DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 205, 216 and 235

[CIS No. 2770–24; DHS Docket No. USCIS–2026–0100]

RIN 1615–AC94

EB–5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB–5 Program; Automatic Revocation of Petitions for Immigrant Classification

AGENCY: U.S. Citizenship and Immigration Services (''USCIS''), Department of Homeland Security (''DHS'').

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would implement the EB–5 Reform and Integrity Act of 2022 (RIA), which the President signed on March 15, 2022. The RIA substantially reforms and adds significant integrity provisions to the employment-based, fifth preference (EB–5) visa category for alien investors and the associated Regional Center Program. In general, under the EB–5 program, aliens are eligible to apply for lawful permanent resident status in the United States if they make the necessary investment in a new commercial enterprise in the United States and create 10 permanent full-time jobs for qualified U.S. workers.

DATES: *Submission of Public Comments:* Written comments must be submitted on or before August 31, 2026. 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 rulemaking package, identified by DHS Docket No. USCIS–2026–0100, through the **Federal Register** eRulemaking Portal: *http://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 above, 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 will not accept any comments that are hand-delivered, couriered, or sent by mail. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you cannot submit your comment by using *http://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: Immigrant Investor Program Office, Field Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 711.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation
II. Executive Summary
  A. Purpose of the Regulatory Action
  B. Legal Authority
  C. Summary of Proposed Regulatory Changes
  D. Summary of Benefits and Costs
III. Background and Purpose
  A. The EB–5 Program
  B. The Regional Center Program
  C. The EB–5 Immigrant Visa Process
IV. Discussion of Proposed Rule
  A. Regulatory Background, Proposed Structure, and Implementation of This Rule
  B. Definitions
  C. National Security and Fraud
  D. Alien Investors
  E. Targeted Employment Areas
  F. Infrastructure Projects
  G. Troubled Businesses
  H. Regional Center Program
  I. Removal of Conditions
  J. Withdrawal Requests and Petition Revocations
  K. Severability
V. Statutory and Regulatory Requirements
  A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)
  B. Regulatory Flexibility Act
  C. Unfunded Mandates Reform Act of 1995 (UMRA)
  D. Executive Order 13132 (Federalism)
  E. Executive Order 12988 (Civil Justice Reform)
  F. Family Assessment
  G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
  H. National Environmental Policy Act
  I. Administrative Procedure Act
  J. Paperwork Reduction Act

Table of Abbreviations

ACS American Community Survey
AML/CFT Anti-money Laundering and Countering the Financing of Terrorism
ASC Application Support Center
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CPI–U Consumer Price Index for All Urban Consumers
CY Calendar Year
DHS Department of Homeland Security
EB–5 Employment-Based Fifth Preference
EIA Economic Impact Analysis
FIRRMA Foreign Investment Risk Review Modernization Act of 2018
FR Federal Register
FY Fiscal Year
GAAS Generally Accepted Auditing Standards
GAO Government Accountability Office
GS General Service
GSA General Services Administration
HSA Homeland Security Act
INA Immigration and Nationality Act
INS Immigration and Naturalization Service
IPO Immigrant Investor Program Office
IRFA Initial Regulatory Flexibility Analysis
JCE Job-Creating Entity
LAUS Local Area Unemployment Statistics
LPR Lawful Permanent Resident
MSA Metropolitan Statistical Area
NAICS North American Industry Classification System
NCE New Commercial Enterprise
NEPA National Environmental Policy Act
OCB Oracle Crystal Ball®
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RC Regional Center
RFA Regulatory Flexibility Act of 1980
RIA EB–5 Reform and Integrity Act of 2022
SAM Staffing Allocation Model
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SEC Securities and Exchange Commission
SOC Standard Occupational Classification
TEA Targeted Employment Area
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
USCIS United States 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 above, 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. In addition to its general call for comments, DHS is specifically seeking comments on:

A. Audits and a regional center's record keeping requirements under section 203(b)(5)(E)(vii) of the Immigration and Nationality Act (INA);

B. The types of projects that may meet the definition of an infrastructure project;

C. The high unemployment area designation process, including the most appropriate data sources to calculate weighted unemployment average of census tracts and how a regional center should renew the designation of a previously designated high unemployment area under section 203(b)(5)(B)(ii)(IV) of the INA, 8 U.S.C. 1153(b)(5)(B)(ii)(IV);

D. Redeployment of alien investor capital under section 203(b)(5)(F)(v) of the INA, 8 U.S.C. 1153(b)(5)(F)(v), including the process a regional center should use to document its compliance with the statutory requirements; and

E. The process for registering direct and third-party promoters of a regional center, new commercial enterprise, or job-creating entity.

DHS also invites comments on the economic analysis supporting this rule and the proposed form revisions.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2026–0100 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 *http://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 redact information that is offensive or impacts the privacy of an individual. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS–2026–0100. 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 of the Regulatory Action

The Department of Homeland Security (DHS) proposes to update its regulations governing EB–5 alien investors and the Regional Center Program to reflect new requirements provided in the INA, 8 U.S.C. 1101 *et seq.,* as amended by the EB–5 Reform and Integrity Act of 2022 (RIA). Public Law 117–103, Division BB, 136 Stat. 1070 (2022).

B. Legal Authority

The Secretary of Homeland Security's authority for the regulatory amendments is found in various provisions of the INA, RIA, 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002), and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing the rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, including establishing regulations deemed necessary to carry out that authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. Specific authority for the proposed regulatory amendments includes:

• Section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), which vests in the Secretary the authority to make visas available to immigrants seeking to engage in a new commercial enterprise in which the immigrant has invested and which will benefit the U.S. economy and create full-time employment for not fewer than 10 U.S. workers. This also includes authority for, among other things, the designation and regulation of regional centers and related entities at sections 203(b)(5)(E), (F), (G), (H), (I), (J) and (K) of the INA, 8 U.S.C. 1153(b)(5)(E), (F), (G), (H), (I), (J), and (K). It further provides new requirements regarding sources of capital at section 203(b)(5)(L) of the INA, 8 U.S.C. 1153(b)(5)(L), protections for good faith investors at section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), authorities to take adverse action related to national security and fraud at sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N) and (O), administrative appeals of EB–5 related determinations at section 203(b)(5)(P) of the INA, 8 U.S.C. 1153(b)(5)(P), administration requirements for EB–5 investor funds at section 203(b)(5)(Q) of the INA, 8 U.S.C. 1153(b)(5)(Q), required checks for investor petitions at section 203(b)(5)(R) of the INA, 8 U.S.C. 1153(b)(5)(R), and future protections from expired legislation at section 203(b)(5)(S) of the INA, 8 U.S.C. 1153(b)(5)(S).

• Section 203(h)(5) of the INA, 8 U.S.C. 1153(h)(5), which provides age-out protections to certain children of EB–5 investors.

• Section 204(a)(1)(H) of the INA, 8 U.S.C. 1154(a)(1)(H), which requires that petitions for classification filed by regional center investors be filed in accordance with the new provisions of the INA, may only be filed after a regional center has filed an associated project application, and that eligibility for such petitions is subject to the approval of the related project application.

• Section 245(k) and (n) of the INA, 8 U.S.C. 1255(k) and (n), which permits concurrent or subsequent filing of applications for adjustment of status for certain EB–5 investors filing petitions for classification.

• Section 216A of the INA, 8 U.S.C. 1186b, which places conditions on permanent residence obtained through section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), and authorizes the Secretary to remove such conditions on permanent residence for those alien investors who have met the applicable investment requirements, created sufficient employment, and otherwise met the requirements of section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5).

• Section 103(b)(1) of the RIA, Public Law 117–103, 136 Stat. 1070 (2022), which amends the INA to direct DHS to issue regulations to implement certain provisions of the INA; specifically, sections 203(b)(5)(F)(v) and (H)(ii)(III) of the INA, 8 U.S.C. 1153(b)(5)(F)(v) and (H)(ii)(III).

C. Summary of Proposed Regulatory Changes

1. Summary of Major Provisions of the Regulatory Action

DHS proposes the following major revisions to the EB–5 program regulations:

• Implementing sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N) to protect the EB–5

program from fraud and threats to national security.

- Reorganizing the regulatory provisions in a new subpart D.
- Adding new definitions.
- Implementing priority date retention.
- Clarifying eligibility requirements, including new capital investment amounts, duration of investment, job creation requirements, and evidentiary requirements.
- Eliminating the use of repaid bridge financing as a basis to demonstrate job creation in the EB–5 program.
- Determining targeted employment areas (TEAs).
- Defining infrastructure projects.
- Removing troubled businesses as an avenue to establish eligibility.
- Describing regional center program requirements, including designation of a regional center, project applications, redeployment, and bona fides of persons involved with the Regional Center Program.
- Implementing the registration process of direct and third-party promoters.
- Establishing enforcement provisions, including monetary penalties, suspensions, debarments, and terminations.
- Implementing audits.
- Creating process improvements for removal of conditions.
- Establishing procedures for amendment of the petition to remove conditions on permanent resident status for investors associated with a terminated regional center or debarred new commercial enterprise or job-creating entity.
- Explaining the processing of withdrawal requests.
- Clarifying the automatic revocation of petitions for immigrant classification.

2. Technical Changes

DHS proposes certain miscellaneous technical amendments to improve the readability of the regulatory provisions and eliminate unnecessary descriptions of internal procedures. These modifications are not intended to be substantive and would not change eligibility criteria or evidentiary standards or confer rights or obligations upon any party. In addition to the changes mentioned in this summary, DHS is also describing proposed technical changes in the relevant sections. DHS invites comments on these changes during the public comment period.

DHS proposes to modify references to specific form names, and numbers, where appropriate, from various regulatory provisions and replace them with general references to the type of application and petition, in recognition that these forms may evolve or change over time, be consolidated, discontinued, or modified, especially with the expansion of online filings. Removing form numbers, where appropriate, would provide greater flexibility to account for future changes to the form or how the forms are filed.

DHS also proposes to update terminology, as some of the regulations predate the creation of DHS. As such, DHS proposes, for example, to replace the term ''Service,'' which is the outdated reference to the former Immigration and Naturalization Service, with ''USCIS,'' ''Department,'' or ''DHS,'' as appropriate. Additionally, DHS proposes to remove the term ''shall'' and to replace it with the term ''will,'' where appropriate, to clearly indicate what action USCIS will take. Making these changes will assist with clarity and readability of the provisions. Finally, DHS is also proposing to remove, in certain regulatory provisions, the phrase ''alien entrepreneur'' and add, in its place, the phrase ''alien investor.'' *See* proposed 8 CFR 216.2 and 216.3.

DHS also proposes to remove em-dashes, where appropriate. *See* proposed 8 CFR 216.6(a). Finally, DHS proposes grammatical changes to better reflect the intended meaning. For example, DHS proposes to change ''which'' to ''that'' in proposed 8 CFR 216.3(b) to read ''obtained permanent resident status through a commercial enterprise that was improper.''

D. Summary of Benefits and Costs

DHS proposes to update and align its regulations governing EB–5 immigrant investors and the Regional Center Program to reflect new requirements provided in the RIA. The proposed rule would apply to business entities involved in EB–5 program investment activity; regional centers (RCs), New Commercial Enterprises (NCEs), and Job Creating Entities (JCEs). It would thus apply to investors and some individuals associated with the businesses. This rule proposes numerous technical changes, codifications, clarifications, guidance, and procedural and operational adjustments to the EB–5 program. Many of the changes are not expected to create economic impacts. For provisions that are expected to generate impacts, DHS has made estimates of some, but not all potential impacts due to data and information constraints.

EB–5 investment activity can be influenced by local, regional, and national factors relevant to economic growth, employment, demand for types of investment, and availability of capital. It can also be influenced by factors such as capital mobility in particular regions and countries outside the United States. The variation in past program investments and intensity within certain project areas (types of projects and geographical areas) could have been and may be influenced by multiple factors that are exogenous to the regulatory framework of the EB–5 program. It is not possible to sort out or identify all the possible factors that can influence the program to determine exactly how the investment activity and related business entities would be impacted, and further, what the effects from and responses to the impacts could be. The multiple provisions being proposed are intended to align the practice of the program with its true intent of stimulating domestic capital investment and job creation while rooting out problems the program has encountered. Second, most of the impacts are expected to accrue to time-related, administrative, documentary, evidentiary, and organizational efforts needed to meet the requirements of the provisions, and this is not something that can be quantified.

The proposed rule seeks to implement RIA's provisions to improve the program along five pathways. First, it would provide clear and thorough guidance to program participants and the public concerning practices, responsibilities, and requirements of the program under the RIA.[1] Second, it would provide DHS with a set of tools to implement provisions under RIA to protect the EB–5 program from fraud and threats to national security, including sanctions that also act as incentives for EB–5 entities to engage in appropriate practices to avoid sanctions. Third, it would support RIA's stringent oversight and evidentiary requirements to provide more assurance that program activities and investments meet compliance standards. Fourth, it would provide some flexibilities for investors to deal with changes in business conditions pertinent to them.

As is noted above, it is not possible to determine how specific entities

[1] Participants in EB–5 programs may also need to consider the extent to which their activities or a particular project may raise issues or impose obligations under the Federal securities laws, including whether there is an offering or sale of any ''security'' under those laws. A description of these laws is available at: *https://www.sec.gov/rules-regulations/statutes-regulations.* Activities subject to Federal securities laws may lead to liability under the statutes and rules administered by the U.S. Securities and Exchange Commission (SEC), separately from any requirements of the EB–5 programs.

would be impacted by specific provisions and what the resulting effects of such impacts would be. However, DHS can draw on some information and data to make partial quantified estimates applicable to some provisions. For the impacts that could be estimated and quantified, at a three percent discount rate the annualized impacts over ten years could range from $39.90 million to $87.36 million, with a midpoint of $63.59 million. At a seven percent discount rate, annualized impacts could range from $38.80 million to $85.39 million, with a midpoint of $62.06 million. These monetized estimated impacts will accrue to the public and private sector.

Table 1 presents the main provisions in the proposed rule, beginning with the monetized estimates (or the quantified impacts) (Table 3A), following by the unquantified impacts (Table 3B), whereas monetized figures reflect the annualized amount for the midpoint of a range, at a seven percent discount rate. The population figures reflect annual averages unless otherwise stated. The information in Table 3 is presented as a broad outline with greater detail provided in the ensuring analysis.

BILLING CODE 9111–97–P

Table 1. Summary of Possible Impacts of Main Provisions of the Proposed Rule.

Table 1A. Monetized Estimates (annualized at 7% discount rate (FY 2024 through FY 2033, 2024 $ dollars)).

Proposed Requirements	Potential Impact
Biometrics Submission Requirement	• Population: 2,488 individuals associated with regional centers, NCEs, and JCEs. • Impact type: Opportunity cost of time and travel expenses to individuals associated with submitting biometrics applicable to Form I-956H. • Estimate: $910,000. • Benefit: Operationalizes a requirement of the RIA and equips DHS with identity verification and management.

Staffing Allocation	• Impact type: Federal government cost; requested number of new personnel based on the EB-5 staffing allocation model (SAM). • Estimate: DHS hiring and wage cost estimate: $44.76 million. • Benefit: Allows DHS meet the operational changes needed to support the RIA and associated requirements proposed in this rule.
Increased Site Visits and Audits	• Population: DHS currently plans about 1,000 physical site visits or virtual checks of new commercial enterprises or job-creating entities annually. • Impact type: DHS intends to conduct stringent program oversight of EB-5 businesses/associated individuals, and the entities could incur some direct and indirect time-related costs applicable to preparation, evidentiary and documentary collection, and interviews. Regional centers may also incur costs associated with outsourcing regional center audits and financial review to third party entities; DHS could incur additional costs applicable to travel and time. Access to the EB-5 program could be revoked if compliance is not met. • Estimate: $1.87 million. • Benefit: Provides increased assurance that regional centers and other program businesses are engaged in appropriate practices; increased virtual checks would create efficiency in determining if initial screening compliance is met, in some cases a physical inspection might not be necessary.
Proposed Rule Familiarization Costs	• Population: 11,741 human resource assistants or attorneys associated with EB-5 businesses. • Impact type: Costs; the Department expects that individuals associated with EB-5 will require time to read and develop an understanding of the rule (these costs would generally be one-time costs mostly incurred in the fiscal year the rule publishes). • Estimate: $9.51 million.

	• Benefit: Not applicable.
Visa Priority Date Retention	• Population: Baseline 1,500 petitions (as of May 1, 2025). • Impact type: Filing fee and time-related costs of filing a new investment petition; investors filing of their own volition would not incur a cost; those filing due to circumstances beyond their control, such as in the case of termination of their affiliated Regional Center, would incur the costs. • Estimate: $3.66 million. • Benefit: Addresses situations in which petitioners may become ineligible through circumstances beyond their control (such as the termination of a regional center) as they wait for their immigrant visa priority date to become current; provides investors with greater flexibility to deal with changes to business conditions.
Regional Center Audits	• Population: 589 annual regional centers • Impact type: costs associated with preparing and participating in audits as time related impacts applicable to the Form I-965G PRA audit response burden. Regional centers may also incur costs associated with outsourcing regional center audits and financial review to third party entities; DHS could incur additional costs applicable to travel and time. • Estimate: $1.34 million. • Benefit: Increased assurance that regional centers and other program businesses are engaged in appropriate practices; increased virtual checks would create efficiency in determining if initial screening compliance is met, in some cases a physical inspection might not be necessary.

Table 1B. Unquantified Impacts.

Proposed Requirements	Potential Impact
High Unemployment Target Area Configuration	• Population: number is currently indeterminate; EB-5 Regional Centers and alien investors relying on a high unemployment target area to meet the reduced investment threshold; more specifically,

	the impacts would be incurred by those that relied on a high unemployment area geography structure that the proposed rule would remove. • Impact type: Unknown; the Department cannot determine if there will be impacts to investments/projects; there could be some time-related impacts due to reconfiguring business plans and economic models; requires target area configurations to generally include census tracts directly adjacent to the project activity. • Estimate: Not estimated. • Benefit: Provides a more reasonable methodology and protocol to accurately gauge job creation estimates to the actual investment project activity.
Combating National Security and Fraud	• Population: All Regional Centers and other EB-5 enterprises, as well as individuals connected to them, would be subject to the increased evidentiary requirements and the additional monitoring and oversight that DHS intends to conduct; it is unknown how many entities could incur impacts in the form of sanctions, termination from the program, debarment, monied penalties, or other actions. • Impact type: Unknown; the Department cannot determine if there will be impacts. • Estimate: Not estimated. • Benefit: Provides DHS a suite of detection and actionable tools to combat national security threats and fraud pertinent to areas of concern that the EB-5 program has encountered; potential sanctions should act as an incentive for compliance to reduce threats and stand to increase the program effectiveness in creating domestic jobs and increase assurance that the activities of the program align with its true intent.
Clarifying Definitions, Terminology, References, and Procedural Updates	• Population: All Regional Centers and other EB-5 enterprises, as well as individuals connected to them. • Impact type: There could be time-related, administrative, and organizational costs applicable

	to updating or revamping investment offerings, business plans, economic models, and other activities to satisfy the extensive number of clarifying definitions, and terminology updates DHS is proposing; DHS does not expect changes to investment volumes of area of focus from the extensive number of changes. The timing of some investments could be impacted. • Estimate: Not estimated. • Benefit: Provides needed updates and codifies specific language and procedures concomitant to the RIA; Provides clear and transparent guidance for stakeholders concerning DHS requirements and intent for the program.
Changes to job creation estimation methodologies	• Population: Very small number of regional centers and investors. • Impact type: Minimal, some changes to business plans and/or economic models might be necessary. • Estimate: Not estimated. • Benefit: Removes outdated and seldom relied upon approaches to job creations estimation relevant to visitor spending, job-sharing arrangements, and troubled businesses.
	•
Source: USCIS Analysis (Apr. 22, 2024)	

In addition to the summary of potential impacts elucidated in Table 3, DHS offers the OMB A–4 accounting statement in Table 2.

Table 2. OMB A-4 Accounting Statement ($ millions, 2024); Period of analysis: FY 2024 through FY 2033.					
Category	**Primary Estimate**		**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS					
Annualized quantified, but un-monetized, benefits	3%	N/A	N/A	N/A	Regulatory Impact Analysis
	7%	N/A	N/A	N/A	

Unquantified Benefits	• Operationalizes the RIA by enacting required and needed changes to the program. Through extensive clarifying definitions, technical adjustments, procedural updates, new and stringent evidentiary standards, DHS provides a cohesive, reasonable, and transparent set of proposals and operational guidance that can enable the public, private EB-program entities, and other stakeholders to develop a clear understanding concerning eligibility and standards required to participate and maintain compliance in the program; the changes proposed stand to increase the program effectiveness in creating domestic jobs and increase assurance that the activities of the program align with its true intent. • Equips DHS with tools to detect fraud, deceit, intentional material misrepresentation, and criminal misuse, as well as threats to public safety or national security. Provides DHS with a suite of actionable tools, including sanctions that include debarment, suspension, and termination from the program, as well as sanctions that could involve monied penalties, to combat problematic areas that the program has encountered. • Increased regional center monitoring and oversight of the investment offerings and business activities of associated new commercial enterprises and job creating activities would provide increased assurance that the ongoing use of the capital complies with all applicable immigration laws, Federal and State securities laws, and the terms and conditions of the investments under the regional center. • Reforms key economic methodologies applicable to the geographic scope of economic activity and high unemployment areas that increase the reasonableness of how these areas are configured in terms of job creating activity. Removes some outdated and unnecessary approaches to estimating and measuring job creation, while making technical adjustments that would increase the validity of job creation estimation methodology. • Addresses situations in which petitioners may become ineligible through circumstances beyond their control (such as the termination of a regional center) as they wait for their immigrant visa priority date to become current. Provides investors with greater flexibility to deal with changes to business conditions.	Regulatory Impact Analysis
COSTS		

Annualized quantified, monetized, costs	3%	$63.63	$39.90	$87.36	Regulatory Impact Analysis
	7%	$62.10	$38.80	$85.39	
Qualitative (unquantified) costs	• The proposed rule seeks significant increases in the scope of screening, monitoring, documentation, evidentiary standards, recordkeeping, and internal controls to qualify and participate in the program under good standing. There are likely to be time-related, administrative, organizational, and possible direct costs expended to meet these requirements. In addition, the numerous qualifying definitions, procedural changes, and modifications to economic methodologies/job creation estimation would potentially render changes in business plans and economic models that could also generate costs. • Some investors might need to file new petitions due to circumstances beyond their control. For example, DHS might have terminated a regional center associated with the original petition and the regional center is unable or unwilling to take the necessary actions to remain eligible. Investors needing to file a new investment petition not under their own volition would incur the requisite filing fee plus opportunity costs of time. • Some investment projects might not be able to meet the proposed high unemployment geography protocol proposed; while some projects may not move forward, others might be reallocated to a new location or take advantage of a rural/infrastructure set-aside; regional centers and investors could incur expenses due to changing their business plan and other related expenses. • There are likely to be familiarization costs associated with reading and understanding the proposed rule.				Regulatory Impact Analysis
TRANSFERS					
	3%	$0	$0	$0	
	7%	$0	$0	$0	
From whom to whom?	N/A				N/A

Category	*Effects*	*Source Citation*
Effects on State, local, or tribal governments	• As this proposed rule codifies the requirements and set aside for infrastructure projects, there could be some private-public partnership investment projects and beneficial downstream effects to State or local governments.	Regulatory Impact Analysis
Effects on small businesses	• Based on limited data, the Department determines that a majority (at least 87.0 percent) of Regional Centers and almost all new commercial enterprises and job-creating enterprises directly involved in program investment activity would be small; however, there are two caveats to this initial determination: 1) The Department can neither determine distributional aspects of the potential impacts small entities involved in the EB-5 program; or, how the proposed rule could impact small entities in terms of costs and implications for business/investment activity. 2) The Department has incomplete data concerning certain types of income that EB-5 businesses likely receive, and number and share that are small may be less than that made in our initial determination.	Regulatory Impact Analysis, IRFA
Effects on wages	• None Expected.	Regulatory Impact Analysis
Effects on growth	• The Department cannot predict if the proposed rule would change either the volume or focus (types of projects, geographic regions, size of capital) of investments. Any such changes could be driven by multiple economic, business, or financial factors exogenous to the changes being proposed. Therefore, we cannot predict if the rule would impact investments and any related job creation and economic growth. However, the Department does not expect that the proposed rule would deter investment or job creation as it in no way regulates or imposes additional requirements on such activity.	Regulatory Impact Analysis

BILLING CODE 9111–97–C

Comprehensive details aligned to the impacts summarized here are provided in the accompanying regulatory impact assessment.

III. Background and Purpose

A. The EB–5 Program

Congress established the EB–5 immigrant visa classification for investors associated with employment creation as part of the Immigration Act of 1990. Public Law 101–649, 104 Stat. 4978. With the amendments made by the RIA, Public Law 117–103, Division BB, 136 Stat. 1070 (2022), the EB–5

classification makes lawful permanent resident (LPR) status available to aliens who invest at least $1.05 million in a new commercial enterprise (NCE) that will create at least 10 full-time jobs for qualifying employees[2] in the United States. *See* INA sec. 203(b)(5)(C)(i), 8 U.S.C. 1153(b)(5)(C)(i). The required investment amount is lowered to $800,000 if the investment is made in a Targeted Employment Area (TEA) or in an infrastructure project. *See* INA sec. 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii). A TEA is a rural area or area designated by DHS as an area of high unemployment. *See* INA sec. 203(b)(5)(D)(viii), 8 U.S.C. 1153(b)(5)(D)(viii); *see also* INA secs. 203(b)(5)(B)(ii), (b)(5)(D)(vii), 8 U.S.C. 1153(b)(5)(B)(ii), (b)(5)(D)(vii). The INA allots 7.1 percent of the worldwide level of employment-based visas (generally around 9,940 immigrant visas) each fiscal year for aliens seeking to enter the United States under the EB–5 classification.[3] *See* INA secs. 201(d), 203(b)(5), 8 U.S.C. 1151(d), 1153(b)(5). The INA reserves annually 20 percent of these visas for qualified immigrants who invest in a rural area, 10 percent of these visas for qualified immigrants who invest in a high unemployment area, and 2 percent of these visas for qualified immigrants who invest in an infrastructure project. *See* INA sec. 203(b)(5)(B)(i), 8 U.S.C. 1153(b)(5)(B)(i).

B. The Regional Center Program

Enacted in 1992, section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, 106 Stat. 1828, 1874, established a pilot program that authorized the provision of a limited number of EB–5 immigrant visas to aliens who invested in designated regional centers. The Regional Center Program was initially designed as a pilot program set to expire after 5 years. Congress continuously extended the program, often through short-term extensions, until the last extension expired on June 30, 2021. *See* Public Law 116–260, Division O, sec. 104, 134 Stat. 2148.

On March 15, 2022, President Biden signed the Consolidated Appropriations Act, 2022, Public Law 117–103, 136 Stat. 1070. Division BB of this Act contains the RIA, which repealed section 610 of Public Law 102–395 and established new provisions of section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), to authorize and reform the Regional Center Program, including myriad integrity and process reforms. *See* Public Law 117–103, Division BB, sec. 103, 136 Stat. 1070, 1075 (2022). The Regional Center Program authorized by the RIA took effect May 14, 2022, and is discussed in greater detail in section IV.H.

Under the Regional Center Program, aliens base their EB–5 immigrant visa petitions on investments in new commercial enterprises associated with and located within designated regional centers. A regional center is an entity in the United States that has been designated by USCIS on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* INA sec. 203(b)(5)(E), 8 U.S.C. 1153(b)(5)(E). While all EB–5 petitioners have to create at least 10 full-time jobs for qualifying employees in the United States, petitioners participating in the Regional Center Program may meet statutory job creation requirements based on economic projections of either direct or indirect job creation, rather than only using jobs the new commercial enterprise creates directly. *See* INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv).

Any entity seeking designation as a regional center must submit all information required by statute[4] using forms designated by USCIS Prior to the RIA, entities seeking designation as a regional center had to file Form I–924, Application for Regional Center Designation under the Immigrant Investor Program. *See* 8 CFR 204.6(m)(3)–(4) (Nov. 20, 2019). On or after May 14, 2022 (the effective date of the provisions of the Regional Center Program in the INA established by the RIA), entities seeking designation as a regional center must file Form I–956, Application for Regional Center Designation. USCIS published Form I–956 on May 13, 2022, under an exemption from the Paperwork Reduction Act (PRA) provided by the RIA,[5] and subsequently published Form I–956 for public comment to comply with the PRA because the exemption only lasted one year. *See* 87 FR 54233 (Sept. 2, 2022); 87 FR 79343 (Dec. 27, 2022). The form was subsequently updated on March 15, 2023,[6] under the exemption from the PRA provided by the RIA,[7] with a subsequent submission to OMB, Office of Information and Regulatory Affairs (OIRA), to finalize all edits to impacted forms with approval granted on the following forms on July 24, 2023: USCIS Forms I–526, I–526E, I–956, I–956F, I–956G, I–956H, I–956K. The current version of Form I–956 is available on the USCIS website at: *https://www.uscis.gov/i-956.*

Once designated, regional centers may submit Form I–956F, Application for Approval of an Investment in a Commercial Enterprise. *See* Public Law 117–103, Division BB, sec. 103(b)(1), 136 Stat. 1070, 1078 (2022); INA sec. 203(b)(5)(F), 8 U.S.C. 1153(b)(5)(F). USCIS published Form I–956F on June 1, 2022, and subsequently published Form I–956F for public comment and made revisions based on those comments. *See* 87 FR 54233 (Sept. 2, 2022); 87 FR 79343 (Dec. 27, 2022). The current version of Form I–956F is available on the USCIS website at: *https://www.uscis.gov/i-956f.*

Designated regional centers must also provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting Form I–956G, Regional Center Annual Statement. *See* INA sec. 203(b)(5)(G), 8 U.S.C. 1153(b)(5)(G). Prior to the RIA, designated regional centers submitted an annual statement to USCIS on Form I–924A, Annual Certification of Regional Center. USCIS published Form I–956G on June 1, 2022, and subsequently published Form I–956G for public comment. *See* 87 FR 54233 (Sept. 2, 2022); 87 FR 79343 (Dec. 27, 2022). The current version of Form I–956G is available on the USCIS website at: *https://www.uscis.gov/i-956g.*

The RIA also established in the INA the EB–5 Integrity Fund, for which each designated regional center must pay annually a required fee to retain its designation. *See* INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). USCIS will use the EB–5 Integrity Fund for integrity measures and in the administration of the Regional Center Program. *See* INA sec. 203(b)(5)(J)(iii), 8 U.S.C.

[2] A qualifying employee may include a U.S. citizen, U.S. national, lawful permanent resident of the United States, or other immigrant lawfully authorized to be employed in the United States. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii). A qualifying employee does not include the investor, his or her spouse, or his or her children. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii).

[3] An immigrant investor, his or her spouse, and children (if any) will each use a separate visa number.

[4] *See* INA sec. 203(b)(5)(E), 8 U.S.C. 1153(b)(5)(E).

[5] Section 106 of the RIA provided a one-year exemption from the requirements of the Paperwork Reduction Act (44 U.S.C. 35). *See* Public Law 117–103, Division BB, Sec. 106(d) (2022).

[6] U.S. Citizenship and Immigration Services, ''Forms Updates'', see links for USCIS Forms I–526, I–526E, I–956, I–956F, I–956G, I–956H, I–956K *available at https://www.uscis.gov/forms/forms-updates?items_per_page=25&page=9* (Edition Date: March 15, 2023).

[7] Section 106 of the RIA provided a one-year exemption from the requirements of the Paperwork Reduction Act (44 U.S.C. 35). *See* Public Law 117–103, Division BB, Sec. 106(d) (2022).

1153(b)(5)(J)(iii). DHS published a **Federal Register** Notice explaining the payment process and requiring payment beginning on March 2, 2023, and before April 3, 2023. *See* 88 FR 13141 (Mar. 2, 2023). For FY 2024 and each year thereafter, a designated regional center must pay the required fee between October 1st and October 31st of the same year. *See* 88 FR at 13141.

C. The EB–5 Immigrant Visa Process

An alien seeking LPR status under the EB–5 immigrant visa classification must go through a multi-step process. The alien must first file an EB–5 immigrant visa petition with USCIS, either as a standalone investor by filing a Form I–526, Immigrant Petition by Standalone Investor, or as a regional center investor by filing a Form I–526E, Immigrant Petition by Regional Center Investor. The petition must be supported by evidence that the alien's lawfully obtained investment capital is invested (*i.e.,* contributed and placed at risk), or is actively in the process of being invested, in a new commercial enterprise in the United States that will create full-time positions for not fewer than 10 qualifying employees. *See* INA sec. 203(b)(5)(A); 8 U.S.C. 1153(b)(5)(A).

If USCIS approves the EB–5 immigrant visa petition, the petitioner must take additional steps to obtain LPR status. In general, once USCIS has approved the petition and an immigrant visa is available, the petitioner may apply for a visa through a Department of State (State) consular post abroad. Alternatively, if the petitioner is already in the United States and is otherwise eligible to adjust status, the petitioner may seek to adjust status to that of an LPR. *See* INA sec. 245, 8 U.S.C. 1255. A petitioner does so by filing a Form I–485, Application to Register Permanent Residence or Adjust Status, with USCIS, which the petitioner may file concurrently with [8] or any time after filing the EB–5 immigrant visa petition. The ability to obtain LPR status is limited because Congress has imposed limits on the availability of immigrant visas based on the category of visa and the immigrant's country of birth. *See* INA secs. 201(d), 202, 8 U.S.C. 1151, 1152.

To request an immigrant visa while abroad, an EB–5 petitioner must apply at a consular post of the Department of State (State). *See* INA secs. 203(e) and (g), 8 U.S.C. 1153(e) and (g); *see also* 22 CFR part 42, subparts F and G. If a visa is available for the petition, the petitioner must generally wait to receive a notification from State's National Visa Center [9] to begin the visa application process with State. After receiving this notification, the petitioner must collect required information and file the immigrant visa application with State. As noted above, the wait for an immigrant visa depends on the demand for immigrant visas in the EB–5 category and the petitioner's country of birth.[10] Generally, State authorizes the issuance of a visa and schedules the petitioner for an immigrant visa interview for the month in which the priority date will be current. If State approves the petitioner's immigrant visa application, the consulate issues an immigrant visa and the petitioner, on the date of admission to the United States, obtains LPR status on a conditional basis. *See* INA secs. 211, 216A, and 221; 8 U.S.C. 1181, 1186b, and 1201.

Alternatively, an EB–5 petitioner who is in the United States in lawful nonimmigrant status, with limited exceptions, may seek LPR status by filing Form I–485, Application to Register Permanent Residence or Adjust Status, with USCIS. *See* INA sec. 245, 8 U.S.C. 1255; 8 CFR part 245. While the RIA amended the INA to allow for filing the application for adjustment with the petition for classification or while the petition for classification is pending (*See* Public Law 117–103, Division. BB, sec. 102(d), 136 Stat. 1070, 1075 (2022); *see* INA sec. 245(n), 8 U.S.C. 1255(n)), an immigrant visa needs to be ''immediately available'' for such an application to be considered properly filed. *See* INA sec. 245(n), 8 U.S.C. 1255(n); 8 CFR 245.2(a)(2)(i)(B) and (C). Generally, an immigrant visa is considered ''immediately available'' if the petitioner's priority date for the EB–5 category is earlier than the relevant date indicated in the monthly Visa Bulletin.[11] *See* 8 CFR 245.1(g)(1).

Whether obtained through the issuance of an immigrant visa or adjustment of status, LPR status based on an EB–5 petition is granted on a conditional basis. *See* INA sec. 216A(a)(1), 8 U.S.C. 1186b(a)(1). In general, within the 90-day period preceding the second anniversary of the date the alien investor obtains conditional permanent resident status, the alien investor must file Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status, with USCIS. *See* INA sec. 216A(d)(2), 8 U.S.C. 1186b(d)(2); 8 CFR 216.6(a)(1). Failure to timely file Form I–829 results in automatic termination of the alien investor's conditional permanent resident status and the initiation of removal proceedings. *See* INA sec. 216A(c), 8 U.S.C. 1186b(c); 8 CFR 216.6(a)(5). In support of the petition to remove conditions, the investor must establish that the investor meets the requirements to remove conditions. If approved, the conditions on the investor's permanent residence are generally removed as of the second anniversary of the date the investor obtained conditional permanent resident status. *See* INA sec. 216A(c)(3), 8 U.S.C. 1186b(c)(3); 8 CFR 216.6(d)(1). For investors who file a Form I–829 petition based on an underlying Form I–526 or Form I–526E petition filed on or after enactment of the RIA, DHS, in its

[8] The RIA amended section 245 of the INA, 8 U.S.C. 1255 to allow an immigrant investor to concurrently file for adjustment of status if the approval of an EB–5 immigrant visa petition makes an immigrant visa immediately available to the investor. Public Law 117–103, Division BB, sec. 102(d), 136 Stat. 1070, 1075 (2022); INA sec. 245(n), 8 U.S.C 1255(n).

[9] The NVC is the unit assigned to pre-process the immigrant visa application. As part of the process, the NVC requests the immigrant visa application fee and all documents. The NVC will hold a petition and all documentation until an immigrant visa interview can be scheduled at a U.S. Embassy or Consulate. *See* Bureau of Consular Affairs, State, ''National Visa Center,'' *https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center.html* (last visited Apr. 3, 2025).

[10] When demand for a visa exceeds the number of visas available for that category and country, the demand for that particular preference category and country of birth is deemed oversubscribed. The U.S. Department of State (State) publishes a Visa Bulletin that determines when an alien may apply for a visa, and when such visa may be authorized for issuance. *See* Bureau of Consular Affairs, State, ''*The Visa Bulletin,*'' *https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html* (last visited Jan. 27, 2025). Specifically, an alien outside the United States cannot begin the visa application process with State unless the alien's ''priority date'' (*i.e.,* the date USCIS received the properly filed Form I–526 or Form I–526E, as appropriate), is earlier than the cut-off date indicated in the ''date for filing application'' chart in the most recent Visa Bulletin for the relevant category and country. *See* 8 CFR 204.6(d) and proposed 8 CFR 204.404 (defining the ''priority date'' for EB–5 petitioners). Similarly, an alien inside the United States generally may file an application for adjustment of status with USCIS only if his or her priority date is earlier than the cut-off date in the Visa Bulletin. However, when USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, USCIS will state on its website that, during that month, applicants may instead use the ''dates for filing visa applications'' in the Visa Bulletin for purposes of determining whether they may file adjustment of status applications with USCIS. *See* USCIS, DHS, ''Adjustment of Status Filing Charts from the Visa Bulletin,'' *https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin* (last updated Jan. 13, 2025).

In either case, the State may not issue a visa and USCIS may not approve an adjustment of status application unless the alien's priority date is earlier than the corresponding cut-off date in the ''final action date'' chart listed in the Visa Bulletin.

[11] *See* Bureau of Consular Affairs, State, ''The Visa Bulletin,'' *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html* (last visited Jan. 27, 2025).

discretion, may provide a 1-year extension of the investor's conditional status if the investor is actively in the process of creating requisite employment and will do so before the third anniversary of the date the investor obtained conditional permanent resident status. *See* INA sec. 216A(c)(3)(B)(ii), 8 U.S.C. 1186b(c)(3)(B)(ii).

IV. Discussion of Proposed Rule

DHS provided a summary of the proposed changes in Section II.C. In this section, DHS describes the changes in greater detail. The discussion proceeds as follows:

A. Regulatory Background, Proposed Structure, and Implementation of this Rule
B. Definitions
C. National Security and Fraud
D. Alien Investors
E. Targeted Employment Areas (TEAs)
F. Infrastructure Projects
G. Troubled Businesses
H. Regional Center Program
I. Removal of Conditions
J. Withdrawal Requests and Petition Revocations
K. Severability

A. Regulatory Background, Proposed Structure, and Implementation of This Rule

In 2019, DHS published the EB–5 Immigrant Investor Program Modernization Final Rule (EB–5 Modernization Rule) which revised 8 CFR 204.6 to reflect previous statutory changes [12] and modernize the EB–5 program, as well as codified existing policies and change certain aspects in need of reform. *See* 84 FR 35750 (July 24, 2019). The final rule's effective date was scheduled to be November 21, 2019. *See id. at* 35750. Although the Secretary of Homeland Security attempted to ratify the EB–5 Modernization Rule on March 31, 2021, on June 22, 2021, the U.S. District Court for the Northern District of California vacated the rule on procedural grounds notwithstanding such ratification, reverting the changes made to 8 CFR 204.6 by the EB–5 Modernization Rule to what existed prior to its promulgation.[13] However, on March 15, 2022 (and before DHS could issue a rule implementing the vacatur of the EB–5 Modernization Rule by removing or amending the regulatory text currently in the Code of Federal Regulations (CFR)), the President signed the RIA. *See* Public Law 117–103, Division BB, 136 Stat. 1070 (2022).[14]

To effectively and clearly revise the regulations based on the new and amended provisions of the INA, DHS proposes to remove and reserve 8 CFR 204.6 and create a new Subpart D to part 204 of Title 8 of the CFR. DHS thus proposes that 8 CFR 204.6, as it existed on November 20, 2019, (before the effective date of the EB–5 Modernization Final Rule) would generally apply to adjudications for petitions filed before March 15, 2022. See proposed 8 CFR 204.400. The new subpart would provide a clear distinction between the requirements for an EB–5 immigrant visa before and after enactment of the RIA, and also provide DHS the greatest opportunity to establish clear regulations for the EB–5 program, including the Regional Center Program, so all stakeholders can determine the eligibility and filing requirements for all aspects of the program, as specified by the new and amended provisions of the INA.

Therefore, DHS proposes that this rule be implemented prospectively to petitions and applications filed on or after its effective date, subject to the following exceptions:

1. Where otherwise directed by the INA or RIA;
2. Where this proposed rule would codify a post-RIA practice or policy that DHS has been implementing since the RIA went into effect, DHS will continue to apply such policies as codified;
3. With respect to priority date retention for alien investors who filed prior to March 15, 2022; [15]
4. In instances where the petitioner poses an ongoing or continued threat to the public safety or national security of the United States or otherwise continues to engage in fraud, deceit, intentional material misrepresentation, or criminal misuse. *See* proposed 8 CFR 204.400(a);
5. All regional centers, including those designated prior to enactment of the RIA, must establish eligibility to participate in the reformed EB–5 Regional Center Program and are subject to all requirements applicable to their continuing participation. *See* proposed 8 CFR 204.400(b); and
6. With respect to EB–5 immigrant visa petition amendments filed because of the termination of the alien investor's regional center or the debarment of the alien investor's new commercial enterprise or job-creating entity. *See* proposed 8 CFR 204.410.

For ease of reference and adjudication, DHS proposes to incorporate applicable holdings from the four EB–5 precedent decision cases (*Matter of Ho, Matter of Hsiung, Matter of Izummi,* and *Matter of Soffici*) [16] into various provisions in this proposed rule, such as proposed 8 CFR 204.407(c)(2), incorporating legal ownership of capital provisions of *Matter of Ho,* 22 I&N Dec. 206, 206 (Assoc. Comm. 1998) (holding that the petitioner must establish legal ownership of the investment capital and that bank statements and other financial documents do not do so if the petitioner shows someone else as the legal owner), proposed 8 CFR 204.408(b)(5), incorporating promissory note provisions of *Matter of Hsiung,* 22 I&N Dec. 201, 202 (Assoc. Comm. 1998) (promissory notes can constitute capital if the note is secured by assets owned by the petitioner, the security interests are perfected, and the assets are fully amenable to seizure), and *Matter of Izummi,* 22 I&N Dec. 169, 191 (Assoc. Comm. 1998) (promissory note must be valued at fair market value). DHS also proposes to codify those activities in *Matter of Ho* that do not rise to the level of concrete business activity and are, therefore, insufficient to show that the investment is at risk, such as a deposit in a business account over which the investor has control, formulating an idea for a future business activity, forming a business entity, and executing a lease.[17] *See* proposed 8 CFR 204.408(b)(6). A simple contribution of capital in exchange for a debt agreement or purchase of an asset by a petitioner is insufficient to demonstrate concrete business activity.[18] *See* proposed 8 CFR 204.408(b)(6). As in *Matter of Ho,* DHS anticipates that the new commercial enterprise or job-creating entity will have undertaken some concrete activity that evidences meaningful implementation of the business plan in order to show that the capital investment is or will be at risk. *See* proposed 8 CFR 204.408(b)(6). In the event that a particular holding is not incorporated into a new regulatory provision and is not otherwise superseded by statute, USCIS would continue to apply applicable holdings from the four EB–5 precedent case

[12] *See* 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758, 1837.

[13] *Behring Regional Center LLC* v. *Wolf,* 544 F. Supp. 3d 937 (N.D. Cal. 2021).

[14] *See* Public Law 117–103, Division BB, 136 Stat. 1070 (2022).

[15] As of May 1, 2025, USCIS has approximately 1,500 pending Form I–526 petitions filed before March 15, 2022.

[16] *See Matter of Ho,* 22 I&N Dec. 206 (Assoc. Comm. 1998); *Matter of Hsiung,* 22 I&N Dec. 201 (Assoc. Comm. 1998); *Matter of Izummi,* 22 I&N Dec. 169 (Assoc. Comm. 1998); and *Matter of Soffici,* 22 I&N Dec. 158 (Assoc. Comm. 1998).

[17] *See Matter of Ho,* 22 I&N Dec. 206, 209–-10 (Assoc. Comm. 1998).

[18] *See Matter of Ho,* 22 I&N Dec. 206, 209–-10 (Assoc. Comm. 1998).

decisions to relevant eligibility determinations.

Lastly, DHS does not believe that other rulemakings it is pursuing would significantly impact this rule. On October 23, 2025, DHS published a notice of proposed rulemaking titled ''U.S. Citizenship and Immigration Services Employment-Based Immigrant Visa, Fifth Preference (EB–5) Fee Rule.'' 90 FR 48516. That rule focuses primarily on fees and financial penalties, with other procedural revisions that would generally not impact this rule. Certain technical changes made to existing 8 CFR 216.6(a)(1) by that rule are incorporated into the more comprehensive changes made to 8 CFR 216.6 by this rule and DHS does not believe it would have a significant impact on this rule. *See* proposed 8 CFR 216.6(b). Additionally, on November 3, 2025, DHS published the notice of proposed rulemaking titled Collection and Use of Biometrics by U.S. Citizenship and Immigration Services (Biometrics NPRM). *See* 90 FR 49062. In the Biometrics NPRM, DHS proposed to generally amend its regulations governing biometrics use and collections related to all immigration benefit requests and for other immigration-related purposes. Specific to the EB–5 program, DHS explains that it would continue its existing practice of collecting biometrics and performing background checks on U.S. citizens, lawful permanent residents, and any other persons involved with an EB–5 regional center, new commercial enterprise or job-creating entity. *See* INA sec. 203(b)(5)(H)(iii), 8 U.S.C. 1152(b)(5)(H)(iii). However, DHS is proposing to remove the EB–5 related regulations 8 CFR 216.4(b)(1), ''Authority to waive interview,'' and 8 CFR 216.4(b)(2), ''Location of interview'' and explains that these two regulatory provisions serve no purpose and are unnecessary, respectively. *See* 90 FR 49062, 49092. As these proposed EB–5 related regulatory amendments are being removed as serving no purpose and unnecessary, DHS does not believe the changes being proposed in the Biometrics NPRM would have a significant impact on this rule. DHS welcomes public comment on any potential joint impacts.

B. Definitions

Under this proposed rule, DHS would define terms used throughout this new subpart in section 204.401. This rule proposes to carry over and update certain definitions from the regulations as they existed prior to the EB–5 Modernization Rule, denoted by reference to 8 CFR 204.6 (Nov. 20, 2019), as well as proposing several new definitions to provide additional clarity based on new or revised statutory definitions in the INA. This section discusses each term, generally in alphabetical order, except where terms are better discussed together, such as direct and indirect jobs.

Capital

The INA defines ''capital'' generally as cash and all real, personal, or mixed tangible assets owned and controlled by the investor or held in trust for the benefit of the investor and to which the investor has unrestricted access. *See* INA sec. 203(b)(5)(D)(ii)(I), 8 U.S.C. 1153(b)(5)(D)(ii)(I). DHS proposes to clarify that ''mixed tangible assets'' means a ''mix of tangible assets (which may include equipment, inventory, or other tangible property).'' *See* proposed 8 CFR 204.401, *Capital.* DHS believes this clarification is necessary to specify that investors would only be able to meet the requirements for an EB–5 immigrant visa by investing tangible assets whose value can be clearly determined, rather than intangible assets, such as patents and trademarks, whose value would be subjective, would vary, and would not clearly establish that an investor has invested the required amount of capital in a new commercial enterprise.

DHS further proposes to clarify that capital held in trust must be held in a revocable living trust of which the investor is the settlor and beneficiary and to which the investor has unrestricted access. *See* proposed 8 CFR 204.401, *Capital.* DHS believes this type of trust most clearly meets the requirements of INA sec. 203(b)(5)(D)(ii)(I), 8 U.S.C. 1153(b)(5)(D)(ii)(I), particularly the requirement that the investor has unrestricted access to the capital, while other types of trusts would not, such as an irrevocable trust where the investor would not have unrestricted access to the capital in the trust. Finally, DHS proposes to incorporate applicable holdings from *Matter of Soffici* that capital does not include loans secured by the assets of the new commercial enterprise or a personal guarantee of the business debt of the new commercial enterprise. *See* proposed 8 CFR 204.401, *Capital; Matter of Soffici,* 22 I&N Dec. 160–163.

Consistent with the definition at 8 CFR 204.6(e) (Nov. 20, 2019), the INA's definition of ''capital'' requires that capital be valued at fair market value in U.S. dollars when it is invested and further clarifies that the valuation must be made in accordance with Generally Accepted Accounting Principles or other standard accounting practice adopted by the Securities and Exchange Commission. *See* INA sec. 203(b)(5)(D)(ii)(II), 8 U.S.C. 1153(b)(5)(D)(ii)(II).[19] DHS proposes to capture these requirements in the regulatory definition of ''capital.'' *See* proposed 8 CFR 204.401, *Capital.* Most investors meet their capital requirement using cash, so this provision would likely apply in limited circumstances where the investor invests equipment or inventory, for example. Though rare, DHS believes this additional language would ensure that the investor fairly values any non-cash investment and is meeting the required investment amount established by section 203(b)(5)(C) of the INA, 8 U.S.C. 1153(b)(5)(C). Where an investor uses any non-cash capital to invest in a new commercial enterprise, this proposed rule would require the investor to establish the fair market value of the capital at the time of filing the EB–5 immigrant visa petition if the investor is in the process of investing or, at the time of investment, if the investor has already invested the capital into the new commercial enterprise. *See* proposed 8 CFR 204.407(b)(4).

The definition of ''capital'' in 8 CFR 204.6(e) (Nov. 20, 2019) excludes ''[a]ssets acquired, directly or indirectly, by unlawful means (such as criminal activities).'' *See* 8 CFR 204.6(e) (Nov. 20, 2019), *Capital.* The INA likewise excludes these types of assets from meeting the definition of ''capital,'' along with several other provisions that would preclude certain assets from qualifying as capital. *See* INA sec. 203(b)(5)(D)(ii)(III), 8 U.S.C. 1153(b)(5)(D)(ii)(III). DHS recognizes that these items will continue to be excluded from being considered ''capital'' under the INA but believes a more streamlined regulatory definition would better aid comprehensibility as these exclusions are more appropriately reviewed as an eligibility requirement for approval of an EB–5 immigrant visa petition, *see* proposed 8 CFR 204.407(c) and (d), and consequently, discusses these additional requirements in greater detail in section IV.D.5 of this preamble.

[19] The Securities and Exchange Commission (SEC) designated the Financial Accounting Standards Board (FASB) as the accounting standard setter for public companies, and the maintenance of the Accounting Standards Codification (ASC). The ASC is currently the single source of the United States Generally Accepted Accounting Principles. The ASC can be accessed through *https://www.fasb.org/standards* (last visited Apr. 3, 2025).

Certifier

The INA defines a ''certifier'' as a person in a position with substantive authority for the management or operations of a regional center, new commercial enterprise, affiliated job-creating entity, or issuer of securities, such as a principal executive officer or principal financial officer, with knowledge of such entities' policies and procedures related to compliance with the requirements of [the EB–5 program]. INA sec. 203(b)(5)(D)(iii), 8 U.S.C. 1153(b)(5)(D)(iii). This statutory definition is included in the definitions of this proposed rule since the certifier role is relevant to the filing of an application for approval of an investment in a commercial enterprise (Form I–956F), and the regional center annual statement (Form I–956G). *See* INA secs. 203(b)(5)(F)(i), (b)(5)(G)(i), (b)(5)(I)(ii), 8 U.S.C. 1153(b)(F)(i), (b)(5)(G)(i), (b)(5)(I)(ii), *see* proposed 8 CFR 204.401, *Certifier.* While the definition of a ''certifier'' includes similar terminology as the definition of a ''person involved with a regional center, new commercial enterprise, or job-creating entity,'' (INA sec. 203(b)(5)(H)(v), 8 U.S.C. 1153(b)(5)(H)(v)), DHS expects that a ''certifier'' would always be a ''person involved,'' but a ''person involved'' would not necessarily meet the definition of a ''certifier,'' unless his or her position within the related entity provides the person with the necessary accountability and knowledge required to meet the certifier definition.[20]

DHS further proposes to codify its post-RIA practice and extend the definition of ''certifier'' to entities registered as a direct or third-party promoter. *See* proposed 8 CFR 204.401, *Certifier.* First, the RIA requires promoters to provide certification that they are eligible to participate in the EB–5 program under section 203(b)(5)(H)(i) of the INA, 8 U.S.C. 1153(b)(5)(H). *See* INA sec. 203(b)(5)(K)(i)(II), 8 U.S.C. 1153(b)(5)(K)(i)(II). In addition, DHS believes it is important to extend this definition to promoters to ensure that whoever is certifying on behalf of an entity seeking registration as, or registered as, a promoter has the same level of knowledge to provide that certification as is required of a regional center, new commercial enterprise, job-creating entity, or issuer of securities in other filings with USCIS. The proposed rule would further require that promoters certify they are familiar with and understand the rules and standards for promoters. *See* proposed 8 CFR 204.428(b)(3).

Comprehensive Business Plan

A designated regional center must submit a comprehensive business plan with its application for approval of an investment in a commercial enterprise (Form I–956F), which is incorporated into associated post-RIA regional center investor petitions. *See* INA sec. 203(b)(5)(E)(ii)(III), (b)(5)(F)(i)(I), 8 U.S.C. 1153(b)(5)(E)(ii)(III), (b)(5)(F)(i)(I). For all pre-RIA petitioners as well as post-RIA standalone investor petitioners seeking to rely on prospective job creation, current regulations likewise require an investor to submit a comprehensive business plan to show that, due to the nature and projected size of the new commercial enterprise, at least 10 qualifying employees would be required. 8 CFR 204.6(j)(4)(i)(B) (Nov. 20, 2019). A comprehensive business plan should be credible and contain a description of the business, its products and services, and its objectives, as well as sales, cost, and income projections. *See Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).[21] DHS proposes to capture each of these requirements by defining a ''comprehensive business plan'' as a credible business plan that describes the nature, timeline, and projected size of the activities being undertaken by the new commercial enterprise or job-creating entity(ies), as applicable. *See* proposed 8 CFR 204.401, *Comprehensive business plan.* Furthermore, DHS also proposes that the business plan must describe the use of capital from alien investors to create full-time employment for not fewer than 10 qualifying employees per alien investor. *See id.* DHS proposes to further require that a comprehensive business plan identify detailed capital requirements, including the sources and uses of funds. *See id.* DHS believes this additional requirement is essential to establishing that the business plan is credible and that the sources of funds, including those that do not derive from EB–5 investors, provided to the new commercial enterprise will be lawful.

