at any time during the period when the investor would have been required to file a petition to remove conditions and establish eligibility to remove conditions.

(B) An investor may include any child who turned 21 years of age or married during the period of conditional permanent resident status on their petition to remove conditions. If the investor does not include the child on their petition to remove conditions, the child must file their own petition to remove conditions.

(C) An investor may include a former spouse who was divorced from the investor during the period of conditional permanent resident status on their petition to remove conditions. If the investor does not include the former spouse on their petition to remove conditions, the former spouse must file their own petition to remove conditions.

(D) If an investor does not file a petition to remove conditions, any spouse, former spouse, or child that obtained conditional permanent resident status based on their relationship to the investor may remove the conditions on their status if they can establish eligibility to remove conditions. The spouse, former spouse, or child must file the petition(s) at any time during the period when the investor would have been required to file a petition to remove conditions.

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Kristi Noem,

Secretary, U.S. Department of Homeland Security.

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