In addition, to meet the definition of a ''comprehensive business plan,'' the plan would have to include a marketing plan, a market and competitive analysis, a list of the required and obtained permits and licenses, the timetable for hiring, the construction schedule of the project, and a detailed overview of the organizational structure, including the relevant experience and expertise of the owners and managers of the new commercial enterprise and job-creating entity(ies), as applicable. *See id.* Based on extensive experience reviewing business plans related to projects financed with EB–5 capital, DHS believes this information would allow USCIS to determine the viability of the investment and ensure compliance with the INA. DHS recognizes that each business is different and thus, that business plans may vary. While the proposed definition outlines certain items that must be included in the plan to meet the definition of a comprehensive business plan (such as a description of the business and its objective), other elements are only required if relevant for that particular business (such as a construction schedule). As such, these items are qualified with ''as applicable'' in the regulatory text because, in some instances, they may not be necessary.

Criminal Misuse, Deceit, Fraud, and Intentional Material Misrepresentation

DHS proposes to separately codify the definitions of ''criminal misuse,'' ''deceit,'' ''fraud,'' and ''intentional material misrepresentation.'' *See* proposed 8 CFR 204.401, *Criminal misuse, Deceit, Fraud,* and *Intentional material misrepresentation.* The statutory language of section 203(b)(5)(O) of the INA, 8 U.S.C. 1153(b)(5)(O), differs from fraud and material misrepresentation findings otherwise made by USCIS during admissibility determinations under section 212(a)(6)(C) of the INA, 8 U.S.C. 1182(a)(6)(C). Existing agency guidance regarding fraud and misrepresentation in the inadmissibility context is specific to fraud or misrepresentation committed by an individual or entity against the U.S. government.[22]

However, the authority to take adverse actions based on determinations under section 203(b)(5)(O) of the INA, 8 U.S.C. 1153(b)(5)(O), with respect to whether an EB–5 immigrant visa petition, application, or benefit is predicated on or involves fraud or misrepresentation, is broader and not limited solely to fraud or

[20] Under section 203(b)(5)(D)(iii) of the INA, 8 U.S.C. 1153(b)(5)(D)(iii), a ''certifier'' must have ''knowledge of [EB–5 entities'] policies and procedures related to compliance'' but a ''person involved'' under section 203(b)(5)(H)(v) of the INA, 8 U.S.C. 1153(b)(5)(H)(v), would not need such knowledge.

[21] *See Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm. 1998) (''A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives . . . It should contain sales, cost, and income projections and detail the bases therefor.'').

[22] *See* USCIS Policy Manual, Volume 8, ''Admissibility,'' Part J, ''Fraud and Willful Misrepresentation,'' Chapter 2, ''Overview of Fraud and Willful Misrepresentation,'' *https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-2* (current as of Jan. 15, 2025).

misrepresentations made by a petitioner or applicant to the U.S. government. *See* INA sec. 203(b)(5)(O), 8 U.S.C. 1153(b)(5)(O); *cf.* INA sec. 212(a)(6)(C)(i), 8 U.S.C. 1182(a)(6)(C)(i) (constructed more narrowly to apply only to aliens who have engaged in the prohibited conduct rather than the construction of INA 203(b)(5)(O), which applies more broadly to any application, petition, or benefit that was predicated on or involved the prohibited conduct).

Existing USCIS guidance on inadmissibility concerning willfulness, intent, and materiality remains relevant to determining whether an EB–5 immigrant visa petition, application, or benefit was predicated on or involves fraud or misrepresentation, and this proposed rule expands on the existing guidance to cover the additional situations addressed by section 203(b)(5)(O) of the INA, 8 U.S.C. 1153(b)(5)(O).

USCIS proposes to codify its interpretation of the INA statutory terms, generally, in accordance with their plain language meanings and in each case as related to the petition, application, or benefit.

For fraud findings made under section 203(b)(5)(O) of the INA, 8 U.S.C. 1153(b)(5)(O), USCIS will consider a petition, application, or benefit to have been predicated on or involve ''fraud'' based on a finding that an individual or entity related to the petition, application, or benefit knowingly made a false representation of or knowingly concealed a material fact with intent to induce action or to deceive.[23]

For findings of intentional material misrepresentation under section 203(b)(5)(O) of the INA, 8 U.S.C. 1153(b)(5)(O), USCIS generally considers a petition, application, or benefit to have been predicated on or involve intentional ''material misrepresentation'' based on a finding that an individual or entity related to the petition, application, or benefit made a false or misleading assertion about a material fact with the intent to deceive.[24]

USCIS generally considers a petition, application, or benefit to have been predicated on or involve ''deceit'' based on a finding that an individual or entity related to the petition, application, or benefit intentionally led another person to believe something that is not true in connection with the petition, application, or benefit.[25]

USCIS generally considers a petition, application, or benefit to have been predicated on or involve ''criminal misuse'' based on a finding that an individual or entity related to the petition, application, or benefit improperly used the EB–5 program or capital obtained through the EB–5 program in connection with or in furtherance of a crime.

In the context of the EB–5 program, criminal misuse is most likely to arise in the context of financial misuse of EB–5 capital in connection with or in furtherance of financial crime.[26]

Types of fraud, deceit, intentional material misrepresentation, or criminal misuse that may arise with individual investor petitions; those associated with regional centers, new commercial enterprises, and job-creating entities; attorneys; migration agents; preparers; and promoters may include but are not limited to the following actions:

- The applicant, petitioner, or person involved with a regional center engaged in financial fraud or financial crimes, including misappropriation of funds (Ponzi scheme, embezzlement, wire fraud, etc.);
- The applicant, petitioner, or person involved with a regional center falsified claims of job creation or economic development or both;
- The applicant, petitioner, or person involved with a regional center intentionally misrepresented the information provided or intentionally omitted required information;
- The attorney, preparer, promoter, or migration agent intentionally misrepresented the EB–5 program to an alien investor, either current or future, such as guaranteeing that the invested funds will be refunded in full or guaranteeing approval of the EB–5 petition or application;
- The attorney, preparer, promoter, or migration agent represented themselves as a registered broker but was not registered with the applicable state or the SEC;
- The petitioner, applicant, or person involved with a regional center falsified one or more responses to the bona fides question set under section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H);
- The applicant falsified information about his or her background on a form (such as his or her credentials, education, employment), or presented altered or counterfeit documents;
- The applicant, petitioner, or person involved with a regional center misrepresented or concealed the source of funds or the path of funds;
- The petitioner presented derivatives that are not legal family members; or
- The petitioner or derivative assumed an alternate identity to attain an immigration benefit.

Debar, Suspend, and Terminate

The INA provides authority to debar, suspend, and terminate persons participating in the EB–5 program, including regional centers, new commercial enterprises, and job-creating entities for particular violations. *See* INA sec. 203(b)(5)(G)(iii)(II), 8 U.S.C. 1153(b)(5)(G)(iii)(II). These authorities extend to investors, promoters, and other persons involved in the Regional Center Program. *See* INA sec. 203(b)(5)(K)(ii), (b)(5)(N), (b)(5)(O), 8 U.S.C. 1153(b)(5)(K)(ii), (b)(5)(N), (b)(5)(O). While DHS discusses the specifics of these authorities in section IV.H.8 of this preamble, DHS proposes to separately codify the definitions of these key terms in 8 CFR 204.401. *See* proposed 8 CFR 204.401, *Debar, Suspend,* and *Terminate.*

First, the INA now provides for debarment in the EB–5 program. *See, e.g.,* INA sec. 203(b)(5)(N)(iii), (b)(5)(O)(ii), 8 U.S.C. 1153(b)(5)(N)(iii), (b)(5)(O)(ii). DHS proposes that a ''debarment'' would preclude a person's participation in the EB–5 program without the ability for reapplication, either permanently or during a specified timeframe, as provided under proposed 8 CFR 204.431(d)(5). *See* proposed 8 CFR 204.401, *Debar.* While the INA generally contemplates permanent debarment, other sanctioning provisions within the INA provide for discretion in imposing sanctions short of permanent debarment, which could include temporary debarments based on considerations such as time-limited orders from relevant regulatory authorities. *See, e.g.,* INA sec. 203(b)(5)(G)(iii)(II), 8 U.S.C. 1153(b)(5)(G)(iii)(II) (authorizing DHS to establish graduated sanctions based on the severity of violations). Since a debarment could be temporary or permanent, this definition would also clarify that a person temporarily debarred would be able to seek to again participate in the EB–5 program after the period of debarment ends, provided the person submits a new application to USCIS to determine his or her eligibility to again participate in the EB–5 program. *See id.*

In addition to debarment, the INA provides suspension authority. *See, e.g.,* INA sec. 203(b)(5)(H)(iv)(I), 8 U.S.C. 1153(b)(5)(H)(iv)(I). While debarment could be temporary or permanent, DHS proposes to define ''suspension'' as a temporary limitation of a person's

[23] *See* definition of ''fraud,'' Black's Law Dictionary (11th ed. 2019).

[24] *See* definition of ''misrepresentation,'' Black's Law Dictionary (11th ed. 2019).

[25] *See* definition of ''deceit,'' Black's Law Dictionary (11th ed. 2019).

[26] *See* definition of ''misuse,'' Black's Law Dictionary (11th ed. 2019).

participation in the EB–5 program as provided under proposed 8 CFR 204.431(d)(3). *See* proposed 8 CFR 204.401, *Suspend.* Suspensions typically last for the period specified in the notice or until USCIS notifies the suspended individuals or entities that they have cured the relevant violation. While suspended, the person suspended would be precluded from certain activities. Upon the end of the suspension period, if applicable, the person may resume participation in the EB–5 program without further application. *See* proposed 8 CFR 204.431(d)(3).

The INA also authorizes, and in some cases requires, termination of an entity's designation as a regional center in the EB–5 program. *See, e.g.,* INA sec. 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III) (when termination is required); *see also, e.g.,* INA sec. 203(b)(5)(I)(iv), 8 U.S.C. 1153(b)(5)(I)(iv) (when termination is an option). As it relates to participation in the EB–5 program, DHS proposes that termination be used for regional centers, as termination authority applies differently depending on which entity's participation is being terminated. Since DHS only designates regional centers (and not NCEs or JCEs), DHS interprets its termination authority for regional centers as applying only to the designation of a regional center in line with historic practice and usage of this term. DHS accordingly proposes to define ''termination'' as the end of a regional center's designation to participate in the Regional Center Program. *See* proposed 8 CFR 204.401, *Terminate.* This definition would also clarify that a terminated regional center would no longer be able to solicit capital from an investor seeking classification as an alien investor in the Regional Center Program. *Id.*

In addition to the authority provided by the INA to terminate an entity's designation as a regional center in the EB–5 program, the INA also provides authority to terminate the participation of NCEs or JCEs in the EB–5 program. *See* INA sec. 203(b)(5)(H)(iv), 8 U.S.C. 1153(b)(5)(H)(iv). *See also* INA secs. (b)(5)(N)(iii), (b)(5)(O)(ii), 8 U.S.C. 1153(b)(5)(N)(iii), (b)(5)(O)(ii). As an initial matter, DHS does not designate NCEs or JCEs for participation in the program the same as is contemplated for regional centers under the INA or in line with historic practices. Moreover, these provisions of the INA do not distinguish between the more specific usage of termination as it applies to a regional center's designation versus other types of sanctions that could apply to NCEs or JCEs that would similarly end their participation in the EB–5 program, such as debarment. *Cf.* INA sec. 203(b)(5)(G)(iii)(III), 8 U.S.C. 1153(b)(5)(G)(iii)(III) (authorizing debarment to end the participation of non-regional center persons in the EB–5 program while limiting usage of the term termination specifically just to a regional center's designation). DHS also notes that the investor protections under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), trigger only upon either the termination of a regional center or debarment of a NCE or JCE. *See* INA sec. 203(b)(5)(M)(ii)(I), 8 U.S.C. 1153(b)(5)(M)(ii)(I) (''in the case of the termination of a regional center''), and INA sec. 203(b)(5)(M)(ii)(II), 8 U.S.C. 1153(b)(5)(M)(ii)(II) (''in the case of the debarment of a new commercial enterprise or job-creating entity''). Consequently, termination of a NCE or JCE that would be distinct from debarment would not trigger these investor protections under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), which DHS believes would be contrary to the remaining provisions of section 203(b)(5)(M) of the INA, which provide protections to ''good faith investors.'' DHS therefore interprets its authority to terminate the participation of NCEs or JCEs in the program the same as debarment, which is reflected in the proposed definitions and accompanying rules.

Direct Jobs and Indirect Jobs

An alien investor must create employment for at least 10 U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or other immigrants lawfully authorized to be employed in the United States (not including the investor or his or her spouse or children). *See* INA sec. 203(b)(5)(A), 8 U.S.C. 1153(b)(5)(A). Before the creation of the Regional Center Program, this employment creation requirement meant that the new commercial enterprise would need to create full-time employment (or demonstrate job retention in a troubled business) for 10 qualifying employees per alien investor to establish eligibility for an EB–5 immigrant visa. *See* 8 CFR 204.6(j)(4) (Nov. 20, 2019). Upon its creation, the Regional Center Program permitted (and the INA continues to permit) regional center investors to establish job creation using reasonable methodologies for determining the number of jobs created, including such jobs estimated to have been created indirectly through revenues generated from increased exports resulting from the program. *See* Public Law 102–395, sec. 610(c), 106 Stat. 1828, 1874 (Oct. 6, 1992); *see also,* INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv). The new provisions of the INA, however, limit the percentage of indirect jobs that may be used by regional center investors to satisfy the job creation requirements, INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv), and, under certain circumstances, prorates the number of direct jobs estimated to be created in connection with construction activity lasting less than 2 years. *See* INA sec. 203(b)(5)(E)(v)(II)(cc), 8 U.S.C. 1153(b)(5)(E)(v)(II)(cc). In addition, the new provisions of the INA expand direct jobs for regional center investors to include not only employees of the new commercial enterprise but also employees of the job-creating entity. *See* INA sec. 203(b)(5)(E)(iv)(I), 8 U.S.C. 1153(b)(5)(E)(iv)(I). As the statute does not define ''direct'' or ''indirect jobs,'' and in light of these new statutory provisions, DHS proposes to define ''direct jobs'' and ''indirect jobs'' in this rule for purposes of establishing requisite job creation for regional center investors. *See* proposed 8 CFR 204.401, *Direct jobs* and *Indirect jobs.*

As noted previously, DHS has historically interpreted that ''direct jobs'' are those jobs where there exists an employer-employee relationship between the new commercial enterprise and the persons it employs, and ''indirect jobs'' are those held outside of the new commercial enterprise, including employees of a job-creating entity. *See* USCIS Policy Manual, Volume 6, Part G, Chapter 2.D(4), ''Measuring job creation.'' Under commonly used economic methodologies to estimate job creation, however, employees of a job-creating entity or those involved in the hands-on production of goods or services related to the job-creating project being undertaken by a job-creating entity would be considered ''direct jobs'' for economic purposes despite being considered ''indirect jobs'' for purposes of establishing eligibility under pre-RIA requirements. For regional center investors, the INA has expanded what may be considered a ''direct job'' to explicitly include employees of the job-creating entity as well as employees of the new commercial enterprise. *See* INA sec. 203(b)(5)(E)(iv)(I), 8 U.S.C. 1153(b)(5)(E)(iv)(I). Though not specified in the statute, DHS proposes to align the legal concept of ''direct jobs'' with how ''direct jobs'' are treated for economic purposes through commonly used economic methodologies used to estimate job creation because, as explained previously, employees of job-creating entities would be considered indirect jobs for purposes of establishing

eligibility under pre-RIA requirements even though they would be viewed as direct jobs under commonly used economic methodologies to estimate job creation. Therefore, for a regional center investor, in addition to an employee of the new commercial enterprise or job-creating entity, ''direct jobs'' would also include jobs estimated to be created through an economically and statistically valid methodology as being involved in the hands-on production of goods and services or in the construction of facilities that have a necessary role in the relevant capital investment project. *See* proposed 8 CFR 204.401, *Direct jobs.*

Importantly, for estimated direct jobs, they should be estimated using economically and statistically valid and transparent methodologies to comply with the INA and ensure USCIS is able to validate that the investment has created sufficient employment to satisfy the requirements of section 203(b)(5)(A) of the INA, 8 U.S.C. 1153(b)(5)(A). *See* INA sec. 203(b)(5)(E)(v)(I), 8 U.S.C. 1153(b)(5)(E)(v)(I).

DHS proposes that ''indirect jobs,'' consistent with DHS's existing interpretation, mean jobs estimated to be employed by those supplying goods and services to the source of production, including the construction of facilities that have a necessary role in the relevant capital investment project, as well as those jobs estimated to be induced through additional personal spending by both direct and indirect employees whose jobs were created by the relevant capital investment. *See* proposed 8 CFR 204.401, *Indirect jobs.*

DHS has historically interpreted that indirect jobs can include, but are not limited to, those held by employees of the job-creating entity (when the job-creating entity is not the new commercial enterprise) as well as employees of producers of materials, equipment, or services used by the new commercial enterprise or job-creating entity. USCIS Policy Manual, Volume 6, Part G, Chapter 2.D(4), ''Measuring job creation.'' Because employees of the job-creating entity or those involved in the hands-on production of goods or services related to the job-creating project being undertaken by a job-creating entity are now considered direct jobs under the proposed definition of ''direct jobs'' (as explained above), the proposed definition of ''indirect jobs'' is being aligned to include just those jobs that are most typically considered indirect jobs for economic purposes in connection with commonly used economic models for estimating job creation. Consistent with DHS's historic interpretation, the definition also continues to include induced jobs, a subset of indirect jobs, which are those created when the new direct and indirect employees spend their earnings on consumer goods and services. *Id.*

EB–5 Immigrant Visa Petition

As the statute does not define ''EB–5 immigrant visa petition,'' DHS proposes to use ''EB–5 immigrant visa petition'' to refer to a petition submitted by a regional center investor or standalone investor seeking classification as an alien investor under section 203(b)(5) of the INA. *See* proposed 8 CFR 204.401, *EB–5 immigrant visa petition.* USCIS will consider Form I–526, Petition by Standalone Investor, and Form I–526E, Petition by Regional Center Investor, as an EB–5 immigrant visa petition for purposes of this regulation. However, in line with other DHS regulations and to maintain operational flexibility, DHS avoids the use of form numbers in the regulatory text, where possible, and instead refers in the text to the form designated by USCIS.

Full-Time Employment

As the statute does not define ''full-time employment,'' DHS proposes to continue to define ''full-time employment'' to mean a position at the new commercial enterprise that requires a minimum of 35 working hours per week. *See* proposed 8 CFR 204.401, *Full-time employment; see* current 8 CFR 204.6(e) (Nov. 20, 2019), *Full-time employment.* This would include direct and indirect jobs, including those estimated to have been created by a regional center investor, provided the economic model estimates ''full-time equivalent'' employment. The number of full-time equivalent employees in each industry is the product of the total number of employees and the ratio of average weekly hours per employee on full-time schedules.[27] While DHS considered requiring regional centers and petitioners to demonstrate that the estimated jobs are likely to be at least 35 hours per week, this approach would have required the submission of additional evidence that is separate from the model documentation. Since the INA requires that economic models be statistically valid and transparent,[28] DHS does not believe this additional documentation would be necessary for USCIS to validate the sufficiency of any job creation estimate provided by a statistically valid and transparent economic methodology.

In its current regulations, DHS allows ''full-time employment'' to include job sharing arrangements where two or more qualifying employees share a full-time position provided the hourly requirement was met, while precluding the combination of part-time positions to meet the hourly requirement. 8 CFR 204.6(e) (Nov. 20, 2019), *Full-time employment.* DHS proposes to eliminate the job-sharing arrangements from the definition of ''full-time employment.'' *See* proposed 8 CFR 204.401, *Full-Time Employment.*

Few petitions have used such job-sharing arrangements to establish eligibility and those that do frequently are determined, instead of using multiple employees to fill one position, to be combining part-time positions, which was expressly prohibited by the regulations. *See* 8 CFR 204.6(e) (Nov. 20, 2019), *Full-time employment.* Additionally, DHS believes that permitting job-sharing does not further the program's objective of creating full-time employment and is consequently proposing to no longer make such an allowance in this rule.

High Employment Area

A ''high employment area'' is part of a metropolitan statistical area (MSA) as designated by the Director of the Office of Management and Budget (OMB)[29] that is not in a TEA, and is experiencing unemployment significantly below the national average rate. INA sec. 203(b)(5)(C)(iv), 8 U.S.C. 1153(b)(5)(C)(iv). Though the statute has included these areas since the first iteration of the EB–5 program in 1990, legacy Immigration and Naturalization Service (INS) did not define or consider a ''high employment area'' as a separate area of investment.

DHS proposes to define a ''high employment area'' as a census tract in a metropolitan statistical area where the new commercial enterprise is principally doing business, or contiguous census tracts where the new commercial enterprise is principally doing business in two or more

[27] Bureau of Economic Analysis, ''What are full-time equivalent employees?'' *https://www.bea.gov/help/faq/368* (last updated Apr. 24, 2018).

[28] *See* INA sec. 203(b)(5)(E)(v), 8 U.S.C. 1153(b)(5)(E)(v).

[29] One of the long-standing statistical standards maintained by OMB is the core based statistical areas program. There are two types of CBSAs: Metropolitan statistical areas (MSAs) and micropolitan statistical areas (µSAs). Metropolitan and micropolitan statistical areas are conceptually similar to each other, but a micropolitan area features a smaller nucleus. OMB periodically reviews these standards, including the MSA. For more information on the MSA, *see* United States Census Bureau, ''About,'' *https://www.census.gov/programs-surveys/metro-micro/about.html* (last revised July 25, 2023); *see also* OMB, 2020 Standards for Delineating Core Based Statistical Areas, 86 FR 37770 (July 16, 2021).

contiguous census tracts, and where the national average rate of unemployment is at least 150 percent of the unemployment being experienced in that area where the investment is being made. *See* proposed 8 CFR 204.401, *High employment area.* Using this calculation to determine whether an area is experiencing high employment would mirror the differential Congress established for high unemployment areas in relation to the national average unemployment rate (*i.e.,* 150 percent). *See* INA sec. 203(b)(5)(B)(ii)(I)(bb), 8 U.S.C. 1153(b)(5)(B)(ii)(I)(bb). DHS believes this definition aligns with the RIA's overall statutory scheme and ensures that the program's objectives of investment being made in areas of true need are effectuated. DHS considered allowing a calculation similar to that used for determining high unemployment areas (to include any directly adjacent census tracts in addition to the census tract(s) where the new commercial enterprise is principally doing business). *See* INA sec. 203(b)(5)(B)(ii), 8 U.S.C. 1153(b)(5)(B)(ii). Instead, DHS proposes to limit the definition of a ''high employment area'' to the census tract(s) where the new commercial enterprise is principally doing business. DHS believes that allowing a calculation similar to high unemployment areas with the inclusion of any directly adjacent tracts would only serve to lower the investment amount required for an area already experiencing high employment, which is contrary to the intent of the EB–5 program to incentivize investments into areas of true need.

For any new commercial enterprise principally doing business in an MSA that is not separately submitting evidence to establish that the new commercial enterprise is principally doing business in a high unemployment area, the regional center or standalone investor would have to submit a list of the census tracts where the new commercial enterprise is principally doing business and the employment data used to calculate whether the area is experiencing high employment. *See* proposed 8 CFR 204.408(g)(3) and 204.421(c)(4).

Infrastructure Project

The INA defines an ''infrastructure project'' as a capital investment project in a designated regional center's filed or approved application for approval of an investment in a commercial enterprise (Form I–956F), which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that also serves as the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investments under the Regional Center Program as financing for maintaining, improving, or constructing a public works project. *See* INA sec. 203(b)(5)(D)(iv), 8 U.S.C. 1153(b)(5)(D)(iv). DHS proposes to incorporate this definition into the regulations, and, because the statute only offers examples of qualifying governmental entities, to include a tribal agency or authority as a potential job-creating entity whose project may qualify as an infrastructure project. *See* proposed 8 CFR 204.401, *Infrastructure Project.* DHS proposes to extend the definition of qualifying ''infrastructure projects'' to tribal authorities to ensure that tribal entities can use the EB–5 program to fund qualifying infrastructure projects. DHS discusses the requirements for an investment in an infrastructure project in section IV.F. of this preamble.

''Invest'' and ''Actively in the Process of Investing''

Section 203(b)(5) of the INA allots a number of immigrant visas to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership) in which the alien investor has invested or, is actively in the process of investing, the required amount of capital. INA sec. 203(b)(5)(A), 8 U.S.C. 1153(b)(5)(A).

As the statute does not define ''invest,'' DHS proposes to define ''invest'' as the contribution of lawfully obtained capital that is placed at risk in a commercial job-creating activity such that there is a risk of loss and a chance for gain. *See* proposed 8 CFR 204.401, *Invest.* This definition would not include capital used in primarily financial or non-commercial activity, such as the purchase of financial instruments traded on secondary markets or constructing, owning, or operating a personal residence. To qualify as an investment, the regulations have always required the investor to place his or her capital at risk. *See* 8 CFR 204.6(j)(2). The proposed definition also aligns with the expectation that in order to satisfy the parameters for capital redeployment, the capital must ''remain at risk'' and be ''maintain[ed] at risk,'' thus implying that it would need to have originally been at risk to begin with. *See* INA sec. 203(b)(5)(F)(v)(I), 8 U.S.C. 1153(b)(5)(F)(v)(I). This definition would clarify the capital is invested when it is placed at risk in a commercial job-creating activity. In instances where the new commercial enterprise is pooling investment capital to loan to a job-creating entity (as is typically seen in regional center-based investments), the investment is completed on the date the entirety of an investor's required amount of capital is placed at risk with the job-creating entity. Alternately, if the new commercial enterprise is the job-creating entity (as is typically seen in standalone investments), then the investment is completed on the date the entirety of an investor's required amount of capital is placed at risk with the new commercial enterprise.

Section 203(b)(5)(A) of the INA (8 U.S.C. 1153(b)(5)(A)(i)) also allows an investor to establish his or her eligibility while actively in the process of investing. As the RIA did not define ''actively in the process of investing,'' and the plain language definition of ''actively'' means ''characterized by action rather than by contemplation or speculation,'' [30] DHS proposes to require the investor to show more than a mere intent to invest or the contemplation of investing at some point in the future. Rather, the investor would have to have committed his or her capital to the new commercial enterprise. Moreover, DHS has long required more than evidence of ''mere intent to invest, or of prospective investment arrangements entailing no present commitment'' in order to demonstrate that an investor was actively in the process of investing the required capital.[31] Therefore, DHS proposes to define ''actively in the process of investing'' to require the alien seeking classification as an alien investor to have commited his or her lawfully obtained capital to a new commercial enterprise in the United States no later than the date on which the alien obtains conditional permanent resident status. *See* proposed 8 CFR 204.401, *Actively in the process of investing.* Most alien investors typically commit their investment to a new commercial enterprise contingent on the approval of the investor's EB–5 immigrant visa petition.[32] This allows the investor to meet the requirements of section 203(b)(5) of the INA for purposes of his or her EB–5 immigrant visa petition, but also provides the investor some level of flexibility to recover his or her investment if his or her EB–5 immigrant visa petition is denied or if the investor ultimately decides to no longer pursue alien

[30] *See* Merriam-Webster, ''active,'' *https://www.merriam-webster.com/dictionary/actively* (last updated Jan. 16, 2025) (defining ''actively'' as ''characterized by action'').

[31] *See* 8 CFR 204.6(j)(2) (Nov. 20, 2019).

[32] *See* proposed 8 CFR 204.401, *EB–5 immigrant visa petition.*

investor status in the United States. Consequently, this definition would continue to allow the commitment of capital to include allowing an alien seeking classification as an alien investor to place his or her capital in escrow for release to the new commercial enterprise pending approval of his or her EB–5 immigrant visa petition consistent with current USCIS policy.[33]

Investor, Regional Center Investor, and Standalone Investor

DHS uses the terms ''investor,'' ''regional center investor,'' and ''standalone investor'' throughout this proposed rule. Where there are different requirements, DHS relies on the regional center investor and standalone investor terms, as appropriate. However, where a requirement applies to each type of investor equally, DHS relies on the term ''investor'' and as the statute does not define the term, proposes to define that term to mean a ''regional center investor'' or ''standalone investor.'' *See* proposed 8 CFR 204.401, *Investor.* Using these terms throughout the proposed rule makes the proposals clearer and helps to differentiate between the two types of investors that may seek classification as an alien investor.

DHS proposes to define a ''regional center investor,'' which is not defined in the statute, as an alien seeking to pool his or her investment with one or more additional aliens seeking, or who have obtained, classification as an alien investor through the Regional Center Program. *See* proposed 8 CFR 204.401, *Regional center investor.* The INA requires an investor seeking to pool his or her investment with additional investors seeking classification as an alien investor to do so through the Regional Center Program. INA sec. 204(a)(1)(H)(i), 8 U.S.C. 1154(a)(1)(H)(i). Whereas investors seeking EB–5 immigrant visas previously could pool their investments in a new commercial enterprise that was not necessarily associated with a designated regional center, the RIA now requires that any pooled investments must be made under the purview of a designated regional center. *Id.* Consequently, DHS further proposes to define a ''standalone investor,'' which is also not defined in the statute, as an alien who is not seeking to pool his or her investment with additional investors seeking classification as an alien investor. *See* proposed 8 CFR 204.401, *Standalone investor.* Importantly, the definition does not preclude an investor from participating in a new commercial enterprise that has other investors, but those other investors must not be seeking classification as an alien investor to comply with the INA.

Job-Creating Entity and Affiliated Job-Creating Entity

DHS proposes to include the statutory definitions of ''job-creating entity'' and ''affiliated job-creating entity'' in 8 CFR 204.401. *See* proposed 8 CFR 204.401, *Job-creating entity* and *Affiliated job-creating entity.* The INA defines a ''job-creating entity'' as any organization formed in the United States for the ongoing conduct of lawful business, including sole proprietorship, partnership (whether limited or general), corporation, limited liability company, business trust, or other entity, which may be publicly or privately owned, including an entity consisting of a holding company and its wholly owned subsidiaries or affiliates (provided that each subsidiary or affiliate is engaged in an activity formed for the ongoing conduct of a lawful business) that receives, or is established to receive, capital investment from alien investors or a new commercial enterprise under the regional center program and is responsible for creating jobs to satisfy the job creation requirements of section 203(b)(5) of the INA. INA sec. 203(b)(5)(D)(v), 8 U.S.C. 1153(b)(5)(D)(v). Further, the INA defines an ''affiliated job-creating entity'' as any job-creating entity that is controlled, managed, or owned by any person involved with the regional center or new commercial enterprise. INA sec. 203(b)(5)(D)(i), 8 U.S.C. 1153(b)(5)(D)(i). As the RIA did not define ''lawful business'' and the plain language definitions mean ''in harmony with the law'' [34] or ''allowed by the law,'' [35] DHS proposes to clarify that the law most relevant to these entities includes local, State, and Federal law. *See* proposed 8 CFR 204.401, *Job-creating entity.*

New Commercial Enterprise

The INA defines a ''new commercial enterprise'' as any for-profit organization formed in the United States for the ongoing conduct of lawful business, including sole proprietorship, partnership (whether limited or general), holding company and its wholly owned subsidiaries (provided that each subsidy is engaged in a for-profit activity formed for the ongoing conduct of a lawful business), joint venture, corporation, business trust, limited liability company, or other entity (which may be publicly or privately owned) that receives, or is established to receive, capital investment from investors under INA sec. 203(b)(5). *See* INA sec. 203(b)(5)(D)(vi), 8 U.S.C. 1153(b)(5)(D)(vi).*s.* As the RIA did not define ''lawful business'' and the plain language definitions mean ''in harmony with the law'' [36] or ''allowed by the law,'' [37] DHS proposes to clarify that the law most relevant to these entities includes local, State, and Federal law. *See* proposed 8 CFR 204.401, *New commercial enterprise.*

In its prior regulations implementing the creation of the EB–5 program by the Immigration Act of 1990 (Pub. L. 101–649, sec. 121, 104 Stat. 4978, 4989), legacy INS separately defined the term ''new'' to ensure that an investor established his or her qualifying commercial enterprise after November 29, 1990, the date Congress first established the EB–5 program. 8 CFR 204.6(e) (Nov. 29, 1991); 56 FR 60897 (Nov. 29, 1991). DHS proposes removing the temporal requirement of 8 CFR 204.6(e) (Nov. 20, 2019) and defining ''new commercial enterprise'' consistent with the definition provided by the INA where no temporal requirement exists. *See* INA sec. 203(b)(5)(D)(vi), 8 U.S.C. 1153(b)(5)(D)(vi); *see also* proposed 8 CFR 204.401, *New commercial enterprise.*

Person Involved

The INA defines a ''person [38] involved'' with a regional center, new commercial enterprise or job-creating entity as a person who is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions over the pooling, securitization, investment, release, acceptance, or control or use of any funding procured under the Regional Center Program. INA sec. 203(b)(5)(H)(v), 8 U.S.C. 1153(b)(5)(H)(v); *see also* proposed 8

[33] USCIS Policy Manual, Volume 6, ''Immigrants,'' Part G, ''Investors,'' Chapter 2, ''Immigrant Petition Eligibility Requirements,'' Section A(2), ''Investment,'' ''Escrow Accounts'' heading, *https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2* (current as of Jan. 15, 2025).

[34] Merriam-Webster, ''lawful,'' *https://www.merriam-webster.com/dictionary/lawful* (last updated Jan. 13, 2025).

[35] Cambridge Dictionary, ''lawful,'' *https://dictionary.cambridge.org/us/dictionary/english/lawful* (last visited Jan. 30, 2025).

[36] Merriam-Webster, ''lawful,'' *https://www.merriam-webster.com/dictionary/lawful* (last updated Jan. 13, 2025).

[37] Cambridge Dictionary, ''lawful,'' *https://dictionary.cambridge.org/us/dictionary/english/lawful* (last visited Jan. 16, 2025).

[38] Throughout this proposed rule, the term ''person'' refers to the term as defined by the Immigration and Nationality Act, which is ''an individual or an organization,'' such as a corporation or limited partnership. INA sec. 101(b)(3), 8 U.S.C. 1101(b)(3).

CFR 204.401, *Person involved.* Section 203(b)(5)(H)(v) of the INA provides the definition ''unless otherwise determined by the Secretary of Homeland Security.'' Accordingly, DHS proposes to codify the statutory definition with minor additions for clarity, such as including ''limited partner.'' DHS proposes to clarify that a person is in a position of substantive authority if the person serves as an administrator, a board member, a general partner, a limited partner, a manager, an officer, an owner, or in a similar position at the regional center, new commercial enterprise, or job-creating entity. *See* proposed 8 CFR 204.401, *Person involved.* This definition would include any alien seeking to obtain alien investor status under the Regional Center Program in his or her role as an owner, including as is often the case, as a limited partner of the new commercial enterprise. In addition, an agent, fiduciary, or representative may be in a position of substantive authority if his or her position in the regional center, new commercial enterprise, or job-creating entity authorizes the person to provide input or oversight of the use of any regional center investor capital obtained under the Regional Center Program. *See* proposed 8 CFR 204.401, *Person involved.*

Under this proposed rule, a person may be indirectly involved if the person owns, manages, or otherwise oversees an organization that rises to the level of a person involved. *See* proposed 8 CFR 204.401, *Person involved.* For instance, if an organization has an ownership interest in the new commercial enterprise, then the owners of that organization, would meet the definition of a ''person involved'' based on his or her ownership interest in the organization that owns the new commercial enterprise.

Principally Doing Business

As the statute does not define ''principally doing business,'' this rule proposes a definition in line with current USCIS policy, to emphasize that a new commercial enterprise is ''principally doing business'' in the location where the job-creating activity is occurring, which may be different from the actual, physical location of the new commercial enterprise. *See* proposed 8 CFR 204.401, *Principally doing business.* DHS proposes to consider, consistent with current policy, factors that include, but are not limited to, the location of jobs directly created by the new commercial enterprise, expenditure of capital related to the creation of jobs, the new commercial enterprise's day-to-day operations, and the new commercial enterprise's assets used to create jobs. *See* USCIS Policy Manual Volume 6, Part G, Chapter 2.A(5), ''Targeted Employment Area.''

This definition is important because it directly relates to how a regional center or alien investor will establish whether the EB–5 investment is being made into a TEA or a high employment area, as appropriate.

Project Application

The INA requires a designated regional center to submit an application for approval of a particular investment offering before any regional center investor in that investment offering submits his or her EB–5 immigrant visa petition. INA secs. 203(b)(5)(F), 204(a)(1)(H)(i), 8 U.S.C. 1153(b)(5)(F), 1154(a)(1)(H)(i).

DHS proposes that a ''project application'' is an application for approval of an investment in a commercial enterprise submitted by a designated regional center according to the form instructions. DHS proceeds to use the term throughout the proposed regulation when referencing Form I–956F, Application for Approval of an Investment in a Commercial Enterprise, as this term is clearer and is the more colloquial use of terminology for EB–5 investments. *See* proposed 8 CFR 204.401, *Project application; https://www.uscis.gov/I-956F.*

Promoter

The INA requires all direct and third-party promoters (including migration agents) of a regional center, any new commercial enterprise, an affiliated job-creating entity, or an issuer of securities intended to be offered to alien investors in connection with a particular investment project to comply with rules promulgated by DHS, including a requirement to register as a promoter. As section 203(b)(5)(K) of the INA, 8 U.S.C. 1153(b)(5)(K), does not specifically define the term ''promoter,'' DHS proposes to define the term in a manner consistent with both statute and DHS current practice. Specifically, DHS proposes to define a ''promoter'' as any person that is acting on behalf of a regional center, new commercial enterprise, or affiliated job-creating entity to advertise, publicize, market, endorse, or provide testimonials or solicit indications of interest in connection with a particular investment offering under the Regional Center Program. *See* proposed 8 CFR 204.401, *Promoter.* When USCIS published the Form I–956K, Registration for Direct and Third-Party Promoters for public comments, stakeholders submitted comments asking whether the provisions regarding promoter registration applied to promoters working on behalf of standalone new commercial enterprises that are not seeking investors for the Regional Center Program. 87 FR 54233 (Sept. 2, 2022); 87 FR 79343 (Dec. 27, 2022). This proposed definition would clarify that only promoters working on behalf of an entity participating in the Regional Center Program would be required to register their participation with USCIS, in alignment with the plain language of the statute that section 203(b)(5)(K) of the INA, 8 U.S.C. 1153(b)(5)(K), applies to direct and third-party promoters of regional center entities to ''oversee promotion of any offering of securities related to the EB–5 Program.''

Promotional Material

The INA requires that any promoter must accurately represent the visa process to alien investors and describe permissible fee arrangements under applicable securities and immigration laws. *See* INA sec. 203(b)(5)(K)(i), 8 U.S.C. 1153(b)(5)(K)(i). The INA further directs promoters to ''comply with the rules and standards prescribed by the Secretary'' to oversee these requirements. *Id.* DHS expects that regional centers, new commercial enterprises, job-creating entities, and promoters working on their behalf will continue to use promotional materials to seek out investors for their projects. In connection with the new requirements in the INA added by the RIA regarding registration and regulation of promoters and their related promotional activities, DHS proposes to define ''promotional materials'' to include any advertisement, offering memorandum, endorsement, testimonial, solicitation, direct and indirect communication between investors and promoters, and all other similar materials under applicable Federal and State securities laws related to offerings under the Regional Center Program regardless of the form taken. *See* proposed 8 CFR 204.401, *Promotional material.*

Qualifying Employee

DHS proposes to update this definition from 8 CFR 204.6(e) to reflect the RIA's addition of ''United States nationals'' to section 203(b)(5)(A)(ii) of the INA. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii). *See* proposed 8 CFR 204.401, *Qualifying employee.*

Redeploy (Redeployment)

Before the enactment of the RIA, an alien investor was required to maintain his or her investment at risk until his or her sustainment period ended. The sustainment period continued through

the investor's 2 years of conditional permanent resident status. Pre-RIA section 216A(d)(1)(B)(ii) of the INA, 8 U.S.C. 1186b(d)(1)(B)(ii). Due to the length of time some investors had to wait for an immigrant visa, at times it became necessary for a new commercial enterprise to further deploy (redeploy) an investor's capital to maintain eligibility. USCIS developed guidance within the framework of the statutory and regulatory authorities at the time for further deployment of an investor's capital after the job creation requirement was satisfied. *See* USCIS Policy Manual, Volume 6, Part G, Chapter 2.A(2), ''Further Deployment After the Job Creation Requirement is Satisfied.''

The RIA required DHS to prescribe regulations to allow NCEs to redeploy investment funds when necessary for an investor to maintain the capital at risk for a petition filed on or after the enactment of the RIA. INA sec. 203(b)(5)(F)(v), 8 U.S.C. 1153(b)(5)(F)(v). Importantly, since the parameters for redeployment are discussed within the ''Business Plans for Regional Center Investments'' section of the INA, INA sec. 203(b)(5)(F), 8 U.S.C. 1153(b)(5)(F), DHS proposes to limit redeployment to regional center investors. Historically, regional center investors have had the longest wait for an immigrant visa and have been most impacted by the need to further deploy capital to retain eligibility, so DHS does not believe this proposed restriction would pose any consequences to standalone investors. Consequently, under this proposed rule, to ''redeploy'' would mean to reinvest an investor's regional center capital for the purpose of maintaining the investor's capital at risk. In addition, due to the changes made by the RIA from requiring the capital to remain invested throughout the conditional residence period in order to remove conditions to requiring that the investment be expected to remain invested for at least two years, DHS believes the likelihood of redeployment becoming a regular occurrence for EB–5 immigrant visa petitions filed on or after March 15, 2022, is highly unlikely.

Regional Center

Current regulations define a ''regional center'' as any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. 8 CFR 204.6(e), *Regional Center.* This definition aligned with the prior statutory requirement that an entity seeking designation as a regional center submit a general proposal for the promotion of economic growth (Pub. L. 102–395, sec. 610(a) (8 U.S.C. 1153 note), but no longer comports with the more specific changes made to the Regional Center Program by the RIA. An entity seeking designation as a regional center is now required to submit a proposal to DHS consistent with concentrating pooled investment in a defined, contiguous, and limited geographic area that establishes a substantive economic impact on the geographic area.[39] INA sec. 203(b)(5)(E), 8 U.S.C. 1153 203(b)(5)(E). Consequently, DHS proposes to update the regulatory definition of a ''regional center'' to align with the new requirements of the RIA. *See* proposed 8 CFR 204.401, *Regional center.* Within this proposed definition, DHS would replace the term ''economic unit'' with ''entity'' to use more appropriate terminology in its definition of a ''regional center.'' *Id.* This proposed definition would also clarify that a ''regional center'' must be formed in the United States (as defined at INA sec. 101(a)(38), 8 U.S.C. 1101(a)(38)), for the ongoing conduct of lawful business to ensure the ongoing integrity of the EB–5 program and that investments are being made in the United States to benefit qualifying employees. *Id.*

Regional Center Program

The RIA reauthorized and significantly reformed the Regional Center Program.[40] Public Law 117–103, Division BB, sec. 103, 136 Stat. 1070, 1075 (2022). In the EB–5 Modernization Rule, DHS defined the ''Regional Center Program'' as the program established by Public Law 102–395, sec. 610, as amended. However, because of vacatur of the EB–5 Modernization Rule[41] and the codification of new authority for the reformed Regional Center Program into the INA by the RIA, DHS proposes to define the ''Regional Center Program'' as the program under section 203(b)(5)(E) of the INA. *See* proposed 8 CFR 204.401, *Regional Center Program.*

Separate Account

The INA requires each new commercial enterprise and affiliated job-creating entity to keep funds received from alien investors in a separate account that may only be used to receive and deploy capital for use in the capital investment project or to return capital to an alien investor that provided it. *See* INA sec. 203(b)(5)(Q), 8 U.S.C. 1153(b)(5)(Q). DHS proposes to codify the INA's definition of a ''separate account'' as an insured account maintained by a new commercial enterprise or affiliated job-creating entity, as applicable, in the United States at a federally regulated bank or other financial institution as defined in 18 U.S.C. 20. *See* INA sec. 203(b)(5)(Q)(vi), 8 U.S.C. 1153(b)(5)(Q)(vi); *see also* proposed 8 CFR 204.401, *Separate account.* DHS further proposes that the account may only contain the pooled investment funds of regional center investors in a new commercial enterprise with respect to a single capital investment venture that may, in turn, fund one or more individual job-creating entities and that a separate account may not contain funds from any other source, except for interest that may accrue on amounts held in the account. *Id.* This definition would clarify that a new commercial enterprise or affiliated job-creating entity is not expected to retain a separate account for each individual regional center investor in the new commercial enterprise, but may pool those investment funds in one separate account. This would not preclude a new commercial enterprise or affiliated job-creating entity, however, from establishing a separate account for each regional center investor, should the new commercial enterprise or affiliated job-creating entity prefer to do so.

Targeted Employment Area, Rural Area, and High Unemployment Area

DHS proposes to codify the INA definitions of a ''targeted employment area,'' ''rural area,'' and ''high unemployment area.'' A ''targeted employment area'' (''TEA'') is, at the time of investment, a rural area or an area designated by the Secretary as a

[39] In accordance with the settlement agreement in *Behring Regional Center LLC and IIUSA* v. *Mayorkas, et al.,* 3:22–cv–2487 (N.D. Cal. 2022) and *EB5 Capital, et al.* v. *Dept. of Homeland Security, et al.,* 3:22–cv–3948 (N.D. Cal. 2022), a regional center designated and in good standing before the enactment of the EB–5 Reform and Integrity Act of 2022 retained its designation subject to establishing compliance with the new requirements added by the RIA.

[40] Certain regional centers designated prior to enactment of the RIA have sought to enjoin DHS's enforcement of certain new requirements of the Regional Center Program against such regional centers, such as collection of the EB–5 Integrity Fund fee. Following denial of the regional centers' motions for preliminary injunction, U.S. District Courts in the Southern District of Florida (upheld on appeal by the United States Court of Appeals for the 11th Circuit) and District of Columbia subsequently rejected this interpretation advanced by these regional centers and granted DHS's motion to dismiss these lawsuits. *Sunshine State Reg'l Ctr., Inc.* v. *Director, USCIS,* 143 F.4th 1331 (11th Cir. 2025) (upholding lower court's grant of DHS's motion to dismiss); *EB5 Holdings, Inc.* v. *Jaddou,* 23–cv–1180 (D.D.C. Feb. 20, 2024) (order granting DHS's motion to dismiss).

[41] *Behring Regional Center LLC,* 544 F. Supp. 3d at 950.

high unemployment area. INA sec. 203(b)(5)(D)(viii), 8 U.S.C. 1153(b)(5)(D)(viii). DHS proposes to define a ''TEA'' as a rural area or a high unemployment area, while defining each of those terms separately in the proposed rule. *See* proposed 8 CFR 204.401, *Targeted employment area.*

The INA separately defines a ''rural area'' as any area other than an area within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). INA sec. 203(b)(5)(D)(vii), 8 U.S.C. 1153(b)(5)(D)(vii). DHS proposes to include this definition of ''rural area'' in the proposed rule while restating slightly for clarification that a ''rural area'' is any area that is: (1) not within a standard MSA; and (2) is not within the outer boundary of any city or town having a population of 20,000 or more. *See* proposed 8 CFR 204.401, *Rural area.* DHS believes this would further make clear that any area may qualify as a rural area provided the area does not meet either of these restrictions. In addition, this would clarify that only the population restriction of the second part of the definition is bound by the most recent decennial status at the time of investment, whereas the first part of the definition would be determined by whether the area was within a standard MSA at the date of investment. Determining the ''date of investment'' is discussed in Section IV.D of this preamble.

As referenced in the definition of TEA, the INA likewise contains detailed provisions regarding designation of high unemployment areas and limits the designation of these areas to DHS. INA sec. 203(b)(5)(B)(ii), 8 U.S.C. 1153(b)(5)(B)(ii). In line with these statutory provisions, DHS proposes to define a ''high unemployment area'' as an area designated by USCIS under the requirements for designation found at proposed 8 CFR 204.402. *See* proposed 8 CFR 204.401, *High unemployment area.*

C. National Security and Fraud

The RIA ''codifies a number of [. . .] long-sought reforms designed to enhance the integrity of the Regional Center Program and prevent fraud and abuse that have plagued it for far too long.'' [42] It provides vital integrity and national security reforms to the EB–5 program to better guard against abuse and promote program integrity.[43] The RIA established in the INA new requirements for regional centers, new commercial enterprise owners, job-creating entity owners, and petitioners and provided USCIS additional authorities that will allow USCIS to mitigate the risks the EB–5 program presents.[44]

The RIA added new discretionary authorities to the INA to deny petitions or applications and revoke prior approvals if DHS determines, in its discretion, that there is a threat to public safety or national security or a benefit request under the EB–5 program is based on fraud, deceit, intentional material misrepresentation, or criminal misuse. INA secs. 203(b)(5)(N) and (O), 8 U.S.C. 1153(b)(5)(N) and (O). Previously, without these provisions, USCIS could not directly act on petitions or applications that involved threats to public safety or national security without a related statutory basis for ineligibility or termination that could provide USCIS reason to terminate a regional center's designation or prohibit the involvement of individuals or petitioners with ties to foreign governments hostile to the United States. While the prior statutory authorization gave USCIS the authority to designate regional centers, which in turn provided implicit authority to terminate those designations, the general language regarding the ''promotion of economic growth'' was the only explicit statutory eligibility requirement for a designation as a regional center. *See* section 610(a) of Public Law 102–395, 106 Stat. 1828, 1874. Due to the lack of explicit statutory authority, USCIS could not always timely terminate a regional center actively engaged in fraud to prevent larger losses to alien investors and bolster the ongoing integrity of the EB–5 program. The INA now provides explicit and comprehensive statutory authority for USCIS to act if DHS determines, in its discretion, that any participant in the EB–5 program presents any public safety or national security threat to the United States or is, or has, engaged in fraud, deceit, intentional material misrepresentation, or criminal misuse. INA secs. 203(b)(5)(N) and (O), 8 U.S.C. 1153(b)(5)(N) and (O).

Under this rule, USCIS would apply the statutory provisions of sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N) and (O), generally using applicable practice guidance regarding sections 212(a)(3) or (6)(C) of the INA, 8 U.S.C. 1182(a)(3) or (6)(C), as a guide, while recognizing that the scope of determinations under sections 212(a)(3) and (6)(C) of the INA, 8 U.S.C. 1182(a)(3) and (6)(C), are more limited than determinations under sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N) and (O). USCIS would also retain discretion under sections 203(b)(5)(N) (O) of the INA, 8 U.S.C. 1153(b)(5)(N) and (O), to determine that other actions not specified by sections 212(a)(3) or (6)(C) of the INA, 8 U.S.C. 1182(a)(3) or (6)(C), still nonetheless require USCIS to act to ensure the integrity of the EB–5 program. For example, if USCIS determines that a person is acting on behalf of an authoritarian government or is, or has been, a member of, or affiliated with a Communist or any other totalitarian party (or subdivision or affiliate thereof), foreign or domestic, USCIS would act under section 203(b)(5)(N) of the INA, 8 U.S.C. 1153(b)(5)(N). Likewise, if USCIS determines, for example, that an alien investor or any other person involved with a regional center who, by fraud or willfully misrepresenting a material fact, seeks to procure, has sought to procure, or has procured, an immigrant visa or other documentation, such as in connection with an application for designation as a regional center, USCIS would act under section 203(b)(5)(O) of the INA, 8 U.S.C. 1153(b)(5)(O).

As noted by a USCIS representative in an industry forum: ''Fraud and other public safety or national security concerns in the EB–5 program, regardless of when such concerns come to light, adversely affect the EB–5 program and the stakeholder community.'' [45] Sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(O), provide DHS with enforcement authority ''if the Secretary determines, in the Secretary's discretion'' that there are national security, fraud, misrepresentation, or criminal misuse concerns. To clarify its

[42] 168 Cong. Rec. S1105 (daily ed. Mar. 10, 2022) (statement of Sen. Grassley).

[43] Senator Charles Grassley, ''Reauthorizing and Reforming the EB–5 Regional Center Program,'' *https://www.grassley.senate.gov/imo/media/doc/EB-5%20Reform%20and%20Integrity%20Act%202021%20-%20Summary.pdf* (last accessed Feb. 15, 2023).

[44] *See, e.g.,* oversight requirements in section 203(b)(5)(F) of the INA, 8 U.S.C. 1153(b)(5)(F), and additional annual reporting requirements in section 203(b)(5)(G) of the INA, 8 U.S.C. 1153(b)(5)(G), as well as the bona fide requirements of participants in the Regional Center Program in section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H). These new requirements are discussed in greater detail in section IV.G.

[45] 2020 IIUSA EB–5 Industry Forum, ''USCIS Remarks by Sarah Kendall, Chief, IPO'' (Nov. 10, 2020), *https://www.uscis.gov/sites/default/files/document/outreach-engagements/IIUSA_2020_Virtual_EB-5_Industry_Forum-IPO_Chief_Sarah_Kendalls_remarks.pdf* (last visited Oct.10, 2025).

discretionary authority in this context, DHS proposes that USCIS would be able to make a determination that any petition, application, or benefit request described in section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), poses a threat to the public safety or national security of the United States, including participation in the EB–5 program itself, or was predicated on or involved fraud, deceit, intentional material misrepresentation or criminal misuse even if the petition, application, or benefit request was filed before the enactment of the RIA. *See* proposed 8 CFR 204.432 and 204.433. Equally important for the integrity of the EB–5 program, USCIS would be able to revoke a prior approval or terminate an investor's conditional permanent resident status if USCIS determines, in its discretion, that a threat to the public safety or national security of the United States exists or the petition, application, or benefit was predicated on or involved fraud, deceit, intentional material misrepresentation or criminal misuse. DHS does not believe this proposal would upset reliance interests because DHS would consider actions or events that occurred prior to enactment of the RIA for the limited purpose of determining whether there is or was an ongoing threat to the national interest or fraud under sections 203(b)(5)(N) or (O) of the INA, 8 U.S.C. 1153(b)(N) and (O) after enactment of the RIA.

As a result of any such determination, USCIS would deny or revoke the approval of any petition, application, or benefit request, terminate the permanent resident status of an alien investor, whether conditional or not, terminate or debar a regional center's designation, and permanently debar from participation in the Regional Center Program any new commercial enterprise, or job-creating entity under proposed 8 CFR 204.431. *See also* proposed 8 CFR 204.432(a) and 8 CFR 204.433(a). In addition, USCIS would bar any person associated with a terminated regional center or debarred new commercial enterprise or job-creating entity from participation in the Regional Center Program if the person was a knowing participant in the activities that led USCIS to make the determination under proposed 8 CFR 204.431. *See* proposed 8 CFR 204.432(b) and 8 CFR 204.433(b). USCIS would base a determination that a person was a knowing participant on actual or constructive knowledge. *Id.* Under this proposed rule, USCIS would consider any person that knew, or should have known, of any violation of the INA or these regulations that did not take action to address the violation to have had actual or constructive knowledge and would be subject to debarment from the EB–5 program. Additionally, a person would be considered to have actual or constructive knowledge if the person is directly or indirectly involved in any activity barred by the RIA or these regulations.

Importantly, as noted above, these determinations would apply to any application or petition submitted either before or after the enactment of the RIA. *See* proposed 8 CFR 204.400(a) and (b). DHS proposes to exercise its discretionary authority under the INA to prevent or end the participation of individuals or organizations that are currently, or were previously, involved in the EB–5 program to preclude their ongoing involvement, where necessary. *See* INA secs. 203(b)(5)(N) and (O), 8 U.S.C. 1153(b)(5) and (O).

In either case, USCIS would provide notice to the affected individual(s) or entity(ies) with an explanation of the determination, unless the relevant information is classified, or disclosure is otherwise prohibited under law. *See* proposed 8 CFR 204.432(c) and 204.433(c). Except for terminations of conditional permanent resident status obtained under section 216A of the INA, 8 U.S.C. 1186b, and denials or revocations of Form I–829 petitions, which are not included among the list of applications, petitions or benefits subject to section 203(b)(5)(P) of the INA, 8 U.S.C. 1153(b)(5)(P), and which have also not historically been appealable since they are otherwise reviewable in removal proceedings in accordance with applicable provisions of section 216A of the INA, 8 U.S.C. 1186b, an individual or organization denied a benefit or sanctioned under sections 203(b)(5)(N) or (O) of the INA, 8 U.S.C. 1153(b)(5)(N)–(O), would be able to appeal the determination to the Administrative Appeals Office. *See* INA sec. 203(b)(5)(P), 8 U.S.C. 1153(b)(5)(P); *see also* proposed 8 CFR 204.432(d) and 204.433(d).

D. Alien Investors

Section 203(b)(5)(A) of the INA, 8 U.S.C. 1153(b)(5)(A), makes immigrant visas available to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise in which the alien has invested, or is actively in the process of investing, the required amount of capital that is expected to remain invested for not less than two years and that will benefit the U.S. economy by creating full-time employment for not fewer than 10 U.S. citizens, U.S. nationals, lawful permanent residents, or other immigrants lawfully authorized to be employed in the United States, not including the investor's spouse or children. INA sec. 203(b)(5)(A), 8 U.S.C. 1153(b)(5)(A).

1. Filing an EB–5 Immigrant Visa Petition

Any alien may file an EB–5 immigrant visa petition on his or her own behalf.[46] This rule would continue to require any alien seeking classification as either a regional center investor or standalone investor to properly file Form I–526E, Petition by Regional Center Investor, or Form I–526, Petition by Standalone Investor, as appropriate, according to the form instructions with the appropriate fees. *See* proposed 8 CFR 204.404. As with any petition filed with USCIS, a petition would continue to be considered properly filed if the petition is complete, signed by the petitioner (in this case the alien investor), and accompanied by the required initial evidence. *Id; see also* 8 CFR 103.2(a)(7). The petition must include the required evidence along with any additional evidence necessary to establish the petitioner's eligibility by a preponderance of the evidence. 8 CFR 103.2(b)(1). As USCIS has continued to increase its use of electronic filing, USCIS amended the Form I–526E to permit investors to choose to upload their initial evidence in MyUSCIS.[47] Under this proposed rule, any investor choosing to upload his or her initial evidence would have to do so within 30 days of filing the petition. *See* proposed 8 CFR 204.404(a). If an investor does not upload his or her evidence in the electronic system within 30 days, USCIS would deny the petition. *Id.* Since the RIA establishes a general processing goal of 240 days for regional center investors in general and 120 days for regional centers investing in a TEA,[48] DHS believes that 30 days is a reasonable timeframe to allow for the investor to upload all required initial evidence while also providing USCIS sufficient time to complete the adjudication within the processing goal. Importantly, the investor must establish his or her eligibility at the time of filing and remain eligible through adjudication of the EB–5 immigrant visa

[46] USCIS would deny an EB–5 immigrant visa petition submitted by any alien barred from participation in the EB–5 program. *See* proposed 8 CFR 204.407(a).

[47] MyUSCIS is an online service that helps users and account holders navigate the immigration process. *https://my.uscis.gov/*.

[48] Public Law 117–103, Division BB, sec. 106(b)(4)–(5), 136 Stat. 1070, 1104, Mar. 22, 2022.

petition. *See* proposed 8 CFR 204.407(a); *see also* 8 CFR 103.2(b)(1).

On June 1, 2022, USCIS revised Form I–526, Immigrant Petition by Alien Investor,[49] to create two separate forms: Form I–526, Immigrant Petition by Standalone Investor, and Form I–526E, Immigrant Petition by Regional Center Investor.[50] As part of this proposed rule, DHS is proposing further modifications to each petition and the corresponding instructions in line with the proposals contained in this rulemaking to ensure that USCIS has all the information necessary to make a determination as to the investor's eligibility and ensure the investor does not pose a threat to the public safety or national security of the United States and is not seeking to obtain an EB–5 immigrant visa fraudulently.

a. Regional Center Investors

The INA requires a regional center to submit a project application before any alien investor investing in that project may file his or her petition for classification as a regional center investor. *See* INA sec. 203(b)(5)(F), 8 U.S.C. 1153(b)(5)(F); INA sec. 204(a)(1)(H)(i), 8 U.S.C. 1154(a)(1)(H)(i). Under this proposed rule, an alien seeking classification as a regional center investor must properly file Form I–526E, Petition by Regional Center Investor, and include evidence of association with a regional center's pending or approved Form I–956F (or project application). *See* proposed 8 CFR 204.404(b). Consequently, DHS is proposing to codify its post-RIA practice of USCIS rejecting any Form I–526E filed without evidence of association with a filed project application. *Id.* Evidence of association would ideally include a copy of the regional center's project application receipt notice along with evidence of the investor's signed agreements to invest in that particular investment offering to establish that his or her investment is associated with a regional center, but might also include other types of evidence to establish that the regional center submitted its project application, particularly in instances where the receipt notice is delayed or the investor seeks to file his or her petition as soon as possible after the regional center has submitted its project application. As intake processing improves, USCIS would expect a regional center to receive a receipt notice shortly after filing, which would improve the likelihood that the Form I–956F receipt notice could be made available to the investor prior to filing his or her Form I–526E. However, in accordance with the settlement agreement in *Behring Regional Center, LLC and IIUSA* v. *Mayorkas, et al.,* 3:22–cv–2487 (N.D. Cal. 2022) *and EB5 Capital, et al.* v. *DHS, et al.,* 3:22–cv–3948–VC (N.D. Cal. 2022), DHS proposes to continue accepting other evidence of the regional center having submitted Form I–956F in certain circumstances. *See* proposed 8 CFR 204.408(a).

DHS notes that an approved project application would establish certain eligibility requirements for a regional center investor, including investment in a new commercial enterprise and the expectation of sufficient job creation, for example. Consequently, DHS would continue its post RIA practice of a regional center investor not needing to submit evidence that is available to USCIS for review in the project application. This evidence from the project application establishing certain eligibility requirements for a regional center investor would be incorporated by reference into the regional center investor's petition, per section 203(b)(5)(E)(ii)(III) of the INA, 8 U.S.C. 1153(b)(5)(E)(ii)(III). In other words, the investor would attest that he or she invested in the project identified on his or her Form I–526E and would not need to resubmit documentation previously provided to USCIS with that project application. This proposed rule would make clear that a regional center investor would only have to submit evidence to establish his or her eligibility for an EB–5 immigrant visa by submitting the evidence required by paragraphs 8 CFR 204.408(b) through (d). *See* proposed 8 CFR 204.408(a).

As a regional center investor may file his or her EB–5 immigrant visa petition once the regional center has submitted its project application, and the project application establishes certain grounds of eligibility for the regional center investor, USCIS would not adjudicate the regional center investor's EB–5 immigrant visa petition until it has adjudicated the regional center's project application as several aspects of a regional center investor's eligibility rely on the approval of the regional center's project application. *See* INA sec. 203(b)(5)(F)(ii), 8 U.S.C. 1153(b)(5)(F)(ii).

b. Standalone Investors

An alien seeking classification as a standalone investor must properly file Form I–526, Petition by Standalone Investor. A standalone investor cannot pool his or her investment with any other aliens seeking classification as an alien investor. *See* INA sec. 203(b)(5)(E)(i), 8 U.S.C. 1153(b)(5)(E)(i); INA sec. 204(a)(1)(H)(i), 8 U.S.C. 1154(a)(1)(H)(i). In accordance with this statutory restriction, DHS proposes to clarify its post-RIA interpretation that multiple standalone investors would not be able to invest in the same new commercial enterprise, even if doing so independently. *See* proposed 8 CFR 204.407(a)(2). DHS proposes this additional language because multiple standalone investors in a single new commercial enterprise is contrary to the INA's requirement that any alien seeking to pool his or her investment with other alien investors must do so under the Regional Center Program. *See* INA sec. 204(a)(1)(H)(i), 8 U.S.C. 1154(a)(1)(H)(i).

2. Priority Dates

DHS proposes to maintain the current definition that the priority date is the date the investor properly files a completed and signed EB–5 immigrant visa petition with USCIS, *see* 8 CFR 204.6(d), including all initial evidence required by the form instructions and the correct fee.[51] *See* proposed 8 CFR 204.406(a). This proposal is also consistent with the priority date assignment for family-based petitions and first through third preference employment-based petitions that do not require a labor certification approved by the Department of Labor. *See* 8 CFR 204.1(b); 8 CFR 204.5(d). A priority date is important to any alien seeking to immigrate to the United States as it establishes his or her place in the visa queue. As discussed in section III.C. of this proposed rule, the priority date is the determining factor as to when a petitioner can either apply for an immigrant visa abroad or to adjust status in the United States based on the dates published in State's monthly Visa

[49] Form I–526 was named Immigrant Petition by Alien Entrepreneur until November 2019. It was renamed in November 2019 to Immigrant Petition by Alien Investor until 2022 when it was split into the Form I–526, Immigrant Petition by Standalone Investor, and Form I–526E, Immigrant Petition by Regional Center Investor.

[50] Each form is available on the USCIS website. USCIS, DHS, ''I–526, Immigrant Petition by Standalone Investor,'' *https://www.uscis.gov/I-526* (last updated Nov. 14, 2024); and USCIS, DHS, ''I–526E, Immigrant Petition by Regional Center Investor,'' *https://www.uscis.gov/I-526E* (last updated Nov. 14, 2024).

[51] As discussed in Section IV.D.1 of this preamble, investors submitting their initial evidence through the electronic filing system would have to provide all required evidence within 30 days of filing or USCIS would deny the petition and the petition would not establish a priority date. *See* proposed 8 CFR 204.404(a). If the investor submits the required evidence within 30 days, the priority date will be the date the petition is filed. *See* proposed 8 CFR 204.406(a).

Bulletin.[52] State may not issue a visa, and USCIS may not grant adjustment of status unless the alien's priority date is earlier than the corresponding cut-off date in the ''final action date'' chart listed in the Visa Bulletin.

Priority Date Retention

The regulations in effect prior to the effective date of the EB–5 Modernization Final Rule did not permit investors to use the priority date of an approved EB–5 immigrant visa petition for a subsequently filed EB–5 immigrant visa petition. *See* 8 CFR 204.6(d) (Nov. 20, 2019). DHS introduced priority date retention to the EB–5 program in certain circumstances in its ''EB–5 Immigrant Investor Program Modernization'' Final Rule to bring the EB–5 priority date retention policy into harmony with other employment-based preference categories. *See* 84 FR 35750, 35751 (July 24, 2019). However, the U.S. District Court for the Northern District of California vacated the EB–5 Modernization Rule on procedural grounds,[53] thereby removing the priority date retention provisions for alien investors from the regulations.

DHS has generally allowed beneficiaries in the employment-based first, second, and third preference categories to retain the priority date of his or her previously approved immigrant visa petitions unless DHS revokes the petition's approval. *See* 8 CFR 204.5(e). DHS expanded the ability of beneficiaries in these preference categories to retain their priority dates even when their petitions have been revoked, so long as the approval was not revoked based on fraud, willful misrepresentation of a material fact, material error, or the revocation or invalidation of the labor certification associated with the petition. *See* 81 FR 82398, 82485 (Nov. 18, 2016).

The RIA added new protections [54] for certain immigrants to retain their eligibility in connection with an otherwise qualified petition. *See* INA sec. 203(b)(5)(M), 8 U.S.C. 1153(b)(5)(M). DHS proposes to apply these provisions on priority date retention from the RIA for investors whose regional center is terminated or whose new commercial enterprise or job-creating entity is barred from participation in the EB–5 program, as well as standalone investors who encounter situations that require a ''material change'' to their initially-filed petitions. *See* proposed 8 CFR 204.406 and 204.410. Section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), provides that upon termination or debarment, as applicable, of the investor's regional center, new commercial enterprise, or job-creating entity, the investor may retain his or her eligibility on that petition by taking specific actions to preserve his or her eligibility and filing an amendment with USCIS within 180 days of receiving notification from USCIS of the termination or debarment, as applicable. *See* INA sec. 203(b)(5)(M), 8 U.S.C. 1153(b)(5)(M). If the investor properly files an amendment and establishes his or her continued eligibility, then the investor would retain the priority date of his or her earlier filed petition, whether the earlier petition is approved or remains pending at the time the amendment is filed. *See* proposed 8 CFR 204.406(c).

DHS welcomes public comment on the priority date retention provisions. DHS also welcomes comments on the standards that may be considered when determining whether to allow for priority date retention, including alternative suggestions to those standards.

Reserved Visa Qualification

Consistent with its post-RIA interpretation and practice,[55] DHS proposes that the new visas reserved by the RIA in the INA only apply to those investors who filed an EB–5 immigrant visa petition on or after the date of enactment, March 15, 2022, and establish eligibility as a ''qualified immigrant'' based on post-RIA eligibility requirements (*e.g.,* adjusted investment amounts). *See* proposed 8 CFR 204.407(g).

3. Biometrics

After an investor files an EB–5 immigrant visa petition, USCIS may schedule the investor to appear for biometrics to confirm the investor's identity, perform background checks, and review a regional center investor's eligibility to be a person involved in the regional center, new commercial enterprise, or job-creating entity.[56] *See* proposed 8 CFR 204.417(a); *see also* 8 CFR 103.2(b)(9), 103.16. While USCIS retains the discretion to schedule an investor for biometrics, most often biometrics would be captured when the investor seeks to obtain an immigrant visa or adjust status. As with all other benefit requests, if an investor is requested to appear for biometrics and does not appear, USCIS will consider the petition to be abandoned and deny the petition. *See* 8 CFR 103.2(b)(13).

4. Investment Amounts

An alien seeking classification as an alien investor must invest, or be actively in the process of investing, the required amount of capital. *See* INA sec. 203(b)(5)(A). The RIA increased the required investment amount from $1 million to $1.05 million. *See* INA sec. 203(b)(5)(C)(i), 8 U.S.C. 1153(b)(5)(C)(i). For investments in a TEA or an infrastructure project, the required investment amount is $800,000. INA sec. 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii).

Under this proposed rule, DHS would update the investment amounts to the amounts established by the RIA.[57] *See* proposed 8 CFR 204.407(b). DHS previously raised the investment amounts in the EB–5 Immigrant Investor Program Modernization Final Rule, setting the minimum investment amount at $1,800,000 U.S. dollars and the investment amount in a TEA at $900,000 U.S. dollars, or 50 percent of the standard minimum investment amount. 84 FR 35750 (July 24, 2019). However, the U.S. District Court for the Northern District of California vacated the Final Rule on procedural grounds, reverting the amounts to $1 million and $500,000, respectively.[58] This proposed rule would remove and reserve 8 CFR 204.6, which contained the investment amounts and would provide the new statutory amounts as well as clarify that the investment amount must remain invested on the date the EB–5 immigrant visa petition is filed, which is explained further in Section IV.D.6 of this preamble. *See* proposed 8 CFR 204.407(b).

---

[52] *See* Bureau of Consular Affairs, DOS, ''The Visa Bulletin,'' *https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html* (last visited Jan. 16, 2025).

[53] *See Behring Regional Center LLC,* 544 F. Supp. 3d at 950.

[54] *See* Public Law 117–103, Division BB, sec. 103(b)(1), 136 Stat. 1070, 1094 (2022) (creating INA sec. 203(b)(5)(M), 8 U.S.C. 1153(b)(5)(M)).

[55] *See, e.g., Del. Valley Reg'l Ctr., LLC* v. *DHS,* No. 23–cv–119, 2023 WL 3863637 (D.D.C. June 7, 2023), aff'd on other grounds, No. 23–5175, 106 F.4th 1195 (D.C. Cir. Mar. 22, 2024); *Mukkavilli* v. *Jaddou,* No. 22–CV–2289, 2023 WL 4029344 (D.D.C. June 15, 2023), aff'd on other grounds, No. 23–5138, 2024 WL 1231346 (D.C. Cir. Mar. 22, 2024).

[56] *See* section IV.H.2 for further discussion on the additional requirements of a person involved with a regional center, new commercial enterprise, or job-creating entity.

[57] These amounts will adjust automatically on January 1, 2027, and every 5 years thereafter, based on the cumulative annual percentage change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average between January 1, 2022, and the date of adjustment as reported by the Bureau of Labor Statistics. INA sec. 203(b)(5)(C)(iii)(I), 8 U.S.C. 1153(b)(5)(C)(iii)(I). DHS will determine when finalizing this rule whether to include the adjusted amounts for petitions filed on or after January 1, 2027.

[58] *See Behring Regional Center LLC,* 544 F. Supp. 3d at 950.

a. Standard Minimum Investment Amount

For an EB–5 immigrant visa petition filed on or after March 15, 2022, the INA establishes a minimum investment amount of $1,050,000 U.S. dollars. INA sec. 203(b)(5)(C)(i), 8 U.S.C. 1153(b)(5)(C)(i). DHS proposes to codify this minimum investment amount in this rule. *See* proposed 8 CFR 204.407(b)(1). This amount will adjust automatically on January 1, 2027, and every 5 years thereafter, based on the cumulative annual percentage change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average between January 1, 2022, and the date of adjustment as reported by the Bureau of Labor Statistics. INA sec. 203(b)(5)(C)(iii)(I), 8 U.S.C. 1153(b)(5)(C)(iii)(I); *see* proposed 8 CFR 204.407(b)(2). DHS will round down to the nearest $50,000 and update these amounts by publication in the **Federal Register**. *Id.* USCIS will also update the amounts on its public website to provide the appropriate investment amounts based on the date a petition is filed.

b. Minimum Investment Amount in a Targeted Employment Area (TEA) or Infrastructure Project

The RIA established a reduced minimum investment amount of $800,000 U.S. dollars for investments made in a TEA or in an infrastructure project.[59] INA sec. 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii). DHS proposes to codify this reduced minimum investment amount for investments made in a TEA or in an infrastructure project in this rule. *See* proposed 8 CFR 204.407(b)(2). This amount will automatically adjust on January 1, 2027, and every 5 years thereafter, to be equal to 75 percent of the standard minimum investment amount provided in proposed 8 CFR 204.407(b)(1). *See* INA sec. 203(b)(5)(C)(iii)(II), 8 U.S.C. 1153(b)(5)(C)(iii)(II); *see* proposed 8 CFR 204.407(b)(2). DHS will round down to the nearest $50,000 and update these amounts by publication in the **Federal Register**. *See* INA sec. 203(b)(5)(C)(iii)(II), 8 U.S.C. 1153(b)(5)(C)(iii)(II); *see* proposed 8 CFR 204.407(b)(2). USCIS will also update the amounts on its public website to provide the appropriate investment amounts based on the date a petition is filed.

c. Minimum Investment Amount in a High Employment Area

Section 203(b)(5)(C)(iv) of the INA permits DHS to establish a higher investment amount of no more than three times the standard minimum investment amount in a high employment area, which is an area within a MSA that is not a TEA and has an unemployment rate significantly below the national average unemployment rate. *See* INA sec. 203(b)(5)(C)(iv), 8 U.S.C. 1153(b)(5)(C)(iv). DHS has not previously defined high employment areas beyond the statutory definition and never raised the investment amount for such an area. With this proposed rule, DHS proposes to define a high employment area as discussed previously in Part IV.B. of this preamble. *See* proposed 8 CFR 204.401, *High employment area.*

DHS is proposing to set the investment amount for an area of high employment at $1,400,000. *See* proposed 8 CFR 204.407(b)(3). Section 203(b)(5)(C)(iv)(II) of the INA, 8 U.S.C. 1153(b)(5)(C)(iv)(II), provides DHS with the discretion to ''specify an amount of capital required [. . .] that is greater than (but not greater than 3 times)'' the standard minimum investment amount. To calculate this amount, DHS multiplied the minimum standard investment amount ($1,050,000) by 133 percent and rounded up to the nearest $50,000, which means the standard minimum investment amount would be 75 percent of the high employment area investment amount. This is the same differential of a high unemployment area compared to the minimum investment amount. DHS proposes to automatically adjust this amount on January 1, 2027, and every 5 years thereafter, to be equal to 133 percent of the standard minimum investment amount rounded up to the nearest $50,000 and publish the new amount in the **Federal Register**. *See* proposed 8 CFR 204.407(b)(3). Setting the automatic adjustment at 133 percent would keep the minimum standard investment amount at roughly 75 percent of the minimum investment amount in a high employment area, in line with the adjustment between the standard amount and the minimum investment amount for TEA and infrastructure projects. DHS also believes this is reasonable because the INA permits raising this amount to no more than three times the standard minimum investment, which at its maximum would be $3,150,000. DHS notes this proposal is much less than the amount allowed by the INA.

DHS welcomes public comment on the high employment area investment amount calculation and percentage of employment in relation to the national average unemployment rate to determine if an area is an area of high employment, as well as any alternatives with reasoning to support a different approach.

5. Source of Capital

An alien seeking classification as an alien investor, whether as a regional center investor or a standalone investor, must establish that he or she invested the required amount of capital described above. No matter the type of capital invested, the capital would have to be lawful, meaning the capital invested was derived, whether directly or indirectly, from lawful sources and through lawful means, including any capital used to cover administrative costs and fees in association with the investment. INA sec. 203(b)(5)(L)(i), 8 U.S.C. 1153(b)(5)(L)(i). USCIS has historically identified unique fraud risks with investor capital, including uncertainties in verifying that the funds invested were obtained lawfully.[60] Consequently, DHS proposes to codify its policies since implementing the RIA to require the investor to establish by a preponderance of the evidence that the capital he or she invested, as well as any capital he or she used to pay any administrative costs and fees, derived from lawful sources and through lawful means as well as document the path of those funds from the investor to the new commercial enterprise. *See* proposed 8 CFR 204.407(c). This would likely include different investors submitting different documents depending on where and how the investor derived the capital he or she invested, including any capital used to cover administrative costs and fees in association with the investment. For example, the investor may establish that he or she accumulated his or her capital through employment by providing bank records, income certificates, or personal income tax returns. *See* proposed 8 CFR 204.408(d)(1). With respect to documenting the path of accumulated funds, some investors might submit banking statements, wire transfer receipts, or cancelled checks, while other investors that use third parties to

[59] 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). DHS proposes definitions of targeted employment areas (TEAs) and infrastructure projects in proposed 8 CFR 204.401 and further discusses the provisions in sections IV.D and IV.E of this proposed rule.

[60] 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.*

facilitate the transfer of capital to the new commercial enterprise on their behalf would need to identify any third party used to meet the investment requirement and submit evidence that the capital provided by the third party was lawful. *See* proposed 8 CFR 204.408(c). USCIS has required this level of information from petitioners seeking to establish the lawfulness of their capital to ensure the EB–5 program is not being used to launder money or otherwise used to support fraudulent or criminal activities. Requiring this information remains necessary to demonstrate the complete path of lawful funds from the investor to the new commercial enterprise and allows USCIS to continue to ensure the integrity of the EB–5 program and that the invested funds are the investor's own funds. In addition, the investor would need to establish that any entity or individual used to provide his or her capital to the new commercial enterprise complies with all U.S. financial requirements and regulations, including anti-money laundering and countering the financing of terrorism (AML/CFT) requirements. *See* proposed 8 CFR 204.408(c)(4). USCIS would consider use of a currency exchanger, money service business, or other mechanism that is licensed, regulated, and authorized by an appropriate foreign or U.S. Government authority as evidence to establish that the capital obtained from the intermediary was lawfully derived, unless USCIS has reason to believe that such capital was not lawfully derived. *See* proposed 8 CFR 204.407(c)(3). If USCIS has reason to believe that such capital was not lawfully derived, then the investor would have to submit independent and credible evidence that the capital was lawfully derived.

The INA also precludes certain types of capital, such as unlawfully acquired assets, capital invested in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien investor and the new commercial enterprise, capital invested with a guaranteed rate of return, or capital subject to a mandatory redemption provision, with certain exceptions. *See* INA sec. 203(b)(5)(D)(ii), 8 U.S.C. 1153(b)(5)(D)(ii). These exceptions allow an investor to include a buy back option that may be exercised solely upon withdrawal or denial of the EB–5 immigrant visa petition or at the discretion of the new commercial enterprise once the capital has been invested for at least two years, provided the capital remained invested at the time of filing the EB–5 immigrant visa petition and was used to create the required number of jobs for qualifying employees. *See* proposed 8 CFR 204.407(d)(3). In other words, the investor would be able to include provisions in his or her investment agreements that would allow the investor to receive his or her capital back if:

1. USCIS denies his or her EB–5 immigrant visa petition;
2. The investor withdraws his or her EB–5 immigrant visa petition; or
3. The new commercial enterprise, in its sole discretion, elects to buy back the investment after the capital has remained invested for at least 2 years, the capital remained invested when the investor filed his or her EB–5 immigrant visa petition, and the capital was used to create the required number of jobs.

Multiple Investors, Including Investors Not Seeking EB–5 Classification

Investments in the EB–5 program frequently involve multiple investors in the new commercial enterprise, some of whom may not be seeking classification as an alien investor. It is no less important that any capital received from other investors in the new commercial enterprise is likewise lawfully derived to ensure the ongoing integrity of the EB–5 program. Consequently, under this proposed rule, if a standalone investor is investing in a new commercial enterprise that is receiving investments from other individuals that are not seeking classification as an alien investor (non-EB–5 capital), then the standalone investor would have to identify all sources of non-EB–5 capital invested in the new commercial enterprise on his or her EB–5 immigrant visa petition. *See* proposed 8 CFR 204.407(c)(4). Similarly, a regional center would have to identify all sources of non-EB–5 capital provided, or expected to be provided, to a new commercial enterprise or job-creating entity identified in a project application. *See* proposed 8 CFR 204.407(c)(4). If USCIS has reason to believe that any capital invested in the new commercial enterprise or provided to the job-creating entity, including capital provided by an alien investor, has been derived by unlawful means, then USCIS would be able to request additional evidence from the regional center or standalone investor, as appropriate, to establish that the capital provided to the new commercial enterprise or job-creating entity is lawful. *See* proposed 8 CFR 204.407(c)(4). These proposals extend provisions in the current regulations that require investors in a new commercial enterprise to identify any additional capital invested in the new commercial enterprise and establish that all additional capital is lawful. 8 CFR 204.6(g)(1) (Nov. 20, 2019). DHS proposes additional clarifications about this provision in the proposed rule; particularly that while the standalone investor or regional center, as appropriate, must continue to identify any capital invested in the new commercial enterprise, USCIS would request additional evidence where there is reason to believe that the capital identified has not been derived by lawful means. USCIS would request such evidence from a standalone investor for his or her own capital or investments made outside of the Regional Center Program; from the regional center directly where there are questions about non-EB–5 capital invested in a new commercial enterprise in the Regional Center Program; or from a regional center investor regarding the lawfulness of his or her own capital. Evidence requested and obtained from a regional center would then be incorporated by reference into the regional center investor's EB–5 immigrant visa petition, consistent with how other project level documentation would be handled for regional center investors. *See* proposed 8 CFR 204.404(b), 204.408(a), and 204.410(b)(1). In either case, the regional center investor or the standalone investor would have an opportunity to remove (and replace, if necessary) any capital that cannot be established as lawful and respond to USCIS indicating those actions have occurred. *See* proposed 8 CFR 204.407(c)(4). However, if a new commercial enterprise or job-creating entity continues to operate with capital that has not been established as lawful or was otherwise attempting to use unlawful capital within the EB–5 program in any manner, USCIS would be able to sanction the regional center, new commercial enterprise, or job-creating entity under proposed 8 CFR 204.431. *See* proposed 8 CFR 204.407(c)(4).

Digital Assets

DHS has considered whether DHS should specifically include regulatory provisions related to the evidentiary considerations when evaluating digital assets [61] as part of the source or path of

[61] Digital assets include cryptocurrencies, digital tokens, and stable coins. The term ''digital assets'' has been defined in statutes, regulations and guidance documents, and may vary depending on the subject matter and purpose. For example, the Internal Revenue Code defines ''digital asset'' as ''any digital representation of value which is recorded on a cryptographically secured distributed

funds for investment of capital in the EB–5 program. For EB–5 purposes, digital assets that are not tangible assets in accordance with the definition of ''capital'' under INA sec. 203(b)(5)(D)(ii), 8 U.S.C. 1153(b)(5)(D)(ii), may not be directly invested as ''capital'' into a new commercial enterprise; however, the use of intangible digital assets as a source of tangible capital (*e.g.* cash) or in the path of funds used to invest tangible capital into a new commercial enterprise may be permissible. USCIS does not believe that digital assets distinguish themselves as a funding source that is significantly distinct from other funding sources described in this preamble, although they may entail different considerations when assessing the lawfulness of the source. DHS has a practice of permitting digital assets as a valid source of funding and applies the same evidentiary considerations as it applies to other funding sources. As is the case for other sources of funding, an investor has to establish that digital assets used as a source or in the path of funds for capital investment must be lawfully derived to ensure the ongoing integrity of the EB–5 program. That is, when assessing digital assets, USCIS typically considers whether digital assets were shown to have been obtained from a lawful source and through lawful means, whether digital assets were shown to have been maintained and not swapped for other digital assets not shown to derive from a lawful source and through lawful means, whether account/digital asset ownership has been shown at all relevant times, whether transaction history has been shown sufficiently, whether tax returns are consistent with claims, whether the purchase/maintenance/movement were lawful and the entities/individuals involved were operating lawfully, and whether any later conversion of the digital assets shows a clear path from lawful source through conversion of digital asset. Additionally, the area of digital assets is rapidly evolving and while USCIS recognizes digital assets as part of a valid EB–5 investor's funding strategy, DHS does not believe that including a regulatory framework specific to digital assets and evidentiary considerations, at this time, would be beneficial. For these reasons, DHS does not believe it is necessary to incorporate specific evidentiary considerations relating to digital assets into this regulation. DHS believes that it is more appropriate to provide necessary details—supplementing evidentiary considerations currently laid out in the proposed regulatory framework—that specifically relate to the assessment of digital assets in sub-regulatory guidance. This approach provides investors and the agency the necessary flexibility to adapt to the evolving world of digital assets, and provide meaningful guidance on the specific types of evidence that may demonstrate the lawfulness of digital assets used in the source and path of funds for capital investment.

In addition to seeking comments on all aspects outlined in this preamble, DHS invites the public to comment on (1) whether the regulation should specifically address evidentiary considerations related to digital assets; (2) whether, if USCIS were to incorporate specific provisions into regulation, the above outlined considerations sufficiently address digital assets or whether additional aspects should be considered; and (3) whether other aspects related to digital assets as a source of funds should be considered or addressed in sub-regulatory guidance.

6. Duration of Investment

Prior to the RIA's enactment, under INA sec. 216A(d)(1)(A)(ii), 8 U.S.C. 1186b(d)(1)(A)(ii), an alien investor was required to sustain his or her investment throughout the period of his or her residence in the United States to be eligible to remove the conditions on his or her permanent resident status. USCIS historically interpreted this sustainment period to mean the two years of the investor's conditional permanent resident status in the United States. *See* USCIS Policy Manual, Volume 6, Part G, Chapter 7.A(2), ''Sustainment of the Investment,'' n. 4.

The RIA removed from section 216A(d)(1)(A)(ii) of the INA, 8 U.S.C. 1186b(d)(1)(A)(ii), the clause regarding how long the investment must be sustained to remove the conditions on residence. The RIA likewise revised section 203(b)(5)(A)(ii) of the INA, 8 U.S.C. 1153(b)(5)(A)(ii), to require that the investor must expect his or her capital to remain invested for no less than two years. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii). In line with the plain language of these statutory changes, DHS interprets these changes to modify the time in which an investor must maintain his or her investment to be eligible for an EB–5 immigrant visa and the subsequent removal of conditions on his or her permanent resident status.

The statutory changes to sections 203(b)(5)(A) and 216A(d)(1)(A) of the INA, 8 U.S.C. 1186b(d)(1)(A), provide that an investor may invest, or be in the process of investing, any time prior to filing his or her EB–5 immigrant visa petition, provided the investment is expected to remain invested in accordance with applicable requirements for at least two years. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii). Though the statute did not explicitly specify what particular actions in connection with an investment must happen (*e.g.* contribution, placement at risk, etc.) for the 2-year period under section 203(b)(5)(A)(i) of the INA, 8 U.S.C. 1153(b)(5)(A)(i), to begin, since the RIA's effective date, DHS has interpreted the start date to be the date that the full amount of qualifying investment is contributed to the new commercial enterprise and placed at risk under applicable requirements, including being made available to the job-creating entity, as appropriate.[62] However, DHS is concerned by a scenario where an investor has made and concluded his or her investment before ever filing an EB–5 immigrant visa petition as it would be difficult for an investor to establish, and for USCIS to verify, the duration of the investment, particularly if USCIS is reviewing potentially dated evidence during the adjudication of the EB–5 immigrant visa petition and the subsequent petition to remove the conditions on residence, or the investor is unable to obtain the necessary evidence to establish his or her eligibility with USCIS. Consequently, DHS proposes that an investor may invest in accordance with all applicable requirements any time prior to filing his or her EB–5 immigrant visa petition and the requirement to remain invested for at least two years begins on that date of investment. However, to be eligible for an EB–5 immigrant visa and to address these

ledger or any similar technology as specified by the Secretary.'' *See* 26 U.S.C. 6045(g)(3)(D). Implementing regulations at 26 CFR 1.6045–1(a)(19) further define digital asset as ''any digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each individual transaction involving that digital asset is actually recorded on that ledger, and that is not cash as defined in paragraph (a)(12) of this section.'' Executive Order 14178, Strengthening American Leadership in Digital Financial Technology,'' 90 FR 8647 (Jan. 23, 2025) has defined digital assets as ''any digital representation of value that is recorded on a distributed ledger, including cryptocurrencies, digital tokens, and stablecoins.''

[62] USCIS, DHS, ''EB–5 Questions and Answers,'' *https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers-updated-dec-2023#:~:text=An%20investor%20filing%20an%20EB,creation%20requirements%20have%20been%20met* (last updated July 16, 2024).

concerns regarding the validity and verifiability of associated evidence in the related adjudication, DHS proposes to modify its post-RIA policy to require (rather than suggest) that the investment would also have to remain at risk and available to the job-creating entity on the date the investor files his or her EB–5 immigrant visa petition. *See* proposed 8 CFR 204.407(b)(1)–(3).

DHS believes these proposed changes best align with the plain language of the INA as amended by the RIA and would lessen the burden on the investor to keep his or her investment in place for an extended period due to circumstances beyond the investor's or the new commercial enterprise's control, such as visa backlogs or other circumstances, while also mitigating the challenges USCIS would face reviewing an investment that has already concluded, potentially long before the investor files an EB–5 immigrant visa petition. Additionally, DHS believes these proposed changes would provide the greatest level of flexibility for stakeholders to create investment strategies that work for them, rather than having to make continual adjustments based on unknown (and often changing) immigrant visa issuance timelines, and would further limit the need for new commercial enterprises to redeploy investor capital after sufficient jobs have been created, solely to keep the investor's capital at risk over a potentially lengthy period. This would likewise minimize the risk of a new commercial enterprise not meeting the redeployment requirements of the INA, which requires USCIS to terminate the designation of any regional center associated with a new commercial enterprise that improperly redeploys an investor's capital. *See* INA sec. 203(b)(5)(F)(v)(II), 8 U.S.C. 1153(b)(5)(F)(v)(II). Importantly, the INA creates a minimum investment timeframe but does not preclude an investor and a commercial enterprise establishing an agreement for a longer period of investment. Further, DHS believes that investors are generally going to file their EB–5 immigrant visa petition shortly after investing the required amount of capital, both to secure a priority date and to lock in protections under section 203(b)(5)(M) of INA, 8 U.S.C. 1153(b)(5)(M), in the event of future sanctions, so having to maintain the investment as of the date of filing the EB–5 immigrant visa petition should not generally be a burden on the investor. Lastly, DHS believes this interpretation would provide the investor and the commercial enterprise with a significant degree of control over the required length of the investment since any need to maintain the investment beyond two years would be based on the investors' decision to file an EB–5 immigrant visa petition and personal investment objectives as well as the financial requirements of the commercial enterprise.

DHS notes that many investors place their capital in escrow pending approval of their EB–5 immigrant visa petition. As discussed in section IV.B of this preamble, an investor would continue to be able to establish that he or she is actively in the process of investing by placing his or her capital in escrow pending approval of his or her EB–5 immigrant visa petition. For purposes of determining the duration of the investment, after the approval of the EB–5 immigrant visa petition and the investor's capital is released from escrow to the commercial job-creating activity, if an escrow agreement is in place, then the investor must expect to maintain that investment within that commercial job-creating activity for no less than 2 years. *See* INA sec. 203(b)(5)(A)(i), 8 U.S.C. 1153(b)(5)(A)(i). If the new commercial enterprise is providing the investor's capital to a separate job-creating entity, the investment capital must remain with the job-creating entity or in use by the job-creating entity for the job-creating activity for no less than 2 years, except where the new commercial enterprise must redeploy the capital, after sufficient job creation, to another commercial activity within the same 2 years to keep the investor's capital at risk. *See* proposed 8 CFR 216.6(d)(2)(ii). While this 2-year timeframe may not align perfectly with the investor's period of conditional permanent residence, USCIS would review the investment when the investor seeks to remove the conditions on his or her residence and determine whether the investment was maintained at risk for at least 2 years from the date it was placed at risk and provided to the job-creating entity. *Id.*

7. Job Creation Requirements and Bridge Financing

An alien seeking classification as an alien investor must establish that his or her investment into a new commercial enterprise benefits the U.S. economy by creating full-time employment for not fewer than 10 qualified employees. *See* INA sec. 203(b)(5)(A), 8 U.S.C.1153(b)(5)(A). DHS proposes to clarify that the job creation must be tied to the investment capital of the alien investor, meaning that the jobs would not have been created but for the investment capital. *See* proposed 8 CFR 204.407(e)(1). DHS also proposes to clarify that the investment capital of the alien investor must be provided to the entity(ies) most closely responsible for creating the employment upon which the investment is based and used in connection with the job-creating activity undertaken by such entity(ies). *See* proposed 8 CFR 204.407(e)(1). These clarifications align with current policy stated in the USCIS Policy Manual and USCIS precedent decisions and would further tie the alien investor's capital to the job creation.[63]

Regional center investors may meet the job creation requirement by relying on economically and statistically valid methodologies for determining the number of jobs created. *See* INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv). However, for regional center investors, the regional center would have to establish on their behalf that the investment offering identified in the project application will satisfy the job creation requirements. *See* proposed 8 CFR 204.407(e)(3). The regional center investor would not have to submit any additional evidence with his or her EB–5 immigrant visa petition to meet the job creation requirement. *See* proposed 8 CFR 204.408(a).

Only up to 90 percent of the job creation requirement may rely on jobs that are estimated to be created indirectly. *See* INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv). The remaining 10 percent of the job creation requirement must be established using direct jobs, which may also be established through job creation estimates, provided the estimates are established using economically and statistically valid and transparent methodologies. *See* proposed 8 CFR 204.407(e)(3)(i). USCIS would generally accept direct job outputs of any acceptable methodology, regardless of whether the parameters of the estimate potentially include employees outside of the new commercial enterprise or job-creating entity. Further, if jobs estimated to be created are created by construction activity lasting less than 2 years, the

[63] USCIS Policy Manual, Volume 6, ''Immigrants,'' Part G, ''Investors,'' Chapter 2, ''Immigrant Petition Eligibility Requirements,'' Section A, ''Investment of Capital,'' *https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2* (current as of Jan. 15, 2025) (''This benefit is greatest when capital . . . invested in a new commercial enterprise . . . because of the investment, creates at least 10 full-time jobs . . .''); USCIS Policy Manual, Volume 6, ''Immigrants,'' Part G, ''Investors,'' Chapter 2, ''Immigrant Petition Eligibility Requirements,'' Section A(2), ''Investment,'' ''Made Available'' heading, *https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2* (current as of Jan. 15, 2025); *See also Matter of Izummi,* 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

investor may satisfy up to 75 percent of the job creation requirement with jobs that are estimated to be created indirectly and any jobs estimated to be created directly will be prorated based on the length of job-creating activity. *See* proposed 8 CFR 204.407(e)(3)(ii). Under this proposed rule, the regional center would have to establish that their particular investment offering will create a sufficient amount of qualifying jobs for the total number of investors sought for that particular investment offering by submitting an economic impact analysis (EIA) that estimates the job creation tied to the job-creating activity. *See* proposed 8 CFR 204.421(b). The EIA would have to be economically and statistically valid and transparent so that USCIS could validate the information provided. *Id.*

Additionally, regional center investors may rely on an economically and statistically valid and transparent methodology to establish the job creation requirements using jobs estimated to be created by prospective tenants occupying commercial real estate created or improved by capital investments if the jobs are not existing jobs that have been or will be relocated. INA sec. 203(b)(5)(E)(v)(II)(aa), 8 U.S.C. 1153(b)(5)(E)(v)(II)(aa). USCIS previously allowed these types of jobs to establish sufficient job creation where the investor was investing in a new commercial enterprise associated with a regional center.[64] USCIS subsequently rescinded this policy in 2018 and updated its Policy Manual to reflect the change because USCIS determined that tenant-occupancy methodologies resulted in a connection or nexus between the investment and jobs that was too tenuous.[65] The INA now explicitly permits, and DHS proposes including in this rule, that a regional center may rely on these methodologies as sufficient to establish job creation, provided the jobs are not existing jobs that have been or will be relocated. *See* proposed 8 CFR 204.407(e). A regional center would include such a methodology in their project application for USCIS to review before any regional center investors would be able to rely on the job creation estimates to obtain approval of their EB–5 immigrant visa petition. *See* proposed 8 CFR 204.421(b).

While the INA allows a regional center to establish sufficient job creation in its project by using economically and statistically valid methodologies, DHS proposes that a regional center would not be able to rely on an economic model that uses visitor spending as an input to demonstrate qualifying jobs. *See* proposed 8 CFR 204.407(e)(3)(iv). Visitor spending purports to calculate jobs based on increased ancillary spending by visitors and tourists because of the underlying EB–5 project. An example is the increased off-site spending at restaurants, entertainment, and transportation venues purportedly arising from construction of a new hotel. DHS believes that causal linkage between visitor spending and an EB–5 project cannot be demonstrated through economic modeling. Modeling techniques, such as traditional input-output models and regression, cannot delineate the portion of visitor spending increase attributable to an EB–5 project as opposed to other sources or causes.

In addition, DHS is proposing in this rule to eliminate the use of bridge financing repaid from EB–5 investment capital as a basis to demonstrate job creation in the EB–5 program. *See* proposed 8 CFR 204.407(e)(1) (''Jobs attributable to any financing repaid with EB–5 investment capital may not be claimed as jobs created by such EB–5 investment capital.'').

As explained above, pursuant to INA section 203(b)(5), 8 U.S.C. 1153(b)(5), an immigrant investor must invest capital into a new commercial enterprise which will benefit the United States economy by creating qualifying jobs. DHS has historically permitted investors and their associated new commercial enterprises to claim credit for jobs created by interim, temporary, or bridge financing [66] that is later replaced by EB–5 capital. *See* USCIS Policy Manual Part G, Vol. 6, Ch. 2; *see also* USCIS EB–5 Adjudications Policy Memorandum, May 30, 2013, PM–602–0082 (superseded by the publication of consolidated EB–5 policy in the USCIS Policy Manual on November 30, 2016).[67]

The RIA did not explicitly address the use of bridge financing in the EB–5 program. However, the RIA amended the INA's job-creation requirement to now provide that an investor must demonstrate the new commercial enterprise into which they invested not just benefit the United States economy ''and'' create qualifying employment but that it must benefit the United States economy ''by'' creating such employment. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii). Though not directly addressed in any related legislative history, DHS interprets this statutory amendment to indicate that Congress wanted to ensure a closer nexus between the alien's investment into the new commercial enterprise and resulting jobs. DHS believes, therefore, that its historical administration of bridge financing no longer best implements the statutory provision as amended by the RIA.

Additionally, DHS has encountered difficulties in the past in consistently adjudicating petitions and applications seeking to utilize bridge financing because of its variability in usage and lack of defined standards. For example, applicants have sought to characterize loans with maturity up to 10 years or more as bridge financing because it was subsequently replaced by EB–5 capital.

While DHS is proposing in this rule to eliminate the use of bridge financing repaid from EB–5 investment capital as a basis to demonstrate job creation in the EB–5 program, DHS is also soliciting comments on alternative options to eliminating the use of bridge financing in recognition that there may be credible uses of bridge financing in the EB–5 program. More recently, DHS has found that Form I–956F project applications filed after enactment of the RIA generally present more credible and realistic uses of bridge financing, which in turn present more credible projects that have a higher likelihood of success. For example, projects that have already broken ground and obtained permits to continue construction based on bridge financing are generally more credible in terms of being to attract additional investment in order complete the project and create qualifying employment. DHS therefore considered alternatives to address these adjudicative difficulties it has faced in the past with respect to bridge financing

[64] *See* USCIS Guidance Memorandum, GM–602–0001, ''Operational Guidance for EB–5 Cases Involving Tenant-Occupancy'' (Dec. 20, 2012), *https://www.uscis.gov/sites/default/files/document/memos/EB-5_Tenant-Occupancy_Guidance_Memorandum.pdf.*

[65] *See* USCIS Policy Manual, Volume 6, ''Immigrants,'' Part G, ''Investors,'' Chapter 2, ''Immigrant Petition Eligibility Requirements,'' *https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2* (current as of Jan. 15, 2025). *See also* USCIS Policy Alert, PA–2018–03, ''Rescission of Guidance Regarding Tenant-Occupancy Methodology'' (May 15, 2018), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20180515-EB5TenantOccupancyMethodology.pdf.*

[66] *See* definition of ''bridge loan,'' Black's Law Dictionary (12th ed. 2024): ''bridge loan (1975) A short-term loan that is used to cover costs until more permanent financing is arranged or to cover a portion of costs that are expected to be covered by an imminent sale.—Also termed bridge financing; swing loan.''

[67] *See* Employment-Based Fifth Preference Immigrants: Investors, USCIS Policy Alert, November 30, 2016, PA–2016–08, available at *www.uscis.gov/sites/default/files/document/policy-manual-updates/20161130-Investors.pdf.*

while also considering the usage of bridge financing in light of this statutory amendment. Specifically, DHS is soliciting public comment to address the use of bridge financing in the EB–5 program through one of these options: (1) eliminate the use of bridge financing in the EB–5 program by no longer permitting any jobs created by bridge financing to be credited to EB–5 investors whose capital investments are used to repay and replace that bridge financing, or (2) restrict the use of bridge financing in the EB–5 program to sufficiently demonstrate a nexus between the jobs created by any bridge financing and the EB–5 capital used to repay the bridge financing such as by requiring that any bridge financing have a limited maturity date[68] and limiting the amount permitted for bridge financing up to a certain percentage of total project costs.[69] In particular, DHS is interested in comments from the public regarding these specific proposals to support limitations on the period for maturity and limitations on amount of bridge financing.

8. Initial Evidence

DHS proposes to clarify and update the regulatory provisions regarding the required initial evidence to accompany an EB–5 immigrant visa petition. The current provisions at 8 CFR 204.6(j) (Nov. 20, 2019) contain, in addition to the evidentiary requirements, certain substantive eligibility provisions that are better suited as standalone provisions apart from the evidentiary requirements. In this rule, DHS would move these eligibility provisions to 8 CFR 204.407 and has discussed them in the sections above.

This proposed rule would then provide the evidentiary requirements in 8 CFR 204.408. Standalone investors would be required to submit all of the initial evidence identified in proposed 8 CFR 204.408(b) through (g), while regional center investors would be required to submit the initial evidence identified in proposed 8 CFR 204.408(b) through (d) and would meet the remaining evidentiary requirements through their association with the regional center's project application for the project in which they have invested. *See* proposed 8 CFR 204.408. Importantly, a regional center investor would not have to submit any of the initial evidence that USCIS would already have reviewed with the regional center's project application. Prior to the RIA's establishment of a project application process, each regional center investor in a new commercial enterprise had to submit project-level documentation to establish his or her eligibility, which led to USCIS having to review the same evidence multiple times. If USCIS determined the evidence was insufficient, USCIS would request additional evidence from each regional center investor. Since the evidence was at the project level, the investor likely had to coordinate with the regional center to provide a response. DHS proposes to codify its post-RIA practice that, with the establishment of a project application, USCIS will review project-level evidence during the project application adjudication and communicate directly with the regional center if any evidence is determined to be insufficient. Once any issues are resolved at the project level and USCIS adjudicates the project application, USCIS would then rely on that adjudication to determine a regional center investor's eligibility related to the project level-requirements, such as job creation and whether the investment is in a high unemployment area.

DHS proposes to eliminate the current requirements at 8 CFR 204.6(h) (Nov. 20, 2019) and 8 CFR 204.6(j)(1) (Nov. 20, 2019), which require evidence to show that the immigrant investor has established the new commercial enterprise in the United States, and at 8 CFR 204.6(j)(5) (Nov. 20, 2019), which require evidence to show that the immigrant investor is or will be engaged in the new commercial enterprise through the exercise of day-to-day managerial control or through policy formulation. The original basis for these provisions was the statutory requirement that the immigrant investor establish and engage in a new commercial enterprise. *See* Section 121(b)(5)(A)–(B)(i) of IMMACT90, Public Law 101–649, 104 Stat. 4978, 4989–90 (Nov. 29, 1990). In 2002, Congress eliminated the requirement that an immigrant investor establish the new commercial enterprise. *See* Section 11036 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758, 1846 (Nov. 2, 2002). DHS believes the RIA, in its overall structure and composition, envisions and permits a largely passive investment into the new commercial enterprise by the immigrant investor. Considering these statutory changes, DHS proposes to eliminate the provisions cited above regarding evidentiary requirements for establishment of, and engagement in, a new commercial enterprise by the immigrant investor, and to clarify that the immigrant investor must submit initial evidence that the immigrant investor has invested capital in an established new commercial enterprise. *See* proposed 8 CFR 204.408(c) and (e); *see also* 8 CFR 204.421(a).

DHS notes that this rule would remove Form I–9, Employment Eligibility Verification, from the list of evidence provided in the regulations and replace it with ''employment eligibility verification forms.'' *See* proposed 8 CFR 204.408(f)(2)(i). However, DHS would still expect Form I–9 to be the primary form used for employment eligibility verification but is modifying the terminology used in the regulatory text to continue to update USCIS regulations from relying on form numbers that are subject to change.

DHS welcomes public comment on the types of evidence that may be provided to establish eligibility for any of the particular eligibility grounds.

9. Amending an EB–5 Immigrant Visa Petition

The INA, as amended by the RIA, permits immigrant investors to amend their pending or approved EB–5 immigrant visa petition in certain circumstances. INA sec. 203(b)(5)(M), 8 U.S.C. 1153(b)(5)(M). This proposed rule would permit immigrant investors to amend their EB–5 immigrant visa petition when:

1. There is a material change that affects the immigrant investor's eligibility;
2. USCIS terminates the immigrant investor's associated regional center; or
3. USCIS debars the immigrant investor's associated new commercial

[68] Typical maturity dates for bridge financing range from 12–36 months depending on the purpose for the bridge loan. *See, e.g., https://www.pnc.com/insights/personal-finance/borrow/what-is-a-bridge-loan.html* (last visited September 5, 2025), describing typical bridge loan maturity of up to one year; *https://www.integracommercial.com/loan-types/commercial-bridge-loans/* (last visited September 5, 2025), offering bridge loans for commercial real estate transactions between 12–36 months. DHS also notes that various provisions within INA sec. 203(b)(5) and INA sec. 216A contemplate investment and job creation within potentially shorter periods of time, such as requiring investment to be expected to remain invested for at least 2 years under INA sec. 203(b)(5)(A)(i), providing for 2 years of conditional residency under INA sec. 216A and limiting job creation in circumstances in which construction activities last less than 2 years under INA sec. 203(b)(5)(E)(iv)(ii). DHS would seek to limit maturity for any bridge loan to ensure compliance with applicable statutory requirements.

[69] *See, e.g., https://www.investopedia.com/terms/l/loan-to-cost-ratio-ltc.asp* (last visited September 5, 2025). In general, many lenders limit bridge financing amounts to around 80% of total project costs. Because of the unique structure of the EB–5 program to provide immigration benefits to investors based on jobs resulting from their investment in a new commercial enterprise, DHS may seek to further limit the amount permitted to be repaid by EB–5 capital in order to ensure a closer and more articulable nexus between the investment of EB–5 capital and resulting job creation.

enterprise or job-creating entity. *See* proposed 8 CFR 204.410(a).

Importantly, in line with the INA, an immigrant investor would not be able to amend his or her EB–5 immigrant visa petition if the amendment is an attempt to correct a deficiency that existed at the time of filing (for example, USCIS denies the regional center's project application on which the investor's EB–5 immigrant visa petition is based, and the investor seeks out another investment). *See* INA sec. 204(a)(1)(H)(ii), 8 U.S.C. 1154(a)(1)(H)(ii); *see also* proposed 8 CFR 204.410(a). Likewise, an amendment could not be used to amend a denied petition or amend a petition where USCIS revoked the approval. *Id.*

a. Material Changes

USCIS generally considers a change to be material ''if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision.'' [70] Consistent with the INA, material changes to a project are now likely to be covered by an amendment to the regional center's project application and subsequently incorporated into an investor's EB–5 immigrant visa petition. *See* INA sec. 203(b)(5)(F)(iii), 8 U.S.C. 1153(b)(5)(F)(iii); INA sec. 204(a)(1)(H)(ii), 8 U.S.C. 1154(a)(1)(H)(ii); proposed 8 CFR 204.410(b)(1). A standalone investor would also be able to amend his or her EB–5 immigrant visa petition to modify aspects of the business plan, provided the business plan was credible when filed. *See* proposed 8 CFR 204.410(b)(2). In the event the investor must invest any additional capital to retain his or her eligibility, then the investor would need to file an amendment to establish that any additional investment capital is lawful under proposed 8 CFR 204.407(c). *See* proposed 8 CFR 204.410(b)(1) and (2). Any change to the investor's source of capital would remain a material change and would result in USCIS denying the amendment request. *Id.* In such a situation, the investor would not be precluded from filing a new EB–5 immigrant visa petition, unless the investor is barred from participation in the EB–5 program. *Id.* In addition, if a standalone investor has not yet invested the full amount of capital when the designation of a high unemployment area expires, the standalone investor would have to file an amendment to seek an extension or modification of the high unemployment designation because the designation expires or because the new commercial enterprise is principally doing business in a new location. *See* proposed 8 CFR 204.410(b)(2). Since an extension would not be necessary as long as the standalone investor invests the full amount of required capital during the period of designation, DHS does not expect this situation to arise very frequently for standalone investors, but is providing for the possibility in this proposed rule to ensure clarity about a standalone investor's responsibility should such a situation come about.

b. Suspensions

The RIA amended the INA to provide the Secretary with specific authority to suspend regional centers and associated parties in certain circumstances. *See* INA sec. 203(b)(5)(G)(iii)(II)(bb), 8 U.S.C. 1153(b)(5)(G)(iii)(II)(bb); INA sec. 203(b)(5)(H)(iv), 8 U.S.C. 1153(b)(5)(H)(iv); INA sec. 203(b)(5)(I)(iv), 8 U.S.C. 1153(b)(5)(I)(iv); INA sec. 203(b)(5)(K)(ii), 8 U.S.C. 1153(b)(5)(K)(ii). DHS is codifying when USCIS may suspend a regional center, new commercial enterprise, or job-creating entity. *See* proposed 8 CFR 204.431. Under this proposed rule, USCIS would be able to suspend an entity from participation in the EB–5 program entirely or limited to certain EB–5 related activities and would prescribe the particulars of any suspension under proposed 8 CFR 204.431(d)(3). Since a suspension would not equate to a termination of a regional center's designation or debarment of a new commercial enterprise or job-creating entity's participation, an investor would not necessarily need to amend his or her EB–5 immigrant visa petition if the suspension does not impact his or her eligibility for an EB–5 immigrant visa. Consequently, a suspension would not by itself trigger the protections provided by section 203(b)(5)(M) of the INA, which are predicated on the termination of a regional center's designation or debarment of a new commercial enterprise or job-creating entity's participation in the EB–5 program.

c. Terminations and Debarments

The RIA established new protections for immigrant investors who invested in a regional center or new commercial enterprise in good faith and their regional center, new commercial enterprise, or job-creating entity is terminated or debarred, as appropriate, from participation in the Regional Center Program. INA sec. 203(b)(5)(M), 8 U.S.C. 1153(b)(5)(M). This new provision provides immigrant investors the opportunity to retain their eligibility for both their EB–5 immigrant visa petition and their petition to remove conditions on their residence, even if their regional center, new commercial enterprise, or job-creating entity is terminated or debarred at any time from the filing of the EB–5 immigrant visa petition throughout their conditional permanent resident status. INA sec. 203(b)(5)(M)(i), 8 U.S.C. 1153(b)(5)(M)(i).

To remain eligible, in the case of termination of the investor's regional center, the investor's new commercial enterprise would have to associate with an approved regional center, or the investor would have to make a qualifying investment in another new commercial enterprise in good standing within 180 days of the regional center's termination. INA sec. 203(b)(5)(M)(ii)(I), 8 U.S.C. 1153(b)(5)(M)(ii)(I). In the case of debarment of the investor's new commercial enterprise or job-creating entity, as appropriate, the investor would have to associate with a new commercial enterprise in good standing and invest any additional capital needed to satisfy any remaining job creation requirements. INA sec. 203(b)(5)(M)(ii)(II), 8 U.S.C. 1153(b)(5)(M)(ii)(II). In either case, USCIS would notify affected investors of the termination of their regional center's designation or the debarment of their new commercial enterprise or job-creating entity. *See* proposed 8 CFR 204.410(c) and (d). Within 180 days of receiving notification of the regional center's termination or the new commercial enterprise or job-creating entity's debarment, an affected investor would have to submit an amendment to his or her EB–5 immigrant visa petition, whether pending or approved. *See* proposed 8 CFR 204.410(e)(2). Consistent with related statutory requirements at sections 203(b)(5)(E) and 204(a)(1)(H)(i) of the INA, 8 U.S.C. 1153(b)(5)(E) and 1154(a)(1)(H)(i), DHS proposes that a regional center investor seeking to move or reassociate his or her investment with a different new commercial enterprise would need to seek out a new commercial enterprise participating in the Regional Center Program. *See* proposed 8 CFR 204.410(c) and (d). DHS considered allowing a regional center investor to seek out any new commercial enterprise regardless of its association with a designated regional center, but the regional center investor would then become a standalone investor and there would not be a statutory basis to claim any indirect jobs previously created as provided

[70] *Kungys* v. *United States,* 485 U.S. 759, 770 (1988). *See Matter of Izummi,* 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). *See* 8 CFR 103.2(b)(1).

under section 203(b)(5)(E) of the INA, 8 U.S.C. 1153(b)(5)(E), nor would such an allowance align with the related requirement under section 204(a)(1)(H)(i) of the INA, 8 U.S.C. 1154(a)(1)(H)(i), specifying that petitions for classification based on pooled investment filed on or after enactment of the RIA be filed in accordance with section 203(b)(5)(E) of the INA, 8 U.S.C. 1153(b)(5)(E). As a result, such an allowance would not only be misaligned with other applicable statutory authorities, but it would also make establishing eligibility much more difficult and costly for a regional center investor even if it were statutorily permissible. In addition, remaining within the Regional Center Program helps to ensure the ongoing integrity of the EB–5 program and implement the objectives of the RIA.

For investors whose regional center, new commercial enterprise, or job-creating entity is terminated or debarred, DHS proposes that, at the time of notice to the investor of the termination or debarment, if the investor's required amount of capital remained invested for at least two years and the new commercial enterprise created the required number of jobs, it is not necessary for the investor to reassociate or make a new qualifying investment under section 203(b)(5)(M)(ii) of the INA, 8 U.S.C. 1153(b)(5)(M)(ii), in order to maintain eligibility for classification under section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), or removal of conditions. *See* proposed 8 CFR 204.410(e)(3). If, however, at the time of notice to the investor of the termination or debarment, the investor's required amount of capital had not yet remained invested for at least two years or the new commercial enterprise had not yet created the required number of jobs, the investor would nevertheless still be able to seek to retain his or her eligibility through the protections of section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), and may reassociate or make a new qualifying investment consistent with the procedures established by this rule for doing so in order to demonstrate continued eligibility.

E. Targeted Employment Areas

The INA reduces the required investment amount for investment in a TEA, which includes a rural area and a high unemployment area. INA sec. 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii). In addition to the reduced investment amount, the RIA added new provisions to the INA that reserve 20 percent of EB–5 visas available annually (or around 1,988 in a typical year) for investments in rural areas and 10 percent of EB–5 visas available annually (or around 994 in a typical year) for investments in high unemployment areas. Any visas reserved for each area that remain unused at the end of the fiscal year are reserved for the same area for an additional fiscal year. INA sec. 203(b)(5)(B)(i)(II)(aa), 8 U.S.C. 1153(b)(5)(B)(i)(II)(aa). Any reserved visas unused for a second year are released in the third fiscal year to the total amount of unreserved EB–5 visas available for investors not investing in a rural area or area of high unemployment or infrastructure project (discussed below). INA sec. 203(b)(5)(B)(i)(II)(bb), 8 U.S.C. 1153(b)(5)(B)(i)(II)(bb).

1. Identifying a Rural Area

To establish investment in a rural area, a regional center or standalone investor, as appropriate, would have to submit a map of the proposed area along with the population counts of that area to ensure that the area identified meets the definition of a rural area. *See* proposed 8 CFR 204.408(g). As discussed in Section IV.B. of this preamble, a rural area is any area that is both outside a standard MSA as designated by the Office of Management and Budget and also outside the boundary of any city or town with a population of 20,000 or more based on the most recent decennial census of the United States. *See* proposed 8 CFR 204.401, *Rural area.* Regional center investors would not have to submit evidence of their investment being within a rural area other than verifying their investment in a new commercial enterprise for which a regional center has filed a project application. *See* proposed 8 CFR 204.408(a).

2. Constructing a High Unemployment Area

Previously, DHS permitted State government entities to designate certain high unemployment areas and provide applicable evidence to an immigrant investor for submission to USCIS that the area qualified as a high unemployment area under section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5). In 2019, DHS revised 8 CFR 204.6 in the EB–5 Modernization Rule to make changes to the definition of a high unemployment area while removing State government entities' determinations from the designation process and instead limiting the authority to make a determination of a high unemployment area with USCIS based on the definition provided in the regulation. *See* 84 FR 35750, 35808 (July 24, 2019). On March 26, 2021, the U.S. District Court for the Northern District of California vacated the EB–5 Modernization Final Rule on procedural grounds, removing the effect of the changes made to 8 CFR 204.6.[71] The INA, as amended by the RIA, now exclusively vests the TEA determination with DHS. INA sec. 203(b)(5)(B)(ii)(II), 8 U.S.C. 1153(b)(5)(B)(ii)(II). DHS proposes that USCIS would designate an area as a high unemployment area during the adjudication of the regional center's project application, or the adjudication of a standalone investor's EB–5 immigrant visa petition, as appropriate. *See* proposed 8 CFR 204.402(c). Regional center investors would not have to submit evidence of their investment being within a high unemployment area other than verifying their investment in a new commercial enterprise for which a regional center has filed a project application. *See* proposed 8 CFR 204.408(a).

The INA provides that a high unemployment area may consist of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business (the ''project tract(s)'') if the weighted average of the unemployment rate[72] for the tract or tracts is at least 150 percent above the national average. INA sec. 203(b)(5)(B)(ii)(I)(bb), 8 U.S.C. 1153(b)(5)(B)(ii)(I)(bb). *See* proposed 8 CFR 204.402(a). If the project tract(s) do not independently qualify under this analysis, a high unemployment TEA may also consist of the project tract(s), along with any or all additional tracts that are directly adjacent to the project tract(s), as long as the weighted average of the unemployment rate for all of the tracts in the identified area is at least 150 percent of the national average when compared using the same labor force employment measure for the census tract(s) and the national average rate. *See* proposed 8 CFR 204.402(a) and (b).

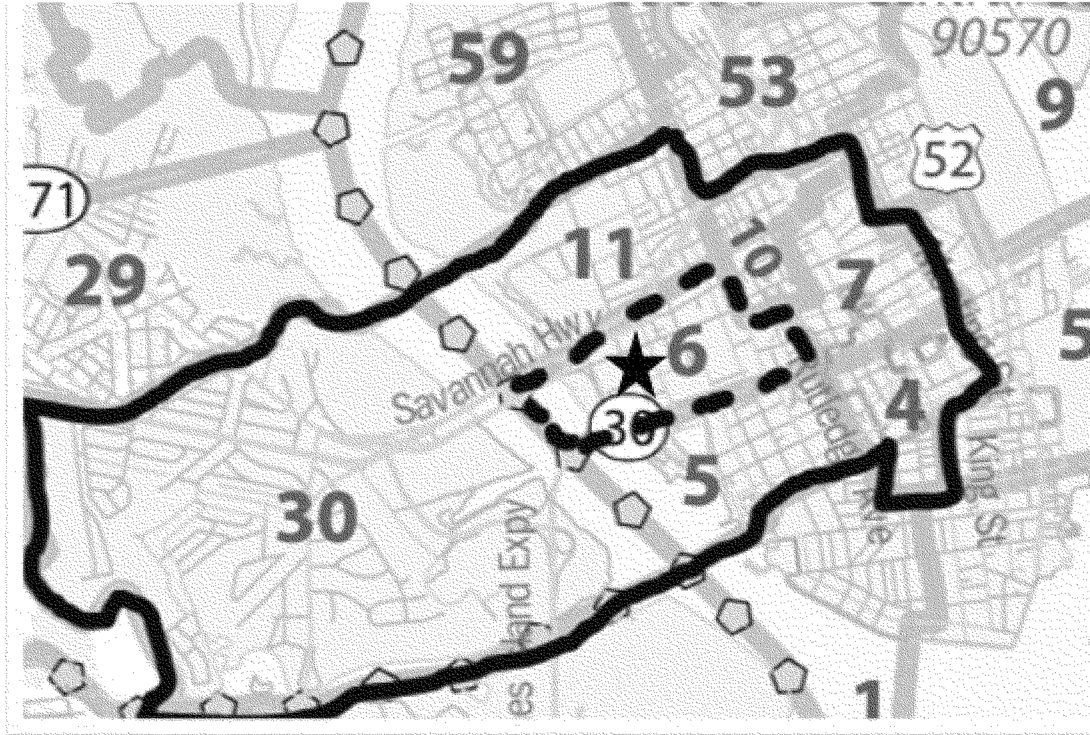
Figure 1 illustrates how to apply the limitations. The tract with the star (6) and surrounded by the dashed line represents the project tract where the new commercial enterprise is principally doing business. The area outlined by the solid black line contains all the tracts that are directly adjacent to the project tract. Under the new statutory definition, the tract with the star (6) may independently qualify for designation as a high unemployment

[71] *Behring Regional Center LLC,* 544 F. Supp. 3d at 950.

[72] The weighted average is obtained utilizing the total actual labor force population of each tract.

area. If it does not, that tract combined with any or all of the additional tracts within the solid black line (4, 5, 7, 10, 11, and 30) may be able to qualify for designation as a high unemployment area if the weighted average unemployment rate of the entire proposed area is not less than 150 percent of the national average rate when compared using the same labor force employment measure for the census tract(s) and the national average rate.

Figure 1.[73]



As illustrated in Figure 1, tracts may be considered directly adjacent to the project tract if the boundaries are touching at a corner, such as number 4 in relation to number 6. Additionally, the census tract boundaries may meet in a waterway, such as number 30 in relation to number 6. If the census tract boundaries meet in that waterway, the tracts are considered directly adjacent. However, if the waterway is itself a census tract, then the tract on the opposite side of that waterway is not directly adjacent to the project tract. For instance, in Figure 2 showing two of the Hawaiian Islands in Kauai County, tract 412 (on the left and surrounded by tract 9902) is not directly adjacent to tract 409 (on the right and surrounded by tract 9901). Recognizing that each of these particular census tracts would independently qualify as a rural area based on the 5-year American Community Survey (ACS) data from 2021, Figure 2 is being used for illustrative purposes for when a census tract separated by a body of water that has its own census tract number would not be directly adjacent to another tract.

[73] 73 U.S. Census Bureau, ''2020 Census—Census Tract Reference Map: Charleston County, SC'' (Jan. 8, 2021), *https://www2.census.gov/geo/maps/DC2020/PL20/st45_sc/censustract_maps/c45019_charleston/DC20CT_C45019.pdf.*

Figure 2.[74]

3. Providing Sufficient Data To Establish a High Unemployment Area

DHS proposes that standalone investors and regional centers seeking designation of their investment or project as principally doing business in a high unemployment area must submit with their EB–5 immigrant visa petition or project application, respectively, a list of the census tract(s) comprising the proposed area and the unemployment statistics for the area for which designation is sought, along with the method(s) by which the unemployment statistics were obtained. *See* proposed 8 CFR 204.408(g)(2) and proposed 8 CFR 204.421(c)(2). DHS further proposes that the unemployment statistics used to perform the calculation must be statistically valid for the census tracts, use unbiased estimates calculated at the census-tract level, be updated periodically, be provided by a Federal agency, and the survey methodology, if any, must use publicly available data along with a description of the applicable weights and estimation of error and bias in the estimates. *See* proposed 8 CFR 204.402(b). DHS expects that under this standard most investors and regional centers would be able to rely on the Census Bureau's ACS[75] to perform the necessary calculations and determine prior to USCIS adjudication whether an area would qualify as a high unemployment area. While DHS does not restrict investors and regional centers to only using the ACS data, DHS believes that establishing these standards for the data will increase transparency and allow investors and regional centers to independently calculate, even before submission of the EB–5 immigrant visa petition or project application, that the area they have identified for investment would likely qualify as a high unemployment area.

When comparing the area identified to the national average rate, the petitioner or regional center, as appropriate, must use consistent data sources between the two areas. Therefore, if the unemployment rate of the area identified is calculated using, for example, data from the ACS from the past year, then the national unemployment rate must also be calculated using data from the ACS from the past year. USCIS previously allowed a combination of U.S. Department of Labor Local Area Unemployment Statistics (LAUS) and ACS data, commonly referred to as a ''Census Share Methodology.'' This methodology does not generally produce statistically valid unbiased estimates at the census-tract level. Consequently, the combination of LAUS and ACS data would not be accepted under proposed program requirements with regard to consistency between the unemployment rate and the census-tract-level data. *See* proposed 8 CFR 204.402(b). Therefore, this methodology would not be accepted under the proposed requirements.

4. Calculating the Weighted Average Unemployment Rate

To calculate the weighted average unemployment rate of an area using EB–5 immigrant visa petition or project application required data (*i.e.,* a list of the census tract(s) comprising the proposed area, the unemployment statistics for the area, and the method by which the unemployment statistics were obtained), first divide the labor force of each census tract by the labor force of the entire area sought for designation. Then, multiply this figure by the unemployment rate of that specific census tract. The resulting figure is the weighted unemployment rate for each individual census tract. The total weighted unemployment rate is the sum of the weighted unemployment rates for each census tract in the area sought for designation. If the total weighted

[74] U.S. Census Bureau, ''2020 Census—Census Tract Reference Map: Kauai County, HI'' (Jan. 6, 2021), *https://www2.census.gov/geo/maps/DC2020/PL20/st15_hi/censustract_maps/c15007_kauai/DC20CT_C15007.pdf.*

[75] U.S. Census Bureau, American Community Survey, *https://www.census.gov/programs-surveys/acs/* (last revised December 23, 2024).

unemployment rate is at least 150 percent of the national unemployment rate when compared using the same labor force employment measure for the census tract(s) and the national average rate, then the project area would qualify as a high unemployment TEA.

5. USCIS Review of the High Unemployment Area

Under this proposed rule, USCIS would not proactively designate or identify areas that may qualify as a high unemployment area. USCIS would rely on the standalone investor or regional center, as appropriate, to provide data to support the claim of an investment in a high unemployment area. The data provided to establish a high unemployment area would vary based on the type of investor seeking the designation. For a standalone investor seeking to invest in a high unemployment area, USCIS would review all the data provided when the investor files his or her EB–5 immigrant visa petition to determine whether the area identified meets the requirements of a high unemployment area. For a regional center investor seeking to invest in a high unemployment area, USCIS would review all the data provided by the regional center when the regional center submits its project application. In either case, designation of a high unemployment area could not be requested from USCIS except through the adjudication of a project application or EB–5 immigrant visa petition. *See* proposed 8 CFR 204.402(c). Though USCIS is not currently positioned to proactively designate areas as a high unemployment area or provide guidance to the public on areas that would qualify as a high unemployment area, USCIS may, in its discretion, publish additional guidance or maps to assist a regional center or standalone investor seeking out an investment in a high unemployment area. Importantly, DHS believes that the standards prescribed in the INA and this proposed rule provide a regional center or standalone investor clear guidelines allowing anyone seeking an investment in a high unemployment area to be able to reliably determine if his or her investment would be within a high unemployment area.

6. Validity Period of a High Unemployment Area Designation

If USCIS approves a standalone investor's EB–5 immigrant visa petition for investment in a high unemployment area, the area identified is considered a high unemployment area for 2 years from the date the standalone investor made his or her investment. *See* proposed 8 CFR 204.402(d). Upon approval, USCIS would then extend the initial designation for 2 years from the date of the approval notice. *See* proposed 8 CFR 204.402(e)(1).

If USCIS approves a project application, then the area identified is considered a high unemployment area for associated regional center investors for 2 years from the date of the project application filing. *See* proposed 8 CFR 204.402(d). Upon approval, if USCIS determines the area continues to qualify as an area of high unemployment, USCIS would then extend the initial designation for 2 years from the date of the approval notice. *See* proposed 8 CFR 204.402(e)(1).

DHS believes providing initial 2-year extensions on the date of adjudication is important to ensure that the 2-year validity period is effectuated and to allow investments to continue without the need for an immediate renewal request. While DHS anticipates USCIS will adjudicate these filings as quickly as possible, this extension would provide a level of certainty that the area identified will be considered a high unemployment area for at least two years rather than two years minus the time the adjudication remained pending.

A regional center investor that has invested the full amount of his or her lawful capital in the new commercial enterprise identified in the project application and files his or her EB–5 immigrant visa petition within the 2 years from the date of the regional center receiving the approval notice would be considered to have invested in a high unemployment TEA and would not need to increase his or her investment should the designation expire or should the area no longer qualify as a high unemployment area after those two years. Likewise, a standalone investor that has invested the full amount of his or her lawful capital in the new commercial enterprise within two years from the EB–5 immigrant visa petition approval and automatic renewal would not need to increase his or her investment should the designation expire or should the area no longer qualify as a high unemployment area after those two years.

7. Renewal of a High Unemployment Area Designation

Within the 90 days prior to the end of the 2-year designation period, a designated regional center or standalone investor, as appropriate, may seek to extend the designation if the regional center will continue to seek new investors beyond those two years or if the regional center investor or standalone investor has not yet invested the full amount of capital prior to the designation's expiration. *See* proposed 8 CFR 204.402(e)(2). If either a regional center investor or standalone investor has not invested the full amount of required capital within the 2-year designation period and the designation of a high unemployment area expires and cannot be renewed because, for example, the area where the new commercial enterprise is principally doing business no longer qualifies as a high unemployment area, then the regional center investor or standalone investor would need to increase his or her investment to meet the minimum investment amount under section 203(b)(5)(C)(i) of the INA, 8 U.S.C. 1153(b)(5)(C)(i), and submit an amendment to his or her EB–5 immigrant visa petition to establish that any additional capital invested is lawful. If an extension is properly requested, then the area's designation would extend during the pendency of the request. This would allow a regional center to continue to solicit investors while USCIS reviews the extension request. If USCIS were to deny the extension request, investors solicited during the pendency would have to increase their investment to meet the minimum capital requirements. Therefore, a regional center should seek to ensure that any particular project remains in an area of high unemployment when continuing to seek investments at the lower investment amount beyond the designation period and if it is, to seek to file an extension request as early in the 90-day period as possible.

Importantly, a regional center investor or standalone investor that invested the full amount of required capital in a new commercial enterprise with a valid high unemployment area designation at the time of the investment would not need to increase his or her capital investment solely because the designation expires.

If a new commercial enterprise moves the location in which it is primarily doing business, then the designated regional center or standalone investor would not be able to submit a renewal request and would instead have to submit an amendment to the project application or EB–5 immigrant visa petition, as appropriate. *See* proposed 8 CFR 204.402(e)(3) and Section IV.D.9 of this preamble.

F. Infrastructure Projects

The INA provides a reduced required investment amount if an investor invests his or her capital in an infrastructure project. *See* INA sec.

203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii). In addition to the reduced investment amount, the INA reserves two percent of EB–5 visas available annually (or approximately 198) for investments in qualifying infrastructure projects. *See* INA sec. 203(b)(5)(B)(i)(I)(cc), 8 U.S.C. 1153(b)(5)(B)(i)(I)(cc). Any visas reserved for infrastructure projects that remain unused at the end of the fiscal year are reserved for infrastructure projects for an additional fiscal year. *See* INA sec. 203(b)(5)(B)(i)(II)(aa), 8 U.S.C. 1153(b)(5)(B)(i)(II)(aa). Any visas reserved for infrastructure projects that remain unused for a second year are released in the third fiscal year to the total amount of EB–5 visas generally available for all EB–5 investors. *See* INA sec. 203(b)(5)(B)(i)(II)(bb), 8 U.S.C. 1153(b)(5)(B)(i)(II)(bb).

Only DHS may determine whether a project qualifies as an infrastructure project. *See* INA sec. 203(b)(5)(B)(iii), 8 U.S.C. 1153(b)(5)(B)(iii). In accordance with post-RIA practice, DHS proposes that USCIS would make this determination when adjudicating the regional center's project application. *See* proposed 8 CFR 204.403(a). Importantly, a standalone investor is not eligible to receive a visa reserved for investment in an infrastructure project. The definition of an infrastructure project in the INA requires the investment project to be administered by a governmental entity that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the Regional Center Program. *See* INA sec. 203(b)(5)(D)(iv), 8 U.S.C. 1153(b)(5)(D)(iv).

While any sector whose utility to the public can be established may qualify as an infrastructure project, DHS generally expects qualifying infrastructure projects to involve the maintenance, improvement, or construction of any physical assets that are designed to provide or support services to the general public through projects in sectors such as those generally identified by relevant statutes, regulations, and executive orders, including aviation, broadband internet, drinking water infrastructure, electricity transmission, energy production and generation, pipelines, ports (including navigational channels), stormwater and sewer infrastructure, surface transportation (including roadways, bridges, railroads, and transit), and water resources projects.[76]

In addition to Congress now providing an immigration benefit for foreign investment in certain infrastructure projects in the United States, DHS must continue to ensure that any foreign investment through the EB–5 program aligns with DHS's obligation to ensure the ongoing security of the nation's most critical infrastructure.[77] Accordingly, DHS proposes to preclude a regional center, new commercial enterprise, or job-creating entity from divulging critical project specifics to a regional center investor, unless such disclosure is explicitly authorized by the government agency administering the infrastructure project. *See* proposed 8 CFR 204.434.[78] DHS has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.[79] As many of the projects that would qualify as an infrastructure project fall within these 16 critical sectors, DHS believes this preclusion is critical to the continued security of the United States because the divulgence of any critical information to a foreign investor may result in adverse consequences to the ongoing security of such infrastructure. A regional center, new commercial enterprise, or job-creating entity that does divulge any such information may be subject to termination or debarment, as applicable, from the Regional Center Program. *See* proposed 8 CFR 204.431, 8 CFR 204.432 and 8 CFR 204.434 and section IV.H of this preamble.

DHS welcomes public comment on the definition of an infrastructure project as well as the types of documents that entities would likely be able to provide to establish that their project meets the definition of an infrastructure project.

G. Troubled Businesses

The current regulations allow an investor to invest in a troubled business and maintain current employment at the business at no less than the pre-investment level for a period of at least two years to meet the statutory employment creation requirement. *See* 8 CFR 204.6(j)(4)(ii) (Nov. 20, 2019). While the RIA neither specifically included nor excluded this provision, DHS is proposing to remove the troubled business provisions from its regulations. Historically, less than one percent of petitions received by USCIS sought to qualify through investment in a troubled business, and these provisions typically were not used by regional center investors. Further, the troubled business provisions do not further job creation in the sense that an immigrant investor's infusion of capital is not actually used to create new employment in the United States. Finally, the current definition looks at net loss as a percentage of net worth, which is unworkable for a business with a negative net worth.

DHS considered retaining this provision in these proposed regulations. Specifically, DHS considered incorporating accounting ratios that the financial industry uses to evaluate the health of a business by defining troubled business to mean a business that has been in existence for at least two years and whose most recent tax returns or audited financial statements show: (1) a quick ratio of less than one calculated as current assets less inventory divided by current liabilities; (2) a current ratio of less than two of current assets divided by current liabilities; or (3) a current liabilities to net worth ratio calculated as current liabilities×100 divided by net worth above 60 percent. For purposes of determining whether the troubled business had been in existence for two years, successors in interest to the troubled business would have been deemed to have been in existence for the same period as the business they succeeded.

Ultimately, DHS decided that the limited use of this provision and the difficulty in an investor establishing that his or her new commercial enterprise qualifies outweighed the utility in retaining this provision. Importantly, removing this provision

---

[76] As part of the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021), Congress demonstrated a similar understanding of "infrastructure." In section 70912(5) of the Act, Congress defined "infrastructure" to include, at a minimum, the structures, facilities and equipment for, in the United States, roads, highways, bridges; public transportation; dams, ports, harbors and other maritime facilities; intercity passenger and freight railroads, freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. *See* section 70912(5) of the Infrastructure Investment and Jobs Act.

[77] *See, e.g.,* Foreign Investment Risk Review Modernization Act of 2018, Subtitle A of Title XVII of Public Law 115–232 (Aug. 13, 2018).

[78] This proposal is not specific to infrastructure projects as defined under section 203(b)(5)(D)(iv) of the INA, 8 U.S.C. 1153(b)(5)(D)(iv). DHS proposes extending the same restriction to any project to ensure critical project specifics or proprietary information are not disclosed to investors that may be a threat to the public safety or national security of the United States. *See* proposed 8 CFR 204.434.

[79] *See* Cybersecurity and Infrastructure Security Agency (CISA), DHS, "Critical Infrastructure Sectors," *https://www.cisa.gov/critical-infrastructure-sectors* (last visited Oct. 28, 2022).

would not impact any investor that filed his or her EB–5 immigrant visa petition before the effective date of this rule, if finalized, seeking to qualify with an investment in a troubled business; USCIS would continue to adjudicate such EB–5 immigrant visa petition based on the statute and regulations in place at the time the investor filed his or her EB–5 immigrant visa petition. *See* proposed 8 CFR 204.400. Likewise, any investor that seeks to remove his or her conditions based on the troubled business provisions would continue to be able to do so, as long as the investor can establish his or her eligibility to remove conditions through job preservation. *See* proposed 8 CFR 216.6(d).

H. Regional Center Program

The RIA repealed the former authorizing statute, codified a significantly reformed Regional Center Program in the INA, and authorized the issuance of immigrant visas to investors participating in the program through September 30, 2027. *See* Public Law 117–103, Division BB, sec. 103 (2022); INA sec. 203(b)(5)(E)(i), 8 U.S.C. 1153(b)(5)(E)(i).

Originally created as a pilot program in 1992, over time the Regional Center Program has become the primary way for alien investors to seek an EB–5 immigrant visa. Over 90 percent of EB–5 immigrant visa petitions seek to establish eligibility based on an investment through a designated regional center. In fact, since its inception, the Regional Center Program accounts for over 90 percent of investment capital received from alien investors seeking an EB–5 immigrant visa and almost 95 percent of the jobs created by these investments.[80] However, neither DHS, nor legacy INS before it, ever comprehensively revised the regulations implementing the Regional Center Program since publishing the first regulations in 1993. After years of administering the program and several Government Accountability Office (GAO) audits [81] identifying concerns with fraud within the EB–5 program, DHS recognized the need to reform and modernize the Regional Center Program to address ongoing concerns of fraudulent and nefarious activity occurring within the Regional Center Program. Consequently, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) on January 11, 2017, seeking public input on a range of issues related to the Regional Center Program administered under the authorization provided by section 610 of Public Law 102–395. While the RIA directly addresses many of the questions for which DHS previously sought public feedback, DHS reviewed comments received on that notice to inform several of the proposals included in this proposed rule for the Regional Center Program under the new provisions of the INA added by the RIA.

1. Regional Center Designation

Under this proposed rule, any entity seeking designation as a regional center would have to submit Form I–956, Application for Regional Center Designation, according to the form instructions and with the appropriate fees. *See* proposed 8 CFR 204.411. The application would have to include a proposal consistent with the purpose of concentrating pooled investment within a defined, contiguous, and limited geographic area. *See* proposed 8 CFR 204.412(a). If the proposal does not establish a contiguous and limited area, as discussed in greater detail later in this section, or is not likely to successfully concentrate pooled investments, USCIS would deny the application. *Id.* If the entity establishes eligibility for designation, USCIS would approve the application, and the designation would remain valid until the regional center's withdrawal from the program under 8 CFR 204.416 or USCIS terminates the designation under 8 CFR 204.431(d)(4). *Id.* Violations that may result in the termination of a regional center's designation are discussed in Section IV.G.8 of this preamble.

a. Contiguous and Limited Area

Although the RIA does not define ''contiguous,'' Black's Law Dictionary defines the term as ''in close proximity; in actual close contact; Touching; bounded or traversed by.'' [82] DHS proposes to add more specificity to the definition for purposes of the EB–5 program, to clarify that a regional center's geographic area would be contiguous if the areas identified share a common boundary or at least one common point, when using legal boundaries recognized or established by the U.S. Census Bureau. *See* proposed 8 CFR 204.412(a)(1). This would include the boundaries of a State, territory, county, and census tract. It would not, however, include census reporting areas that exist outside of the confines of a physical geographic boundary, which DHS believes is consistent with the plain language of ''contiguous, and limited geographic area'' at section 203(b)(5)(E)(iii) of the INA, 8 U.S.C. 1153(b)(5)(E)(iii). DHS believes this clarification is necessary as stakeholders have asked whether a regional center can connect areas that do not share a common boundary but may be economically linked; for example, the states of California and Hawaii. This clarification would preclude this situation as the economic connection required within a regional center's designated area is too attenuated where the two areas are separated by more than 2,000 miles of ocean.[83] DHS considered precluding contiguity where the areas identified are only connected by international waters. However, this definition would have precluded an entity from establishing a regional center consisting of the State of Hawaii, for instance, where clearly the economic connection between the islands of the State is not limited by the distance between each island, though they are separated by international waters. Consequently, DHS proposes using legal boundaries recognized or established by the U.S. Census Bureau, which includes states and territories.[84] DHS recognizes that this definition precludes a regional center from connecting, for example, Puerto Rico to Florida or Puerto Rico to the U.S. Virgin Islands, but believes this definition provides the greatest clarity, in alignment with the plain statutory text, to entities seeking designation as a regional center as to what USCIS would consider contiguous.

Contiguity is not the only prerequisite to determining an area of designation for a regional center. The INA requires that an entity seeking designation as a

[80] Based on information from internal USCIS systems, there have been approximately $74.97 billion (95 percent) in EB–5 investments creating 239,580 jobs (95 percent) made within a designated regional center compared to $3.57 billion (5 percent) in EB–5 investments creating 12,360 jobs (5 percent) outside of designated regional centers since 1994.

[81] GAO, GAO–15–696, ''Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits'' (Aug. 12, 2015), *https://www.gao.gov/products/gao-15-696. See also* 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. See also* GAO, GAO–23–106452, ''Immigrant Investor Program: Opportunities Exist to Improve Fraud and National Security Risk Monitoring'' (Mar. 28, 2023), *https://www.gao.gov/products/gao-23-106452.*

[82] Black's Law Dictionary, ''contiguous,'' *https://thelawdictionary.org/contiguous* (last visited Dec. 11, 2024).

[83] Los Angeles, CA and Hilo, HI are separated by 2,137 nautical miles. By comparison, this same distance directly east from Los Angeles would go beyond Charleston, SC. DistanceFromTo, ''Distance Between Cities on Map,'' *https://www.distancefromto.net* (last visited Dec. 6, 2023).

[84] United States Census Bureau, ''2020 Geographic Boundaries,'' *https://www.census.gov/programs-surveys/acs/geography-acs/geography-boundaries-by-year/2020.html* (last updated June 13, 2022).

regional center must operate ''within a defined, contiguous, and limited geographic area'' (emphasis added). INA sec. 203(b)(5)(E)(iii), 8 U.S.C. 1153(b)(5)(E)(iii). Therefore, the entity seeking designation would also have to establish that the geographic area of the regional center is limited. *See* proposed 8 CFR 204.412(a). An area would be considered limited if the regional center establishes that the proposed economic activity will have a substantive economic impact on the entirety of the proposed area. *See* proposed 8 CFR 204.412(a)(2). The regional center would have to include reasonable predictions, supported by economically and statistically valid and transparent forecasting tools, concerning the amount of investment that will be pooled, the kinds of commercial enterprises that will receive such investments, details of the jobs that will be created directly or indirectly as a result of such investments, and other positive economic effects the investments will have. *See* proposed 8 CFR 204.412(a).

To meet the requirement for an area to be limited, DHS proposes that the entity must demonstrate that its proposed economic activity will have a substantive impact on the area for which designation is sought. *See* proposed 8 CFR 204.412(a)(2). A regional center may establish substantive impacts by showing that the proposed economic activity would impact the area for which designation is sought through, for example, a(n):

- Increase in aggregate gross domestic product (GDP);
- Reduction of poverty;
- Increase in aggregate employment;
- Increase in international exports;
- Encouragement of further investments; or
- Encouragement of the development of associated businesses (suppliers, subcontractors, and distributors).

b. Management and Oversight Requirements

The INA also requires an entity seeking designation as a regional center to include with its proposal a description of the policies and procedures that are in place and reasonably designed to monitor its new commercial enterprises and any associated job-creating entity, affiliated or otherwise, to ensure ongoing compliance with all applicable laws, regulations, and executive orders of the United States, including all immigration, criminal, labor and securities laws, as well as all securities laws of the State where any securities offerings will be conducted, investment advice will be given, or the offerors or offerees reside. INA secs. 203(b)(5)(E)(iii)(II) and (IV), 8 U.S.C. 1153(b)(5)(E)(iii)(II) and (IV); INA sec. 203(b)(5)(G)(i)(VII), 8 U.S.C. 1153(b)(5)(G)(i)(VII). DHS proposes that an entity seeking designation must submit evidence of these policies and procedures. *See* proposed 8 CFR 204.413(g).

In its 2017 ANPRM, DHS asked for public comment on monitoring and oversight requirements that should be considered for rulemaking. Specifically, DHS sought data and information on potential methods for ensuring an appropriate level of monitoring and oversight, including through regional center attestations, the submission of detailed information about the regional center's oversight efforts of its new commercial enterprises and job-creating entities, and other compliance and enforcement mechanisms. 82 FR 3211, 3215 (Jan. 11, 2017). One commenter to that ANPRM suggested that regional centers should provide a description of their monitoring and oversight mechanisms when applying for an initial designation and to attest to having fulfilled their monitoring commitments as part of an annual filing.[85] Another commenter to that ANPRM suggested that the regional center provide its written supervisory procedures when applying for initial designation that would address how the regional center would provide due diligence, fund administration, and financial reporting on each project and then certify annually that the regional center has followed its written policies and procedures with respect to each project it has sponsored for which investor funds are still invested during each calendar year.[86]

DHS appreciates the commenters' suggestions and proposes that evidence to establish sufficient oversight of the new commercial enterprises and any associated job-creating entities would include documentation of programs of internal controls by the regional center that provide regular reviews of individual projects and examination of financial records and any planned use of independent reviews by local third-party accountants or auditors. *See* proposed 8 CFR 204.412(b) and 204.413(h). This evidence could include standard operating procedures developed by the regional center, ongoing audits of the new commercial enterprises and any associated job-creating entities, or requiring regular reporting and updates from the new commercial enterprises and any associated job-creating entities with which the regional center is offering EB–5 investments. DHS does not want to limit how a regional center can best determine how to oversee and monitor its projects. With the increased compliance requirements specified by the INA, DHS believes there is sufficient incentive for regional centers to establish their own best practices to ensure monitoring and oversight necessary to ensure project success and a continuing designation as a regional center. DHS welcomes comments on any additional requirements that should be incorporated for a regional center to establish sufficient oversight and monitoring of its projects.

Not only would a regional center need to provide a monitoring and oversight plan as part of the designation application, as explained above, but following designation, the regional center must continue to engage in and certify compliance of its monitoring and oversight obligations for the investment offerings, business activities, and job creation of associated new commercial enterprises and job-creating entities. *See* proposed 8 CFR 204.418(a). This continued monitoring and oversight requirement would ensure that the regional center is continuing to perform its due diligence with respect to capital investments under its auspices and that pooled capital investments at its new commercial enterprises and job-creating entities will have a substantive economic impact.

c. Amending a Regional Center Designation

The INA requires a regional center to file an amendment to its designation at least 120 days prior to implementing significant proposed changes to its organizational structure, ownership, or administration, including the sale of the regional center, or any other arrangement that would result in individuals not previously subject to the requirements in INA sec. 203(b)(5)(H), 8 U.S.C. 1153(b)(5)(H), becoming involved with the regional center. INA sec. 203(b)(5)(E)(vi), 8 U.S.C. 1153 203(b)(5)(E)(vi). DHS proposes incorporating these requirements into the regulation as well as clarifying that significant changes include not only the sale of the regional center but also any changes to the regional center's policies and procedures for monitoring and oversight. *See* proposed 8 CFR 204.416(a)(2). DHS further proposes

[85] Comments of EB–5 Securities Roundtable, USCIS–2016–0008–0020, *https://www.regulations.gov/comment/USCIS-2016-0008-0020* (posted Apr. 10, 2017).

[86] Comments of Klasko Immigration Law Partners, LLP, USCIS–2016–0008–0031, *https://www.regulations.gov/comment/USCIS-2016-0008-0031* (posted Apr. 12, 2017).

requiring a regional center to file an amendment if a person that held a significant role in the management and oversight of the regional center departs the regional center as well as providing information about the person that will fill the position vacated by the departure. *See* proposed 8 CFR 204.416(a)(3). This would generally include changes at the executive or senior management level of the regional center and not necessarily any change to lower-level employees of the regional center. To submit an amendment, the regional center would be required to submit a Form I–956, indicating that the filing is an amendment to its designation and providing all the relevant information to amend the designation. *See* proposed 8 CFR 204.416(b).

Prior to the RIA, a regional center was allowed, but not required, to amend its designation where: (1) there was a change to the industries of focus of the regional center; (2) the regional center sought to add a new commercial enterprise associated with the regional center or seek a preliminary determination of EB–5 compliance for an exemplar Form I–526, Immigrant Petition by Alien Investor, for investment into that new commercial enterprise, before individual investors filed their petitions; or (3) notify USCIS of changes in the name, organizational structure or administration, capital investment instruments, or offering memoranda (including changes in the economic analysis and underlying business plan used to estimate job creation) for a previously added new commercial enterprise associated with the regional center.[87] DHS proposes capturing these types of amendments on the Form I–956F, Application for Approval of an Investment in a Commercial Enterprise, or project application *See* proposed 8 CFR 204.423.

For more discussion on those proposals, see section IV.H.4 of this preamble.

Where a regional center is unable to submit an amendment within 120 days of a proposed change because exigent circumstances are present, the INA requires a regional center to file a required amendment within 5 business days of the change. INA sec. 203(b)(5)(E)(vi)(bb), 8 U.S.C. 1153 203(b)(5)(E)(vi)(bb). For purposes of establishing that exigent circumstances are present, DHS proposes that qualifying exigent circumstances would include significant, unanticipated disruptions to the operations of the regional center that are outside the control of the regional center making prior notice improbable or impractical. *See* proposed 8 CFR 204.416(b). DHS would generally consider such circumstances to include situations where, for example, an owner of the regional center dies, or there is an unexpected event, such as a natural disaster or other massive disruption, that impacts the regional center's operations. DHS recognizes that certain changes following an exigent circumstance may only be temporary in nature and that more permanent changes are likely to follow. To avoid numerous notification and amendment filings for temporary changes where exigent circumstances are present, the regional center would only have to notify USCIS within the 5 days of the exigent circumstance along with identifying information for any persons temporarily involved during such time and then file an amendment within 30 days of the change to identify any ongoing aspects of the change. *See* proposed 8 CFR 204.416(b). Rather than submit a full amendment with a temporary change (*i.e.,* lasting less than 30 days), DHS expects that a regional center would notify USCIS through its Immigrant Investor Program email address to describe the exigent circumstances and relevant changes, including providing identifying information such as name and date of birth for any persons temporarily involved with the regional center as a result of such circumstances. DHS believes 30 days in these circumstances would be sufficient time for a regional center to take commercially reasonable steps to overcome such a situation, particularly since this change has already occurred and USCIS would have to be able to ensure that the regional center is maintaining its compliance with applicable requirements under the INA.

Within 30 days of the exigent circumstance, the regional center must file an amendment reflecting all relevant aspects of the change and include the necessary attestation (Form I–956H, Bona Fides of Persons Involved with Regional Center Program) for any persons who remain involved with the regional center at such time with the amendment filing. *See* proposed 8 CFR 204.416(b).

Under the proposed rule, regional centers that fail to file relevant amendments would result in the regional center being in violation of applicable requirements and potentially subject the regional center to appropriate sanction. *See* proposed 8 CFR 204.431(b)(7)(iii). By requiring such amendments to be filed in a timely manner, DHS would better ensure compliance by regional centers, associated new commercial enterprises and job-creating entities, and investors relying on the regional center's designation. Each of these requirements is important to ensure the regional center continues to comply with the program and mitigate the potential for fraudulent activity to occur.

Under this proposed rule, an amendment filing may impact the adjudication of pending project applications and pending EB–5 immigrant visa petitions, depending on the nature of the amendment. DHS proposes to clarify that USCIS will hold the adjudication of any project application and any EB–5 immigrant visa petitions where the amendment is filed to report any change in ownership of the regional center resulting in a change in control of the regional center (including changes in ownership among existing owners) or changes in ownership that result in someone becoming involved with the regional center who was not previously subject to section 203(b)(5)(H) of the INA. *See* proposed 8 CFR 204.416(c)(1). The regional center would not be able to submit new project applications until USCIS has adjudicated the amendment. *Id.* USCIS would continue to adjudicate project applications and EB–5 immigrant visa petitions for other amendment requests, such as a request to expand the regional center's geographic area, except where information in the amendment negatively impacts program eligibility, in which case USCIS would hold adjudication of project applications and EB–5 immigrant visa petitions until the amendment is adjudicated. *See* proposed 8 CFR 204.416(c)(2).

2. Bona Fides of Persons Involved With the Regional Center Program

Each person involved with a regional center, new commercial enterprise and affiliated job-creating entity must provide information and attest that they meet applicable requirements to be involved in the Regional Center Program. INA sec. 203(b)(5)(H)(iii)(I), 8 U.S.C. 1153(b)(5)(H)(iii)(I). A person is an individual or an organization. INA sec. 101(b)(3), 8 U.S.C. 1101(b)(3). DHS must perform background and database checks with respect to a regional center, a new commercial enterprise, any affiliated job-creating entity, and persons involved with such entities as needed to determine compliance with the RIA. INA sec. 203(b)(5)(H)(iii)(II), 8

[87] *See* USCIS, Form I–924, ''Instructions for Application for Regional Center Designation under the Immigrant Investor Program.''

U.S.C. 1153(b)(5)(H)(iii)(II). In addition, DHS may require information and attestations and perform these checks for persons involved with a job-creating entity that is not an affiliated job-creating entity in its discretion if there is a reasonable basis to believe such entity or person is not in compliance with applicable requirements. INA sec. 203(b)(5)(H)(iii)(III), 8 U.S.C. 1153(b)(5)(H)(iii)(III).

To ensure sufficient information is available to conduct the necessary background checks, USCIS created Form I–956H, Bona Fides of Persons Involved with Regional Center Program, to capture all the necessary information to determine whether a person involved is prohibited from doing so by the INA. In addition, the INA authorizes USCIS to evaluate public safety and national security threats, and USCIS interprets this to permit adding information collections or modifying current information collections, as needed, to effectuate the RIA.

This proposed rule would codify the statutory requirement and post-RIA practice that an entity seeking designation as a regional center would have to include a Form I–956H with the application for designation for every person (whether an individual or organization) that is involved with the regional center. *See* INA sec. 203(b)(5)(E)(iii)(III), 8 U.S.C. 1153(b)(5)(E)(iii)(III); proposed 8 CFR 204.413(i) and 8 CFR 204.417(a). Failure to include a Form I–956H for every person involved with the regional center with an application for designation will result in denial of the application for designation. In addition, USCIS will deny an application for designation if any persons involved with the regional center do not meet the requirements of INA sec. 203(b)(5)(H), 8 U.S.C. 1153(b)(5)(H). *See* proposed 8 CFR 204.412(c).

If a designated regional center undergoes any changes that necessitate an amendment and there are new persons involved with the regional center, then those new persons would need to include Form I–956H with the I–956 amendment filing. *See* proposed 8 CFR 204.416(a)(2) and (3). If a regional center does not include Form I–956H for all individuals for whom the filing is required, or if the regional center knowingly involves an individual with the regional center that does not meet the requirements of section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H), then USCIS may deny the Form I–956 amendment and suspend or terminate the designation of the regional center. INA sec. 203(b)(5)(H)(iv), 8 U.S.C. 1153(b)(5)(H)(iv); *see also* proposed 8 CFR 204.431(b)(2).

Upon submission of Form I–956H and payment of the appropriate fee by an individual, USCIS schedules the individual for biometrics, either at a USCIS Application Support Center within the United States or at a facility designated to collect biometrics outside the United States. The filing of Form I–956H and submission of biometrics provides USCIS the ability to conduct background checks and ensure that all persons involved with the regional center, new commercial enterprise, or affiliated job-creating entity are complying with section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H). USCIS is, however, unable to collect biometrics from an organization submitting Form I–956H. In such a case, USCIS runs all the necessary checks and uses open-source information to determine whether the organization is prohibited from participating in the Regional Center Program under section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H). In addition, any individual within an organization involved with a regional center may also need to submit Form I–956H if that individual meets the definition of a person involved through his or her position within the organization submitting the Form I–956H.

Persons Involved

A person is involved with a regional center if that person is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions over the pooling, securitization, investment, release, acceptance, or control or use of any funding procured under the Regional Center Program. INA sec. 203(b)(5)(H)(v), 8 U.S.C. 1153(b)(5)(H)(v); *see also* proposed 8 CFR 204.401, *Person Involved.* DHS proposes to clarify that a person is in a position of substantive authority if the person serves as an administrator, a board member, a general partner, a manager, an officer, an owner, or in a similar position at the regional center, new commercial enterprise, or job-creating entity. *See* proposed 8 CFR 204.401, *Person Involved.* This definition would include any individual seeking to obtain immigrant investor status under the Regional Center Program in his or her role as an owner, including as is often the case, as a limited partner, of the new commercial enterprise. In addition, an agent, fiduciary, or representative may be in a position of substantive authority if his or her position in the regional center, new commercial enterprise, or job-creating entity authorizes him or her to provide input or oversight of the use of any regional center investor capital obtained under the Regional Center Program. *See* proposed 8 CFR 204.401, *Person Involved.* To streamline the submission of the required information from regional center investors, USCIS incorporated the questions asked on Form I–956H into Form I–526E, Petition by Regional Center Investor, so each individual regional center investor can provide responses to the necessary questions without requiring a regional center to submit an amendment every time a new regional center investor becomes involved. DHS would not expect the regional center to include a Form I–956H for any current or future regional center investors with their project application solely based on the regional center investor's investment and ownership of an associated new commercial enterprise and instead would expect each regional center investor to provide certification of his or her ability to become a person involved.

When DHS published Form I–956H,[88] many commenters suggested that this definition of a person involved, to include regional center investors, is too broad as the INA provides that a person involved is in a position of substantive authority and regional center investors, typically in the role of a limited partner, often will not meet this threshold in their view. DHS believes, however, that any owner, including a limited partner, has sufficient authority over the direction of the new commercial enterprise through his or her ability to vote or otherwise influence the new commercial enterprise such that a regional center investor would be a person involved, and therefore need to submit the required attestation of his or her eligibility to become a person involved.

Further, any person indirectly involved would also need to submit the necessary attestation. See proposed 8 CFR 204.401, *Person involved,* 8 CFR 204.417(a). A person (whether an individual or organization) may be indirectly involved if he or she owns or manages an organization that rises to the level of a person involved. For instance, if an organization has an ownership interest in the new commercial enterprise, then the owners of that organization would meet the definition of a person involved based on their ownership interest in the organization that owns the new commercial enterprise. Consequently, each owner of an organization with an ownership

[88] 87 FR 54233; DHS Docket No. USCIS–2022–0010.

interest in the new commercial enterprise would likewise need to submit a Form I–956H.

If USCIS determines, as a result of its background checks or at any time after reviewing a submitted Form I–956H, that any person involved with the regional center, new commercial enterprise, or job-creating entity is ineligible to do so, USCIS would notify the affected entity(ies). *See* proposed 8 CFR 204.417(d). Upon receiving notification, the affected entity(ies) would have 14 days from the date of the notice to take commercially reasonable efforts to remove the person from his or her involvement with the affected entity(ies) and provide USCIS information on the removal of that person. *See* proposed 8 CFR 204.417(d). Similarly, it would be incumbent upon the regional center, new commercial enterprise, or job-creating entity to notify USCIS if they determine that any person involved is ineligible under section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H). If the affected entity(ies) learn of any ineligibility before receiving notification from USCIS, the entity(ies) must notify USCIS within 14 days of acquiring such knowledge and provide information about the steps being taken to remove the person from his or her involvement in the affected entity(ies). *See* proposed 8 CFR 204.417(c) and (d).

If there are issues with any persons involved during review of an application for regional center designation, USCIS would generally issue a Notice of Intent to Deny providing the applying entity the opportunity to remove any ineligible person in line with these provisions. *See* proposed 8 CFR 204.412(c) and 204.417(d). If the regional center did not take commercially reasonable efforts to remove the person from his or her involvement, then USCIS would generally deny the application for designation.

3. Regional Center Annual Statements

To continue participation in the Regional Center Program, regional centers must provide updated information annually to demonstrate ongoing compliance with applicable statutory requirements. INA sec. 203(b)(5)(G), 8 U.S.C. 1153(b)(5)(G). The annual statement must include, among other things, certifications (completed by an individual that meets the definition of a certifier as discussed in Section IV.B. of this preamble) that the regional center remains in compliance with various provisions of the Regional Center Program, including those provisions covering bona fides of persons involved and the use of promoters. *Id.* Under this proposed rule, a designated regional center would be required to file Form I–956G, Regional Center Annual Statement, with USCIS according to the form instructions. *See* proposed 8 CFR 204.418(a). Prior to the RIA, a designated regional center had to submit Form I–924A, Annual Certification of Regional Center, on or before December 29 of the calendar year in which the Federal fiscal year ended. When USCIS created Form I–956G, it maintained this filing window. *See* Form I–956G Instructions. Therefore, any regional center designated on or before September 30 of any given year, the end of the Federal fiscal year, must submit Form I–956G on or before December 29 of the same calendar year. Conversely, any regional center designated on or after October 1, the start of the Federal fiscal year, does not have to submit an annual statement until on or before December 29 of the following calendar year.

USCIS incorporated the required certifications on the Form I–956G. *See* Part 4 of Form I–956G. This proposed rule would codify the requirements on the post-RIA annual statement and also include certification that the regional center is in compliance with its ongoing obligation to monitor and oversee its associated new commercial enterprises and job-creating entities. *See* proposed 8 CFR 204.418(a). Specifically, in addition to providing such certifications, the regional center would have to submit documentation with its annual statement providing an accounting of all individual regional center investor capital invested in the regional center, new commercial enterprises, and job-creating entities.[89] *See* proposed 8 CFR 204.418(b)(1). Additionally, for each new commercial enterprise with investors who have a pending and approved EB–5 immigrant visa petition or who have obtained conditional permanent resident status but not yet filed a petition to remove conditions, the regional center would be required to submit an accounting of all individual regional center investor capital invested in those new commercial enterprises, an accounting of the aggregate jobs created or preserved,[90] detailed evidence of the progress made toward completion of each capital investment project, and the reporting of any changes to documents submitted for any ongoing capital investment project that do not otherwise require an amendment to the project application under proposed 8 CFR 204.423. *See* proposed 8 CFR 204.418(b)(3). Once a project concludes and the new commercial enterprise no longer has any active immigrant investors, meaning the immigrant investors in the project have all submitted their petition to remove conditions, the regional center would no longer have to submit information about that new commercial enterprise, unless it recruits new immigrant investors in the future that file an EB–5 immigrant visa petition that triggers reporting requirements under proposed 8 CFR 204.418(b)(3). However, the conclusion of a project would not absolve a regional center from being required to submit the rest of the documentation for any ongoing new commercial enterprises or for the regional center itself, as long as the regional center seeks to maintain its designation. A regional center that does not submit Form I–956G would be subject to termination of its designation. *See* proposed 8 CFR 204.431(b)(7)(iv).

Also under this proposed rule, USCIS would be able to require a regional center to submit any additional information to support its annual statement if USCIS determines the regional center's annual statement is insufficient. *See* proposed 8 CFR 204.418(c). A regional center's annual statement may be insufficient if the documentation provided omits any relevant information about the ongoing progress of any capital investment project under the purview of the regional center or where USCIS determines additional information is necessary to support the certifications made by the regional center. If a designated regional center does not submit an annual statement in any year or is otherwise not complying with the requirements to retain its designation, USCIS would be able to sanction the regional center under proposed 8 CFR 204.431, which could include termination of the regional center's designation.

4. Regional Center Project Application Process

Under the previously authorized Regional Center Program, a regional

[89] Under INA 203(b)(5)(G)(i), each designated regional center must submit an annual statement, and this annual statement must include ''an accounting'' of all individual alien investor capital invested in the regional center, new commercial enterprise, and job creating entity, but this statute does not define ''an accounting.''

[90] While DHS proposes removing the troubled business provisions from the regulations for any petitions or projects filed on or after the enactment of this proposed rule, DHS may still need to report any job preservation statistics to Congress or otherwise make such information available. Consequently, DHS proposes retaining jobs retained as a reportable field on the Form I–956G, even though such jobs would no longer be able to be used to establish sufficient job creation for eligibility as an immigrant investor.

center could submit an exemplar Form I–526 with its Form I–924 designation or amendment request to obtain approval of certain aspects of an investment project for the limited purpose of providing deference in associated adjudications. If approved, the documents provided to comply with job creation and investment eligibility requirements were accorded deference in subsequent, related Form I–526 and Form I–829 filings, absent material change, fraud, willful misrepresentation, or a determination of legal deficiency.

Under the INA, as amended by the RIA, a designated regional center must submit a project application for each particular investment offering through an associated new commercial enterprise before any regional center investor can file his or her individual petition. INA sec. 203(b)(5)(F), 8 U.S.C. 1153(b)(5)(F). If approved, the evidence submitted with the project application is then incorporated by reference into the EB–5 immigrant visa petition for regional center investors in that particular offering, alleviating the need for each individual regional center investor in that particular offering to submit the same documentation to USCIS already submitted with the project application. INA sec. 203(b)(5)(F)(ii), 8 U.S.C. 1153(b)(5)(F)(ii).

As part of the implementation of the RIA, USCIS created Form I–956F, Application for Approval of Investment in a Commercial Enterprise (project application), on June 1, 2022. Under this proposed rule, a designated regional center, including those designated before the RIA that will continue to seek regional center investors on or after May 14, 2022, would have to submit a project application for each particular investment offering under the regional center's purview. *See* proposed 8 CFR 204.419. Each project application may only contain one new commercial enterprise, which may then involve multiple job-creating entities to which the new commercial enterprise will provide the regional center investors' capital. Under proposed 8 CFR 204.420, the regional center would have to establish that:

1. The project is realistic and credible;
2. The investment offering and project are compliant with applicable eligibility requirements for classification of regional center investors (including investment of the required amount of capital and sufficient job creation for all regional center investors in the project);
3. The project will be monitored and overseen by the regional center for compliance with applicable immigration and Federal and State securities laws;
4. All persons involved with the new commercial enterprise and job-creating entities are not precluded from being involved under section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H); and
5. The new commercial enterprise or affiliated job-creating entity or both have established a separate account and retained a fund administrator as required by proposed 8 CFR 204.425.

Regardless of the type of project submitted by the regional center, the regional center would have to submit evidence that the new commercial enterprise is established in the United States, which must include, as appropriate, complete formation documents, such as articles of incorporation, organization, association, certificate of merger or consolidation or other similar formation documents, together with all amendments to such documents; complete copies of all other organizational documents, such as a partnership agreement, operating agreement, bylaws, or other similar organization documents for the new commercial enterprise, together with all amendments to such documents; and certificates evidencing the new commercial enterprise's authority to do business in the State, municipality, or other applicable jurisdiction of the United States in which the new commercial enterprise has created or is seeking to create jobs. *See* proposed 8 CFR 204.421(a). DHS would expect the regional center to submit documentation of the new commercial enterprise's authority to do business in any location where the new commercial enterprise is principally doing business under proposed 8 CFR 204.401, *Principally doing business.*

Under the proposed rule, the regional center would also have to submit evidence of sufficient job creation for each regional center investor that will be investing in the new commercial enterprise. This would typically be provided in an EIA showing that the project will create full-time employment for at least 10 qualifying employees per regional center investor within the timeline identified in the comprehensive business plan. *See* proposed 8 CFR 204.421(b). Since regional center investors may rely on indirect job creation to establish up to 90 percent of the requirement and may rely on economic models to establish the remaining 10 percent of direct job creation, DHS proposes requiring a regional center to rely on an economically and statistically valid and transparent methodology in which model outputs are reproducible and all the inputs and any adjustments to the model are fully explained in the project application. *Id.* While DHS currently expects regional centers to submit the Bureau of Economic Analysis' Regional Input-Output Modeling System to establish job creation, DHS proposes this language to allow a regional center to submit other economic methodologies that may work better for the regional center, because, for example, the job estimates are based on a tenant occupancy methodology. USCIS, however, must be able to independently verify the inputs and outputs to the model, while also accounting for any new or modified economic models that may be developed in the future that might also meet the ''economically and statistically valid and transparent'' requirements.

The location where the new commercial enterprise is principally doing business would determine the level of investment required by regional center investors in the new commercial enterprise. If the new commercial enterprise identified in the project application is principally doing business in a high unemployment area, the regional center would have to submit a list of the census tracts comprising the proposed project area and the unemployment statistics for that area, along with the methods by which the unemployment statistics were obtained, as well as the national unemployment rate used to calculate whether the area meets the definition of a high unemployment area. *See* proposed 8 CFR 204.421(c)(2); *see also* proposed 8 CFR 204.402. Similarly, if the new commercial enterprise identified in the project application is principally doing business in a rural area, the regional center would have to submit a map of the area where the new commercial enterprise will principally be doing business, including the population counts of that area to establish that the area meets the definition of a rural area. *See* proposed 8 CFR 204.421(c)(1); *see also* proposed 8 CFR 204.401, *Rural area.* For projects where the regional center is offering an investment opportunity in an infrastructure project, the regional center would have to submit evidence of a contract with a Federal, State, local, or tribal agency or authority to provide investment capital to a public works project. *See* proposed 8 CFR 204.421(c)(3).

The regional center would also have to retain a copy of any agreements between any investor in the new commercial enterprise and the regional center or its related entities, or agreements between the regional center

and its related entities that relate to the transfer of any capital described in the project application, including, but not limited to, offering memoranda, subscription agreements, escrow agreements, organizational documents, term sheets, side letters, documentation of oral agreements, and any other marketing materials used or to be used in connection with the offering, including the identification of any social media outlets that are or will be used to market or promote the EB–5 immigrant visa program. *See* proposed 8 CFR 204.421(d). DHS proposes this provision for the regional center to retain such information for submission in connection with a USCIS audit and to provide evidence of any potential conflicts of interest that may exist between the regional center and its associated entities, particularly as related to the transfer and use of regional center investor capital.

The INA precludes the use of immigrant investor capital to purchase municipal, or any other bonds, if they are available to the general public, either as part of a primary offering or from a secondary market. INA sec. 203(b)(5)(E)(v)(II)(bb), 8 U.S.C. 1153(b)(5)(E)(v)(II)(bb). DHS proposes to clarify that this prohibition applies to an initial investment, capital held in escrow, use of capital, redeployment of capital, and any ongoing use of capital to retain the capital at risk. *See* proposed 8 CFR 204.427.

The regional center would also have to submit attestations and information from persons involved with the new commercial enterprise and affiliated job-creating entities as required by proposed 8 CFR 204.417(a). *See* proposed 8 CFR 204.421(e).

The application would also have to include evidence to show that the separate account required under proposed 8 CFR 204.425 has been established by the new commercial enterprise or affiliated job-creating entity and an appropriate fund administrator has been retained, including bank statements for such accounts. *See* proposed 8 CFR 204.421(f).

Lastly, the regional center would need to provide additional information, either as additional documentation or included within documents submitted to establish the requirements above. *See* proposed 8 CFR 204.421(g). DHS proposes that this list of required additional information and documentation include biographies for management, officers, directors, and any person with similar responsibilities at the new commercial enterprise and job-creating entity(ies); risks associated with the investment; any investment and offering documents provided to potential investors; any documents related to the investment filed with the Securities and Exchange Commission (SEC) or securities regulator of any State; conflicts of interest that currently exist or may arise; and any pending investigations, litigation, bankruptcy, or adverse judgments or bankruptcy orders issued during the most recent 10-year period, in the United States or abroad, involving the regional center, new commercial enterprise, or job-creating entity(ies), or its owners, officers, managers, directors, or other persons acting in a similar capacity, or any other enterprise in which such persons held majority ownership. *Id.* DHS believes this information and documentation captures all the requirements identified by the RIA for a regional center's project application to be used as an investment offering for regional center investors. *See, e.g.,* INA sec. 203(b)(5)(F)(i)(III) and (IV), 8 U.S.C. 1153(b)(5)(F)(i)(III) and (IV).

Once a regional center establishes that its investment offering meets the requirements and provides all the required documentation to USCIS, USCIS would approve the application. If approved, the elements of the project application related to the regional center's investment offering, including sufficient job creation and minimum amount to be invested (where the investment offering is in a TEA or infrastructure project), will be incorporated by reference into the adjudication of the EB–5 immigrant visa petition of a regional center investor that has provided evidence of association with the regional center's project application, meaning the regional center investor will not separately have to submit the same project-level documentation already provided and reviewed with the project application. INA sec. 203(b)(5)(F)(ii), 8 U.S.C. 1153(b)(5)(F)(ii). *See* proposed 8 CFR 204.408(a). If USCIS denies the project application, then USCIS would provide a notice explaining the reasons for the decision and providing the regional center information on its right to appeal. *See* proposed 8 CFR 204.422.

a. Amending a Project Application

If approved, there are certain circumstances in which a regional center must submit an amendment to its project application. *See* proposed 8 CFR 204.423(b) and (c). DHS proposes requiring a regional center to submit an amendment to its project application within at least 90 days prior to the first regional center investor in that particular investment offering becoming eligible to file a petition to remove conditions. *See* proposed 8 CFR 204.423(b)(1). As part of that amendment filing, the regional center would have to submit the following updated documents: business plan, EIA, and reasonable and transparent methodologies to establish sufficient job creation for the regional center investors in that investment offering. *See* proposed 8 CFR 204.423(b)(2). A regional center investor would then be able to rely on the project application amendment's approval to establish that his or her investment created enough jobs to establish eligibility to remove the conditions on his or her residence under proposed 8 CFR 216.6(e)(2)(ii). *See* proposed 8 CFR 204.423(e)(4). If the regional center does not submit a project application amendment as required, USCIS would be able to sanction the regional center for failing to file a required amendment. *See* proposed 8 CFR 204.431(b)(7)(iii).

In addition, DHS proposes that a regional center must amend its project application within 30 days of the change where there may be an impact to the eligibility of any regional center investors that have already filed their EB–5 immigrant visa petition, as well as any regional center investors that may seek to file an EB–5 immigrant visa petition based on the particular investment offering identified in the project application. *See* proposed 8 CFR 204.423(c). Where the regional center would have to file an amendment due to a change in ownership or location of the new commercial enterprise or job-creating entity(ies), USCIS would hold adjudication of all associated EB–5 immigrant visa petitions until USCIS adjudicates the amendment because the nature of the change must be reviewed to determine the ongoing eligibility of regional center investors in the project. *See* proposed 8 CFR 204.423(e)(2). Other changes necessitating an amendment would not necessarily require USCIS to hold adjudication of the associated EB–5 immigrant visa petitions, unless review of the amendment would lead USCIS to determine that there is a negative impact on the associated EB–5 immigrant visa petitions. *See* proposed 8 CFR 204.423(e)(3).

DHS also proposes that a regional center would have to file an amendment if there are changes to the expenditure of capital or capital structure reflected in any business plan submitted in connection with the previously approved project application in response to or otherwise materially impacting the credibility or viability of such plans or successful execution of projects that in turn could adversely

impact eligibility for associated investors, including, but not limited to, payments to parties related to the business plan and the loss of financing or addition of outside financing from sources not previously identified in the approved project application or otherwise obtained from any source other than a federally regulated bank or other financial institution (as defined in 18 U.S.C. 20). *See* proposed 8 CFR 204.423(c)(5). DHS intends that this would primarily affect regional centers making a change that impacts the number of jobs reflected in the approved project application. For example, an amendment would be required when there is a reduction in expenditures that decreases the number of jobs created, but would not be required for an increase of an existing commercial loan that may create additional jobs that are unnecessary for investor eligibility. An amendment would also be required to identify new sources of funding that may be non-traditional or less regulated, such as a new equity investment from a previously unaffiliated individual or business.

Once approved, a high unemployment area designation is initially valid for two years from the date on which the project application is filed. INA sec. 203(b)(5)(B)(ii)(IV)(aa)(AA), 8 U.S.C. 1153(b)(5)(B)(ii)(IV)(aa)(AA). As discussed in section IV.E of this preamble, once USCIS approves the high unemployment area designation, USCIS would extend the initial designation for 2 years from the date of the approval notice. *See* proposed 8 CFR 204.402(e)(1). In addition to certain changes that take place in the due course of business, DHS proposes that a regional center would have to amend its project application to seek an extension of a high unemployment area designation if the regional center continues to seek investors in the project after the initial designation of a high unemployment area is otherwise due to expire. *See* proposed 8 CFR 204.423(c)(6). DHS expects that certain projects will extend well beyond 2 years from the date the regional center submits its project application and beyond the project approval which extends the high unemployment area designation two years from that date, necessitating an extension of the high unemployment area designation. For projects that seek new investors after the initial high unemployment area designation period (as extended by the project approval), DHS would also expect that there may be additional changes to the project application that a regional center should submit for USCIS review. Consequently, DHS proposes that a regional center may seek to extend a high unemployment designation by submitting an amendment to its project application to establish the area continues to meet the requirements of a high unemployment area. Importantly, regional center investors that provided the full amount of capital to the new commercial enterprise that was subsequently provided to the job-creating entity before the high unemployment area designation expires do not have to make any additional investments if the area no longer qualifies as a high unemployment area. *See* proposed 8 CFR 204.402(g). However, if the regional center investor did not provide the full amount of capital to the new commercial enterprise that was subsequently provided to the job-creating entity before the initial high unemployment designation will otherwise expire may be required to increase his or her investment if the area no longer qualifies as a high unemployment area. *Id.*

In order to discourage skeletal, hypothetical or otherwise ineligible filings that are not filed in good faith (for example, amendments filed solely to meet applicable deadlines or initial applications that are purely hypothetical with no intention to undertake the actual project filed solely to permit the filing of associated investor petitions), any amendment to a project application (including the initial filing) must be submitted in good faith. *See* proposed 8 CFR 204.423(d). In determining whether a project application or amendment was submitted in good faith, USCIS would examine both the subjective intent of the applicant to undertake the project and whether objectively the applicant had a realistic prospect of undertaking the project. *See* 59 FR 1318 (Jan. 10, 1994). A regional center that files an amendment must also notify any investors who have filed an immigrant visa petition associated with the particular investment offering of the change. *See* proposed 8 CFR 204.423(a).

b. Regional Center Investors

Under the proposed rule, once a designated regional center has filed a project application, a regional center investor investing in that particular offering would be able to submit his or her Form I–526E. To be considered properly filed, a regional center investor would have to submit evidence of association with a regional center's pending or approved project application with his or her Form I–526E. *See* proposed 8 CFR 204.404(b). Such evidence could include a copy of the Form I–956F receipt notice issued to the regional center or evidence the regional center submitted Form I–956F to USCIS. To otherwise establish his or her eligibility, a regional center investor would also have to submit sufficient documentation to establish that he or she has invested the required amount of capital, and that the capital used for the investment is lawful. *See* proposed 8 CFR 204.408(b) and (c). Whereas each individual regional center investor previously had to submit project documentation, even where the regional center submitted an exemplar Form I–526 with a Form I–924 application for initial designation or amendment, USCIS would now review those documents as part of the Form I–956F project application adjudication. The regional center investor would have to attest to being subject to those agreements included with the project application by signing a statement on the Form I–526E that incorporates all the project documentation provided by the regional center by reference into the petitioner's Form I–526E, but would not otherwise be expected to provide the documentation submitted in support of the project application that establishes those elements of the regional center investor's eligibility. *See* proposed 8 CFR 204.404(b).

c. Revocation of Project Application Approval

DHS proposes that USCIS would have certain reasons to revoke the approval of a project application, including the denial of an amendment to an approved project application, the regional center's failure to submit a required amendment to an approved project application, the discovery of any evidence affecting program eligibility not disclosed by the regional center, or a material mistake of law or fact in the adjudication of the project application. *See* proposed 8 CFR 204.424(a). USCIS would provide a notice of its intent to revoke the approval for any of these stated reasons. *See* proposed 8 CFR 204.424(b). Within 30 days of the issuance of a notice of the revocation of the approval of a project application, a regional center may file an appeal with the Administrative Appeals Office under part 103 of this chapter. USCIS would hold the adjudication of any associated EB–5 immigrant visa petitions until the revocation decision is finalized and, if the approval of the project application is revoked, USCIS will notify associated investors as and in a manner USCIS determines to be appropriate. *Id.* DHS believes these provisions are necessary to provide USCIS the ability to correct

an error or hold the regional center to account for not continuing to keep USCIS updated on its project's ongoing eligibility.

Additionally, under this proposed rule, the termination of the regional center's participation in the Regional Center Program results in the automatic revocation of a project application upon the adjudication of any appeal of the termination or, if no appeal is filed, the expiration of the appellate period. *See* proposed 8 CFR 204.424(c). Automatic revocations would not be appealable under section 203(b)(5)(P) of the INA, 8 U.S.C. 1153(b)(5)(P), because DHS believes that it is not a distinct determination separate from the determination resulting in automatic revocation (termination of the regional center), which would be separately appealable. Any new commercial enterprise previously covered by a project application submitted by a regional center that has since been terminated may be able to reassociate itself with another designated regional center. *Id.* To associate with another regional center, the new regional center would have to submit a project application on behalf of the new commercial enterprise, indicating its sponsorship of that particular investment offering and its plan to conduct monitoring and oversight of the new commercial enterprise. Affected regional center investors would retain their eligibility if the new commercial enterprise associates with another designated regional center and they file an amendment to their EB–5 immigrant visa petition within 180 days of notice of the termination. *See* proposed 8 CFR 204.424(c) and 8 CFR 204.410(c). Alternatively, the regional center investor would also be able to make a new investment in another new commercial enterprise participating in the Regional Center Program within 180 days of notification of the revocation. *See* proposed 8 CFR 204.410(c). Any regional center investor whose new commercial enterprise does not associate with another designated regional center or otherwise takes no action to make another investment would have his or her EB–5 immigrant visa petition denied, or revoked if the petition was previously approved, except that the investor may continue to be eligible notwithstanding the revocation of the project application approval where sufficient jobs were already created and the investor's capital was invested for at least 2 years under applicable requirements before the revocation. *See* proposed 8 CFR 204.424(d). No EB–5 immigrant visa petition may rely on a revoked project application to establish eligibility. *Id.*

d. Denial of Project Application Approval

DHS proposes that USCIS may deny any project application that does not establish eligibility under proposed 8 CFR 204.420 or does not include the evidence required under proposed 8 CFR 204.421. USCIS would notify the regional center in writing of the denial decision and specify the reasons for the denial in compliance with 8 CFR 103.3(a)(1)(i). The regional center may appeal the denial to the Administrative Appeals Office according to 8 CFR 103.3. *See* proposed 8 CFR 204.422(a). USCIS would hold the adjudication of any associated EB–5 immigrant visa petitions until the denial decision is finalized. *See* proposed 8 CFR 204.422(b). As proposed, once the denial decision is finalized, a regional center investor will not be able to rely on the denied project application to demonstrate eligibility and any pending visa petitions associated with the denied project application will be denied. *Id.*

5. Redeployment

Current regulations do not address the situation of a new commercial enterprise completing its project and returning the investor's capital before the end of the period during which the investor is required to maintain the investment at risk. USCIS previously addressed the requirements for the investor to maintain eligibility in these circumstances through the USCIS Policy Manual. *See* USCIS Policy Manual, Volume 6, Part G, Chapter 2.A(2), ''Investment,'' (July 22, 2021, historical version).[91]

The RIA specifically directs USCIS to prescribe regulations to implement certain statutory parameters for redeployment of investor capital by the new commercial enterprise. INA sec. 203(b)(5)(F)(v), 8 U.S.C. 1153(b)(5)(F)(v). Those parameters state that the new commercial enterprise will be allowed to redeploy investment funds anywhere within the United States or its territories for the purpose of maintaining the investors' capital at risk if:

1. The new commercial enterprise has executed the business plan for a capital investment project in good faith without a material change;

2. The new commercial enterprise has created a sufficient number of new full-time positions to satisfy the job creation requirements of the program for all investors in the new commercial enterprise;

3. The job-creating entity has repaid the capital initially deployed in conformity with the initial investment contemplated by the business plan; and

4. The capital, after repayment by the job-creating entity, remains at risk and it is not redeployed in passive investments, such as stocks or bonds. INA sec. 203(b)(5)(F)(v), 8 U.S.C. 1153(b)(5)(F)(v). *See also* proposed 8 CFR 204.426(a).

USCIS must terminate a regional center if one of its associated new commercial enterprises violates any of the statutory requirements regarding the redeployment of investor funds. INA sec. 203(b)(5)(F)(v), 8 U.S.C. 1153(b)(5)(F)(v). *See also* proposed 8 CFR 204.426(c).

DHS proposes to implement these statutory parameters for redeployment of investor capital by the new commercial enterprise in this rule. *See* proposed 8 CFR 204.426. DHS proposes to clarify that the execution of the business plan for a capital investment project in good faith includes properly filing and receiving approval for amendments, and that repayment of the initial investment by the job-creating entity can likewise be changed from that contemplated by the business plan by a properly filed and approved amendment. *See* proposed 8 CFR 204.426(a). DHS further proposes that any redeployment of investor capital must be made within 3 months of the return of the capital to the new commercial enterprise, except that USCIS will consider evidence showing that a longer period was reasonable for a specific type of commercial enterprise or into a specific commercial activity under the totality of the circumstances. *See* proposed 8 CFR 204.426(b). DHS believes that this period of time provides sufficient flexibility for a new commercial enterprise to identify and execute an investment for the redeployment of investor capital while maintaining the intent of the statute that the investment remains at risk for at least two years. For purposes of the statutory restriction on passive investments, such as stocks and bonds, DHS proposes to codify the statutory prohibition, and align it with existing practice to clarify that this applies to all secondary market securities and to primary market securities that are unrelated to use in any commercial activity (*i.e.,* where the purchase of

[91] Historical versions of the USCIS Policy Manual are available at: USCIS Policy Manual, Volume 6, ''Immigrants,'' Part G, ''Investors,'' Chapter 2, ''Immigrant Petition Eligibility Requirements,'' ''History'' tab, *https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2#,* (current as of Jan. 15, 2025).

securities is primarily financial rather than commercial in nature).

USCIS will terminate a regional center's designation and may debar or otherwise sanction the new commercial enterprise from participation in the Regional Center Program under proposed 8 CFR 204.431 if the new commercial enterprise does not comply with the parameters of redeployment provided in 8 CFR 204.426. *See* proposed 8 CFR 204.426(c).

6. Direct and Third-Party Promoters

The INA requires any direct or third-party promoter of a regional center, new commercial enterprise, affiliated job-creating entity, or issuer of securities intended to be offered to immigrant investors in connection with a particular capital investment project to register his or her participation as a promoter with USCIS. INA sec. 203(b)(5)(K), 8 U.S.C. 1153(b)(5)(K). This proposed rule would codify the registration requirements and process. *See* proposed 8 CFR 204.428.

Registration Process

Every promoter must register his or her participation in the Regional Center Program with USCIS. INA sec. 203(b)(5)(K), 8 U.S.C. 1153(b)(5)(K); *see also* proposed 8 CFR 204.428(a). If the promoter is an entity, then all promoters working for that entity in a role that meets the definition of promoter described in proposed 8 CFR 204.401 would also have to submit Form I–956K to USCIS. Conversely, employees of an organization required to register with USCIS who are not involved in the actual promotion of a particular investment offering would not be required to submit Form I–956K. This would include, for example, administrative staff of the organization.

USCIS published Form I–956K, Registration for Direct and Third-Party Promoters, to allow promoters participating in the Regional Center Program to provide all the necessary information to USCIS. Similar to current practice, under the proposed rule, with his or her form, a promoter would have to include identifying information, including providing biometrics, if applicable, for USCIS to properly confirm the identity of the registrant, provide certifications that he or she is eligible to participate in the Regional Center Program under section 203(b)(5)(H) of INA, 8 U.S.C. 1153(b)(5)(H); certify his or her familiarity with the rules and standards for registration; and confirm the existence of a written agreement for each entity with which the promoter has entered into agreement and include a copy of the written agreement(s) with his or her registration. *See* proposed 8 CFR 204.428(b). If the promoter is an organization and all employees of that organization are covered by the written agreements provided with the Form I–956K, those employees would not have to submit a copy of the same written agreements, provided the organization already provided a copy of any such written agreements to USCIS with its Form I–956K. *See* proposed 8 CFR 204.428(f). Further, each promoter must provide a copy of the relevant written agreement to any regional center investors it seeks for investment in the particular investment offering. The written agreement would have to provide a full disclosure of any fees, ongoing interest, and other compensation that have been, or will be, received by a promoter in connection with an investment in an offering under the Regional Center Program. *See* proposed 8 CFR 204.428(d)(1). Regional center investors must certify on their Form I–526E that they received a copy of the written agreement.

Each promoter would also have to certify on his or her Form I–956K that he or she is familiar with and will accurately represent the Regional Center Program and the U.S. immigrant visa process to prospective investors. *See* proposed 8 CFR 204.428(c). DHS considered requiring promoters to complete a testing requirement to establish that they sufficiently understand the Regional Center Program and the U.S. immigrant visa process. However, DHS believes the administration of any such requirement would not be practical for the proper administration of the promoter registration process. Rather, DHS is proposing to require the promoter to certify his or her own knowledge and to utilize its authority under the INA to suspend or bar a promoter from participating in the Regional Center Program if he or she is not providing accurate information to immigrant investors. *See* proposed 8 CFR 204.428(c) and (g). The certification requirement would include providing investors with accurate information about the steps involved in obtaining an immigrant visa or permanent resident status, including the length of time the process may take, to the best of the promoter's knowledge based on information made publicly available by USCIS and State.[92] *See* proposed 8 CFR 204.428(c).

Additionally, the promoter would not be able to use manipulative, deceptive, or fraudulent claims in any promotional materials, which could include false or materially misleading statements, failing to discuss any material factors that make the offering speculative or risky, providing predictions of financial or immigration success, or stating that USCIS or any U.S. Government agency has reviewed or approved an offering's calculations or performance results. *See* proposed 8 CFR 204.428(e)(1). A promoter, or his or her promotional materials, would be able to state generally that a project application submitted by the regional center is approved, where the regional center has received an approval notice from USCIS. *See* proposed 8 CFR 204.428(e)(1)(v). Under this proposed rule, it would be the promoter's responsibility to ensure that any promotional materials used do not contain any manipulative, deceptive, or fraudulent claims and comply with all applicable immigration and securities laws. *See* proposed 8 CFR 204.428(e)(3). In addition, the promoter would have to retain all promotional materials, and provide them to USCIS upon request, including a translation when necessary. *See* proposed 8 CFR 204.428(e)(4). And the promoter must comply with all applicable Federal and State securities laws. *See* proposed 8 CFR 204.428(e)(5).

When a promoter files Form I–956K, USCIS would issue a receipt notice to the promoter indicating the promoter properly filed Form I–956K. After performing certain background checks to verify compliance with program requirements, USCIS would then issue the promoter a notice of registration. Alternatively, if USCIS finds that the Form I–956K does not meet program requirements (such as by not acknowledging a written agreement), USCIS would generally first issue a notice of non-registration and provide the promoter an opportunity to respond before issuing a final notice of non-registration. *See* proposed 8 CFR 204.428(a).

[92] USCIS provides current processing timeframes by form type on its website. USCIS, DHS, ''Check Case Processing Times,'' *https://egov.uscis.gov/processing-times* (last visited Dec. 6, 2023). State publishes a monthly visa bulletin that indicates the priority date required to seek an immigrant visa or adjustment of status based on the petitioner's country of birth and filing category. Bureau of Consular Affairs, Department of State, ''The Visa Bulletin,'' *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html* (last visited Dec. 6, 2023).

Under this proposed rule, USCIS would generally accept the Form I–956K, except where the promoter is suspended or permanently barred [93] from participation in the Regional Center Program or the form otherwise does not meet filing requirements, such as missing name and/or contact information of the promoter or missing or unsigned certifications. As such, a promoter can begin promoting under the Regional Center Program once he or she submits Form I–956K. *Id.* However, if a promoter receives a final notice of non-registration, then that promoter must cease any promotion activities of the EB–5 program. Once a promoter completes the registration process, the registration would remain in place until such time as the promoter seeks to withdraw his or her registration or USCIS suspends or bars the promoter from participating in the Regional Center Program. *See* proposed 8 CFR 204.428(g); *see also* 8 CFR 204.431(b)(10). DHS proposes reasons that USCIS may seek to suspend or bar a promoter, including any failure to follow the rules and standards for promoters and violations of any applicable Federal and State securities laws. *Id.* If USCIS determines a promoter should be suspended or barred from participation in the Regional Center Program, USCIS would send a notice to the promoter explaining the reasons for the suspension or bar. *See* proposed 8 CFR 204.428(g), 8 CFR 204.431(b)(10), (e) and (h). The promoter would generally have an opportunity to rebut the reasons provided. *Id.* A suspension would not necessarily preclude a promoter's future involvement in the Regional Center Program. *See* proposed 8 CFR 204.431(d)(3)(iv). However, if USCIS permanently bars a promoter's participation, the promoter would not be able to participate in the Regional Center Program again. *See* proposed 8 CFR 204.431(d)(5)(i).

A promoter's suspension or debarment may also impact the regional center, new commercial enterprise, or affiliated job-creating entity that utilized the promoter, if any of those entities knowingly associated with a promoter that does not meet the requirements to be a promoter or does not take any action to discontinue use of a suspended or barred promoter within 14 days of learning of the suspension or bar. *See* proposed 8 CFR 204.428(g)(3).

If USCIS suspends or bars a promoter from participation in the Regional Center Program and USCIS can determine from its records those entities that used that promoter, USCIS may notify the affected entities of the promoter's suspension or bar. *Id.*

DHS welcomes public comment on the registration process for direct and third-party promoters. DHS also welcomes comment on the standards that may be considered for registration, suspension of a promoter and debarment of a promoter, including alternative suggestions to those standards.

7. Fund Administrators

The INA requires each new commercial enterprise and affiliated job-creating entity to keep funds received from immigrant investors in a separate account that may only be used to receive and deploy capital for use in the capital investment project or to return capital to an immigrant investor that provided it. INA sec. 203(b)(5)(Q), 8 U.S.C. 1153(b)(5)(Q). The new commercial enterprise or affiliated job-creating entity must also use a fund administrator that meets certain requirements to oversee and track any transfer of EB–5 investor capital to and from the separate account. INA sec. 203(b)(5)(Q)(iv), 8 U.S.C. 1153(b)(5)(Q)(iv). DHS may waive this requirement if the new commercial enterprise or affiliated job-creating entity is controlled by or under common control of an investment adviser or broker-dealer that is registered with the Securities and Exchange Commission if, in DHS's discretion, the SEC provides comparable protections and transparency for immigrant investors as that required by section 203(b)(5)(Q)(iv) of the INA. INA sec. 203(b)(5)(Q)(v)(I), 8 U.S.C. 1153(b)(5)(Q)(v)(I). Further, DHS must waive the requirement for any new commercial enterprise or affiliated job-creating entity that commissions an annual independent financial audit of such new commercial enterprise or job-creating entity and provides the audit to USCIS, as well as all investors in the new commercial enterprise. INA sec. 203(b)(5)(Q)(v)(II), 8 U.S.C. 1153(b)(5)(Q)(v)(II). DHS proposes to incorporate these provisions into the regulations. *See* proposed 8 CFR 204.425.

For the mandatory waiver of the fund administrator requirement under section 203(b)(5)(Q)(v)(II) of the INA, 8 U.S.C. 1153(b)(5)(Q)(v)(II), DHS proposes to clarify that the annual independent audit would have to cover the new commercial enterprise and any job-creating entity to which the new commercial enterprise has disbursed investment funds received from regional center investors. *See* proposed 8 CFR 204.425(b). For the discretionary waiver available under section 203(b)(5)(Q)(v)(I) of the INA, DHS proposes that a regional center may request such a waiver when it files the project application for the new commercial enterprise seeking such a waiver, or by submitting an amendment to a previous project application seeking a waiver of the fund administrator requirement. *See* proposed 8 CFR 204.425(c). In either case, the fund administrator requirement would only impact new commercial enterprises participating in the Regional Center Program. *See* proposed 8 CFR 204.425(a).

Whether a new commercial enterprise employs a fund administrator or obtains a waiver of such requirement, the new commercial enterprise may only use regional center investor capital in certain manners. INA sec. 203(b)(5)(Q)(ii), 8 U.S.C. 1153(b)(5)(Q)(ii). DHS proposes to capture these disbursement requirements in this rule. *See* proposed 8 CFR 204.425(d).

8. Enforcement: Monetary Penalties, Suspensions, Terminations, and Debarments

Various provisions of the INA provide DHS the authority to sanction or take other actions against a designated regional center, its new commercial enterprises, its job-creating entities, affiliated or otherwise, and issuers of securities offered or intended to be offered to regional center investors. *See* INA sec. 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III), INA sec. 203(b)(5)(F)(v)(II), 8 U.S.C. 1153(b)(5)(F)(v)(II), INA sec. 203(b)(5)(G)(iii), 8 U.S.C. 1153(b)(5)(G)(iii), INA sec. 203(b)(5)(H)(iv), 8 U.S.C. 1153(b)(5)(H)(iv), INA sec. 203(b)(5)(I)(iv), 8 U.S.C. 1153(b)(5)(I)(iv) and INA sec. 203(b)(5)(J)(iv), 8 U.S.C. 1153(b)(5)(J)(iv). Other provisions provide DHS the authority to suspend or bar the participation of such entities or other individuals participating in the Regional Center Program, such as promoters of such entities. *See* INA sec. 203(b)(5)(K)(ii), 8 U.S.C. 1153(b)(5)(K)(ii), INA sec. 203(b)(5)(N), 8 U.S.C. 1153(b)(5)(N), and INA sec. 203(b)(5)(O), 8 U.S.C. 1153(b)(5)(O). For ease of reference and application, DHS proposes to consolidate these statutory sanction provisions into proposed 8 CFR 204.431. Specifically, DHS proposes regulatory provisions providing for the imposition of various

[93] Section 203(b)(5)(K)(ii) of the INA, 8 U.S.C. 1153(b)(5)(K)(ii), provides only for either suspension or permanent debarment if USCIS determines that a direct or third-party promoter has violated section 203(b)(5)(K)(i) of the INA, 8 U.S.C. 1153(b)(5)(K)(i).

sanctions, including suspensions, terminations, and debarments, against a regional center, new commercial enterprise, job-creating entity, issuer of securities offered or intended to be offered to investors seeking classification under section 203(b)(5) of the INA and associated parties, including owners, promoters and others involved with such entities for violations. *See* proposed 8 CFR 204.431. DHS proposes a list of violations that would warrant sanctions or other authorized actions. *See* proposed 8 CFR 204.431(b).

The INA directs DHS to establish a graduated set of sanctions based on the severity of the violation for regional centers and certain associated parties that includes fines, suspension, debarment and termination. INA sec. 203(b)(5)(G)(iii), 8 U.S.C. 1153(b)(5)(G)(iii). Therefore, DHS proposes that sanctions would be issued based on the severity of the violations of the INA and could include:

1. A Finding of Violation Notice that will provide notification of a violation of law or regulation, such as a cease-and-desist letter, and be included in the relevant USCIS record of proceeding;
2. Monetary penalties equal to not more than 10 percent of the total capital invested by immigrant investors in the regional center's new commercial enterprises or job-creating entities directly involved in such violations;
3. Suspension from participation in the EB–5 program, which may be in whole or in part;
4. Termination of a regional center's designation;
5. Debarment from participation in the EB–5 program for the regional center, new commercial enterprise, or job-creating entity; and
6. Debarment from participation in the EB–5 program for one or more persons associated with the regional center, new commercial enterprise, or job-creating entity.

See proposed 8 CFR 204.431(d).

Under the proposed rule, USCIS may take reasonable actions to collect information regarding a potential or suspected violation, to pursue remedial action, to deter future violations, and to ensure ongoing compliance with the EB–5 program before issuing a sanction. *See* proposed 8 CFR 204.431(e). For example, USCIS may issue warning letters when it becomes aware of evidence of false statements, the involvement of ineligible individuals, impending actions taken by securities regulators, or the failure to pay required fees to avert or correct compliance concerns. The letter would also include any proposed sanction if the person or entity does not remedy the violation.

USCIS may also issue notices of violation or pre-sanction notices, such as cease and desist letters, when it finds or otherwise believes that a regional center, new commercial enterprise, job-creating entity, or promoter is engaging or has engaged in the violation of a law, rule, or regulation in proposed 8 CFR 204.431(b) or other prohibited activity. *See* proposed 8 CFR 204.431(d)–(e). For example, these notices or letters could be used to inform regional centers or promoters to cease marketing activities prohibited by the rules and standards in proposed 8 CFR 204.428 and proposed 8 CFR 204.431(b)(10) or to cease the misuse of the DHS or USCIS seal. These pre-sanction notices, including cease-and-desist letters, would generally also include any further proposed sanction if the person or entity does not remedy the violation. *See* proposed 8 CFR 204.231(e).

Regardless of whether USCIS sends a warning letter or other type of notice, USCIS would generally first issue a notice identifying the actions that initiated the sanctions process as well as the sanction USCIS is imposing. *See* proposed 8 CFR 204.431(f)(2). Each sanction would be issued based on a consideration of certain factors, such as the manner, nature, magnitude, culpability, and harm, when determining the severity of a sanction to issue. *See* proposed 8 CFR 204.431(c). DHS notes that under the proposed rule, USCIS would be able to issue more than one sanction for any violation. *See* proposed 8 CFR 204.431(d). For example, if USCIS determines that a regional center is engaging in conduct inconsistent with its designation by failing to adhere to its policies and procedures adopted to monitor and oversee associated new commercial enterprises, such as failing to adequately screen or knowingly permitting a person to be involved with one of its new commercial enterprises who is ineligible to participate in the Regional Center Program under section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H), USCIS could issue a monetary penalty to the regional center. *See* proposed 8 CFR 204.431(d)(2). If the regional center does not ensure that its new commercial enterprise takes commercially reasonable steps to remove the person from participating in the Regional Center Program, then USCIS would be able to issue additional sanctions for the ongoing violation to either or both the regional center and its associated new commercial enterprise. Additionally, if the regional center does not pay the monetary penalty, nonpayment would constitute an additional sanctionable offense. *See* proposed 8 CFR 204.431(b)(9).

Upon receipt of a sanction notice, the affected party could take action to comply with the sanction notice or file a motion to reopen or reconsider or appeal any final determination to the Administrative Appeals Office. *See* proposed 8 CFR 204.431(g) and (h). If an affected party is the subject of multiple sanctions, a separate motion or appeal must be timely filed for each sanction the affected party seeks to have reviewed. *See* proposed 8 CFR 204.231(f)(1). For example, if an affected party received both a fine and a suspension and the affected party wished to have both sanctions reviewed by the Administrative Appeals Office, then he or she would be required to file two separate appeals. This requirement serves to clearly identify the sanctions for which an affected party has sought administrative appellate review for exhaustion purposes under section 203(b)(5)(P)(ii) of the INA, 8 U.S.C. 1153(b)(5)(P)(ii). Furthermore, this requirement provides USCIS with the necessary flexibility to efficiently oversee the integrity of the EB–5 program.

a. Monetary Penalties

Under the proposed rule, USCIS could impose monetary penalties (*i.e.,* fines) on regional centers based on particular violations of applicable requirements. *See, e.g.,* INA sec. 203(b)(5)(G)(iii)(II)(aa), 8 U.S.C. 1153(b)(5)(G)(iii)(II)(aa) (''fines equal to not more than 10 percent of the total capital invested by alien investors in the regional center's new commercial enterprises . . .''); *see* proposed 8 CFR 204.431(d)(2). To streamline the process for imposing monetary penalties for certain common violations under section 203(b)(5)(G)(iii) of the INA, 8 U.S.C. 1153(b)(5)(G)(iii) (such as failure to file an annual statement), DHS considered prescribing set amounts for monetary penalties rather than making individualized determinations for the amount of the monetary penalty based on the severity of each violation up to the statutory limit of 10 percent of the total capital invested by EB–5 investors in the regional center's new commercial enterprises or job-creating entities directly involved in such violations. For example, under that approach, DHS would impose a set monetary penalty of $10,000 on a regional center with one or more investors in its new commercial enterprises or job-creating entities that does not file its annual statement (with required information for each of its new commercial enterprises and job-creating

entities) by the required due date. DHS is seeking public input and feedback on whether to prescribe set monetary penalties for certain common violations, particularly the amount for such penalties and the types of violations that may be covered.

b. Suspensions

Under the proposed rule, USCIS could suspend any person from participating in the EB–5 program. *See* proposed 8 CFR 204.431(d)(3). DHS proposes that suspension means temporarily disallowing some or all forms of participation in the EB–5 program by the suspended person. *See* proposed 8 CFR 204.401, *Suspend.* Suspensions may be time or violation-limited sanctions to address and contain problematic behaviors in a generally constructive manner. During a period of suspension and depending on the scope of suspension imposed, the person may not be able to continue to solicit investors, generate or promote further investments, or otherwise participate in the EB–5 program, either in part or with restrictions. For example, a regional center could be suspended from filing project applications or accepting new regional center investors. Any suspension would take effect as of the date of the determination and last for the period specified by USCIS. *See* proposed 8 CFR 204.431(d)(3). The proposed rule would generally codify existing policy on holding the adjudication of certain applications and petitions during the period of suspension but would provide more uniform parameters for holding, rejecting, or denying applications associated with suspended regional centers or NCEs or JCEs. *See* proposed 8 CFR 204.431(d)(3)(ii–iii).

c. Debarments

DHS proposes that debarments preclude a person's participation in the EB–5 program without the ability for reapplication either permanently or temporarily as determined by USCIS. *See* proposed 8 CFR 204.401, *Debar.* Debarments could be temporary or permanent, but in either case would result in the end of the person's participation in the EB–5 program. *See* proposed 8 CFR 204.431(d)(5). All debarments would include or be preceded by ending the person's participation in the EB–5 program and would occur under circumstances requiring longer term solutions to safeguard program integrity, including temporary or permanent removal from the EB–5 program.

A temporary debarment would end the person's participation while permitting reapplication after a timeframe specified by USCIS. *See* proposed 8 CFR 204.431(d)(5)(iii). USCIS would remove temporarily debarred persons from any list of approved regional centers or registered promoters for the specified timeframe. If the debarment is temporary, USCIS would provide the length of the bar in its sanctions notice to the affected party. *See* proposed 8 CFR 204.431(f)(1). For example, DHS may impose a temporary debarment based on a related time-limited injunction due to noncompliance with Federal and State securities laws. The range of associated parties that could be sanctioned for securities noncompliance is quite broad, including any persons involved in the regional center's or new commercial enterprise's activities, as determined by the Secretary. INA secs. 203(b)(5)(G) and (I), 8 U.S.C. 1153(b)(5)(G) and (I). Further, potential violations subject to sanction for noncompliance with Federal and State securities laws include temporary or permanent orders, judgements, or decrees of any court, final orders issued by the SEC or State securities regulator. INA secs. 203(b)(5)(I)(iv), 8 U.S.C. 1153(b)(5)(I)(iv). Due to the number of possible parties affected and varied time horizons of orders and judgements issued by other State and Federal regulators, and due to the RIA requirement for the establishment of graduated sanctions, DHS believes that temporary debarments may be an appropriate sanctions tool short of imposing a permanent bar in these and other similar circumstances. *See* proposed 8 CFR 204.431(b).

The INA requires the permanent debarment of any individual or organization from participating in the EB–5 program where USCIS determines, in its discretion, that the individual or organization was a knowing participant in any conduct that led to the termination of a regional center, new commercial enterprise, or job-creating entity for reasons relating to public safety, national security, fraud, deceit, intentional material misrepresentation, or criminal misuse. INA secs. 203(b)(5)(N) and (O), 8 U.S.C. 1153(b)(5)(N) and (O). USCIS would remove permanently debarred entities from any list of approved regional centers or registered promoters indefinitely.

USCIS would base a determination that a person was a knowing participant on actual or constructive knowledge and either direct or indirect participation. *See* proposed 8 CFR 204.432(b) and 204.433(b). Consequently, USCIS would consider any person to being a knowing participant if that person knew that his or her participation in the prohibited conduct was unlawful or if that person should have known that his or her participation in the prohibited conduct was unlawful (for example, based on their position or relationship with the relevant entity). Moreover, USCIS would consider a person to be a knowing participant if that person participated directly in the prohibited conduct or indirectly in the prohibited conduct such as through an intermediary or representative or by having actual or constructive knowledge of the prohibited conduct and failing to exercise his or her authority to prevent the prohibited conduct from occurring. For example, USCIS would debar an executive of an EB–5 entity with actual or constructive knowledge who fails to terminate an employee or other agent that is engaging in fraud on behalf of the EB–5 entity in connection with the EB–5 program.

d. Terminations

As discussed above in connection with relevant definitions, DHS interprets its termination authority differently depending on which entity's participation is being terminated. Since DHS only designates regional centers (and not NCEs or JCEs), DHS interprets its termination authority for regional centers as applying only to end the designation of a regional center in line with historic practice and usage of this term, and DHS accordingly proposes to impose terminations as a sanction only on regional centers. *See* proposed 8 CFR 204.431(d)(4). DHS proposes that a terminated regional center may not solicit capital from an investor seeking classification as an immigrant investor. *See* proposed 8 CFR 204.401, *Terminate.* On the other hand, the INA also provides authority to terminate the participation of NCEs or JCEs in the EB–5 program. *See* INA secs. 203(b)(5)(H)(iv), (N)(iii), and (O)(ii), 8 U.S.C. 1153(b)(5)(H)(iv), (N)(iii), (O)(ii). As an initial matter, DHS does not designate NCEs or JCEs for participation in the program the same as is contemplated for regional centers under the INA or in line with historic practices. Moreover, these provisions of the INA do not distinguish between the more specific usage of termination as it applies to a regional center's designation versus other types of sanctions that could apply to NCEs or JCEs that would similarly end their participation in the EB–5 program, such as debarment. *Cf.* INA sec. 203(b)(5)(G)(iii)(II), 8 U.S.C. 1153(b)(5)(G)(iii)(II) (authorizing debarment to end the participation of

non-regional center persons in the EB–5 program while limiting usage of the term termination specifically just to a regional center's designation). DHS also notes that the investor protections under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M) trigger only upon either the termination of a regional center or debarment of a NCE or JCE. *See* INA sec. 203(b)(5)(M)(ii)(I), 8 U.S.C. 1153(b)(5)(M)(ii)(I) (''in the case of the termination of a regional center''), and INA sec. 203(b)(5)(M)(ii)(II), 8 U.S.C. 1153(b)(5)(M)(ii)(I) (''in the case of the debarment of a new commercial enterprise or job-creating entity''). Consequently, termination of a NCE or JCE that would be distinct from debarment would not trigger these investor protections under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), which DHS believes would be contrary to the remaining provisions of section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), which provide protections to ''good faith investors.'' DHS therefore interprets its authority to terminate the participation of NCEs or JCEs in the program as tantamount to debarment, which is reflected in the proposed definitions and accompanying rules discussed previously. Accordingly, under this proposed rule, USCIS would have the ability to terminate a regional center from participation in the Regional Center Program for any of the violations in proposed 8 CFR 204.431(b). The RIA requires termination of the regional center's designation where the new commercial enterprise violates any of the requirements of redeployment of EB–5 capital (INA sec. 203(b)(5)(F)(v)(II), 8 U.S.C. 1153(b)(5)(F)(v)(II)), if the regional center does not consent to or deliberately attempts to impede a DHS audit (INA sec. 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III), *see also* proposed 8 CFR 204.431(b)(3)), or if the regional center does not make the required Integrity Fund Fee payment within 90 days of its due date (INA sec. 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II); *see also* proposed 8 CFR 204.431(b)(9)).

e. Sanctions Process

Under this proposed rule, any sanction could be appealed to the Administrative Appeals Office. *See* proposed 8 CFR 204.431(h). DHS considered how to provide maximum effect to a sanction, while also allowing a sanctioned person the opportunity to exhaust all administrative remedies. Particularly, as related to monetary penalties, DHS considered whether any such penalty would be due immediately or should be delayed pending the filing (or subsequent outcome) of an appeal. DHS also considered requiring any sanctioned person to pay a percentage of any monetary penalty upon receipt of a sanction notice, with the balance coming due if any appeal is dismissed, to deter frivolous appeal filings solely to delay the effective date of a sanction, while also preserving the right of the sanctioned person to file an appeal. Similarly, DHS considered borrowing an approach used by the Internal Revenue Service where, if an appeal is filed, interest accrues from the date any monetary penalty comes due, which would then be payable at the conclusion of an appeal, if such appeal is dismissed.[94] If the appeal is sustained, then the monetary penalty and accrued interest would be dismissed.

DHS is seeking public input on the process USCIS should implement as it relates to sanctions and the right of appeal, particularly how DHS can balance the right of appeal with ensuring the effectiveness of the sanctions proposed under 8 CFR 204.431.

9. Audits

The INA requires DHS to audit each regional center at least once every 5 years. INA sec. 203(b)(5)(E)(vii)(II), 8 U.S.C. 1153(b)(5)(E)(vii)(II). DHS proposes that USCIS conduct these audits, and USCIS is currently doing so according to the Generally Accepted Government Auditing Standards (GAGAS) to the extent practicable as determined by USCIS. *See* proposed 8 CFR 204.430(a) and (b). DHS considered using Generally Accepted Auditing Standards (GAAS), but GAAS would only provide an opinion on the reliability of the annual financial statements prepared by the regional center and would not provide the opinion needed on the performance of the regional center.

Audits permit USCIS the ability to reach a conclusion on the performance of the regional center, including reviews of the regional center's financial and program performance, as well as determining whether the regional center is effectively managing its operations under the Regional Center Program and properly pooling regional center investor capital to create jobs.

USCIS would use the results of an audit to evaluate whether the regional center is continuing to operate consistent with its designation. *See* proposed 8 CFR 204.430(b). To do so, USCIS would not only review all records the regional center previously submitted to USCIS, but also have the ability to request information from or conduct interviews or site visits to any new commercial enterprise or job-creating entity(ies) associated with the regional center. *Id.* Auditors would potentially contact new commercial enterprises or job-creating entities to obtain sufficient evidence, such as confirmation from outside parties, to corroborate representations made by the regional center. *Id.* Audits require auditors to obtain sufficient appropriate evidence to support an audit opinion, and therefore, auditors may determine that independent verification with the new commercial enterprises or job-creating entities is necessary for obtaining such evidence.

To properly prepare for an audit, a regional center would have to maintain all documents submitted with its designation application, all of its project applications, and all annual statements for five years. *See* proposed 8 CFR 204.430(c)(1). In addition, the regional center would have to make and preserve any books, ledgers, records, and other documentation from the regional center, new commercial enterprise, or job-creating entity used to support any claims, evidence, or certifications contained in the regional center's annual statements. *Id.* Lastly, the regional center would be required to maintain records of each immigrant investor in each new commercial enterprise under the purview of the regional center, his or her current filing status with USCIS, total capital received from each investor, and the disbursement and flow of each investor's capital to the new commercial enterprise or job-creating entity, as appropriate. *Id.* Any records required to be maintained must be preserved by the regional center for a 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred. *Id.*

When a regional center is selected for an audit, USCIS would issue an audit notification to the regional center, to which the regional center would have 30 days to respond and coordinate the scheduling of the audit with USCIS. *See* proposed 8 CFR 204.430(d). Under the proposed rule, USCIS would schedule the audit at an agreed upon time and date at the location where the regional center is conducting its operations. *Id.* The audit may also include site assessments of any new commercial enterprise or job-creating entity under the regional center's purview during the period being audited to confirm the documents retained by the regional

[94] *See* IRS, Publication 4576 (Rev. 10–2020), ''Penalty Appeals,'' *https://www.irs.gov/pub/irs-pdf/p4576.pdf* (last visited May 29, 2024).

center or otherwise validate information reviewed during the audit. *Id.* USCIS would issue a notice of intent to terminate the regional center's designation if the regional center does not respond to the notice or in any other way attempts to impede a USCIS audit. *Id.; see also* proposed 8 CFR 204.431(d)(4).

After the conclusion of the audit, USCIS would document the results and add them to the regional center's record. *See* proposed 8 CFR 204.430(e). If the audit provides any indication of fraud by the regional center, its new commercial enterprises, or job-creating entities, or the regional center is not continuing to operate consistent with its designation, USCIS may take appropriate action under proposed 8 CFR 204.431, which could include sanctions, up to and including termination or debarment from participation in the Regional Center Program. *Id; see also* proposed 8 CFR 204.431.

I. Removal of Conditions

Whether obtained pursuant to issuance of an immigrant visa or adjustment of status, permanent resident status based on an EB–5 immigrant visa petition is granted on a conditional basis. *See* INA sec. 216A(a)(1), 8 U.S.C. 1186b(a)(1). Within the 90-day period preceding the second anniversary of the date the immigrant investor obtains conditional permanent resident status, the immigrant investor must file a petition to remove the conditions on his or her residence (Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status). *See* INA secs. 216A(c) and (d), 8 U.S.C. 1186b(c) and (d). Failure to timely file Form I–829 results in automatic termination of the immigrant investor's conditional permanent resident status and the initiation of removal proceedings. *See* INA sec. 216A(c), 8 U.S.C. 1186b(c). In support of the petition to remove conditions, the immigrant investor must show that he or she invested the required amount of capital for at least 2 years and created at least 10 jobs for qualifying employees. *See* INA sec. 216A(d)(1), 8 U.S.C. 1186b(d)(1). If approved, the conditions on the immigrant investor's permanent residence are removed as of the second anniversary of the date the investor obtained conditional permanent resident status. *See* proposed 8 CFR 216.6(g)(1).

The RIA altered the requirements for an immigrant investor to remove the conditions on his or her permanent resident status. Where the immigrant investor previously had to show that he or she invested or were actively in the process of investing the required amount of capital, the INA now requires that the investment was made in its entirety prior to submitting a petition to remove conditions. *See* Public Law 117–103, Division BB, sec. 104(a)(6)(A), 136 Stat. 1070, 1101 (2022); INA sec. 216A(d)(1)(A), 8 U.S.C. 1186b(d)(1)(A). In accordance with the RIA's statutory effectiveness provisions, DHS proposes that these new requirements apply to petitions to remove conditions that are filed based on an EB–5 immigrant visa petition filed on or after March 15, 2022, and proposes differentiating the requirements under prior section 216A of the INA, 8 U.S.C. 1186b, and the requirements of the RIA in section 216A of the INA, 8 U.S.C. 1186b, as amended. *See* Public Law 117–103, Division BB, sec. 104(b), 136 Stat. 1070, 1102–3 (2022); *see* proposed 8 CFR 216.6(d)(1) and (2). Importantly, this change would mean the immigrant investor must have invested the full amount of capital in the new commercial enterprise before filing the petition to remove conditions and the investment would have to have been maintained for at least 2 years from the date the investment was placed at risk with the new commercial enterprise, including being provided to any job-creating entity(ies) as applicable, to align with the requirement that the investor must expect his or her requisite amount of capital to remain invested for not less than 2 years, provided that the investment remained at risk with the new commercial enterprise on the date the investor filed his or her immigrant visa petition. *See* INA sec. 203(b)(5)(A)(i), 8 U.S.C. 1153(b)(5)(A)(i); *see also* 8 CFR 216.6(d)(2)(ii). In addition, the immigrant investor must have created the required number of jobs prior to filing his or her petition to remove conditions, or in the event the immigrant investor is actively in the process of creating the required number of jobs and expects to create any remaining jobs within a year of filing his or her petition to remove conditions, the immigrant investor may request a 1-year extension of his or her conditional permanent resident status to create the required number of jobs, provided his or her capital would remain invested during such time. *See* INA sec. 216A(d)(1)(B), 8 U.S.C. 1186b(d)(1)(B); *see also* 8 CFR 216.6(g)(3). In such a case, USCIS may grant an extension and, at the end of the third year, the immigrant investor would then have to file another petition to remove conditions no later than 30 days after the expiration of the 1-year extension. *See* INA sec. 216A(d)(1)(B)(ii), 8 U.S.C. 1186b(d)(1)(B)(ii); *see also* 8 CFR 216.6(g)(3).

The INA contains protections for good faith investors following program noncompliance of a regional center, new commercial enterprise, or job-creating entity. *See* INA sec. 203(b)(5)(M), 8 U.S.C. 1153(b)(5)(M). One of those protections is the option for an investor to make a subsequent investment into another new commercial enterprise if the regional center is terminated or the initial new commercial enterprise or job-creating entity is debarred. *See* INA sec. 203(b)(5)(M)(ii), 8 U.S.C. 1153(b)(5)(M)(ii). The INA further provides that if an investor utilizes this protection and makes a subsequent investment, the date of eligibility for the investor to have the conditions on his or her permanent residency removed becomes two years after the date of the subsequent investment. *See* INA sec. 203(b)(5)(M)(iv), 8 U.S.C. 1153(b)(5)(M)(iv). DHS is proposing to implement these new provisions in this rule. *See* proposed 8 CFR 216.6(a)(1).

DHS is proposing that an investor may utilize the protections under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), and provide evidence to establish continued eligibility as described in any notice of termination or debarment or in accordance with applicable form instructions for the purpose of amending his or her pending petition to remove conditions on his or her permanent resident status. *See* proposed 8 CFR 216.6(g)(4). DHS believes that the most efficient and least burdensome method of receiving the investor's evidence to establish continued eligibility and amend his or her pending petition will generally be through the response to any notice of termination or debarment without any associated filing fee, though DHS also anticipates retaining flexibility to require a different process through applicable form instructions which may include a filing fee in the future. This process utilizes the requirements of section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), that DHS notify the investor of the termination or debarment and that the investor take certain actions, such as reinvesting in another new commercial enterprise, and amend his or her petition within 180 days of the notice in order to demonstrate continued eligibility. USCIS would review the amended petition, including any evidence submitted in response to any notice of termination or debarment, to determine whether the investor has demonstrated eligibility under section 203(b)(5)(M) of the INA. *See* proposed 8

CFR 216.6(g)(4). If USCIS approves the amended petition, the conditions on the investor's permanent resident status would not be removed and USCIS would extend the investor's conditional permanent resident status for 2 years from the date of his or her subsequent investment. *See* proposed 8 CFR 216.6(g)(4). If USCIS denies the petition, then the standard denial process would apply (which may include issuance of a notice to appear following termination of the investor's conditional permanent resident status).

To remove conditions, an immigrant investor must have invested the full amount of capital before filing his or her petition to remove conditions. In addition, where the immigrant invested in a high unemployment area, the full amount of capital would have to have been provided to the job-creating entity while the area was designated as a high unemployment area. If the investor did not provide the full amount of capital to the job-creating entity and the high unemployment area cannot be extended because the new commercial enterprise is no longer principally doing business in a high unemployment area, then the immigrant investor must provide additional capital to the new commercial enterprise to meet the standard minimum investment amount. *See* INA sec. 203(b)(5)(B)(ii)(V), 8 U.S.C. 1153(b)(5)(B)(ii)(V). As a result, it would be in the investor's interest to ensure that his or her full amount of capital is placed at risk with the new commercial enterprise, including being provided to the job-creating entity as applicable, no later than the date the high unemployment area designation in place at the time he or she begins the process of investing would expire.

DHS proposes to amend the current regulations relating to the required evidence to accompany the petition to remove conditions. The purpose of these proposed changes is to require a more specific list of evidentiary items that, based on the adjudications experience of USCIS, is more likely to be probative in establishing whether the investor has met the eligibility requirements to have the conditions on his or her permanent residence removed. *See* proposed 8 CFR 216.6(e). DHS also proposes to specify separate required items of evidence for standalone investors than regional center investors. *See* proposed 8 CFR 216.6(e)(1)(iii) and (2)(ii). The differences between regional center projects and standalone ones, in particular the ability for regional center investors to meet the job creation requirement through estimated jobs using reasonable economic methodologies, mean that generally the types of evidence that will be probative for establishing eligibility will be different for each. DHS further proposes two mirrored evidentiary sections, one for petitions based on an EB–5 immigrant visa petition filed before March 15, 2022, and one for those based on an EB–5 immigrant visa petition filed on or after March 15, 2022. *See* 8 CFR 216.6(e)(1) and (2). The differences between the two reflect changes brought about by the RIA.

As part of the evidentiary requirements for regional center investors to remove the conditions on their residence, DHS proposes requiring a regional center to submit an amendment to its project application at least 90 days prior to the first regional center investor in that particular investment offering becoming eligible to file a petition to remove conditions. *See* proposed 8 CFR 204.423(b)(1). As part of that amendment filing, the regional center would have to submit an updated business plan, an updated EIA, and updated reasonable and transparent methodologies to establish sufficient job creation for the regional center investors in that investment offering. *See* proposed 8 CFR 204.423(b)(2). A regional center investor would then be able to rely on the project application amendment's approval to establish that his or her investment created enough jobs to establish eligibility to remove the conditions on his or her residence. *See* proposed 8 CFR 216.6(e)(2)(ii). If the regional center does not submit a project application amendment as required, USCIS may sanction the regional center for failing to file a required amendment. *See* proposed 8 CFR 204.431(b)(7)(iii). Additionally, the regional center investor would then have to establish that his or her investment created sufficient employment, which may include evidence the investor reassociated his or her investment with another regional center or new commercial enterprise in the event his or her regional center is terminated. *See* proposed 8 CFR 216.6(e)(2)(ii).

Site Visits

Additionally, USCIS must conduct a site visit to the relevant new commercial enterprise or business location identified in the regional center's project application before adjudicating any associated petition to remove conditions based on an EB–5 immigrant visa petition filed on or after March 15, 2022. Public Law 117–103, Division BB, sec. 104(a)(5), 136 Stat. 1070, 1101 (2022). DHS proposes that, for purposes of the RIA, such a site visit may include in-person visits or, at USCIS' discretion, utilize web or teleconferencing communications in coordination with the new commercial enterprise and job-creating entity(ies). For purposes of RIA, site visits may include a review of open-source, commercial, or proprietary databases to verify evidence submitted to USCIS by the petitioner. *See* proposed 8 CFR 216.6(f) and 8 CFR 204.429. While USCIS must provide a regional center 24-hour notice prior to any site visit, USCIS may conduct a site visit to a new commercial enterprise or job-creating entity at any time, without notice to ensure that USCIS can verify that the necessary job creation upon which an investor is seeking to establish lawful permanent residence has actually occurred. *See* proposed 8 CFR 204.429. This would also allow USCIS to continue to conduct necessary investigations in response to concerns of fraud or that the new commercial enterprises or job-creating entities are not acting in the manner they claim. For these reasons, making unannounced visits is a critical tool to ensure the ongoing integrity of the EB–5 program and the eligibility of investors to remove the conditions on their residence.

The proposed regulation also states that if USCIS is unable to verify facts related to an investment or particular investment offering (project), including due to the failure or refusal of an entity participating in the Regional Center Program to cooperate in a site visit, then the lack of verification of pertinent facts, including from failure or refusal to cooperate, may result in termination of a designated regional center or debarment of a new commercial enterprise or job-creating entity that is the subject of a site visit. *See* proposed 8 CFR 204.429. A determination that a petitioner or employer failed or refused to cooperate would be case-specific but could include situations where one or more USCIS officers arrived at a job-creating entity's office, made contact with the owner or other person involved with the job-creating entity and properly identified themselves, and the owner or person involved refused to speak to the officers or the officers were refused entry into the premises or refused permission to review business records pertaining to the particular investment offering and job creation. Failure or refusal to cooperate could also include situations where a person involved agreed to speak but did not provide the information requested within the time period specified, or did not respond to a written request for information within the time period specified. Before denying a petition to remove conditions for issues related to an unsuccessful site

visit, USCIS would provide the petitioner an opportunity to rebut adverse information and present information on his or her own behalf in compliance with 8 CFR 103.2(b)(16).

Miscellaneous Changes

DHS proposes clarifying changes to several paragraphs of 8 CFR 216.6. These changes bring the regulatory language into line with existing practice in several areas where the current language is ambiguous or does not address certain situations. *See* proposed 8 CFR 216.6(a) (a petition is properly filed if signed by petitioner and accompanied by appropriate fees and evidence, and USCIS may reject a petition not properly filed); proposed 8 CFR 216.6(d)(3) (derivatives may inherit an investor's interest upon the investor's death and remove conditions if the investor meets the applicable requirement for maintaining the investment); proposed 8 CFR 216.6(h) (USCIS will terminate the investor's permanent resident status as of the second anniversary of the date the investor obtained it if the investor does not submit a petition to remove conditions); and proposed 8 CFR 216.6(c)(3) (discussing failure to appear for required interview and the procedure for requesting and granting reschedule or waiver of the interview).

Additionally, DHS proposes to improve the adjudication process for removing conditions by providing flexibility in interview locations and update the regulations to conform to the current process for issuing permanent resident cards. Section 216A(c)(1)(B) of the INA, 8 U.S.C. 1186b(c)(1)(B), generally requires Form I–829 petitioners to be interviewed prior to final adjudication of the petition, though DHS may waive the interview requirement in its discretion. *See* INA sec. 216A(d)(3)(B), 8 U.S.C. 1186(d)(3)(B). The statute also provides that the interview may be held at a location that ''is convenient to the parties involved.'' *See* INA sec. 216A(d)(3)(A), 8 U.S.C. 1186(d)(3)(A). Importantly, the INA precludes USCIS from waiving the interview requirement on any Form I–829 filed based on an EB–5 immigrant visa petition filed on or after March 15, 2022, if the investor invested in a regional center, new commercial enterprise, or job-creating entity that was sanctioned under section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), or has been determined to be a threat to public safety or national security. *See* INA sec. 216A(d)(3)(B), 8 U.S.C. 1186b(d)(3)(B), and proposed 8 CFR 216.6(c)(1).

Under this rule, DHS is proposing to give stakeholders greater flexibility in the interview location by clarifying USCIS' discretion under the INA to determine the appropriate location for Form I–829 petition interviews. Specifically, the proposed amendment would allow USCIS to schedule an interview at the USCIS office holding jurisdiction over the adjudication of the petition, the location of the investor's new commercial enterprise, or the investor's residence in the United States. *See* proposed 8 CFR 216.6(c)(2). Interview location flexibility was previously provided in the subsequently vacated EB–5 Modernization Rule (84 FR 35750, 35801, July 24, 2019), and DHS believes this change is still warranted and will benefit the agency by making the interview process more effective and benefit immigrant investors by reducing the need to travel long distances to participate in Form I–829 petition interviews.

DHS also proposes to amend regulations governing the process by which immigrant investors obtain their new permanent resident cards after the approval of their Form I–829 petition. After an immigrant investor's Form I–829 petition is approved, the immigrant investor and each included derivative will be issued a permanent resident card. This card documents that the conditions on the immigrant investor's status have been removed. Current regulations include an outdated description of the process for obtaining such permanent resident cards. Specifically, the current regulation requires the immigrant investor and his or her derivatives to report to a district office for processing of their permanent resident cards after approval of the Form I–829 petition. *See* 8 CFR 216.6(d)(1) (Nov. 20, 2019). This process is no longer necessary in light of intervening improvements in USCIS' biometric data collection program.[95] USCIS mails the permanent resident card directly to the immigrant investor by U.S. Postal Service registered mail after approving the Form I–829 petition. Therefore, there is no need for each immigrant investor or any derivatives to report to a district office for processing of their permanent resident cards after petition approval.

DHS is thus proposing to remove the mandatory reporting requirement from the regulatory text, and to replace that requirement with the discretionary authority to require an immigrant investor to provide biometrics when needed to complete card production.

[95] DHS already has authority to collect this information under 8 CFR part 103.

See proposed 8 CFR 216.6(g)(1). This discretionary authority is intended to address circumstances in which an in-person meeting is necessary, such as when the biometrics captured during the Form I–829 background process may not be suitable for issuing a permanent resident card.

Lastly, DHS proposes to make minor technical changes to other parts of 8 CFR, namely to content in newly proposed part 204, and current parts 216 and 235 to align with terminology found in the INA and to align with other regulations published after the creation of DHS and USCIS; specifically, DHS proposes to modify ''the Service'' and ''the director'' to ''USCIS,'' update the use of the word ''entrepreneur'' to ''investor'' or ''investment,'' as appropriate, and remove references to specific form numbers. *See* proposed 8 CFR 204.408, 216.2, 216.3 and 235.11.

J. Withdrawal Requests and Petition Revocations

An applicant or petitioner may withdraw a benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. 8 CFR 103.2(b)(6). A request to withdraw a pending petition routinely results in USCIS acknowledging the request and processing the withdrawal of the pending petition. If a petitioner seeks to withdraw a previously approved petition, the approved petition is generally automatically revoked. *See* 8 CFR 205.1.

On November 18, 2016, DHS published its ''Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers'' Final Rule, which became effective on January 17, 2017. *See* 81 FR 82398 (Nov. 18, 2016). This rule revised 8 CFR 205.1 to clarify that a Form I–140, Immigrant Petition for Alien Workers, will remain approved if a request to withdraw the petition is received or the petitioner terminates his or her business 180 days or more after either the date of the petition's approval or the date of filing of an associated application for adjustment of status. *Id.* at 82402. While this rule did not intend to apply to EB–5 immigrant visa petitions since immigrant investors self-petition rather than needing an employer to petition on their behalf, as is the case with the Form I–140 petition, the plain language of the regulatory text made no such distinction. As a result, USCIS experienced challenges in accepting and resolving requests from immigrant

investors to withdraw their EB–5 immigrant visa petition. Therefore, DHS is proposing modifications to 8 CFR 205.1 to clarify that the changes made by the 2017 Final Rule do not include EB–5 immigrant visa petitions. *See* proposed 8 CFR 205.1(a)(3)(iii)(C). DHS further proposes to make clear that an immigrant investor may seek to withdraw his or her EB–5 immigrant visa petition at any time by submitting a request to USCIS. *See* proposed 8 CFR 205.1(a)(3)(iii)(E). If an immigrant investor submits a withdrawal request after the EB–5 immigrant visa petition is approved, these revisions would clarify that the approved petition is automatically revoked, as had previously been the practice until the 2017 Final Rule. This regulatory fix is important to immigrant investors because the investor's ability to recover his or her investment may be predicated on USCIS resolving his or her withdrawal request and concluding action on his or her petition. In addition, these changes would allow USCIS to remove a petition from the immigrant visa process if the petitioner has no intention of pursuing an immigrant visa, which would help to ensure that immigrant visa processing is not delayed by expending effort on petitions that will not be used to obtain an immigrant visa.

Along with these technical changes regarding automatic revocation of approved EB–5 petitions, DHS further proposes to clarify that automatic revocation of any previously approved petition does not prevent USCIS from revoking the approval on other grounds at any time. *See* proposed 8 CFR 205.1(c). This accords with statutory authority regarding revocation of petition approvals, including the new authorities in the INA added by the RIA, and is an important clarification in order to preserve the integrity of agency decision-making to correct errors and address instances of fraud or threats to the national interest whether in EB–5 or other applicable areas.

K. Severability

DHS proposes to include language that would allow stakeholders to continue to rely on a provision in this proposed rule if the provision is held invalid or unenforceable against a person or circumstance to continue to give maximum effect to the provisions permitted by the INA, unless a determination is made that a provision of the subpart is invalid and unenforceable in all circumstances, in which case the provision would be severed from the remainder of the subpart. *See* proposed 8 CFR 204.435. DHS believes this would preserve the provisions of this rule to the fullest extent possible and ensure the ongoing integrity of the EB–5 program.

V. Statutory and Regulatory Requirements

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

E.O. 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 costs and benefits, reducing costs, harmonizing rules, and 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 the 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 sec. 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

DHS proposes to update and align its regulations governing EB–5 alien investors and the Regional Center Program to reflect new requirements provided in the RIA. The proposed rule would apply to business entities involved in EB–5 program investment activity; regional centers (RCs), New Commercial Enterprises (NCEs), and Job Creating Entities (JCEs). It would thereby apply to investors and some individuals associated with the business entities. The proposed rule proposes numerous technical changes, codifications, clarifications, guidance, and procedural and operational adjustments to the EB–5 program. Most of the changes are codifying post RIA practices, or expanding on existing guidance, and are not expected to incur measurable impacts. For provisions that are expected to generate impacts, DHS has made estimates of some, but not all potential impacts due to data and information constraints.

EB–5 investment activity can be influenced by local, regional, and national factors relevant to economic growth, employment, demand for types of investment, and availability of capital. It can also be influenced by factors such as capital mobility in particular regions and countries outside the United States. The variation in past program investments and intensity within certain project areas (types of projects and geographical areas) could have been and may be influenced by multiple factors that are exogenous to the regulatory framework. It is not possible to sort out or identify all the possible factors that can influence the program to determine exactly how the investment activity and related business entities would be impacted, and further, what the effects from and responses to the impacts could be. The multiple provisions being proposed are intended to align the practice of the program with the provisions of the RIA, which includes stimulating domestic capital investment and job creation while rooting out problems the program has historically encountered. Second, most of the impacts are expected to accrue to time-related, administrative, documentary, evidentiary, and organizational efforts needed to meet the requirements of the provisions, and this is not something that can be quantified.

The proposed rule seeks to implement RIA's provisions to improve the program along five pathways. First, it provides clear and thorough guidance to program participants and the public concerning practices, responsibilities, and requirements of the program under the RIA.[96] Second, it provides DHS with

[96] Participants in EB–5 programs may also need to consider the extent to which their activities or a particular project may raise issues or impose obligations under the Federal securities laws, including whether there is an offering or sale of any ''security'' under those laws. A description of these laws is available at: *https://www.sec.gov/rules-*

a set of tools to implement provisions under the RIA to protect the EB–5 program from fraud and threats to national security, including sanctions that also act as incentives for EB–5 entities to engage in appropriate practices to avoid sanctions. Third, it supports RIA's stringent oversight and evidentiary requirements to provide more assurance that program activities and investments meet compliance standards. Fourth, it increases the reasonableness and appropriateness of methods utilized to estimate economic impacts and job creation while removing or modifying some outdated practices. Fifth, it provides some flexibilities for investors to deal with changes in business conditions pertinent to them.

As is noted above, it is not possible to determine how specific entities would be impacted by specific provisions and what the resulting effects of such impacts would be. However, DHS can draw on some information and data to make partial quantified estimates applicable to some of the provisions. For the impacts that could be estimated and quantified, at a three percent discount rate the annualized impacts over ten years could range from $39.90 million to $87.36 million, with a midpoint of $63.59 million. At a seven percent discount rate, annualized impacts could range from $38.80 million to $85.39 million, with a midpoint of $62.06 million.

Table 3 presents the main provisions in the proposed rule, beginning with the monetized estimates (or the quantified impacts) (Table 3A), followed by the unquantified impacts (Table 3B), whereas monetized figures reflect the annualized amount for the midpoint of a range, at a seven percent discount rate. The population figures reflect annual averages unless otherwise stated. The information in Table 3 is presented as a broad outline with greater detail provided in the ensuing analysis.

BILLING CODE 9111–97–P

Table 3. Summary of Possible Impacts of Main Provisions of the Proposed Rule.

Table 3A. Monetized Estimates (annualized at 7% discount rate (FY 2024 through FY 2033, 2024 dollars)).

Proposed Requirements	Potential Impact
Biometrics Submission Requirement	• Population: 2,488 individuals associated with regional centers, NCEs, and JCEs. • Impact type: Opportunity cost of time and travel expenses to individuals associated with submitting biometrics applicable to the Form I-956H.

regulations/statutes-regulations. Activities subject to Federal securities laws may lead to liability under the statutes and rules administered by the SEC, separately from any requirements of the EB–5 programs.

	• Estimate: $910,000. • Benefit: Operationalizes a requirement of the RIA and equips DHS with identity verification and management.
Staffing Allocation Model	• Impact type: Federal government cost; requested number of new personnel based on the EB-5 staffing allocation model (SAM). • Estimate: DHS hiring and wage cost estimate: $44.76 million. • Benefit: Allows DHS to meet the operational changes needed to support the RIA and associated requirements proposed in this rule.
Increased Site Visits and Audits	• Population: DHS currently plans about 1,000 site visits or virtual checks of new commercial enterprises or job-creating entities annually. • Impact type: DHS intends to conduct stringent program oversight of EB-5 businesses/associated individuals, and the entities could incur some direct and indirect time-related costs applicable to preparation, evidentiary and documentary collection, and interviews. Regional centers may also incur costs associated with outsourcing regional center audits and financial review to third party entities; DHS could incur additional costs applicable to travel and time. Access to the EB-5 program could be revoked if compliance is not met. • Estimate: $1.87 million. Applicable to public (DHS) and EB-5 businesses. • Benefit: Provides increased assurance that regional centers and other program businesses are engaged in appropriate practices; increased virtual checks would create efficiency in determining if initial screening compliance is met, in some cases a physical inspection might not be necessary.
Proposed Rule Familiarization Costs	• Population: 13,568 human resource assistants or attorneys associated with EB-5 businesses. • Impact type: Costs; the Department expects that individuals associated with EB-5 will require time to read and develop an understanding of the rule

	(these costs would generally be one-time costs mostly incurred in the fiscal year the rule publishes). • Estimate: $9.51 million. • Benefit: Not applicable.
Visa Priority Date Retention	• Population: baseline 1,500 I-526 petitions (as of May 1, 2025). • Impact type: Filing fee and time-related costs of filing a new investment petition; investors filing of their own volition would not incur a cost; those filing due to circumstances beyond their control, such as in the case of termination of their affiliated Regional Center, would incur the costs. • Estimate: $3.66 million. • Benefit: Addresses situations in which petitioners may become ineligible through circumstances beyond their control (such as the termination of a regional center) as they wait for their immigrant visa priority date to become current; provides investors with greater flexibility to deal with changes to business conditions.
Regional Center Audits	• Population: 589 annual regional centers. • Impact type: costs to Regional Centers associated with preparing and participating in audits as time related impacts applicable to the Form I-965G PRA audit response burden. Regional centers may also incur costs associated with outsourcing regional center audits and financial review to third party entities; DHS could incur additional costs applicable to travel and time. • Estimate: $1.34 million. • Benefit: Increased assurance that regional centers and other program businesses are engaged in appropriate practices; increased virtual checks would create efficiency in determining if initial screening compliance is met, in some cases a physical inspection might not be necessary.

Table 3B. Unquantified Impacts.

Proposed Requirements	Potential Impact

High Unemployment Target Area Configuration	• Population: number is currently indeterminate; EB-5 Regional Centers and alien investors relying on a high unemployment target area to meet the reduced investment threshold; more specifically, the impacts would be incurred by those that relied on a high unemployment area geography structure that the proposed rule would remove. • Impact type: Unknown; the Department cannot determine if there will be impacts to investments/projects; there could be some time-related impacts due to reconfiguring business plans and economic models; requires target area configurations to generally include census tracts directly adjacent to the project activity. • Estimate: Not estimated. • Benefit: Provides a more reasonable methodology and protocol to accurately gauge job creation estimates to the actual investment project activity.
Regional Center Oversight of Capital and Affiliates	• Population: 547 annually approved Regional Centers.[97] • Impact type: in addition to audits, Regional centers will be required to develop a monitoring and oversight protocol over their affiliated businesses and capital investments; they would likely incur time-related, organizational, and administrative costs associated with setting up the plans and conducting follow on and continued monitoring and oversight. • Estimate: Not estimated. Benefit: Increased regional center monitoring and oversight of the investment offerings, business activities, and job creation of associated new commercial enterprises and job creating activities would provide increased assurance that the ongoing use of the capital complies with all applicable immigration laws, Federal and State

	securities laws, and the terms and conditions of the investments under the regional center.
Combating National Security and Fraud **• Implementing sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N)**	• Population: All Regional Centers and other EB-5 enterprises, as well as individuals connected to them. • Impact type: Unknown; the Department cannot determine exact impacts although there are Regional Centers and individuals that would be subject to increased evidentiary requirements and the additional monitoring and oversight that DHS intends to conduct. It is unknown how many entities and individuals could incur impacts in the form of sanctions, termination from the program, debarment, monied penalties, or other actions. • Estimate: Not estimated. • Benefit: Provides DHS a suite of detection and actionable tools to combat national security threats and fraud pertinent to areas of concern that the EB-5 program has encountered; potential sanctions should act as an incentive for compliance to reduce threats and stand to increase the program effectiveness in creating domestic jobs and increase assurance that the activities of the program align with its true intent.
Clarifying Definitions, Terminology, References, and Procedural Updates Reorganizing the regulatory provisions in a new subpart D.	• Population: All Regional Centers and other EB-5 enterprises, as well as individuals connected to them, would be subject to the changes. • Impact type: There could be time-related, administrative, and organizational costs applicable to updating or revamping investment offerings, business plans, economic models, and other activities to satisfy the extensive number of clarifying definitions and updates DHS is proposing; DHS does not expect changes to investment volumes of area of focus from the extensive number of changes. The timing of some investments could be impacted. • Estimate: Not estimated.

	• Benefit: Provides needed updates and codifies specific language and procedures concomitant to the RIA; Provides clear and transparent guidance for stakeholders concerning DHS requirements and intent for the program.
Changes to job creation estimation methodologies	• Population: Very small number of regional centers and investors. • Impact type: Minimal, some changes to business plans and/or economic models might be necessary. • Estimate: Not estimated. • Benefit: Removes outdated and seldom relied upon approaches to job creations estimation relevant to visitor spending, job-sharing arrangements, and troubled businesses.
Source: USCIS Analysis (Nov. 21, 2025)	

In addition to the summary of potential impacts elucidated in Table 3, DHS offers the OMB A–4 accounting statement in Table 4.

[97] 97 U.S. Citizenship and Immigration Services, ''Approved EB–5 Immigration Investor Regional Centers'' as of February 12, 2025. There are now 547 approved regional centers. See *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 accessed June 2, 2025).

Table 4. OMB A-4 Accounting Statement ($ millions, 2024); Period of analysis: FY 2024 through FY 2033.					
Category	**Primary Estimate**		**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS					
Annualized quantified, but un-monetized, benefits	3%	N/A	N/A	N/A	Regulatory Impact Analysis
	7%	N/A	N/A	N/A	
Unquantified Benefits	• Operationalizes the RIA by enacting required and needed changes to the program. Through extensive clarifying definitions, technical adjustments, procedural updates, new and stringent evidentiary standards, DHS provides a cohesive, reasonable, and transparent set of proposals and operational guidance that can enable the public, private EB-program entities, and other stakeholders to develop a clear understanding concerning eligibility and standards required to participate and maintain compliance in the program; the changes proposed stand to increase the program effectiveness in creating				Regulatory Impact Analysis

	domestic jobs and increase assurance that the activities of the program align with its true intent. • Equips DHS with tools to detect fraud, deceit, intentional material misrepresentation, and criminal misuse, as well as threats to public safety or national security. Provides DHS with a suite of actionable tools, including sanctions that include debarment, suspension, and termination from the program, as well as sanctions that could involve monied penalties, to combat problematic areas that the program has encountered. • Increased regional center monitoring and oversight of the investment offerings and business activities of associated new commercial enterprises and job creating activities would provide increased assurance that the ongoing use of the capital complies with all applicable immigration laws, Federal and State securities laws, and the terms and conditions of the investments under the regional center. • Reforms key economic methodologies applicable to the geographic scope of economic activity and high unemployment areas that increase the reasonableness of how these areas are configured in terms of job creating activity. Removes some outdated and unnecessary approaches to estimating and measuring job creation, while making technical adjustments that would increase the validity of job creation estimation methodology. • Addresses situations in which petitioners may become ineligible through circumstances beyond their control (such as the termination of a regional center) as they wait for their immigrant visa priority date to become current. Provides investors with greater flexibility to deal with changes to business conditions.				
COSTS					
Annualized quantified, monetized, costs	3%	$63.63	$39.90	$87.36	Regulatory Impact Analysis
	7%	$62.10	$38.80	$85.39	
Qualitative (unquantified) costs	• The proposed rule seeks significant increases in the scope of screening, monitoring, documentation, evidentiary standards, recordkeeping, and internal controls to qualify and participate in the program under good standing. There are likely to be time-related, administrative, organizational, and possible direct costs expended to meet these requirements. In addition, the numerous qualifying				Regulatory Impact Analysis

	definitions, procedural changes, and modifications to economic methodologies/job creation estimation would potentially render changes in business plans and economic models that could also generate costs. • Some investors might need to file new petitions due to circumstances beyond their control. For example, DHS might have terminated a regional center associated with the original petition and the regional center is unable or unwilling to take the necessary actions to remain eligible. Investors needing to file a new investment petition not under their own volition would incur the requisite filing fee plus opportunity costs of time. • Some investment projects might not be able to meet the proposed high unemployment geography protocol proposed; while some projects may not move forward, others might be reallocated to a new location or take advantage of a rural/infrastructure set-aside; regional centers and investors could incur expenses due to changing their business plan and other related expenses. • There are likely to be familiarization costs associated with reading and understanding the proposed rule.				
TRANSFERS					
	3%	$0	$0	$0	
	7%	$0	$0	$0	
From whom to whom?	N/A				N/A
Category	***Effects***				***Source Citation***
Effects on State, local, or tribal governments	• As this proposed rule codifies the requirements and set aside for infrastructure projects, there could be some private-public partnership investment projects and beneficial downstream effects to State or local governments.				Regulatory Impact Analysis
Effects on small businesses	• Based on limited data, the Department determines that a majority (at least 87.0 percent) of Regional Centers and almost all new commercial enterprises and job-creating enterprises directly involved in program investment activity would be small; however, there are two caveats to this initial determination: 1) The Department can neither determine distributional aspects of the potential impacts small entities involved in the EB-5				Regulatory Impact Analysis, IRFA

	program; or, how the proposed rule could impact small entities in terms of costs and implications for business/investment activity. 2) The Department has incomplete data concerning certain types of income that EB-5 businesses likely receive, and number and share that are small may be less than that made in our initial determination.	
Effects on wages	• None Expected.	Regulatory Impact Analysis
Effects on growth	• The Department cannot predict if the proposed rule would change either the volume or focus (types of projects, geographic regions, size of capital) of investments. Any such changes could be driven by multiple economic, business, or financial factors exogenous to the changes being proposed. Therefore, we cannot predict if the rule would impact investments and any related job creation and economic growth. However, the Department does not expect that the proposed rule would deter investment or job creation as it in no way regulates or imposes additional requirements on such activity.	Regulatory Impact Analysis

BILLING CODE 9111–97–C

The ensuing impact assessment is organized as follows. Section 2 presents background data and some estimates for investment volumes going forward. Section 3 discusses the impacts, first as pertinent to monetized estimates and followed by unquantified impacts and collates the total impacts of the proposed rule. Section 4 discusses the clarifying changes to definitions and procedural updates, followed by a summary and concluding Section 5. Finally, a small entity analysis is presented in Section 6 appropriate to the Regulatory Flexibility Act.

2. Background and Investment Baseline

DHS is proposing this rulemaking to align its regulations with the EB–5 Reform and Integrity Act of 2022 (''RIA'') signed by the President on March 15, 2022. The preamble reviewed historical and procedural aspects of the EB–5 program and detailed specific justifications for the provisions being proposed along with their legal references. A summary of the parts of the program subject to provisions proposed in the rule are provided in Table 5.

BILLING CODE 9111–97–P

Table 5: Areas of the EB-5 program Subject to Provisions in the Proposed Rule.
Main Changes Proposed Included in the Impacts
• Implementing sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N), to protect the EB-5 program from fraud and threats to national security.
• Implementing priority date retention
• Clarifying eligibility requirements, including new capital investment amounts, duration of investment, job creation requirements, and evidentiary requirements.
• Eliminating the use of repaid bridge financing as a basis to demonstrate job creation in the EB-5 program.
• Determining targeted employment areas (TEAs).
• Implementing audits.
• Adding new definitions.
Other Technical, or Clarifying Changes with minimal impacts
• Reorganizing the regulatory provisions in a new subpart D.
• Establishing procedures for amendment of the petition to remove conditions on permanent resident status for investors associated with a terminated regional center or debarred new commercial enterprise or job-creating entity.
• Explaining the processing of withdrawal requests.
• Clarifying the automatic revocation of petitions for immigrant classification.
• Defining infrastructure projects.
• Implementing the registration process of direct and third-party promoters.
• Establishing enforcement provisions, including monetary penalties, suspensions, debarments, and terminations.

BILLING CODE 9111–97–C

This regulatory impact analysis focuses on data and points of examination that are pertinent to developing quantitative and qualitative potential impacts applicable to this rulemaking (the extensive applicable legal references laid out in the preamble are generally omitted for purpose of brevity).

A person wishing to immigrate to the United States under the EB–5 program files either a Form I–526, Immigrant Petition by Standalone Investor, or a Form I–526E, Immigrant Petition by Regional Center Investor, as described in section D.1 of the preamble. Each individual immigrant investor files a Form I–526/526E petition containing information about his or her investment. The investment must be made into either a NCE within a designated regional center in accordance with the Regional Center Program or a "standalone" NCE independent of a regional center. 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 centers).

Under the Regional Center Program, following a USCIS designation, affiliated investors could submit investment petitions in the concurrent year and in future years, provided the regional center maintains its designation with USCIS. Each year, the stock of approved regional centers represents the previous year's approved total, plus new regional centers designated during the current year, minus those that exit the program either through their own volition or by termination by USCIS in the concurrent year.[98]

In general, DHS databases tracked the NCE associated with each individual investment. Any given NCE could fund more than one investment project. DHS emphasizes that in the years leading up to the RIA, and in FY 2022 when the RIA was implemented, there was a sharp decrease in petitions submitted to the program. However, since FY 2023 there has been a recovery in volumes. Table 6 presents data showing the clear slowdown in filing volumes applicable to EB–5 form types that had predecessors prior to FY 2022 and the recent recovery.

BILLING CODE 9111–97–P

[98] Between FY 2018 and 2022, USCIS terminated 388 regional centers. *See* USCIS List of EB–5 Terminated Regional Centers, "Regional Center Terminations," *https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/regional-center-terminations* (last updated Feb. 1, 2025).

Table 6. Annual Receipts for Fee Paying EB-5 Applicants for FY 2018 through FY 2025.								
Form	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**
I-526 and I-526E*	6,626	4,007	4,062	794	654	2,168	4,894	6,654
I-829, Petition by Investor to Remove Conditions on Permanent Resident Status	3,407	3,803	3,249	3,228	1,241	1,169	4,133	4,394
I-924, Application For Regional Center Designation Under the Immigrant Investor Program	119	76	33	31	1	--	--	--
I-924A, Annual Certification of Regional Center	784	794	694	588	529	--	--	--
I-956, Application for Regional Center Designation (formerly I-924)	--	--	--	--	108	274	165	42
Form I-956G, Regional Center Annual Statement (formerly I-924A)	--	--	--	--	1	312	501	525
Total	**10,936**	**8,680**	**8,038**	**4,641**	**2,534**	**3,923**	**9,693**	**11,615**

Source: USCIS, Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER), PAER0017530 (Apr. 3, 2025), with update via PAER0019467 (Nov. 12, 2025).
Note:
"U.S. Citizenship and Immigration Services has released two new forms under the EB-5 Reform and Integrity Act of 2022, which revised INA 203(b)(5)." USCIS Released New Forms for Immigrant Investor Program, https://www.uscis.gov/archive/uscis-releases-new-forms-for-immigrant-investor-program (Release Date 06/02/2022).
*Form I-526 was named Immigrant Petition by Alien Entrepreneur until November 2019. It was renamed in November 2019 to Immigrant Petition by Alien Investor until 2022 when it was split into the Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor.

BILLING CODE 9111–97–C

As is shown in Table 6, receipts for regional center designation (Form I–924) declined consistently from FY 2018 to FY 2022, and then recovered (Form I–956) in FY 2023 and FY 2024 (Form I–956) before declining in FY 2025. Investor petitions (Form I–526) petitions also declined from FY 2018 to FY 2022, and then recovered its 2018 level fully in FY 2025.[99] There are two mutually related reasons that explain why Form I–956 filings declined leading into FY 2022. First, there was a lapse in the statutory authorization for the EB–5 Regional Center Program from June 2021 until March 2022, so that regional centers were discouraged from filing. Second, during a portion of the lapse duration EB–5 database and system changes did not record some filings.

Table 7 provides data regarding investments reflected by approved Form I–526 petitions during the six-year period FY 2016 through FY 2021. By "investment" here we gauge an approved NCE filing in which DHS has evidence that the full investment was made, and the associated project conducted. But to avoid conflating the term "investment," in Table 7 the number of individual investors is shown as well as the dollar quantity of investment.

BILLING CODE 9111–97–P

[99] In the USCIS data, I–526 filings prior to FY 2022 are recorded as "legacy" filings. In FY 2022 the Form was broken out between legacy filings, standalones, and the new form I–526E. In that year, some regional center investor petitions appear to be captured under both the legacy and I–526E designation, and hence the volume that year may vary from the figure shown.

Table 7. EB-5 Program Investment Volumes (investment amounts in millions, Forms I-526 Approved FY 2016 through FY 2021).[100]

Category	Bracket	Investors	Investment Amount	Category	Shares	
					Investors	Investment Amount
Regional	**Sub-total**	**38,250**	**$19,151.50**	**Affiliated with RCs**	95.1%	93.8%
center	**Non-TEA**	53	$53.00	RC investment non-TEA	0.1%	0.3%
	TEA	38,197	$19,098.50	RC investment in TEAs	99.9%	99.7%
Standalone	**Sub-total**	**1,979**	**$1,277.50**	**Standalone Investment**	4.9%	6.3%
	Non-TEA	576	$576.00	Standalone investment non-TEA	29.1%	45.1%
	TEA	1,403	$701.50	Standalone investment in TEAs	70.9%	54.9%
Total	------	**40,229**	**$20,429.00**	-----	-----	-----

Source: DHS, USCIS, Office of Performance and Quality (OPQ), and INFACT (April 3, 2025).

BILLING CODE 9111–97–C

In Table 7 the investment amount figures reflect only the EB–5 portion of total capital involved. If associated non-program capital was included, then the total investment associated with the program would be higher. As is shown, the estimated program-sourced investment was approximately $20.43 billion over the 6-year timeframe. Overall, a total of 39,600 investors, comprising 98.4 percent of investments, were made into target employment areas (TEAs) and thus qualified for the reduced investment amount ($500,000). The shares of the [number of] investments/projects are generally close to the respective shares of capital for regional centers, but this is not the case for standalones. For the latter, the non-TEA and TEA share of investors was 29.1 percent and 70.9 percent, respectively, which is notably different than their respective investment amounts.

There can be a good deal of variation in program volumes, which can be driven by U.S. economic conditions, global economic conditions and those in certain regions or countries, international capital availability and constraints, and multiple other factors. Technically, all entities (individuals and businesses) associated directly with the program would be covered by the proposed rule. Hence, we report in Table 8 the Forms' titles with the first respective ''sub-column'' denoting the past form number and the second reporting the current form number. USCIS Forms I–526, I–526E, I–956, I–956F, I–956G, I–956H, and I–956K took effect in FY 2022, under an exemption

[100] DHS recognizes that the data provided in Table 7 is dated. However, since volumes have only picked up in the last two years, DHS would only be able to present and evaluate a small window of data. DHS will consider a potential update at the final rule stage.

from the Paperwork Reduction Act (PRA) provided by the RIA.[101] As part of the process to obtain approval from OMB, Office of Information and Regulatory Affairs (OIRA), USCIS published a 60-Day **Federal Register** Notice [102] and 30-Day **Federal Register** Notice [103] for USCIS Forms: I–526, I–526E, I–956, I–956F, I–956G, I–956H, I–956K.

Table 8. EB-5 Program Forms and Average filings (annual, FY 2023 through FY 2025).

Title	Past	Current	Volume
Immigrant Petition by Regional Center Investor	I-526	I-526E	4,448
Immigrant Petition by Standalone Investor	I-526	I-526	274
Amendment to Legacy Form I-526	-----	I-527	----[104]
Application for Regional Center Designation[105]	I-924A	I-956	160
Application for Approval of an Investment in a Commercial Enterprise	----	I-956F	670
Regional Center Annual Statement	I-924A	I-956G	446
Bona Fides of Persons Involved with Regional Center Program	----	I-956H	2,488
Registration for Direct and Third-Party Promoters	----	I-956K	882
Petition by Investor to Remove Conditions on Permanent Resident Status	I-829	I-829	3,232

Source: DHS, USCIS Volume Projection Committee (VPC) (Apr. 15, 2025).

As is reported in Table 8, there are four new forms for which no predecessor form type existed. Table 8 also includes the average annualized receipts for the period FY 2023 through FY 2025, to start with the most recent full FY in which the new forms were effective. The total figures (sum last column) is 12,600, which is the total number of form submissions impacted, although future volumes could vary from those reported as the average of FY 2023 through FY 2025.

3. Impacts of the Major Rule Provisions

a. Impacts by Provision

(1) Staffing Allocation Model

Public sector impacts are expected to accrue to resource costs associated with implementing the RIA, and the intended increases in monitoring, inspections, and compliance. We will account for these as two separate line items. We will first describe the ''inputs'' for the expenses and then how we estimate them for each year over the 10-year period FY 2024 through FY 2033.

The USCIS IPO Staffing Allocation Model (SAM) to implement this rule has a requirement of 229 new personnel; 97 new positions have been authorized, and IPO is seeking approval of 132 more. The exact timing of the hires and paygrades are not fully committed yet, but they have been initialized in FY 2024, take place over four years, and the average paygrade would be a Federal general service (GS) level thirteen (GS–13). We will utilize the following accounting conventions for the expected resource costs. The current (CY 2024) basic salary for a GS–13 Federal civil servant ranges from $88,250 to $115,079.[106] In addition, many DHS employees work in offices outside the National Capital Region, there are 58 Federal locality regions that supplement the basic pay. Analysis of the locality adjustments data from the Office of Personnel Management (OPM) reveals that they follow a positive-right skewed distribution with a median value of 21.6 percent and a mean of 23.5 percent. This type of situation occurs when most of the observations cluster at relatively low values but in which a small number of large values exert disproportionate weight on the mean.

Onboarding new employees generates recruiting and hiring costs. These can include, but are not limited to, job postings, candidate screening, background checks, training, equipment and credential issuance, and other human resource requirements. There can be substantial variation in the cost per hire (based on different skill levels and job titles) but a 2024 report from the employment services firm *Indeed* reports that the cost of hiring for most employers ranged from about $4,000 to $20,000.[107]

DHS accounts for employee benefits by calculating a benefits-burden applicable to Bureau of Labor Statistics (BLS) data detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and

[101] Section 106 of the RIA provided a one-year exemption from the requirements of the Paperwork Reduction Act (44 U.S.C. 35). *See* Public Law 117–103, Division BB, Sec. 106(d) (2022).

[102] 87 FR 54233 (Sept. 2, 2022); DHS Docket No. USCIS–2022–0010.

[103] 87 FR 79343 (Dec. 27, 2022); DHS Docket No. USCIS–2022–0010.

[104] The Form I–527 is not currently in use and is being promulgated in a published notice of proposed rulemaking titled ''U.S. Citizenship and Immigration Services Employment-Based Immigrant Visa, Fifth Preference (EB–5) Fee Rule.'' 90 FR 48516 (Oct. 23, 2025).

[105] Volume includes amendments and initial filings. Currently, the VPC forecast covers the period through FY 2032. For the FY 2033 value, we extended the previous year value out to cover the final year in the ten-year span.

[106] There would likely be some supervisory hires at the GS–14 or GS–15 level and possibly some GS–12 hires, but GS–13 is expected to be the average and most common level. The Office of Personnel Management (OPM) Federal salary tables are found at: U.S. Office of Personnel Management, ''Salaries & Wages: General Schedule,'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2024/general-schedule* (last visited Jan. 2, 2024).

[107] See Indeed, ''What Is the Cost of Hiring New Employees?,'' *https://www.indeed.com/hire/c/info/cost-of-hiring-employees?gad_source=1&gclid=EAIaIQobChMIrdip1OfChgMVgtIWBR0SGgcLEAAYASAAEgLr1vD_BwE&hl=en&aceid=&co=US&gclsrc=aw.ds* (last updated Oct. 31, 2024). Indeed is a web-based subsidiary for the multinational human resources firm, Recruit Holdings Co. Ltd. DHS recognizes that the cost to hire federal employees could vary from the reported amounts, and it is possible that the costs could be lower for some of the positions.

industries. Based on the BLS data relied on, the cost of employee benefits is approximately 42 percent of the cost of wages and salaries for private industry workers, and we augment this multiple to account for higher benefits for federal workers.[108] DHS analysis of data provided by the Congressional Budget Office (CBO) indicates that for workers with bachelor's degrees and higher the average difference between federal and private benefits was 24.3 percent. Therefore, DHS scales the BLS private multiplier by 1.24 to arrive at a federal worker benefits scalar of 1.76.[109] DHS will rely on this burden to estimate the full costs incurred by new federal employees, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, and other benefits.

The human resource costs will involve both the costs of hiring plus the payment in salaries, thereby comprising a flow and stock set up. There is likely to be variation in the inputs, and therefore we provided an estimated range for the SAM costs based on a lower and upper bound. There is, of course, some subjectivity in this estimation, but we believe the approach we developed is transparent and tractable, and its parameters are fully documented. For employment, we base the estimates on the full requirement (229). Based on the pace of hiring, we allocate the hires equally across FY 2025 through FY 2027. For the salary levels described above, we rely on the high and low bound and for hiring costs we utilize the range reported above.

Since 2014, the largest Federal pay raise was 4.6 percent (2023) that comprised a 4.1 percent general salary increase, and a 0.5 percent locality pay adjustment. The smallest Federal pay raise in the same period was 1.0 percent.[110] We rely on these values as the range and assign a uniform locality rate adjustment of 0.5 percent across the board. Since we do not have information on the distribution of USCIS employees with respect to localities, we cannot assign a weighting system to develop appropriate values. Given this constraint, we will rely on the lower and upper quartile values of 18.6 percent and 28.6 percent, in order.

Utilizing the information presented above, DHS sets up a stock and flow accounting system that operates as follows. In each year the total personnel costs are the sum of two parts. First are the hiring costs, calculated as the number of new hires made in a year multiplied by the hiring cost, which is kept consistent each year for the period between FY 2024 and FY 2027 (in years 5 through 10, as hiring is completed, this first sum component will be zero). The second component is the salaries of all hires to date, in which the base salary is adjusted to account for the locality pay, the benefits burden, and the growth rate of salary. The inputs to the estimation technique are summarized in Table 9.

BILLING CODE 9111–97–P

[108] The benefits-to-wage multiplier is calculated as follows: for private industry workers = Total Employee Compensation per hour)/(Wages and Salaries per hour) ($45.65 Total Employer Compensation per hour)/($32.07 Wages and Salaries per hour = 1.4234 ≈ 1.42 (rounded). *See* Bureau of Labor Statistics, U.S. Department of Labor, Economic News Release, ''Employer Cost for Employee Compensation—June 2025,'' Table 1. Employer Costs for Employee Compensation by ownership (Sep. 12, 2025), *https://www.bls.gov/news.release/archives/ecec_09122025.htm.* The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[109] See ''Comparing the Compensation of Federal and Private-Sector Employees in 2022,'' CBO (April 2024); chapter 2, ''Comparison of Wages, Benefits, and Total Compensation in the Federal Government and the Private Sector,'' Table 2.2: ''Federal and Private-Sector Benefits, by Workers' Educational Attainment, 2022.'' The figure of 1.24 is obtained by taking the average of the ratio of federal to private worker benefits for three college degree levels, Bachelor's, Master's, and Professional or Doctorate, in order. The relevant figures are: 31.7, 33.5, 35.1, and 22.0, 26.2, and 35.0, in order. Sourced to: *https://www.cbo.gov/publication/60235#_idTextAnchor024* (Nov. 5, 2025).

[110] FederalPay, ''General Schedule (GS) Pay Raise History,'' *https://www.federalpay.org/gs/raises* (last visited Jan. 23, 2024).

Table 9. Inputs for Estimation of Federal Staffing Allocation Costs.	
Input	**Value**
Low-end bound	Total Hires: 229 Hiring cost years: FY 2024 through FY 2027[111] Hiring cost: $4,000 per hire Initial salary: GS-13 step 1=$88,520 Benefits multiple: 1.76 Salary growth: 1 percent Locality pay adjustment: 18.6 percent Locality pay growth: 0.5 percent
High-end bound	Total Hires: 229 Hiring cost years: FY 2024 through FY 2027 Hiring cost: $20,000 per hire (initial) Initial salary: GS-13 step 10=$115,079 Benefits multiple: 1.76 Salary growth: 4.7 percent Locality pay adjustment: 28.6 percent Locality pay growth: 0.5 percent
Source: USCIS analysis (Nov. 21, 2025).	

The results are presented in Table 10 which shows the two components for each year as well as the totals. We do not actually estimate the mean and rather derive it directly as the mid-point of the low and high estimates.

[111] As of Nov. 3, 2025, USCIS has filled about half the allocated positions.

Table 10. Potential Public Costs Applicable to New Program Hires (undiscounted, 2024 dollars in millions).									
FY	Low-end			High-end			Mid-point		
	Hiring	Salary	Total	Hiring	Salary	Total	Hiring	Salary	Total
2024	$0.23	$9.86	$10.09	$1.15	$13.55	$14.69	$0.69	$11.70	$12.39
2025	$0.23	$20.02	$20.25	$1.15	$28.34	$29.48	$0.69	$24.18	$24.87
2026	$0.23	$30.48	$30.71	$1.15	$44.46	$45.61	$0.69	$37.47	$38.16
2027	$0.233	$41.25	$41.48	$1.15	$62.01	$63.16	$0.69	$51.63	$52.32
2028	$0.00	$41.87	$41.87	$0.00	$64.87	$64.87	$0.00	$53.37	$53.37
2029	$0.00	$42.50	$42.50	$0.00	$67.86	$67.86	$0.00	$55.18	$55.18
2030	$0.00	$43.13	$43.13	$0.00	$70.99	$70.99	$0.00	$57.06	$57.06
2031	$0.00	$43.78	$43.78	$0.00	$74.27	$74.27	$0.00	$59.02	$59.02
2032	$0.00	$44.44	$44.44	$0.00	$77.70	$77.70	$0.00	$61.07	$61.07
2033	$0.00	$45.10	$45.10	$0.00	$81.29	$81.29	$0.00	$63.20	$63.20
10-year Total	$0.92	$362.43	$363.35	$4.58	$585.33	$589.91	$2.75	$473.88	$476.63
Annual Avg.	$0.09	$36.24	$36.34	$0.46	$58.53	$58.99	$0.28	$47.39	$47.66
Source: USCIS analysis (Nov. 21, 2025). *Note: Calculations may not sum due to rounding.									

BILLING CODE 9111–97–C

To provide transparency on how the information in Table 10 is obtained, consider year 1 for the low-end bound. With an exact hiring number of 57.25 employees and a hiring cost of $4,000, the hiring costs for that year would be $229,000. The low-end salary ($88,520) is scaled by a factor of 1.946, which includes the sum of the federal benefits multiplier (.76) and the locality adjustment (.186). The resulting salary per person is $172,260, and at 57.3 hires, year 1 salary costs could be $9.86 million. In year 2 the hiring costs would be the same, but the salary costs per person would be higher, at $174,844, to reflect the salary growth rate of 1.5%. As in year 2 there would be 114.5 personnel, total salary costs would be $20.02 million. The same logic and approach applies to the high-end results, pursuant to the applicable parameters.

As is shown in Table 10, the 10-year undiscounted costs to hire and maintain new employees to administer the program based on the changes in the RIA and the concomitant changes proposed herein could range from $363.35 million to $589.91 million, with a midpoint of $476.63 million.

At present, DHS is not anticipating there to be other direct resource costs. While some training time for current personnel is expected, this training will be ensconced in regular allocated training time. The same holds true for infrastructure and information technology typology. No new buildings, plants, or equipment are currently planned. While some modifications and changes to existing data and reporting programs and systems could be expected, these can largely be absorbed in regular refresher and systems updates allocation. DHS will update any changes in such projections as necessary in the final rule and welcomes public comments concerning public sector impacts.

(2) Submission of Biometrics

DHS has routinely collected biometrics applicable to the former Form I–829, but not for the Form I–526/I–526E or the retired Form I–924/924A as they pertain to regional centers. Therefore, in the past immigrant investors routinely submitted biometrics when they applied for the removal of the conditions on their residence. Under this proposed rule, DHS would still require the submission of biometrics by investors at the removal of conditions stage, though in cases in which DHS

determines additional verification of identity is needed, biometrics could be requested more than once.

DHS will apply routine biometrics submission from persons involved with a regional center, an NCE, and any affiliated JCE, as applicable and as described in the preamble. DHS is not currently planning to require the submission of biometrics from all employees of the regional center-affiliated entities. DHS is planning to routinely include the submission of biometrics with Form I–956H.

The submission of biometrics involves travel to an Application Support Center (ASC) for the biometric services appointment. In past rulemakings, DHS estimated that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours. *See* 78 FR 536, 572 (Jan. 3, 2013). The cost of travel also includes a mileage charge based on the estimated 50-mile round trip at the CY 2025 General Services Administration (GSA) rate of $0.70 per mile.[112] The travel cost is $35.0, which is the per mileage reimbursement rate multiplied by 50-mile travel distance. We estimate that individuals typically spend an average of 1 hour and 10 minutes (1.17 hours) at an ASC to submit biometrics.[113] Adding the ASC time and travel time yields 3.67 hours.

To estimate the time-associated opportunity costs, we need to rely on a wage bound. This is difficult because EB–5 entities can involve complex business activities. However, we assess that generally the entities involved in biometrics submissions are primarily involved in the business of finance and management of their investments.[114] Therefore, we selected twenty occupations from the Standard Occupational Classification (SOC) system that we think reasonably capture the individuals involved in biometrics. These SOC titles and associated BLS mean hourly wages for the detailed occupations are reported in Table 11.

BILLING CODE 9111–97–P

[112] GSA, ''Privately Owned Vehicle (POV) Mileage Reimbursement Rates Effective January 1, 2025,'' *https://www.gsa.gov/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement* (last updated January 20, 2025).

[113] *See* USCIS, Form I–765, ''Instructions for Application for Employment Authorization,'' p. 25, OMB No. 1615–0040 (expires Sept. 30, 2027), *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf.*

[114] *See, e.g.,* INA sec. 203(b)(5)(H)(v), 8 U.S.C. 1153(b)(5)(H)(v) (''a person is involved with a regional center, a new commercial enterprise, any affiliated job-creating entity, as applicable, if the person is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance, or control or use of any funding that was procured under the program'').

Table 11. Occupation Titles and Wages for Potential Individuals that will File EB-5 Forms.

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 Analysts and Marketing Specialists	41.58
Business Operations Specialists, All Other	44.41
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

Source: U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wage Statistics, "National Employment and Wage Estimates." The figures reflect the May 2024 data series, at https://www.bls.gov/news.release/archives/ocwage_04022025.htm. (last accessed Nov. 3, 2025)

BILLING CODE 9111–97–C

The minimum, average, and maximum of the above range are $41.58, $61.91, and $87.86, in order. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent BLS report detailing average total employee compensation for all civilian U.S. workers. DHS estimates the benefits-to-wage multiplier to be 1.46, which incorporates employee wages and salaries and the full cost of benefits, such as paid leave, insurance, and retirement.[115] Therefore, using the benefits-to-wage multiplier, the loaded hourly wage rates are $60.71 $90.39 and $128.28, in order.

At the burdened wage levels advanced in the preceding module, the opportunity costs of time are $222.79, $331.74, and $470.77 in order of low, mid, and high. Adding the direct travel cost ($35.00 yields a per-submission total cost of $257.79, $366.74, and 505.77, in order.[116] Multiplying these total costs by the annual projected volumes (2,488) yields the accountancy for biometrics, as is presented in Table 12. Since the annualized amounts are the same for each FY, for purpose of brevity the single value terms are presented.

Table 12. Quantified Estimates of biometrics Submission costs (2024 dollars in millions)

	Range	Annual amount	10-year amount
Biometrics	low	$0.64	$6.41
	mid	$0.91	$9.12
	high	$1.26	$12.58

Source: USCIS Analysis (Nov. 30, 2025).

As reported, under the current volume projections, the costs to submitters involving the EB–5 program could range about $641,000 to $1.26 million annually, with a midpoint of $912,000.[117]

(3) Priority Date Retention

DHS is proposing priority date retention to address situations in which petitioners may become ineligible through circumstances beyond their control (such as the termination of a regional center) as they wait for their immigrant visa priority date to become current; this provides investors with greater flexibility to deal with changes to business conditions. DHS proposes to allow certain immigrant investors to retain the priority date of an approved EB–5 immigrant visa petition for use in connection with any subsequent filed EB–5 immigrant visa petition on or after March 15, 2022.

Some investors might need to file new petitions due to circumstances beyond their control. For example, DHS might have terminated a regional center associated with the original petition and the regional center is unable or unwilling to take the necessary actions to remain eligible. DHS cannot predict at this time how many investors would refile—either under their own volition or reasons outside their control—but we can provide a proxy metric. There are 1,500 pending legacy Form I–526 petitions as of May 1, 2025 (by comparison, on March 15, 2022, the figure was 13,759). DHS will rely on this figure as a maximum population although the provision will not be limited to legacy filings. DHS believes this figure is reasonable because the population subject to the provision will remain relatively limited, especially as legacy Form I–526 petitions continue to move from pending to closed. DHS will evaluate this figure again at the final rule stage and welcomes public input concerning it.

DHS cannot assess exactly how many investors might be subject to the priority date provision, but for transparency and

[115] The benefits-to-wage multiplier is calculated as follows: (civilian) Total Employee Compensation per hour)/(Wages and Salaries per hour) ($48.05 Total Employer Compensation per hour)/($33.02 Wages and Salaries per hour = 1.4551 ≈ 1.46 (rounded). *See* Bureau of Labor Statistics, U.S. Department of Labor, Economic News Release, ''Employer Cost for Employee Compensation—June 2025,'' Table 1. Employer Costs for Employee Compensation by ownership (Sep. 12, 2025), *https://www.bls.gov/news.release/archives/ecec_09122025.htm.* The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[116] For many form types, there are statutory or discretionary waivers to the biometrics services fee. In this case, such waivers are not likely and therefore the estimates assume all persons associated with the Form I–956H that will submit biometrics will also incur the service fee.

[117] The increase in biometrics collection pertinent to the Form I–956H is not expected to generate substantial public sector burdens. The ASC contract and concomitant pricing structure is designed to be flexible in processing of varying benefit request volumes. Specifically, the ASC contract is aggregated by USCIS District, and each USCIS District has five volume bands within its pricing mechanism. (A USCIS district is a geographical area in which a district or field office provides immigration services in that area.) The pricing strategy takes advantage of economies of scale in that larger biometric processing volumes have smaller corresponding biometric processing prices. Prices could only rise on average if the volume of biometrics reaches a certain level, and the projections for additional biometrics made herein is nowhere close to reaching the band ceiling.

completeness it will provide a range of monetized cost impacts. DHS will bound the population at zero and the maximum of 1,500, presented above. While a figure benchmarked to zero is not informative, it allows DHS to calculate a midpoint, which may be more realistic.

The filing fee for Form I–526/526E is currently $3,675. Additionally, a separate payment of $1,000 is required via the RIA for aliens filing the I–526E.[118] The time-related burden is 1.65 hours.[119] At the hourly wages developed in the above module, the opportunity costs of time range from $100.17 to $211.65. Adding the maximum (applicable to the Form I–526E) filing fees of $4,675 yields costs per submission that could range from $4,775.17 to $4,886.65. At the maximum population (1,500) the high-end cost per submission yields a monetized estimate of $7.33 million, and the midpoint of this maximum and zero is $3.66 million. As stated, DHS cannot predict how many investors might be impacted by the retention provision and invites public input on the subject.

DHS assumes that most of the priority date retention cases would be incurred in the first year of the rule, but since it is possible for investors to utilize this provision in the future, we extend the impact to all years to provide a maximum annual estimate and invite public input on this provision.

(4) Rule Familiarization

DHS expects that there will be familiarization costs associated with reading and reviewing this rule. While DHS cannot make precise estimates of such costs, we will provide a possible range based on several factors. For a wage range, DHS assumes that the rule would be reviewed by human resource assistants within a company or attorneys. The mean wage for a Human Resources Assistant (non-payroll and time keeping) is $24.50 and the fully loaded wage rate is $35.77. On the high end, the average hourly wage for lawyers is $87.86, and for outsourced attorneys, we utilize a higher multiplier of 2.5, which yields an hourly rate of $219.65.[120]

According to the research entity *Wordsrated,* adults read between 200 and 300 words per minute on average.[121] The current draft comprises approximately 107,340 words, which would generate readings times of between 357.8 and 536.7 minutes, which translate to 5.96 and 8.95 hours. At the low-end time (5.96 hours) and low-end wage ($35.77 for a Human Resource Assistant), the familiarization cost per case could be $213.31 and at the high-end wage ($219.65 for an outsourced attorney) and time (8.95 hours), the familiarization cost could be $1,964.77. To monetize the impact DHS assumes that in the first effective year of the rule, existing and new entities would review the rule, while in subsequent years, only new entities would review it. There are currently 589 designated regional centers, 3,040 NCEs, and 1,948 JCE, for a total of 5,577 current businesses. For future entities, we can rely on the annual volume of regional centers (160, Table 8) and NCEs proxied by the Form 1–526 and I–526E (4,772, Table 8, derived). DHS cannot predict the volume of JCEs, and there is not a one-to-one mapping between any two of regional centers, investors, NCEs, and JCEs; however, if we rely on the current ratio of JCEs to NCEs (1,948/3,040 = 1,948 = .641), we can extrapolate to projected NCEs to obtain a figure of estimated of 3,059. Drawing on the above figures, in the first year of rule 13,568 entities would incur familiarization costs while in other years 7,991 would incur such costs.

Based on the volumes and range for the per-entity costs, in the first-year monetized rule familiarization costs could range from $2.89 million to $26.66 million, with a midpoint of $14.78 million. In other years the costs could range from $1.70 million to $15.70 million, with a midpoint of $8.70 million. DHS recognizes that the range provided is large, but presents it based on likely variation in the factors utilized and solicits public input on rule familiarization costs.

(5) Audits and Site Visits

With the increased requirements specified by the RIA, DHS is proposing numerous criteria to create sufficient incentives for EB–5 business entities to meet compliance standards. While the Department believes that regional centers are best equipped to establish their own best practices to ensure monitoring and oversight necessary to ensure project success and a continuing designation as a regional center, DHS is planning an expansion of audits and site visits in both number, frequency, and scope. The proposed rule would allow USCIS to perform a site visit to any designated regional center after providing at least 24 hours of notice and to any new commercial enterprise or job-creating entity at any time. *See* proposed 8 CFR 204.429. In addition, on or after March 15, 2024, USCIS must conduct a site visit to the relevant new commercial enterprise or business location identified in the regional center application before adjudicating any associated petition to remove conditions (where the petition to remove conditions is based on an underlying petition for classification filed on or after enactment of the RIA). *Id.*

DHS proposes that such a site visit may be conducted in-person, or, at USCIS' discretion, through web or teleconferencing means in coordination with the new commercial enterprise and job-creating entity. For purposes of RIA, site visits may include a review of open-source, commercial or proprietary databases to verify evidence submitted to USCIS by the petitioner. The proposed regulation also states that if USCIS is unable to verify facts related to an investment or particular investment offering (project), including due to the failure or refusal of an entity participating in the EB–5 Program to cooperate in a site visit, then the lack of verification of pertinent facts, including from failure or refusal to cooperate, may result in termination of a designated regional center or debarment of a new commercial enterprise or job-creating entity that is the subject of a site visit. DHS believes that the expansion of site visits would create incentives to meet compliance and there are costs expected to the public sector.

DHS cannot predict with accuracy the scope of the costs applicable to increased regional center audits and site visits of project locations. However, we can provide some limited data and qualitative discussion to inform situational awareness for the public based on existing information from the Administrative Site Visit and Verification Program that began in 2009.

---

[118] See G–1055, USCIS Fee Schedule, Form I–526E, Immigrant Petition by Regional Center Investor, at *https://www.uscis.gov/g-1055?form=i-526e.*

[119] See Form I–526E form instructions at: USCIS, Form I–526E, ''Instructions for Immigrant Petition by Regional Center Investor'' OMB No. 1615–0026 *(expires Mar. 31, 2027), https://www.uscis.gov/sites/default/files/document/forms/i-526einstr.pdf.*

[120] See Final Small Entity Impact Analysis, ICE ''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,* page G–4.

Calculation: The average hourly wage for Lawyers, $87.86 The wage reflects the May 2024 data published by the U.S. Department of Labor, BLS National Occupational Employment and Wage Estimates Release at: May 2024 National Occupational Employment and Wage Estimates (*bls.gov*). *https://www.bls.gov/news.release/archives/ocwage_04022025.htm.*

[121] See Wordsrated, ''Reading Speed Statistics,'' by Dimitrije Curcic (Nov. 8, 2021), at: *https://wordsrated.com/reading-speed-statistics/.*

From FY 2016 through FY 2021, we analyzed site visit records for 438 physical site visits to entities associated with regional centers and stand-alone entities (the standalones comprised both NCEs and JCEs but are not uniquely parsed out in our data). The visits were conducted by officers assigned to the USCIS Field Operations Directorate. Review of evidence and related administrative effort is conducted by IPO office staff as well as USCIS Fraud Detection and National Security Directorate personnel. Most of the visits were performed by one officer, but a little less than a third (31.8 percent) involved two officers and a small share (2.7 percent) were conducted by three officers. The time spent during each visit involves the commute time to and from the site, plus the time spent on-site conducting the visit. The average time spent was 14.8 hours (in total, for all officers involved) and the median time was a little lower at 12.6 hours and ranged substantially from about 2.0 to 68.0 hours.

It is important for DHS to emphasize that all site visits were based on a random process—in no case was there a predication sourced to evidence, data, or the outcome of adjudications applicable to the visited entities. In the records analyzed, the data captured the general outcome of the visit in terms of whether the entity was ''operating as expected'' or ''not operating as expected.'' Table 13 presents the breakdown of the two entity types and broad outcome.

Table 13. Contingency Table for EB-5 Site Inspections (FY 2016 through FY 2021).

Entity	Operating as expected	Not operating as expected	Total
Regional Center	192 (71.9%)	75 (28.1%)	267 (61%)
Stand Alone	93 (54.4%)	78 (45.6%)	171 (39%)
Total	**285 (65.1%)**	**153 (34.9%)**	**438 (100%)**

Source: USCIS analysis (Dec. 14, 2023).

Generally, a determination of ''operating as expected'' sources initial compliance based on the site visit. As is shown, a little less than three-quarters (71.9 percent) of NCEs associated with regional centers were compliant while a smaller share of those associated with stand-alone entities were, at just over half (54.4 percent). Overall, about two-thirds were deemed initially compliant.[122]

Once the visit is completed, the findings, which can involve interview notes and transcripts, photographs, document retrieval or copies of documents, and officer input, are reviewed by a supervisory immigration services officer who may share the findings with additional management for decisions on courses of action to take, if any. On average, it took 73 days for the total process—from the date of the visit to a supervisory determination concerning the potential need for further action. We do not have metrics of the total time spanning the visit to when actions, if taken, were completed.

In the future, DHS expects to conduct at least 1,000 site visits to NCEs and JCEs annually to include more virtual visits and direct participation from IPO staff in physical project site visits. Approximately half of these visits to NCEs are currently being done virtually. In FY 2021, DHS began a process of virtual checks and audits of program entities. In that year, 183 virtual checks of NCEs were conducted of which 70, or about 38.0 percent, resulted in a determination of compliance. While the virtual screenings were also random, those determined to be compliant were deemed to not need a physical site visit. In FY 2024, 965 site visits were conducted at NCEs, 599 (62%) of which were completed virtually. Going forward, DHS will still rely on a randomized process for some site visits but will expand its use of virtual initial checks to screen for initial compliance that can be utilized to determine that a physical site visit is generally not required.

As it relates to the expanded use of audit and site visits, there will be public sector costs and costs to EB–5 businesses. DHS does not have sufficient data and information to make definitive estimates of the impacts but can provide a potential range for some of them. Foremost, the expansion will create the need for more personnel and training (such as interview techniques), and additional costs applicable to records keeping and review. We do not account for these separately because they would be generally embodied in the staffing model costs estimated in an above section. However, it is reasonable to account for the time and travel of DHS personnel as an impact. Based on the data DHS analyzed we will utilize a high-low range from several inputs and derive a midpoint directly from it. From the data, DHS believes it is reasonable to utilize the lower and upper quartile figures for the commuting time and onsite time for officers. The total commuting time is 1.0 and 3.5 hours, in order, and the average commuting speed is 25.51 miles per hour,[123] which generates mileage of 25.51 and 89.29, in order. At the GSA POV rate of .70 per mile, direct travel costs are $17.86 and $62.50 in order.

The range of total officer hours per visit is 2 to 7.2. Based on the pay range for a GS–13 officer at the higher federal benefits multiplier, loaded annual earnings of $172,260 and $223,926 yield hourly rates of $82.82 and $107.66, in order at 2080 annual hours.[124] The resulting costs of time could range from $165.63 to $775.13, which when added to the direct travel costs yield public sector costs per inspection that could range from $183.49 to $837.63. As DHS plans more virtual inspections, we bound the number of site visits from 500 to 750. At this range the public sector costs applicable to physical site visits

[122] One regional center visit was marked as ''no contact,'' which we included not operating as expected.

[123] U.S. Department of Transportation, Federal Highway Administration, National Household Travel Survey (2022). Source: Table 7–4, ''Commute Patterns by Mode of Transportation,'' report dated Jan. 2024, available at the following portal: *https://nhts.ornl.gov/*. The figure utilized applies to CY 2022 and reflects all modes of transportation for both rural and urban areas.

[124] The low-end salary was developed in the above staffing model; to recapture, it is the low-end GS-13 salary ($88,250) scaled by a factor of 1.946 to account jointly for federal worker benefits and locality pay.

could range from $91,746 to $628,222 annually, with a midpoint of $359,984.

For the entities visited, there are likely to be impacts as well. Foremost, there could be time and resources expended to prepare and organize documents for the visits. There could be an impact to income and productivity if operations receive a notice of noncompliance as a result of the site visit. DHS utilizes the PRA response burden for site inspections of 16.0 hours, which at 1,000 annual inspections at the wage range of $60.71 to $128.28, yields cost of $971,309 to $2,052,410. Adding the public and private costs yield a range from $1,063,055 to $2,680,631, with a midpoint of $1,871,843.

Based on the PRA response for the Form I–956G audit, at 24 hours, we estimate a cost to a regional center for the audit. At 589 approved regional centers, under the assumption that all regional centers could be audited each year, the low-end cost of audits could be $858,151, which is the number of audits (589) multiplied by the low-end wage ($60.71) and multiplied by the burden (24 hours). The high-end figure calculated along the same lines could be $1,813,304, with a midpoint of $1,335,728. DHS notes these costs could be higher if a regional center hires an auditor. USCIS requests comments on the costs of a site visit to a regional center.

b. Unquantified Impacts

(1) Infrastructure and Rural Projects

The RIA reserves two percent of EB–5 visas available annually for investments in qualifying infrastructure projects. DHS generally expects qualifying infrastructure projects to involve the maintenance, improvement, or construction of any physical assets that are designed to provide or support services to the general public through projects in sectors generally identified by relevant laws, regulations, and executive orders, including aviation, broadband internet, drinking water infrastructure, electricity transmission, energy production and generation, pipelines, ports (including navigational channels), stormwater and sewer infrastructure, surface transportation (including roadways, bridges, railroads, and transit), and water resources projects. *See also* proposed 8 CFR 204.401, *Infrastructure Project.* DHS cannot predict how many investments will involve infrastructure projects. There may be some additional costs incurred by applicants in gathering and preparing documentation to support the evidentiary requirements appropriate to the criteria set forth in the preamble.

Additionally, 20 percent of the EB–5 immigrant visas otherwise available in any given fiscal year are reserved for investors in a rural area. The set asides may create incentives that could stimulate investment into rural and infrastructure projects, which would benefit areas that may be lacking capital investment. Currently DHS has no way of estimating the scope of such impacts and welcomes public input on the subject.

(2) High Unemployment Areas

Before the RIA, DHS had historically relied on State government entities to identify a high unemployment area and provide certification to an immigrant investor for submission to USCIS that the area qualified as a high unemployment area. The RIA now limits the high unemployment area designation determination to DHS. DHS proposes that USCIS would designate an area as a high unemployment area during the adjudication of the regional center's project application, or the adjudication of a standalone investor's EB–5 immigrant visa petition, as appropriate. The RIA provides that a high unemployment area may consist of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business (the ''project tract(s)'') if the weighted average of the unemployment rate [125] for the tract or tracts is at least 150 percent above the national average. If the project tract(s) do not independently qualify under this analysis, a high unemployment area may also consist of the project tract(s), along with any or all additional tracts that are directly adjacent to the project tract(s), as long as the weighted average of the unemployment rate for all of the tracts in the identified area is at least 150 percent of the national average when compared using the same labor force employment measure for the census tract(s) and the national average rate.

DHS cannot determine the proportion or number of projects concomitant to high unemployment areas that would not have met the proposed requirements. Such data or information is not currently available in a manner that can be queried for a valid statistical analysis. If a project could not meet the proposed criteria, several possibilities exist. Foremost, the project may not be undertaken. Second, the project might be relocated to a different location that does qualify as a high unemployment area. Third, the project may be allocated to a non-high unemployment area and be subject to the standard investment amount as opposed to the reduced one. Fourth, the project might be allocated to a different type of area or project-type—rural or infrastructure—that would qualify for the reduced investment amount. DHS notes that at present, it has begun seeing a shift into infrastructure projects and a slight shift out of high unemployment area projects, though it cannot provide data specific to these effects at present.

(3) Sanctions

DHS proposes regulatory provisions providing for the imposition of various sanctions, including suspensions, terminations, and debarments, against a regional center, new commercial enterprise, job-creating entity, issuer of securities offered or intended to be offered to investors seeking classification under section 203(b)(5) of the INA and associated parties, including owners, promoters and others involved with such entities for violations (as discussed in section IV.H.8).

Therefore, DHS proposes that sanctions would be issued based on the severity of the violations of the INA and could include:

1. A Finding of Violation Notice that will provide notification of a violation of law or regulation, such as a cease-and-desist letter, and be included in the relevant USCIS record of proceeding;
2. Monetary penalties equal to not more than 10 percent of the total capital invested by immigrant investors in the regional center's new commercial enterprises or job-creating entities directly involved in such violations;
3. Suspension from participation in the EB–5 program, which may be in whole or in part;
4. Termination of a regional center's designation;
5. Debarment from participation in the EB–5 program for the regional center, new commercial enterprise, or job-creating entity; and
6. Debarment from participation in the EB–5 program for one or more persons associated with the regional center, new commercial enterprise, or job-creating entity.

Under the proposed rule, USCIS may take reasonable actions to collect information regarding a potential or suspected violation, to pursue remedial action, to deter future violations, and to ensure ongoing compliance with the EB–5 program before issuing a sanction. *See* proposed 8 CFR 204.431(e). For example, USCIS may issue warning letters when it becomes aware of

[125] The weighted average is obtained utilizing the total actual labor force population of each tract.

evidence of false statements, the involvement of ineligible individuals, impending actions taken by securities regulators, or the failure to pay required fees to avert or correct compliance concerns. The letter would also include any proposed sanction if the person or entity does not remedy the violation. Upon receipt of a sanction notice, the affected party could take action to comply with the sanction notice or file a motion to reopen or reconsider or appeal any final determination to the Administrative Appeals Office.

Sanctions would generate costs to EB–5 entities, and there could be public sector costs involved in preparing, developing notices, and carrying out sanctions against EB–5 entities. The impact to EB–5 entities could sustain a direct and indirect component. Monetary sanction could pose a direct cost, while other sanctions could result in projects and investments being deferred or forgone. In addition, appeals of sanctions would incur time related preparation and administrative costs. DHS cannot predict how many EB–5 business entities are likely to incur sanctions, and the extent of any such sanctions. On the one hand, DHS cannot utilize compliance, audit, and site visit data to estimate sanctions; a finding of noncompliance or a problem of some type does not automatically generate a sanction, as entities could have time to remedy the infraction. Second, the potential for sanctions may provide an incentive for compliance.

DHS is seeking public input on the sanctions as it relates to costs, other impacts, and the appeal process.

(4) National Security and Fraud

The RIA codifies reforms designed to enhance the integrity of the Regional Center Program and prevent fraud and abuse that have plagued the program. It provides vital integrity and national security reforms to the EB–5 program to better guard against abuse and promote program integrity. The RIA establishes new requirements of regional centers, NCEs, JCEs, and petitioners, and provides USCIS additional authorities that will allow USCIS to mitigate the risks the EB–5 program has encountered.

Specifically, the RIA provides new discretionary authorities to deny petitions, applications or benefits and revoke prior approvals if there is a threat to public safety or national security or a benefit request under the EB–5 program is based on or involves fraud, deceit, intentional material misrepresentation, or criminal misuse. These authorities provide more tools for DHS to act on petitions or applications that involved threats to public safety or national security. Before the RIA, USCIS could not always timely terminate a regional center actively engaged in fraud to prevent larger losses to immigrant investors and bolster the ongoing integrity of the EB–5 program. The RIA now provides statutory authority for USCIS to deny or revoke applications, petitions or benefits under the EB–5 program (including termination or debarment), as applicable, if any participant in the EB–5 program presents any public safety or national security threat to the United States or is, or has, engaged in fraud, deceit, intentional material misrepresentation, or criminal misuse.

Under this rule, for example, if USCIS determines that a person is acting on behalf of an authoritarian government or is, or has been, a member of, or affiliated with a Communist or any other totalitarian party (or subdivision or affiliate thereof), foreign or domestic, USCIS could deny, revoke, terminate or debar as applicable under the INA. Likewise, if USCIS determines, for example, that an immigrant investor or any other person involved with a regional center who, by fraud or willfully misrepresenting a material fact, seeks to procure, has sought to procure, or has procured, an immigrant visa or other documentation, such as in connection with an application for designation as a regional center, USCIS could deny, revoke, terminate or debar as applicable under the INA. With the new authorities provided by the RIA, DHS is proposing that USCIS may make a determination that a petition, application, or benefit request poses a threat to the public safety or national security of the United States with respect to any petition, application or benefit under the EB–5 program including those filed before the enactment of the RIA.

As a result of any such determination, USCIS would deny or revoke the approval of any petition, application, or benefit request, terminate the permanent resident status of an immigrant investor, whether conditional or not, and terminate and permanently debar any regional center, NCE, or JCE from participation in the Regional Center Program. In addition, USCIS would bar any person associated with these entities terminated from participation in the Regional Center Program if the person was a knowing participant in the activities that led USCIS to make the determination. Importantly, these determinations would apply to any application or petition submitted either before or after the enactment of the RIA. DHS believes the RIA provides USCIS the ability to remove individuals or organizations that are currently, or were previously, involved in the EB–5 program to preclude their ongoing involvement, where necessary. DHS believes the RIA allows USCIS to act when it is in the interest of national security, or the integrity of the EB–5 program to do so.

(5) Monitoring and Oversight

The RIA requires an entity seeking designation as a regional center to include with its proposal a description of the policies and procedures that are in place and reasonably designed to monitor its NCEs and any associated JCEs, affiliated or otherwise, to ensure ongoing compliance with all applicable laws, regulations, and Executive Orders of the United States, including all immigration, criminal, and securities laws, as well as all securities laws of the State where any securities offerings will be conducted, investment advice will be given, or the offerors or offerees reside. DHS proposes that an entity seeking designation must submit evidence of these policies and procedures, and that evidence to establish sufficient oversight of the NCEs and any associated JCEs would include documentation of the regional center's internal controls that provide regular review of individual projects and the examination of financial records and any planned use of independent reviews by local third-party accountants or auditors. This evidence could include standard operating procedures developed by the regional center, ongoing audits of the NCEs and associated JCEs or requiring regular reporting and updates from the NCEs and any associated JCEs with which the regional center is offering EB–5 investments. DHS does not want to limit how a regional center can best determine how to oversee and monitor its projects. With the increased compliance requirements specified by the RIA, DHS believes there is sufficient incentive for regional centers to establish their own best practices to ensure monitoring and oversight necessary to ensure project success and a continuing designation with USCIS.

Not only would a regional center need to provide a monitoring and oversight plan as part of the designation application, as explained above, but following designation, the regional center must continue to engage in monitoring and oversight of the investment offerings, business activities, and job creation of associated NCEs and JCEs. This continued monitoring and oversight requirement would ensure that the regional center is continuing to

perform its due diligence with respect to capital investments under its auspices and that pooled capital investments will have a substantive economic impact.

As part of these oversight requirements, DHS proposes that a regional center would be required to establish its own ongoing internal controls to maintain effective control over capital received from regional center investors that provides reasonable assurance that the ongoing use of the capital complies with all applicable immigration laws, Federal and State securities laws, and the terms and conditions of the investments under the purview of the regional center. The regional center would need to submit documentation of any programs of internal controls that provide the regional center with regular reviews of individual projects and examination of financial records and any planned use of independent reviews by local third-party accountants or auditors.

DHS assesses that regional centers would need to devote time and resources preparing, organizing, and operationalizing a monitoring and oversight protocol for its affiliated businesses and investments. As part of such plans, costs may also be incurred from utilization of third-party accountants or auditors. However, DHS believes that the stringent evidentiary and monitoring requirements, along with punitive actions, would provide incentives for regional centers to establish and conduct thorough monitoring of affiliated businesses. DHS has partially quantified impacts associated with compliance, as pertinent to regional center audits, which is one part of the general increase in compliance requirements. DHS solicits public input regarding additional impacts related to monitoring and compliance.

c. Total Impacts of the Proposed Rule

(1) Monetized Total Impacts

DHS has been able to make monetized estimates of the impacts applicable to several proposed actions, which are accounted for as costs. These are presented in Table 14, which first presents undiscounted impacts (Table 14A) followed by the impacts discounted at three and seven percent, in order. (Table 14B). The impacts are presented at a low-end, mid-range, and high-end bound and those applicable impacts to the public sector and to private program entities are parsed out.

BILLING CODE 9111–97–P

Table 14. Monetized Impacts of the proposed Rule (million, FY 2024 through FY 2033).

Table 14.a.i. Undiscounted, low-end.

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact
2024	$10.09	$0.64	$0.00	$2.89	$1.06	$0.86	$15.55
2025	$20.25	$0.64	$0.00	$1.71	$1.06	$0.86	$24.52
2026	$30.71	$0.64	$0.00	$1.71	$1.06	$0.86	$34.98
2027	$41.48	$0.64	$0.00	$1.71	$1.06	$0.86	$45.75
2028	$41.87	$0.64	$0.00	$1.71	$1.06	$0.86	$46.14
2029	$42.50	$0.64	$0.00	$1.71	$1.06	$0.86	$46.76
2030	$43.13	$0.64	$0.00	$1.71	$1.06	$0.86	$47.40
2031	$43.78	$0.64	$0.00	$1.71	$1.06	$0.86	$48.05
2032	$44.44	$0.64	$0.00	$1.71	$1.06	$0.86	$48.70
2033	$45.10	$0.64	$0.00	$1.71	$1.06	$0.86	$49.37
Sum	**$363.35**	**$6.41**	**$0.00**	**$18.24**	**$10.63**	**$8.58**	**$407.21**
Avg	**$36.34**	**$0.64**	**$0.00**	**$1.82**	**$1.06**	**$0.86**	**$40.72**

Table 14.a. ii. Undiscounted, mid-range.

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact
2024	$12.39	$0.91	$3.66	$14.78	$1.87	$1.34	$34.95
2025	$24.87	$0.91	$3.66	$8.70	$1.87	$1.34	$41.35
2026	$38.16	$0.91	$3.66	$8.70	$1.87	$1.34	$54.65
2027	$52.32	$0.91	$3.66	$8.70	$1.87	$1.34	$68.81
2028	$53.37	$0.91	$3.66	$8.70	$1.87	$1.34	$69.86
2029	$55.18	$0.91	$3.66	$8.70	$1.87	$1.34	$71.67
2030	$57.06	$0.91	$3.66	$8.70	$1.87	$1.34	$73.55
2031	$59.02	$0.91	$3.66	$8.70	$1.87	$1.34	$75.51
2032	$61.07	$0.91	$3.66	$8.70	$1.87	$1.34	$77.55
2033	$63.20	$0.91	$3.66	$8.70	$1.87	$1.34	$79.68
Sum	**$476.63**	**$9.12**	**$36.65**	**$93.10**	**$18.72**	**$13.36**	**$647.58**
Avg	**$47.66**	**$0.91**	**$3.66**	**$9.31**	**$1.87**	**$1.34**	**$64.76**

Table 14.a.iii. Undiscounted, high-end

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact

2024	$14.69	$1.26	$7.33	$26.66	$2.68	$1.81	$54.43
2025	$29.48	$1.26	$7.33	$15.70	$2.68	$1.81	$58.26
2026	$45.61	$1.26	$7.33	$15.70	$2.68	$1.81	$74.39
2027	$63.16	$1.26	$7.33	$15.70	$2.68	$1.81	$91.94
2028	$64.87	$1.26	$7.33	$15.70	$2.68	$1.81	$93.65
2029	$67.86	$1.26	$7.33	$15.70	$2.68	$1.81	$96.64
2030	$70.99	$1.26	$7.33	$15.70	$2.68	$1.81	$99.77
2031	$74.27	$1.26	$7.33	$15.70	$2.68	$1.81	$103.05
2032	$77.70	$1.26	$7.33	$15.70	$2.68	$1.81	$106.48
2033	$81.29	$1.26	$7.33	$15.70	$2.68	$1.81	$110.07
Sum	$589.91	$12.58	$73.30	$167.96	$26.81	$18.13	$888.69
Avg	$58.99	$1.26	$7.33	$16.80	$2.68	$1.81	$88.87

Table 14.b.i. 3% discount rate, low-end

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact
2024	$9.80	$0.62	$0.00	$2.81	$1.03	$0.83	$15.10
2025	$19.09	$0.61	$0.00	$1.61	$1.00	$0.81	$23.11
2026	$28.10	$0.59	$0.00	$1.56	$0.97	$0.79	$32.01
2027	$36.86	$0.57	$0.00	$1.51	$0.95	$0.76	$40.65
2028	$36.12	$0.55	$0.00	$1.47	$0.92	$0.74	$39.80
2029	$35.59	$0.54	$0.00	$1.43	$0.89	$0.72	$39.16
2030	$35.07	$0.52	$0.00	$1.39	$0.86	$0.70	$38.54
2031	$34.56	$0.51	$0.00	$1.35	$0.84	$0.68	$37.93
2032	$34.06	$0.49	$0.00	$1.31	$0.82	$0.66	$37.33
2033	$33.56	$0.48	$0.00	$1.27	$0.79	$0.64	$36.74
Sum	**$302.80**	**$5.47**	$0.00	**$15.69**	**$9.07**	**$7.32**	**$340.36**
Annualized	**$35.50**	**$0.64**	$0.00	**$1.84**	**$1.06**	**$0.86**	**$39.90**

Table 14.b.ii. 3% discount rate, mid-range.

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact
2024	$12.03	$0.89	$3.56	$14.35	$1.82	$1.30	$33.93
2025	$23.44	$0.86	$3.45	$8.20	$1.76	$1.26	$38.98
2026	$34.92	$0.84	$3.35	$7.96	$1.71	$1.22	$50.01
2027	$46.49	$0.81	$3.26	$7.73	$1.66	$1.19	$61.13

2028	$46.04	$0.79	$3.16	$7.51	$1.62	$1.15	$60.26
2029	$46.21	$0.76	$3.07	$7.29	$1.57	$1.12	$60.02
2030	$46.40	$0.74	$2.98	$7.08	$1.52	$1.09	$59.80
2031	$46.59	$0.72	$2.89	$6.87	$1.48	$1.05	$59.61
2032	$46.80	$0.70	$2.81	$6.67	$1.44	$1.02	$59.44
2033	$47.02	$0.68	$2.73	$6.48	$1.39	$0.99	$59.29
Sum	**$395.94**	$7.78	$31.26	**$80.13**	**$15.97**	**$11.39**	$542.48
Annualized	**$46.42**	$0.91	$3.66	**$9.39**	**$1.87**	**$1.34**	$63.59
Table 14.b.iii. 3% discount rate, high-end.							
FY	**USCIS staffing**	**Biometrics collection**	**Priority date**	**Rule familiarization**	**Site visits**	**Regional center audits**	**Total impact**
2024	$14.26	$1.22	$7.12	$25.88	$2.60	$1.76	$52.85
2025	$27.79	$1.19	$6.91	$14.80	$2.53	$1.71	$54.92
2026	$41.74	$1.15	$6.71	$14.37	$2.45	$1.66	$68.08
2027	$56.12	$1.12	$6.51	$13.95	$2.38	$1.61	$81.69
2028	$55.96	$1.09	$6.32	$13.54	$2.31	$1.56	$80.79
2029	$56.83	$1.05	$6.14	$13.15	$2.25	$1.52	$80.94
2030	$57.72	$1.02	$5.96	$12.77	$2.18	$1.47	$81.12
2031	$58.63	$0.99	$5.79	$12.39	$2.12	$1.43	$81.35
2032	$59.55	$0.96	$5.62	$12.03	$2.05	$1.39	$81.61
2033	$60.49	$0.94	$5.45	$11.68	$1.10	$1.350	$81.90
Sum	**$489.08**	**$10.73**	$62.53	**$144.56**	**$22.87**	**$15.47**	$745.23
Annualized	**$57.33**	**$1.26**	$7.33	**$16.95**	**$2.68**	**$1.81**	$87.36
Table 14.b.iv. 7% discount rate, low-end.							
FY	**USCIS staffing**	**Biometrics collection**	**Priority date**	**Rule familiarization**	**Site visits**	**Regional center audits**	**Total impact**
2024	$9.43	$0.60	$0.00	$2.71	$0.99	$0.80	$14.53
2025	$17.69	$0.56	$0.00	$1.49	$0.93	$0.75	$21.41
2026	$25.07	$0.52	$0.00	$1.39	$0.87	$0.70	$28.55
2027	$31.65	$0.49	$0.00	$1.30	$0.81	$0.66	$34.90
2028	$29.85	$0.46	$0.00	$1.22	$0.76	$0.61	$32.89
2029	$28.32	$0.43	$0.00	$1.14	$0.71	$0.57	$31.16
2030	$26.86	$0.40	$0.00	$1.06	$0.66	$0.53	$29.52

2031	$25.48	$0.37	$0.00	$0.99	$0.62	$0.50	$27.96
2032	$24.17	$0.35	$0.00	$0.93	$0.58	$0.47	$26.49
2033	$22.93	$0.33	$0.00	$0.87	$0.54	$0.44	$25.10
Sum	**$241.44**	**$4.50**	$0.00	**$13.08**	**$7.47**	**$6.03**	**$272.52**
Annualized	**$34.38**	**$0.64**	$0.00	**$1.86**	**$1.06**	**$0.86**	**$38.80**

Table 14.b.vi. 7% discount rate, mid-range.

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact
2024	$11.58	$0.89	$3.43	$13.81	$1.75	$1.25	$32.67
2025	$21.72	$0.86	$3.20	$7.60	$1.64	$1.17	$36.12
2026	$31.15	$0.84	$2.99	$7.10	$1.53	$1.09	$44.61
2027	$39.92	$0.81	$2.80	$6.64	$1.43	$1.02	$52.49
2028	$38.05	$0.79	$2.61	$6.21	$1.34	$0.95	$49.81
2029	$36.77	$0.76	$2.44	$5.80	$1.25	$0.89	$47.75
2030	$35.54	$0.74	$2.28	$5.42	$1.17	$0.83	$45.80
2031	$34.35	$0.72	$2.13	$5.07	$1.09	$0.78	$43.95
2032	$33.22	$0.70	$1.99	$4.73	$1.02	$0.73	$42.18
2033	$32.13	$0.68	$1.86	$4.42	$0.95	$0.68	$40.51
Sum	**$314.41**	$7.78	$25.74	**$66.80**	**$13.15**	**$9.38**	$435.89
Annualized	**$44.76**	$0.91	$3.66	**$9.51**	**$1.87**	**$1.34**	$62.06

Table 14.b.vi. 7% discount rate, high-end.

FY	USCIS staffing	Biometrics collection	Priority date	Rule familiarization	Site visits	Regional center audits	Total impact
2024	$13.73	$1.18	$6.85	$24.91	$2.51	$1.69	$50.87
2025	$25.75	$1.10	$6.40	$13.71	$2.34	$1.58	$50.89
2026	$37.23	$1.03	$5.98	$12.82	$2.19	$1.48	$60.72
2027	$48.18	$0.96	$5.59	$11.98	$2.05	$1.38	$70.14
2028	$46.25	$0.90	$5.23	$11.19	$1.91	$1.29	$66.77
2029	$45.22	$0.84	$4.88	$10.46	$1.79	$1.21	$64.40
2030	$44.21	$0.78	$4.56	$9.78	$1.67	$1.13	$62.13
2031	$43.22	$0.73	$4.27	$9.14	$1.56	$1.06	$59.98
2032	$42.26	$0.68	$3.99	$8.54	$1.46	$0.99	$57.92
2033	$41.32	$0.64	$3.73	$7.98	$1.36	$0.92	$55.95

Sum	$387.38	$8.84	$51.48	$120.51	$18.83	$12.74	$599.78
Annualized	$55.15	$1.26	$7.33	$17.16	$2.68	$1.81	$85.39
USCIS Analysis (last updated Jan. 12, 2026).							

BILLING CODE 9111–97–C

As is reported in Table 14, on an undiscounted basis, 10-year average monetized impacts could range from about $40.72 million to $88.87 million, with a mid-range estimate of $64.76 over the 10-year period of FY 2024 through FY 2033. At a three percent discount rate the annualized impacts could range from approximately $39.90 million to $87.36 million, with a midpoint of $63.59 million. At a seven percent discount rate, the annualized impacts could range from approximately $38.80 million to $85.39 million, with a midpoint of $62.06 million. Table 15 also reports total ten-year monetized impacts.

(2) Other Unquantified Impacts

DHS proposes that a regional center would not be able to rely on an economic model that uses visitor spending as an input to demonstrate qualifying jobs. Visitor spending purports to calculate jobs based on increased ancillary spending by visitors and tourists because of the underlying EB–5 project. An example is the increased off-site spending at restaurants, entertainment, and transportation venues purportedly arising from construction of a new hotel. DHS believes that causal linkage between visitor spending and an EB–5 project cannot be demonstrated through economic modeling. Modeling techniques, such as traditional input-output models and regression, cannot delineate the portion of visitor spending increase attributable to an EB–5 project as opposed to other sources or causes. The economic impact of visitor spending cannot be definitively attributed to the EB–5 project, as those resources might have been directed toward other activities or projects that could have generated similar spending increases.

DHS is proposing to remove the troubled business provisions from its regulations. Historically, less than one percent of petitions received by USCIS sought to qualify through investment in a troubled business, and these provisions typically were not used by regional center investors. Further, the troubled business provisions do not further job creation in the sense that an immigrant investor's infusion of capital is not actually used to create new employment in the United States; rather it is contributed to an existing troubled business with existing employment for which investors may claim credit for preserved jobs. Finally, the current definition looks at net loss as a percentage of net worth (requiring a net loss of at least 20% compared to net worth), which is unworkable for a business with a negative net worth (where liabilities exceed assets) as the calculation of a positive net loss compared to negative net worth would result in a negative percentage and would not meet the requirement in the regulatory definition despite a negative net worth by itself being a potentially independent and relevant indicator of the troubled nature of the business.

DHS also proposes to eliminate the job-sharing arrangements from the definition of full-time employment. Few petitions have used such job-sharing arrangements to establish eligibility and those that do frequently are determined to be combining part-time positions rather than using multiple employees to fill one position. Additionally, DHS believes this provision does not further the program's objective of creating full-time employment.

A cost-savings would likely accrue to regional center investors in new commercial enterprises not having to submit multiple project-level documentation to establish his or her eligibility. If USCIS determined the evidence was insufficient, USCIS would request additional evidence from each regional center investor. Since the evidence was at the project level, the investor likely had to coordinate with the regional center to provide a response. DHS proposes to codify its post-RIA practice that, with the establishment of a project application, USCIS will review project-level evidence during the project application adjudication and communicate directly with the regional center if any evidence is determined to be insufficient. Once any issues are resolved at the project level and USCIS adjudicates the project application, USCIS would then rely on that adjudication to determine a regional center investor's eligibility related to the project level-requirements, such as job creation and whether the investment is in a high unemployment area. Since USCIS would not be reviewing multiple, duplicitous documents, there could be a public sector cost-savings as well. DHS invites public input on these types of savings, as the Department cannot currently quantify them.

4. Clarifying Definitions and Procedural Updates

In addition to the proposals that DHS has presented and for which DHS has discussed potential impacts thus far, there are an extensive number of proposals that focus on procedural and technical adjustments to various aspects of the program in order to support the implementation of the RIA. Generally, there are four types of technical modifications. First, there are numerous technical amendments and miscellaneous adjustments to specific words that DHS believes would improve readability of the provisions. Second, there are modifications to references applicable to forms with some updated terminology. These two types of changes are non-substantive and pose no changes to eligibility or evidentiary requirements. While DHS does not believe there will be economic impacts sustained by them, it invites public input concerning any possible impacts

A third type of change applies to codifying, updating, and clarifying definitions and requirements in order to align DHS regulations with specific language and intent in the RIA. DHS believes that impacts will accrue to reading and understanding these codifications but does not account for them separately because they are likely to be ensconced in the already accounted-for (quantified) rule familiarization costs. DHS does not rule out that there may be some time and effort required by EB–5 entities to make changes to documentation to align with the modified definitions but does not expect substantial impacts to investments or job creation from them. DHS cannot estimate these potential time-related efforts and seeks public comment regarding them. A list of the areas subject to definitional updates are provided in Table 15.

BILLING CODE 9111–97–P

Table 15. Summary of Clarifying Definitions and Procedural Updates.

Program areas subject to proposed clarifying definition or procedural updates.	Who/what could be affected and how could they be impacted?
• Capital • Certifier • Comprehensive Business Plan • Direct and Indirect Jobs • EB-5 Immigrant Visa Petition • High Employment Area • Full-time Employment • Actively in the Process of Investing • Person Involved • Job-Creating Entity and Affiliated Entity • Principally Doing Business (Activity Location) • Promotional Material • Regional Center • Separate Account • Qualifying Employee • Duration of Investment • Amending an EB-5 Immigrant Visa Petition • Material Changes • Designation/Renewal of a High Unemployment Area • Regional Center Project Application Process • Amending a Project Application • Removal of Conditions • Derivatives (dependents of immigrant investors) • Investor Withdrawal of Visa Petition	• All individuals and business entities involved with the EB-5 program whose investment activity and business plan embody the listed subject areas would be covered by the applicable definitional changes; however, DHS cannot determine how many such entities would incur impacts. • Impacts: time-related familiarization costs and possible modifications to documents.
Source: USCIS analysis (Jan. 12, 2024).	

BILLING CODE 9111–97–C

The fourth type of technical change changes involves DHS proposing specific requirements and amendments to support actions promulgated in the RIA. It is noted that any of the topic areas listed in Table 16 can incur any or all of the four types of technical adjustments, but this fourth type covers increased reporting or evidentiary requirements (these requirements are outside the scope of monitoring and compliance, as those requirements have been elucidated in their respective section). DHS does not detail all of them, as is done in the preamble, but summarizes them below.

• Extend provisions in the current regulations that require investors in a new commercial enterprise to identify any additional capital invested in the new commercial enterprise and establish that all additional capital is lawful; USCIS would request additional evidence where there is reason to believe that the capital identified has not been derived by lawful means.

- DHS proposes to modify its post-RIA policy to require (rather than suggest) that the investment would also have to remain at risk and available to the job-creating entity on the date the investor files his or her EB–5 immigrant visa petition
- USCIS would be able to require a regional center to submit any additional information to support its annual statement if USCIS determines the regional center's annual statement is insufficient.
- The regional center would also have to submit evidence of sufficient job creation for each regional center investor that will be investing in the new commercial enterprise. This would typically be provided in an EIA showing that the project will create full-time employment for at least 10 qualifying employees per regional center investor within the timeline identified in the comprehensive business plan.
- DHS proposes requiring a regional center to rely on an economically and statistically valid and transparent methodology in which model outputs are reproducible and all the inputs and any adjustments to the model are fully explained in the project application.
- DHS proposes requiring a regional center to submit an amendment to its project application within at least 90 days prior to the first regional center investor in that particular investment offering becoming eligible to file a petition to remove conditions; a regional center must amend its project application within 30 days of the change where there may be an impact to the eligibility of any regional center investors that have already filed their EB–5 immigrant visa petition, as well as any regional center investors that may seek to file an EB–5 immigrant visa petition based on the particular investment offering identified in the project application.
- DHS proposes that a regional center would have to file an amendment if there are changes to the expenditure of capital or capital structure reflected in any business plan submitted in connection with the previously approved project application in response to or otherwise materially impacting the credibility or viability of such plans or successful execution of projects that in turn could adversely impact eligibility for associated investors, including, but not limited to, payments to parties related to the business plan and the loss of financing or addition of outside financing from sources not previously identified in the approved project application or otherwise obtained from any source other than a federally regulated bank or other financial institution.
- DHS proposes to amend the current regulations relating to the required evidence to accompany the petition to remove conditions. The purpose of these proposed changes is to require a more specific list of evidentiary items that, based on the adjudications experience of USCIS, is more likely to be probative in establishing whether the investor has met the eligibility requirements to have the conditions on his or her permanent residence removed
- As part of the evidentiary requirements for regional center investors to remove the conditions on their residence, DHS proposes requiring a regional center to submit an amendment to its project application at least 90 days prior to the first regional center investor in that particular investment offering becoming eligible to file a petition to remove conditions.
- In addition to the above proposal, DHS is requiring more thorough evidence and documentation applicable to sources and lawfulness of capital, geographic scope of economic activity, high-unemployment areas, and job creation estimation methods.

There would likely be time-related and organizational costs that could accrue to updating business plans, economic models, and other activities to align practice with the changes; practitioners would need to expend time and possibly resources to generate and submit documents; there may also be timing changes with respect to when certain petitions or documentation is submitted to DHS; DHS cannot estimate these costs but at present does not expect them to be large; DHS does not expect a change in investment volume due to changes in these areas.

5. Benefits of the Proposed Rule

DHS believes that the proposed rule will generate benefits. It will provide key operational and procedural practices to implement the RIA and enact key and needed changes to the EB–5 program. By including extensive clarifying definitions, technical adjustments, new and stringent evidentiary standards, DHS provides a cohesive, reasonable, and transparent approach towards implementation of the amendments the RIA made to the EB–5 program through this proposed rule and current operational and policy guidance for regional centers, regional center investors, standalone investors, as well as the public and other stakeholders.

The biometrics submission requirement operationalizes a requirement of the RIA and equips DHS with identity verification and management. The increase in USCIS staffing would allow DHS to meet the operational changes needed to support the RIA and concomitant requirements proposed in this proposed rule. Expanded site visits and audits would increase assurance that regional centers and other program businesses are engaged in appropriate practices; increased virtual checks would create efficiency in determining if initial screening compliance is met, in some cases a physical inspection might not be necessary. Proposed changes to the High Unemployment Target Area Configuration will stand to provide a more reasonable methodology and protocol to accurately gauge job creation estimates to the actual investment project activity.

The proposed increase in regional center monitoring and oversight of the investment offerings, business activities, and job creation of associated new commercial enterprises and job creating activities would provide increased assurance that the ongoing use of the capital complies with all applicable immigration laws, Federal and State securities laws, and the terms and conditions of the investments under the regional center. Regional Centers would be directed to develop a screening and monitoring and oversight plan as part of the designation application, whereby the regional center must engage in monitoring and oversight of the investment offerings, business activities, and job creation of associated NCEs and JCEs. The continued monitoring and oversight requirement will ensure that the regional center is continuing to perform its due diligence with respect to capital investments under its auspices and that pooled capital investments will have a substantive economic impact. As part of the oversight requirements, regional centers will be required to establish their own ongoing internal controls to maintain effective control over capital received from investors.

The proposed rule also reforms key economic methodologies applicable to the geographic scope of economic activity and high unemployment areas that increase the reasonableness of how these areas are configured in terms of job creating activity. It also removes outdated and unnecessary approaches to estimating and measuring job creation. DHS cannot currently estimate impacts effects determine if there will be impacts due to these changes but welcomes public comment on how job creation estimates could be affected.

The proposed rule also provides flexibility to investors. It addresses situations in which petitioners may

become ineligible through circumstances beyond their control (for example, the termination of a regional center) as they wait for their EB–5 immigrant visa priority date to become current. Further, the proposed rule also provides investors with greater flexibility to deal with changes to business conditions. Similarly, ensuring the termination of a regional center would not impact the individual's petition date and would allow them to submit a new petition. This would give the potential investors additional security.

As it pertains to national security and fraud, the proposed rule equips DHS with a suite of detection and actionable tools to combat national security threats and fraud pertinent to areas of concern that the EB–5 program has encountered; potential sanctions should act as an incentive for compliance to reduce threats and stand to increase the program effectiveness in creating domestic jobs and increase assurance that the activities of the program align with its true intent. It is also possible that by reducing fraud and malfeasance, this proposed rule may have the potential to encourage more investors by lowering their risk of financial loss.

6. Summary and Conclusion

In concluding this analysis, DHS notes that it cannot predict if this proposed rule will change the volume of EB–5 investments, the total capital associated with such investments, the types of industries and activities that the investment is geared toward, or the geographic focus of investment, and welcomes public comment on all impacts and degree of such impacts. Furthermore, DHS does not know if there will be impacts to domestic capital investment and job creation. EB–5 investment activity can be influenced by domestic and international economic conditions, international capital availability (and constraints), and business trends, as well as immigration-related factors. These ''exogenous'' factors and their influence on the EB–5 program are not possible to predict with accuracy, and it would not be possible to parse them out from any ''endogenous'' factors due to this proposed rule. Additionally, DHS cannot use the volume projections to make inferences concerning job creation. DHS evaluates submitted evidence to determine the reasonableness of estimated job creation from regional centers and investors at the time of filing, and then again at the removal of conditions stage. DHS does not conduct its own parallel modelling to attempt to estimate or measure job creation and compare them to submitted projections.

Foremost, the increased monitoring, oversight, and stringent evidentiary requirements should provide incentives for practitioners to adhere to the true intent and purpose of the program and, along with the suite of punitive actions explained herein, to avoid such detrimental actions explained herein. Second, the rule does not regulate capital or restrict program investment. Rather, it increases judiciousness and evidentiary requirements to provide assurance the program activity is aligned with its true intent in a legal, transparent, and reasonable manner.

As was described in the analysis, in addition to the monetized impacts accruing to the filing of new forms, biometrics submissions, and integrity fund fees, we believe that most of the impacts to EB–5 businesses and involved individuals would accrue to time and effort in two broad ways. Foremost such impacts would be required to satisfy the proposed evidentiary requirements as well as increased compliance and oversight. Second, there could be impacts incurred due to procedural adjustments and methodologies that could require modifications to business plans and economic forecasts. We fully acknowledge that some previous TEA geographical configurations would potentially not meet the proposed changes to the geography, but this is not alone sufficient to suggest investments will decline, as there could be substitution into a different location or into one of the other reduced-threshold categories of projects.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (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.[126]

[126] 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).

DHS has reviewed this proposed regulation in accordance with the RFA. As is explained in the regulatory impact analysis, DHS has monetized certain types of impacts and qualitatively discussed others in which monetized estimates were not possible. In addition, there are an extensive number of proposals involving clarifying definitions, procedural requirements, and technical amendments for which DHS cannot determine how EB–5 entities will be impacted.

There are four types of entities that we 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 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. As a result of this determination, individuals are not covered in this Initial Regulatory Flexibility Analysis (IRFA), and we focus this on the business components pertinent to the EB–5 program.

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

The changes being proposed are necessary to implement the provisions of the EB–5 Reform and Integrity Act of 2022 (referred to as the ''RIA'' in the preceding economic analysis), signed by the President on March 15, 2022, which substantially reforms and adds significant integrity provisions to the EB–5 program for immigrant investors and the associated Regional Center Program. The proposed rule is necessary to clarify and codify how DHS will implement and make operational the changes provided by the RIA and provides additional guidance to the public and stakeholders regarding specific requirements for the EB–5 program.

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

The objective of this proposed rule is for DHS to revise its regulations such that they align with the RIA and address the vacatur of the EB–5 Modernization Final Rule, as is discussed more fully in the preamble. To effectively and clearly revise the regulations based on the provisions of the RIA, DHS proposes to remove and reserve section 204.6 of title 8 of the CFR and create a new Subpart

D to section 204 of title 8 of the CFR.[127] This new subpart will not only provide a clear distinction between the requirements for an EB–5 immigrant visa before and after the RIA, but will also provide DHS with an opportunity to clearly establish regulations for the EB–5 program going forward, including the Regional Center Program, such that stakeholders can determine the eligibility and filing requirements for all aspects of the EB–5 program. The changes being proposed stand to add integrity and transparency to the EB–5 program by providing DHS a suite of tools to combat fraud, to reform key areas of the EB–5 program, and by providing clear guidance to immigrant investors and the associated business entities concerning various aspects of the EB–5 program.

The Secretary of Homeland Security's authority for the regulatory amendments is found in various provisions of the INA, 8 U.S.C. 1101 *et seq.,* Act of October 6, 1992, Public Law 102–395, 106 Stat. 1828, Act of November 2, 2002, Public Law 107–274, 116 Stat. 1923, and the HSA, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing this proposed rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, including establishing regulations deemed necessary to carry out that authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. Specific authority applicable for the proposed regulatory amendments are provided in Section II.B of the preamble.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

A person wishing to immigrate to the United States under the EB–5 program files an Immigrant Petition by Standalone Investor (Form I–526) or Immigrant Petition by Regional Center Investor (Form I–526E), containing information about his or her investment. The investment must be made into either a 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 in a particular geographic area, including prospective job creation and increased domestic capital investment. A regional center will pool the capital of multiple investors together and arrange them typically as investments in NCEs under the purview of the regional center. 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).

We 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. 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 is available, we can provide some criteria for an initial assessment. As noted above, we are not considering investors under the purvey of the RFA. Further, neither the amount of a typical individual investment itself—which is the reduced required minimum investment amount of $800,000—nor the pool of total investment capital, is appropriate to consider as income for this assessment.[128] With these two caveats, we first assess the regional centers and then proceed to other, non-regional center EB–5 businesses.

a. Regional Centers

It is the assessment of the Department that regional centers will generally earn income through three primary mechanisms. First, they charge investors an administrative fee earmarked to expenses for marketing and operations pertinent to the investment offering. It 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 has in the past been standard across regional centers at 10 percent of the individual investment amount; hence we rely on the typical percentage applied to most expected investments of $800,000 to gain an amount of $80,000 per investor as a baseline.[129] This reliance is justified on grounds that almost all EB–5 program activity has historically accrued to investments at the reduced threshold—which qualify for the current reduced investment requirement of $800,000 as opposed to the standard mount of $1,050,000.[130] For the period FY 2016 through FY 2021, there were 38,250 investments made under regional centers of which 38,197, or 99.8 percent, were made at the reduced amount (which was $500,000 over that period).[131]

Second, regional centers may 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, they may earn residual income. They may capture income accruing to differential on the terms of the loans they bundle and what is returned to investors. There may be return on investment in the forms of profit from the end-state economic activity being promulgated by the loans through 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

[127] To review the appropriate version of the regulations, readers should refer to section 204.6 prior to November 21, 2019, the effective date of the EB–5 Modernization Rule.

[128] DHS is operating under the assumption most investment projects will accrue to the reduced amount of $800,000. As is discussed in the preceding economic analysis, from FY 2016 through FY 2021, 97.4 percent of investments were made at the reduced level. 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. As is discussed in the accompanying analysis, the proposed changes to high-unemployment geographies may mean that 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.

[129] In the past the amount has been standard at 10 percent. There is the possibility that this could change, as administrative fees are now required to be paid from lawful funds, but at present, DHS does not have sufficient information on such changes and will update at the final rule stage if such data is available and purports a difference. The Department also invites public input on this topic.

[130] Target employment areas (TEA) 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* (last updated July 28, 2022). As a result of the 2022 Reform Act, the reduced investment threshold also applies to infrastructure investments.

[131] Data source: USCIS C3, ELIS, Infact Database (Aug. 2, 2023).

to regional centers to assess this type of income.[132]

To conduct the IRFA analysis, DHS utilized the 640 [133] currently approved regional centers by running their respective names in subscription based open-source business data providers to obtain income information on them. The search yielded 339 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 are most likely revenue attributed to sales fees, marketing, and other related charges involved, and neither the administrative fees charged to investors or profits on loans or investment. While the sample size of 339 is more than sufficient to satisfy a 95 percent level of confidence pursuant to the population size (640), the results pose a constraint. The NAICS codes are provided at the six-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 to ascertain small entity status.[134] 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 s approved from FY 2020 through FY 2022. From the matches, we culled the results to remove duplicates from the initial search result batch (the 339 of the 640 current regional center s), 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 we will discuss, out of necessity of the constraints faced, we will conduct the assessment along several different and unconventional paths. Hence, Table 16 presents metrics 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 16. Regional Center Revenue Data.

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).

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

[133] U.S. Citizenship and Immigration Services, ''Approved EB–5 Immigration Investor Regional Centers'' as of February 12, 2025. There are now 547 approved regional centers. See *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 accessed June 2, 2025). Data received at the time of drafting the economic analysis reflected in the Administrative Record, USCIS used 640 annually approved regional centers. USCIS will update the numbers, for the economic and small entity analysis, in the final rule stage.

[134] 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 were no additional information provided that could be useful in making an industry inference.

The 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 16, there are also differences between the means and the medians across the two sample-groups.

Having tractable data on sales revenue, we turn to the next income source, administrative fees charged to investors. To conduct this module of the assessment, we queried internal DHS EB–5 data repositories to obtain the number of investors the regional centers acquired during the same timeframe as the above module. To obtain the number of investors, we proxy the number of investors via the number of Form-I–526 filings submitted under the purview of the regional center.[135] Key statistics applicable to investors are provided in Table 17:

Table 17. Statistics for Investors Per-Regional Center.

Group	Full	Restricted
Entities	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.

We multiply the number of investors by a standard $80,000 fee to capture an estimate of total administrative fees by regional center. We add this figure to sales revenue found in the subscription-based data. In addition, USCIS announced, and is collecting currently, the required collection of integrity fund payments, which will resource fraud, misuse, and criminal activity investigations.[136] DHS cannot rule out the possibility that regional centers will pass the integrity fund fees onto the investors as well. For regional centers with 20 or fewer investors, we included the $10,000 fee and for those with more than 20 investors, we added a $20,000 fee. By combining these components, we were able to make a revenue estimate for the sample of regional centers. Of the full sample, we found that 48.5 percent would pay the $10,000 fee and that 51.5 percent would pay $20,000, which based on the annual population of 640, would be 310 and 330 regional centers in order.

Given the data constraints discussed thus far, for robustness we will assess the entities' small entity status along three different methodological approaches. While we have the listed NAICS codes for the 198 classifiable entities, DHS extensively reviewed various NAICS codes and determined that the six-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 under which regional centers operate.[137] By this we mean that whilst the NAICS code provided in the data often apply to the types of downstream projects that the regional centers gear loans towards, the regional centers are usually not involved directly in those activities, and are 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. Of the actual NAICS codes provided for classifiable industries, half accrued to several six-digit codes under the three-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. We will also evaluate the restricted sample based on the actual NAICS code listed in the data. The results are presented in Table 18.

[135] There is a caveat to relying on the number of Form I–526 filings as a proxy for RC investors. Some individual investors may file more than on 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 RC is promulgated. DHS does not know if the RC 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.

[136] The integrity fund was established via the RIA and the Notice of EB–5 Regional Center Integrity Fund Fee. 88 FR 13141 (Mar. 2, 2023).

[137] Where NAICs codes for RCs were provided in the data, some were different than 522310, but we believe that this singular code is appropriate. Whilst the RC loans apply to different types of projects under different industries as a general matter the RC 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/* (last updated: Jan. 16, 2025).

Table 18. Analysis of Regional Center Income.

Group		Full	Full	Restricted
Entities		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 18, 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 $47.0 million under general investment services. However, still the large majority is small at the lower size standard. Based on these data we 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.[138]

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 one year, as investments and fees could be collected over multiple years. However, we abridged all the income to one 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 the impacts that could accrue to EB–5 entities (*i.e.,* not those involving the public sector costs applicable to new personnel) could be about $30.24 million annually (high-end, 7 percent discount rate). In practice, the costs would be higher, but DHS cannot estimate costs applicable to some of the provisions being proposed. DHS does not have an exact way of distributing the quantified costs across regional centers, but under the assumption of an equal distribution, the cost mapped to 640 regional centers would accrue approximately $47,000 per regional center. DHS requests comment on this assumption.

b. Other EB–5 Businesses

For non-regional center businesses involved in investment activity, which we attribute to NCEs and JCEs, we employed out of necessity an unconventional, multi-step approach to the small entity analysis. First, we were 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. We pooled the names of the entities and then randomly selected them. We next ran searches in the subscription-based, open-source business information

[138] USCIS acknowledges that we stated in the 2022/2023 Fee Rule, our analysis found that we could not determine if RCs were large or small. That statement remains accurate. Nevertheless, since then, and for the purposes of transparency, the different determination in this IRFA (based on the data and analysis, and considering the caveat noted above) is driven by two factors: foremost, when the broad 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). In the current databases there are many more listed and there is more data on the ones that are provided in the data; second, USCIS economists reviewed an internal USCIS–IPO database that captures much 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.

providers on 400 of them, to attempt to satisfy a 95 percent level of confidence.[139] 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 those 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.[140]

In addition to the low match-rate, we encountered two additional challenges. Foremost, we faced the same issue as we did for regional centers; over a 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 a fifth (13, or 18.8 percent) were missing either or both of a NAICS code or a revenue figure. These limitations rendered the sample size down to a mere 56 entities.

Given the challenges elucidated above, we relied on an unconventional second-step approach. We simply ran queries against perturbations 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. We then backed out likely regional centers by first culling any results that contained the conjoined terms ''regional'' and ''center.'' We next bolstered this filtering process by further manually eliminating any regional center names either captured in our sample of regional centers, from that above module of this IRFA, or that were otherwise approved in the past but are not currently active. Finally, we 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 business, but are themselves not directly involved in the investment activity of the program. The filtering schema is summarized in Table 19, which shows the stepwise method.

Table 19. Methodology Applicable to Non-Regional Center Business.

	Step 1: Search 400 random pooled NCE/JCE names (FY 2018 through FY 2022)	**+111**
	a) Entities missing sales revenue or NAICS code	- 42
Less	b) Non-classifiable establishments	-13
	Step 1 Subtotal	**56**
	Step 2: Boolean search of program terms[141]	**+885**
	a) Entities missing sales revenue or NAICS code	-28
	b) Non-classifiable establishments	-316
Less	c) Entities with conjoined terms "regional" and "center"	-62
	d) Other explicit RC 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 we 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

[139] 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.

[140] 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.

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

imputing a NAICS codes based (twice) on the single industry description we believe best fits—for these businesses we base the NAICS codes solely on a single trial benchmarked to the reported NAICS code.

Based on the income data applicable to these businesses, the analysis in this Regulatory Flexibility Act, section 6.C.1 through 6.C.2 and the small entity determination is provided in Table 20 below.

Table 20. Small Entity Statistics for Non-RCBs.

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. Conceptually it is possible, for the set of 488 small entities with matched revenue data, to take the monetized impacts that have been estimated, and divide them by the reported income for each entity, to derive a percentage of income the impact could embody. However, as was the case with regional centers, it is not possible to conduct this currently, and therefore DHS cannot say if and how these impacts would impact the related businesses involved. As a result, we cannot determine what the impact to small entities would be.

c. Concluding Remarks

The IRFA that DHS has prepared to support this proposed rule suggests that the large 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, we emphasize that this determination is made on incomplete information, as we do not have data on certain types of income that could accrue to such entities. To pen some context to this caveat, we evaluated 1,402 EB–5 projects in which an investment was conducted through a JCE between FY 2018 through FY 2022, for which we could extract viable data 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 non-program capital. For the blended capital projects, the figures, in order again, are $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.[142] 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 this potential return is 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 we relied on alternative methodologies. As such, the findings are based on samples that are only partially random because the randomized procedures did not yield sufficient sample sizes to conduct the analysis. While we have no reason to assume that there is any reporting or selection bias in the non-sampled portions, we also cannot rule it out completely either. Finally, although the limited data and unconventional approach we have taken supports the determination that most entities impacted by this proposed rule would be small, we cannot speculate on how the regional centers and other businesses entities would be impacted, and if any such impacts would benefit or degrade program investment intensity overall, or its focus on geographic reasons or types of projects. As is described in the associated economic analysis, the impacts of the proposed fee increases will accrue to transfers from requestors to DHS, and the integrity fund fees and potential penalties are accounted for as costs. As was noted in section 6. A 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. We note here that from an accounting perspective, an income flow earmarked to a cost could be considered a net zero-value transaction. But when examined in the context of the RFA, such an

[142] *See,* Deloitte, ''2021 Study of Economic Assumptions,'' pp. 8–9, *https://www2.deloitte.com/content/dam/Deloitte/us/Documents/human-capital/us-2021-study-of-economic-assumptions.pdf* (last visited Nov. 20, 2024).

income 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 incur from the proposed changes that are transferred or passed through to other entities could also affect the small entity determinations for all EB–5 businesses. For example, we have no evidence to suggest, but cannot rule out, that for some entities the applicable fee increases 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.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills

As is detailed in the preamble and regulatory analysis, in order to implement and operationalize the RIA, DHS is proposing numerous reporting, documentary, and evidentiary requirements applicable to business plans, sources and use of capital, job creation estimation, target employment areas, geographic area, and removal of conditions. These requirements could apply to all regional centers, new commercial entities, and job creating entities. In order to make operational key aspects of the RIA, there are will likely be substantial record-keeping and compliance requirements imposed on private sector EB–5 entities.

In addition, audits, site visits, and monitoring and compliance requirements will also likely increase recordkeeping, document initialization and preservation, and time-related impacts applicable to these requirements. DHS has made estimates of some of the impacts applicable to these requirements, such as site visits and regional center audits.

5. 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, overlap, or conflict with the proposed rule. As was explained in the preamble, the RIA provides greater oversight requirements and broader authority for USCIS to take actions against regional centers, including the permanent debarment of individuals from their involvement in the EB–5 program. The RIA also provides new requirements of regional centers that will allow USCIS to act much earlier to mitigate the risks the EB–5 program has encountered, including threat to public safety, national security, fraud, deceit, intentional material misrepresentation, and criminal misuse.

Additionally, each benefit request submitted under this proposed rule in connection with the EB–5 program would be required to demonstrate, as applicable, compliance with the Committee on Foreign Investment in the United States and the Foreign Investment Risk Modernization Act of 2018 (FIRRMA) regulations. The proposed changes are intended to align the EB–5 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 overlapping or duplicative in terms of the Federal regulatory framework.

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

The proposed rule seeks to align the Department's regulations with the RIA. The RIA made numerous changes to the EB–5 program. The purpose of this proposed rule is to specify the operational requirements needed to align DHS regulations and practices with the RIA. DHS did not have discretion in those changes, and therefore the implementation of alternatives for those statutory requirements is outside of the Department's purview. Where the rule is proposing changes to current and new procedural requirements not specifically stated in the RIA, the Department believes those proposed changes stand to provide the appropriate and necessary tools to achieve the level of integrity, appropriateness, security, and reform for the program that DHS is seeking.

Because of the specific requirements of the RIA and the self-enacting aspects of the changes to the EB–5 program made by the RIA DHS believes that the specific requirements it is proposing comprise operational and actional approaches that are most likely to effectively allow it to carry out the RIA with maximum effectiveness. This does not mean that DHS did not consider alternatives in specific areas. For example, as it relates to geographic scope, TEA configurations, and unemployment calculation, DHS evaluated a number of alternative criteria and economic approaches based on how these could be scoped. These included various ways petitioners could possibly (and have in the past) calculated high unemployment and combined census tracts together to form a high unemployment area.

In addition, DHS considered conducting only remote audits as an alternative, but given the objective to evaluate and determine the financial and program performance, the ability to request information or conduct interviews DHS found that in some instances site visits provide a more accurate picture. The specific requirements that DHS is proposing are believed to be the most practical, reasonable and transparent. While DHS did evaluate alternatives, as outlined above, it is not possible to determine a quantified and monetized estimate of the alternatives relative to the proposals stated. The reason is that DHS does not have information or data from regional centers and other EB–5 related businesses concerning the time and resources expended on their economic models and business plans to develop job creation and economic impact estimates, and therefore cannot determine how alternatives might affect such resourcing and expenditure. Although DHS has no information to indicate there would be an increase in burdens, the Department realizes that for some businesses, and on the average, resources might increase as time and effort may be necessary to adapt to the new methods proposed. For example, some entities may require new software or modelling platforms to fulfill the proposed changes.

As is pertinent to increased recordkeeping, compliance, evidence, and monitoring and oversight, including the collection of biometrics, DHS believes the proposals are reasonable and that proposals (alternatives) that reduced the requirements (from a current baseline or those proposed) would pose risks and that the current proposals stand to provide the necessary tools to assure that the program is aligned with its intent of promoting investment and job creation, whilst reducing fraud, malfeasance, and malignance. DHS recognizes that the proposals will have an impact on small entities and that some alternatives could alleviate some of the impacts, but that

the benefit of the proposals will outweigh the costs. DHS invites and will evaluate public comment concerning alternatives to the proposals herein.

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.[143] 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.[144]

This proposed rule does not contain such a mandate, because it would not impose any enforceable duty upon any other level of government or private sector entity. Rather, there may be some private-public partnership investment projects and beneficial downstream effects to State or local governments because the rule would codify the set aside for infrastructure projects. Any downstream effects on such entities would arise solely due to their voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this rule. 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. The requirements of title II of UMRA; therefore, do not apply, and DHS has not prepared a statement under UMRA. DHS has, however, analyzed many of the potential effects of this proposed action in the RIA above.

D. Executive Order 13132 (Federalism)

E.O. 13132 was issued to ensure the appropriate division of policymaking authority between the States and the Federal Government and to further the policies of the Unfunded Mandates Act. This proposed rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect that this rule would impose substantial direct compliance costs on State and local governments or preempt State law. Therefore, in accordance with section 6 of E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. 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, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this proposed rule meets the applicable standards provided in section 3 of E.O. 12988.

F. Family Assessment

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999 (*See* 5 U.S.C. 601 note), enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. *See* Public Law 105–277, 112 Stat. 2681 (1998). After review of the criteria specified in section 654(c)(1) of that act, DHS determined that the implementation of this proposed rule would not negatively affect family well-being, because the rule would implement the EB–5 Reform and Integrity Act, which would not cause the impacts listed in section 654(c)(1).

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

This proposed rule has been reviewed in accordance with the requirements of E.O. 13175, Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with Tribes on a Government-to-Government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. DHS has assessed the impact of this proposed rule and determined that this proposed rule does not have tribal implications that require tribal consultation under E.O. 13175.

H. National Environmental Policy Act

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)[145] establish the policies and procedures that DHS and its components use to comply with NEPA.

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.[146] The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[147]

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.[148]

This proposed rule is limited to amending the regulatory criteria to implement the EB–5 Program

---

[143] 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).

[144] *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.

[145] The Instruction Manual contains DHS's procedures for implementing NEPA and was issued November 6, 2014, *https://www.dhs.gov/ocrso/eed/epb/nepa.*

[146] *See* 42 U.S.C. 4336(a)(2), 4336e(1).

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

[148] Instruction Manual at V.B(2)(a) through (c).

requirements authorized by the RIA. This proposed rule is strictly administrative and procedural because it is only amending DHS's existing regulations for aliens seeking to establish eligibility for an EB–5 immigrant visa and to implement the reformed Regional Center Program.

As discussed throughout this preamble, this rulemaking includes a number of proposed regulatory changes affecting immigrant investors, regional centers, and affiliated individuals and entities. If finalized, this proposed rule is intended to reform and improve the integrity of the EB–5 program by: (1) adding new definitions; (2) implementing sections 203(b)(5)(N) and (O) of the INA, 8 U.S.C. 1153(b)(5)(N) and (O), to protect the EB–5 program from fraud and threats to national security; (3) implementing statutory eligibility requirements, including new capital investment amounts, duration of investment, job creation requirements, and evidentiary requirements; (4) removing troubled businesses as an avenue to establish eligibility; (5) codifying enforcement provisions, including monetary penalties, suspensions, debarments, and terminations; (6) implementing a process to audit regional centers; (7) implementing the RIA's Regional Center Program requirements, including those affecting the designation of a regional center, project applications, redeployment, and bona fides of persons involved with the Regional Center Program; (8) codifying the registration process for direct and third-party promoters; and (9) amending certain processes, such as those for the removal of conditions and withdrawing pending petitions or applications.

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 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, these regulatory amendments are categorically excluded from further NEPA review.

I. Administrative Procedure Act

On March 14, 2025, the Department of State published a notice in the **Federal Register** indicating that ''all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States, constitute a foreign affairs function of the United States under the Administrative Procedure Act, 5 U.S.C. 553, 554.'' *See Determination: Foreign Affairs Functions of the United States* (Feb. 21, 2025), 90 FR 12,200 (Mar. 14, 2025). The APA excepts from all of the requirements of 5 U.S.C. 553 agency rules that involve ''a military or foreign affairs function of the United States.'' *See* 5 U.S.C. 553(a)(1). While DHS believes this rulemaking would fit within the efforts described in this notice such that it would constitute a foreign affairs function of the United States, it is nevertheless publishing this as a proposed rule and seeking public comment under the Administrative Procedure Act.[149]

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (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. Please see the accompanying PRA documentation for the full analysis. The Information Collection table below shows the summary of forms that are part of this rulemaking.

[149] Agencies are not obligated to assert the exception with respect to any particular rule and it is within the agency's discretion to determine whether using notice and comment rulemaking would be beneficial, as it is in this case. *See, e.g., Indep. Living Res.* v. *Or. Arena Corp.,* 982 F. Supp. 698, 744 n.62 (D. Or. 1997) (observing that agencies may voluntarily elect notice-and-comment procedures for a variety of reasons even though not required); *Hoctor* v. *U.S. Dep't of Agric.,* 82 F.3d 165, 171–72 (7th Cir. 1996) (observing that there is nothing in the APA to forbid an agency to use notice-and-comment procedures even if not required under the APA); *cf. Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 101–02 (2015) (holding that agencies may ''grant additional procedural rights in the exercise of their discretion,'' including ''the right to notice and an opportunity to comment'' when not otherwise required by the APA, but also noting that ''reviewing courts are generally not free to impose them if the agencies have not chosen to grant them'' (quotation marks omitted)).

Table 22. Summary of Forms.

OMB Number	Form Number	Form Name	Type of PRA Action
1615-0026	I-526	Immigrant Petition by Standalone Investor	Revision of a Currently Approved Collection
	I-526E	Immigrant Petition by Regional Center Investor	
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	Revision of 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	

1. USCIS Forms I–526; I–526E

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection 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 the information collection instrument.

Comments are encouraged and will be accepted if submitted on or before August 31, 2026. All submissions received must include the 0MB Control Number 1615-0026 in the body of the letter and the agency name. Comments on this 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

(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).

Overview of Information Collection

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

(2) *Title of the Form/Collection:* Immigrant Petition by Standalone Investor; Immigrant Petition by Regional Center Investor.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* 1-526; I-526E; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form 1-526 is used by a standalone investor to petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Immigration and Nationality Act (INA), as amended. The Form 1-526E is used by an investor pooling his or her investment with one or more qualified immigrants participating in the Regional Center Program to petition users forstatus as an immigrant to the United Stated under section 203(b)(5) of the Immigration Nationality Act (INA), as amended. A regional center investor may also use Form l-526E to report any amendments necessary to establish ongoing eligibility if the regional center, new commercial enterprise, or job-creating entity in which the investor has invested is terminated or debarred from patticipation in the Regional Center Program.

(5) *An estimate bf 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 r-526 is 504 and the estimated hour burden per response is 2.40 hours; the estimated total number of respondents for the information collection I-526E is 4,000 and the estimated hour burden per response is 2.27 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 l 0,290 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 $4,954,400.

2. USCIS Form 1-829

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection 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 the information collection instrument.

Comments are encouraged and will be accepted if submitted on or before August 31, 2026. All submissions received must include the OMB Control Number 1615–0045 in the body of the letter and the agency name. Comments on this 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

(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).

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 conditions on his or her 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 4.09 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 5,313 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 $437,330.

3. USCIS Forms I–956; I–956F; I–956G; I–956H; I–956K

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection 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 the information collection instrument.

Comments are encouraged and will be accepted if submitted on or before August 31, 2026. All submissions received must include the OMB Control Number 1615–0159 in the body of the letter and the agency name. Comments on this 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

(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).

Overview of information collection:

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

(2) *Title of the Form/Collection:* Application for Regional Center Designation; Application for Approval of an Investment in a Commercial Enterprise; Regional Center Annual Statement; Bona Fides of Persons Involved with Regional Center Program; Registration for Direct and Third-Party Promoters.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–956; I–956F; I–956G; I–956H; I–956K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Form I–956 is used to request U.S. Citizenship and Immigration Services (USCIS) designation as a regional center under Immigration and Nationality Act (INA) sec. 203(b)(5)(E), or to request an amendment to an approved regional center designated under section 203(b)(5)(E) of the INA, 8 U.S.C. 1153(b)(5)(E). The Form I–956F is used by a designated regional center to request approval of each particular investment offering through an associated new commercial enterprise. The Form I–956G is used by regional centers to provide required information, certifications, and evidence to support their continued eligibility for regional center designation. Each approved regional center must file Form I–956G for each Federal fiscal year (October 1 through September 30) on or before December 29 of the calendar year in which the Federal fiscal year ended. The Form I–956H must be completed by each person involved with a regional center, new commercial enterprise, or affiliated job-creating entity and submitted as a supplement to Form I–956, Application for Regional Center Designation, or other forms where persons are required to attest to their eligibility to be involved with the EB–5 entity and compliance with section 203(b)(5)(H) of the INA, 8 U.S.C. 1153(b)(5)(H). The Form I–956K must be completed by each person acting as a direct or third-party promoter (including migration agents) of a regional center, any new commercial enterprise, an affiliated job-creating entity, or an issuer of securities intended to be offered to alien investors in connection with a particular capital investment project.

(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–956 is 400 and the estimated hour burden per response is 23.29 hours; the estimated total number of respondents for the information collection I–956F is 1,000 and the

estimated hour burden per response is 25 hours; the estimated total number of respondents for the information collection I–956G is 643 and the estimated hour burden per response is 16.18 hours; for the audit requirement associated with the I–956G, the estimated total number of respondents for Compliance Review is 40 and the estimated hour burden per response is 24 hours and the estimated total number of respondents for the information collection during the Site Visit is 40 and the estimated hour burden per response is 16 hours; the estimated total number of respondents for the information collection I–956H is 3,643 and the estimated hour burden per response is 1.47 hours; the estimated total number of respondents for the information collection of Biometrics Processing for Form I–956H is 3,643 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection I–956K is 632 and the estimated hour burden per response is 2.07 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 57,246 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 $2,907,788.

List of Subjects and Proposed Regulatory Amendments

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Adoption and foster care, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure, Immigration.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Proposed Regulatory Amendments

Accordingly, for the reasons outlined in this preamble, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641, 8 CFR part 2.

■ 2. Remove and reserve § 204.6.

■ 3. Add subpart D, consisting of §§ 204.400 through 204.435, to read as follows:

Subpart D—Immigrant Investors and the Regional Center Program.

Sec.

204.400 Scope of this subpart.
204.401 Definitions.
204.402 High unemployment areas.
204.403 Infrastructure projects.
204.404 Filing an EB–5 immigrant visa petition.
204.405 Including a spouse and children on the EB–5 immigrant visa petition.
204.406 Establishing and retaining a priority date.
204.407 Eligibility for approval of an EB–5 immigrant visa petition.
204.408 Initial evidence to accompany an EB–5 immigrant visa petition.
204.409 Decision on an EB–5 immigrant visa petition.
204.410 Amending an EB–5 immigrant visa petition.
204.411 Applying for regional center designation.
204.412 Eligibility for regional center designation.
204.413 Initial evidence to accompany application for regional center designation.
204.414 Decision on regional center designation.
204.415 Duration of regional center designation.
204.416 Amending or withdrawing a regional center designation
204.417 Bona fides of persons involved with the Regional Center Program.
204.418 Regional center annual statements.
204.419 Submitting a project application.
204.420 Eligibility for a project application.
204.421 Initial evidence to accompany a project application.
204.422 Decision on a project application.
204.423 Amending a project application.
204.424 Revocation of a project application approval.
204.425 Separate accounts and fund administrators for regional center investor capital.
204.426 Redeployment of immigrant investor capital.
204.427 Prohibition on purchase of publicly available bonds.
204.428 Direct and third-party promoters.
204.429 Site visits.
204.430 Audits.
204.431 Enforcement.
204.432 Threats to public safety or national security.
204.433 Determinations of fraud, misrepresentation, deceit, or criminal misuse.
204.434 Compliance with FIRRMA.
204.435 Severability.

§ 204.400 Scope of this subpart.

(a) *Alien investors.* This subpart governs the adjudication of an EB–5 immigrant visa petition filed on or after March 15, 2022, by a regional center investor or standalone investor. An EB–5 immigrant visa petition filed before March 15, 2022, is governed by § 204.6, as in effect on November 20, 2019, except where expressly stated in this subpart or where USCIS determines that approval of the petition is contrary to the national interest for reasons relating to threats to public safety or national security of the United States under § 204.432, or where the petition was predicated on or involved fraud, deceit, intentional material misrepresentation, or criminal misuse under § 204.433.

(b) *Regional centers.* This subpart governs the provisions of the Regional Center Program in effect as of May 14, 2022. On or after May 14, 2022, any entity seeking designation as a regional center must file an application for regional center designation on the form designated by USCIS according to § 204.411. All designated regional centers, regardless of designation date, must demonstrate eligibility to participate in the program in compliance with the requirements of § 204.412, either through an application for designation under § 204.411 or through amendment under § 204.416, and comply with all requirements applicable to continuing participation in the Regional Center Program, including submission of an annual statement on the form designated by USCIS according to § 204.418, paying the annual EB–5 Integrity Fund Fee under section 203(b)(5)(J) of the Act, audit requirements under § 204.430, enforcement requirements under § 204.431, public safety, national security, and fraud requirements under §§ 204.432 and 204.433, and FIRRMA requirements under § 204.434.

§ 204.401 Definitions.

For the purposes of this subpart D, the following definitions apply:

Actively in the process of investing means an actual commitment to invest the required amount of lawfully obtained capital no later than the date on which the investor obtains conditional permanent resident status. Such capital may be held in escrow for release to the new commercial enterprise no later than the date on which the investor obtains conditional permanent resident status. This definition does not include mere intent to invest, prospective investment arrangements with no present

commitment, or any investment arrangements that contemplate investment of the required amount of capital into the new commercial enterprise after the investor obtains conditional permanent resident status.

Affiliated job-creating entity means any job-creating entity that is controlled, managed, or owned by any person involved with the regional center or new commercial enterprise as defined in this section.

Capital means cash and all real, personal, or mix of tangible assets (which may include equipment, inventory, or other tangible property) owned and controlled by the investor or held in a revocable living trust of which the investor is the settlor and beneficiary and to which the investor has unrestricted access. All capital is valued at fair market value in U.S. dollars when it is invested, in accordance with Generally Accepted Accounting Principles or other standard accounting practice adopted by the Securities and Exchange Commission. Capital does not include loans secured by the assets of the new commercial enterprise or a personal guarantee of the business debt of the new commercial enterprise.

Certifier means a person in a position of substantive authority for the management or operations of a regional center, new commercial enterprise, affiliated job-creating entity, issuer of securities, or direct or third-party promoter, such as a principal executive officer or principal financial officer, with knowledge of such entities' policies and procedures related to compliance with the requirements of the EB–5 program.

Comprehensive business plan means a credible business plan that describes the nature, timeline, and projected size of the activities being undertaken by the new commercial enterprise or job-creating entity(ies), as applicable, and the use of capital from alien investors to create full-time employment for not fewer than 10 qualifying employees per immigrant investor. A comprehensive business plan must contain, at a minimum, a description of the business and its objectives, its products and services, detailed capital requirements including sources and uses of funds, and sales, cost, and income projections supported by relevant evidence. It must also include, as applicable, a marketing plan, a market and competitive analysis, a list of the required and obtained permits and licenses, the timetable for hiring, the construction schedule of the project, and a detailed overview of the organizational structure, including the relevant experience and expertise of the owners and managers of the new commercial enterprise and job-creating entity(ies).

Criminal misuse means, with respect to a person related to a petition, application, or benefit under the EB–5 program, the improper use of the EB–5 program or capital obtained through the EB–5 program in connection with or in furtherance of a crime.

Debar means to preclude a person's participation in the EB–5 program without the ability for reapplication either permanently or during a specified timeframe as provided under § 204.431(d)(5). Temporarily debarred persons may seek to participate in the EB–5 program again after the period of debarment has ended, such as through the submission of a new application for designation for previously debarred regional centers.

Deceit means, with respect to a person related to a petition, application, or benefit under the EB–5 program, to intentionally lead another person to believe something that is not true.

Direct jobs means employees of the new commercial enterprise or job-creating entity, or, for purposes of job creation under the Regional Center Program in the case of jobs estimated to be created through an economically and statistically valid methodology as being involved in the hands-on production of goods and services or in the construction of facilities that have a necessary role in the relevant capital investment project.

EB–5 immigrant visa petition means a petition on the form designated by USCIS that is submitted by a regional center investor or a standalone investor seeking classification as an immigrant investor under section 203(b)(5)(E) or section 203(b)(5) of the Act, respectively.

Fraud means, with respect to a person related to a petition, application, or benefit under the EB–5 program, to knowingly make a false representation or knowingly conceal a material fact with intent to induce action or deceive.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the Regional Center Program, ''full-time employment'' also means employment of a qualifying employee in a position that has been created either directly or indirectly that is estimated using economically and statistically valid methodologies that estimate full-time equivalent employment.

High employment area means a census tract, or contiguous census tracts, in a metropolitan statistical area where the new commercial enterprise is principally doing business where the national average rate of unemployment is at least 150 percent of the unemployment being experienced in such area when using the same data source and same timeframe to make the comparison.

High unemployment area means an area designated as such by USCIS under § 204.402.

Indirect jobs means, for purposes of jobs estimated to be created through an economically and statistically valid methodology under the Regional Center Program, those jobs estimated to be employed by those supplying goods and services to the source of production, including for the construction of facilities that have a necessary role in the relevant capital investment project, and those estimated to be induced through additional personal spending by both direct and indirect employees whose jobs were created by the relevant capital investment project.

Infrastructure project means a capital investment project in a designated regional center's filed or approved project application, which is administered by a governmental entity (such as a Federal, State, local, or tribal agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the Regional Center Program from regional center investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project.

Intentional material misrepresentation means, with respect to a person related to a petition, application, or benefit under the EB–5 program, a false or misleading assertion about a material fact with the intent to deceive.

Invest means to contribute lawfully obtained capital that is placed at risk in a commercial job-creating activity such that there is a risk of loss and a chance for gain. This definition does not include capital used in primarily passive or non-commercial activity such as the purchase of financial instruments traded on secondary markets, primary market securities that are unrelated to use in commercial activities, or constructing, owning, or operating a personal residence.

Investor means a regional center investor or a standalone investor.

Job-creating entity means any organization formed in the United States for the ongoing conduct of lawful business under local, State, and Federal law, including sole proprietorship, partnership (whether limited or

general), corporation, limited liability company, business trust, or other entity, which may be publicly or privately owned, including an entity consisting of a holding company and its wholly owned subsidiaries or affiliates (provided that each subsidiary or affiliate is engaged in an activity formed for the ongoing conduct of a lawful business) that receives, or is established to receive, capital investment from immigrant investors or a new commercial enterprise under the Regional Center Program and is responsible for creating jobs to satisfy the job creation requirements of § 204.407(e).

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

Person involved means any person that is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions for a regional center, new commercial enterprise, or job-creating entity over the pooling, securitization, investment, release, acceptance, or control or use of any funding that was procured under the Regional Center Program. A person is in a position of substantive authority if the person serves as an administrator, a board member, a general partner, a limited partner, a manager, an officer, an owner, or in a similar position at the regional center, new commercial enterprise, or job-creating entity, respectively. An agent, fiduciary, or representative may be in a position of substantive authority if his or her position in the regional center, new commercial enterprise, or job-creating entity authorizes him or her to provide input or oversight of the use of any regional center investor capital obtained under the Regional Center Program.

Principally doing business means the commercial activities most significantly related to the job creation required under section 203(b)(5) of the Act. An entity is principally doing business in the location where those activities occur.

Project application means an application for approval of an investment in a commercial enterprise submitted by a designated regional center according to the form instructions.

Promoter means a person acting on behalf of the regional center, any new commercial enterprise, an affiliated job-creating entity, or an issuer of securities intended to be offered to investors under the EB–5 program, to advertise, publicize, market, endorse, provide testimonials, or solicit indications of interest in connection with a particular capital investment project under the Regional Center Program. A person may be acting on behalf of a regional center, new commercial enterprise, affiliated job-creating entity or issuer of securities as a promoter through contract, sub-contract, or by virtue of employment or other type of agency relationship with such entities or another promoter.

Promotional material means an advertisement, offering memorandum, endorsement, testimonial, solicitation, direct and indirect communication between investors and promoters, and all other similar materials under applicable securities laws related to offerings under the Regional Center Program. Promotional material may be in any form, including generally accessible websites, newspapers, magazines, print media advertisements, online, television or radio commercials, audio recordings, or any other audio or visual display.

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

Redeploy means to reinvest regional center investor capital for the purpose of maintaining the investor's capital at risk under § 204.426.

Regional center means any entity, public or private, formed in the United States for the ongoing conduct of lawful business that has established eligibility for designation by USCIS under § 204.412.

Regional center investor means an alien seeking to pool his or her investment with one or more additional aliens seeking, or who have obtained, classification as an immigrant investor under section 203(b)(5) of the Act in accordance with section 203(b)(5)(E) of the Act.

Regional Center Program means the program under section 203(b)(5)(E) of the Act.

Rural area means any area that is:

(1) Not within a standard metropolitan statistical area (as designated by the Director of the Office of Management and Budget); and

(2) Not within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States available at time of filing).

Separate account means an insured account maintained by a new commercial enterprise or affiliated job-creating entity, as applicable, in the United States at a federally regulated bank or other financial institution as defined in 18 U.S.C. 20. The account may only contain the pooled investment funds of regional center investors in a new commercial enterprise with respect to a single capital investment project that may, in turn, fund one or more individual job-creating entities. A separate account may not contain funds from any other source, except for interest that may accrue on amounts held in the account.

Standalone investor means an alien who is not seeking to pool his or her investment with one or more additional aliens seeking, or who have obtained, classification as an immigrant investor under section 203(b)(5) of the Act.

Suspend means to temporarily limit a person's participation in the EB–5 program as provided under § 204.431(d)(3).

Targeted employment area means a rural area or a high unemployment area.

Terminate means to end a regional center's designation to participate in the Regional Center Program as provided under § 204.431(d)(4). A terminated regional center is no longer authorized to participate in the Regional Center Program and may not solicit capital from an investor seeking classification as an immigrant investor.

§ 204.402 High unemployment areas.

(a) *Composition.* A high unemployment area is:

(1) Comprised of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business and may include in the calculation any census tracts directly adjacent to the census tract(s) where the new commercial enterprise is principally doing business; and

(2) Experiencing a weighted unemployment rate of at least 150 percent of the national average

unemployment rate, based on the labor force employment measure for each census tract.

(b) *Unemployment calculation.* The labor force employment measure used for each census tract in the calculation must be the same labor force employment measure used for the national average unemployment rate. The labor force employment measure used to perform the calculation must:

(1) Be statistically valid for the requested census tracts;

(2) Use unbiased estimates calculated at the census tract level;

(3) Be updated periodically;

(4) Be provided by a Federal agency. If Federal estimates are not available or are not updated periodically, estimates from the State, territory, or other local agency responsible for estimating unemployment, such as the State's Department of Labor, are acceptable; and

(5) Use publicly available data along with a description of the applicable weights and the estimation of error and bias in the estimates for purposes of any survey methodology.

(c) *Determination and designation.* Only USCIS may determine if an area qualifies as an area of high unemployment. USCIS will determine whether a proposed area qualifies for designation as a high unemployment area as part of the adjudication of a project application for regional center investors or of an EB–5 immigrant visa petition for standalone investors. Designation of a high unemployment area cannot be requested except as part of the adjudication of a project application or standalone EB–5 immigrant visa petition, as applicable.

(d) *Duration.* A qualified area will be designated as a high unemployment area for two years from either:

(1) For regional center investors, the date of filing of a project application by a designated regional center; or

(2) For standalone investors, the date of investment.

(e) *Renewal.*

(1) If USCIS approves a standalone investor's immigrant visa petition or regional center's project application and determines an area continues to qualify as an area of high unemployment under paragraph (c) of this section, USCIS will automatically renew the initial high unemployment area designation for two years from the date of the approval of the standalone investor's immigrant visa petition or regional center's project application.

(2) Within 90 days of the expiration of a designation of a high unemployment area, a designated regional center or standalone investor may request a renewal of the designation as a high unemployment area for additional two-year periods if the designated high unemployment area continues to meet the requirements under paragraph (a) of this section by submitting a renewal request on the form designated by USCIS. A renewal request for the designation of a high unemployment area may be comprised of the same census tract(s) for the area initially designated or a combination of other qualifying census tract(s), provided that the project location remains consistent, as provided under paragraph (a) of this section. The period of designation for a high unemployment area will temporarily extend upon the timely filing of a request for renewal through the time a determination on such renewal request is made. The approval of a renewal request for a high unemployment area designation will extend the period of designation for the high unemployment area for two years from the date of the prior designation's expiration.

(3) If a new commercial enterprise relocates such that it is principally doing business in another location, the designation of a high unemployment area may not be renewed and a designated regional center or standalone investor, as appropriate, must file an amendment to the applicable project application or EB–5 immigrant visa petition as provided in §§ 204.410 and 204.423.

(f) *Effect of designation.* Investors investing in a designated high unemployment area during its period of designation must invest at least the amount specified in § 204.407(b) and may qualify for a reserved visa under section 203(b)(5)(B)(i)(I)(bb) of the Act.

(g) *Effect of expiration.* An investor who has invested the required amount of capital in a high unemployment area during its period of designation does not need to invest additional capital due to the expiration of the designation and may continue to qualify for a reserved visa under section 203(b)(5)(B)(i)(I)(bb) of the Act even after the expiration of the designation. In the event an investor remains in the process of investing and has not invested the required amount of capital in a high unemployment area when the period of designation expires and the area no longer qualifies as a high unemployment area, the investor must invest any additional capital necessary to meet the amount required by § 204.407(b) and submit an amendment to his or her EB–5 immigrant visa petition to establish the lawful path and source of additional capital.

§ 204.403 Infrastructure projects.

(a) *Determination.* USCIS will determine whether a proposed project qualifies as an infrastructure project as part of the adjudication of a project application for regional center investors. USCIS will not separately determine if a project may qualify as an infrastructure project except as part of the adjudication of a project application.

(b) *Effect of determination.* Any regional center investor investing in an infrastructure project must invest lawful capital of at least the amount specified in § 204.407(b) and may qualify for a reserved visa under section 203(b)(5)(B)(i)(I)(cc) of the Act.

§ 204.404 Filing an EB–5 immigrant visa petition.

(a) *In general.* Any alien seeking classification as an alien investor must properly file an EB–5 immigrant visa petition on his or her own behalf on the form designated by USCIS according to § 103.2 of this chapter. USCIS will reject a petition that is not properly filed. USCIS will deny a petition if the petitioner chooses to upload his or her required initial evidence in the designated USCIS electronic system and does not submit such evidence within 30 days of filing the petition.

(b) *Regional center investor.* A regional center investor must include the evidence required by § 204.408(b) through (d) and may include any other supporting documentation necessary to establish eligibility. A regional center investor must also include evidence of association with a regional center's pending or approved project application and certify that all records associated with such application are incorporated by reference into the investor's petition. If the petition does not include sufficient evidence of association with a pending or approved project application at the time of filing, USCIS will consider the petition improperly filed and will reject the petition.

(c) *Standalone investor.* A standalone investor must include the evidence required by § 204.408 and may include any other supporting documentation necessary to establish eligibility.

§ 204.405 Including a spouse and children on the EB–5 immigrant visa petition.

(a) *In general.* An investor may include his or her spouse and his or her children on the EB–5 immigrant visa petition if his or her spouse or children are accompanying or following to join the investor in the United States.

(b) *In cases where the investor must file an amendment to his or her EB–5 immigrant visa petition and his or her child turns 21 years of age.* A child of

an investor who was included on an EB–5 immigrant visa petition and turns 21 years of age prior to obtaining conditional permanent resident status will continue to be considered a child of the investor on an amended EB–5 immigrant visa petition if:

(1) The child was included as a derivative beneficiary of the investor on an EB–5 immigrant visa petition for which the investor properly filed an amendment under § 204.410; and

(2) The investor filed an amendment to his or her EB–5 immigrant visa petition due to the termination or debarment, as applicable, of a regional center, new commercial enterprise, or job-creating entity.

(c) *In cases where the investor's conditional permanent resident status has been terminated and the investor seeks to file a new EB–5 immigrant visa petition and include his or her child.* An unmarried child who is 21 years of age or older and whose conditional permanent resident status based on his or her relationship as the child of an investor has been terminated may be included as a child of the investor on one subsequently filed EB–5 immigrant visa petition, provided the subsequent EB–5 immigrant visa petition is filed no later than one year from the date USCIS terminated the conditional permanent resident status.

§ 204.406 Establishing and retaining a priority date.

(a) *In general.* The priority date of an EB–5 immigrant visa petition is the date the completed and signed petition is properly filed, in accordance with § 103.2 of this chapter, provided the required evidence is submitted with the petition or is submitted electronically within 30 days of filing. A priority date is not transferable to another alien. A denied petition will not establish a priority date. An investor with multiple EB–5 immigrant visa petitions is entitled to the earliest qualifying priority date.

(b) *Priority date retention for pending petitions.* The priority date of a properly filed EB–5 immigrant visa petition for which the investor was eligible at the time of filing will continue to apply if an amendment to such petition is required and is properly filed under § 204.410.

(c) *Priority date retention for approved petitions.* The priority date of an approved EB–5 immigrant visa petition will apply to any properly filed amendment to such petition under § 204.410.

§ 204.407 Eligibility for approval of an EB–5 immigrant visa petition.

(a) *In general.* An alien seeking classification as an alien investor must invest the required amount of capital under paragraph (b) of this section to create the required amount of employment under paragraph (e) of this section, and expect to maintain that investment for at least two years from the time it was placed at risk in a new commercial enterprise in the United States. An investor must establish his or her eligibility for the classification at the time of filing the EB–5 immigrant visa petition according to § 204.404 and must continue to be eligible through adjudication. Any investor that is debarred from participation in the EB–5 Program under § 204.431 cannot establish eligibility for classification as an immigrant investor.

(1) *Regional center investors.* A regional center investor eligible at the time of filing will be deemed eligible at the time of adjudication subject to the continuing approval of the investor's associated project application, including approval of any properly filed amendments to the project application, and the filing of any amendments to the investor's petition under § 204.410.

(2) *Standalone investors.* A standalone investor eligible at the time of filing will be deemed eligible at the time of adjudication subject to the filing of any amendments to such investor's petition under § 204.410. A standalone investor may not pool his or her investment with any other investors seeking classification as an immigrant investor. Multiple standalone investors may not invest in the same new commercial enterprise, even if such investments are made independently.

(b) *Required amounts of investment.*

(1) *Standard minimum investment amount.* Unless otherwise specified, for an EB–5 immigrant visa petition filed on or after March 15, 2022, the investor must invest one million, fifty thousand United States dollars ($1,050,000) in capital in a new commercial enterprise in the United States, which must remain invested on the date the EB–5 immigrant visa petition is filed. Beginning on January 1, 2027, and every five years thereafter, this amount will automatically adjust for petitions filed on or after each adjustment's effective date, based on the cumulative annual percentage change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S City Average reported by the Bureau of Labor Statistics between January 1, 2022, and the date of adjustment. The qualifying investment amounts will be rounded down to the nearest $50,000. DHS will update this figure by publication in the **Federal Register**.

(2) *Targeted employment area and infrastructure projects.* Unless otherwise specified, for an EB–5 immigrant visa petition filed on or after March 15, 2022, based on an investment in a targeted employment area or in an infrastructure project, the investor must invest eight hundred thousand United States dollars ($800,000) in capital in a new commercial enterprise in the United States, which must remain invested on the date the EB–5 immigrant visa petition is filed. Beginning on January 1, 2027, and every five years thereafter, this amount will automatically adjust for petitions filed on or after each adjustment's effective date, to be equal to 75 percent of the standard minimum investment amount described in paragraph(b)(1) of this section. DHS will update this figure by publication in the **Federal Register**.

(3) *High employment area.* Unless otherwise specified, for an EB–5 immigrant visa petition filed on or after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE *IN THE* **Federal Register**] based on an investment in a high employment area, the investor must invest one million and four hundred thousand United States dollars ($1,400,000) in capital in a new commercial enterprise in the United States, which must remain invested on the date the EB–5 immigrant visa petition is filed. Beginning on January 1, 2027, and every five years thereafter, this amount will automatically adjust for petitions filed on or after each adjustment's effective date, to be equal to 133 percent of the standard minimum investment amount described in paragraph (b)(1) of this section, rounded up to the nearest $50,000. DHS will update this figure by publication in the **Federal Register**.

(4) *Valuation of non-cash capital.* For non-cash capital that is actively in the process of being invested, an investor must establish the fair market value of such capital at the time of filing his or her EB–5 immigrant visa petition. For non-cash capital that has already been invested, an investor must establish the fair market value of such capital at the time of investment.

(c) *Source and path of invested capital.*

(1) *In general.* An investor must establish that his or her investment capital derives, directly and indirectly, from a lawful source and through lawful means, including any capital used to pay administrative costs and fees to the regional center in association with the investment, by submitting the

documentation required by § 204.408(b) and (c).

(2) *Legal ownership of invested capital.* An investor must establish that he or she was the legal owner of the invested capital. Bank statements and other financial documents do not meet this requirement if the documents show someone else as the legal owner of the capital.

(3) *When using intermediaries to transfer capital or exchange currencies.*

An investor that uses currency exchangers, money service businesses, or any other mechanism to exchange or swap currencies to obtain capital that is then invested in the new commercial enterprise must establish that any capital provided by the currency exchanger, money service business, or other mechanism to or on behalf of the investor was derived, directly and indirectly, from a lawful source. USCIS will consider the use of a currency exchanger, money service business, or other mechanism that is licensed, regulated and authorized by a foreign or U.S. Government authority responsible for detecting, deterring and disrupting criminal abuse of the financial system to conduct business in accordance with applicable law as evidence to establish that such capital was lawfully derived, unless USCIS has reason to believe that such capital was not lawfully derived.

(4) *Multiple investors.* A new commercial enterprise may be used as the basis for classification as an alien investor even though there are several owners of the new commercial enterprise, including persons who are not seeking classification as an immigrant investor and non-natural persons, both foreign (subject to § 204.417) and domestic, provided that the source(s) of all capital invested into the new commercial enterprise or provided to the job-creating entity is identified and has been derived by lawful means. If USCIS has reason to believe that capital invested in the new commercial enterprise or provided to the job-creating entity(ies) has been derived by unlawful means, USCIS may request additional evidence to establish the capital has been derived by lawful means. If an immigrant investor cannot establish that a particular source of capital invested into the new commercial enterprise or provided to the job-creating entity, as applicable, has been derived by lawful means, the alien investor must establish that such capital has been removed from the new commercial enterprise or job-creating entity, which may also include a demonstration that such capital was replaced with other, lawfully derived capital. USCIS may sanction a new commercial enterprise or job-creating entity under § 204.431 if the new commercial enterprise or job-creating entity continues to operate with capital that has not been established as lawful. USCIS may sanction a regional center overseeing a new commercial enterprise or job-creating entity under § 204.431 if a new commercial enterprise or job-creating entity under the purview of that regional center continues to operate with capital that has not been established as lawful.

(d) *Restrictions on invested capital.*

(1) *Gifts and loans.*

(i) A regional center, new commercial enterprise, or job-creating entity participating in the Regional Center Program, or any person involved with such entities as defined in § 204.401, cannot directly or indirectly gift or loan capital to an investor seeking classification as an immigrant investor.

(ii) Any commercial loan used to establish a qualified investment must not prohibit the use of loaned funds for investment purposes.

(2) *Debt arrangements, guaranteed returns and redemptions.* An investor may not invest capital:

(i) In exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the investor and the new commercial enterprise;

(ii) With a guaranteed rate of return on the amount invested by the investor; or

(iii) Subject to any agreement entered into between the investor and the new commercial enterprise prior to such investor's capital being invested for at least two years that provides the investor with a contractual right to repayment, such as a mandatory redemption at a certain time or upon the occurrence of a certain event, or a put or sell-back option held by the investor, even if such contractual right is contingent on the success of the new commercial enterprise, such as having sufficient available cash flow.

(3) *Exceptions.* An investor may invest capital that is subject to a buy back option that may be exercised solely upon withdrawal or denial of the petition or at the discretion of the new commercial enterprise after such capital has been invested for at least two years, provided the capital remained invested at the time of filing the EB–5 immigrant visa petition, and was used to create the required number of jobs for qualifying employees.

(e) *Job creation requirements.*

(1) *In general.* An investor must establish that his or her investment has created or will create at least ten (10) jobs for qualifying employees. The job creation claimed must be tied to the investment capital, meaning that the jobs would not have been created but for the investment capital provided by the investor. Jobs attributable to any financing repaid with EB–5 investment capital may not be claimed as jobs created by such EB–5 investment capital. All of the investment capital must be provided to the entity(ies) most closely responsible for creating the employment upon which the petition is based and used in connection with the job-creating activity undertaken by such entity(ies).

(2) *Employment creation allocation.* The total number of full-time positions created for qualifying employees will be allocated solely to investors who have used the new commercial enterprise as the basis for an EB–5 immigrant visa petition. No allocation will be made among persons not seeking classification as an immigrant investor or among any non-natural persons, either foreign (subject to § 204.417) or domestic. USCIS will recognize any reasonable agreement made among the investors regarding the identification and allocation of such qualifying positions. If no such agreement exists, USCIS will allocate job creation based on the filing date of the EB–5 immigrant visa petition.

(3) *Regional center investors.* A regional center, on behalf of the regional center investors in its particular investment offering, must establish that the investment offering identified in its project application will create full-time employment for at least ten (10) qualifying employees per regional center investor in the investment offering. A regional center's project application may establish that the investment will create the required amount of full-time employment for qualifying employees per regional center investor using jobs that are estimated to be created directly or indirectly through the investment in the new commercial enterprise or job-creating entity, as appropriate. The regional center must include the economically and statistically valid forecasting tools used in its application and the model output must be transparent and reproducible by USCIS.

(i) Except as provided in paragraph (e)(3)(ii) of this section, up to 90 percent of the job creation requirement for regional center investors may be established by indirect job estimates using economically and statistically valid and transparent methodologies. At least 10 percent of the job creation requirement must be established using direct jobs, which may be employees of the new commercial enterprise or job-

creating entity or may be estimated using an economically and statistically valid and transparent methodology. Estimated direct jobs using an economically and statistically valid and transparent methodology based on the job-creating activity of the new commercial enterprise or job-creating entity are not limited solely to employees of the new commercial enterprise or job-creating entity. Any jobs estimated as direct jobs may not also be estimated as indirect jobs and vice versa.

(ii) Regional center investors may satisfy up to 75 percent of the job creation requirement using jobs estimated to be created indirectly by construction activity lasting less than 2 years. If the regional center is relying on model-derived, direct jobs from construction activity lasting less than 2 years, the number of those jobs that may be counted as direct jobs must be calculated by multiplying the total number of model-derived, direct jobs estimated to be created by the fraction of the 2-year period that the construction activity lasts.

(iii) A regional center may rely on an economically and statistically valid and transparent methodology to establish the job creation requirements using jobs estimated to be created by prospective tenants occupying commercial real estate created or improved by capital investments if the estimated jobs are not existing jobs that have been or will be relocated.

(iv) A regional center may not rely on an economic model that uses visitor spending as an input to demonstrate job creation.

(f) *Adjudication of petitions on merits.* USCIS will not pre-adjudicate EB–5 immigrant visa petitions. Each petition will be adjudicated on its own merits.

(g) *Reserved visa qualification.* To qualify for a reserved visa under section 203(b)(5)(B)(i) of the Act, an investor must submit an EB–5 immigrant visa petition on or after March 15, 2022, and demonstrate eligibility as a qualified investor, including investment of the required minimum amount of lawful capital under § 204.407(b).

§ 204.408 Initial evidence to accompany an EB–5 immigrant visa petition.

(a) *Evidence required.* A standalone investor must submit all the required evidence in paragraphs (b) through (g) of this section. A regional center investor must submit all the required evidence in paragraphs (b) through (d) of this section along with evidence of association with a regional center's pending or approved project application and certify that all records associated with such application are incorporated by reference into the investor's petition.

(b) *Evidence of investment.* To establish the investor has invested, or is in the process of investing, the amount of capital required by § 204.407(b), the investor must submit:

(1) Evidence that the investment remains invested in the new commercial enterprise on the date the EB–5 immigrant visa petition is filed.

(2) For all investments into a new commercial enterprise other than a sole proprietorship:

(i) Executed investment, organizational, and other offering agreements including executed subscription agreements and operating or partnership agreements (which may include only executed signature pages for regional center investors where the full agreement is contained in their associated project application and incorporated into the regional center investor's petition for classification); and

(ii) As applicable, equity certificates, equity ledgers, capitalization tables, or other records of the new commercial enterprise showing the investor has invested into the new commercial enterprise.

(3) When investing cash:

(i) Bank statement(s) showing amount(s) transferred from or on behalf of the investor and deposited in United States bank account(s) for the new commercial enterprise;

(ii) Evidence from the escrow agent showing the deposit of the investor's capital; and

(iii) Evidence from the new commercial enterprise showing the receipt of the investor's capital.

(4) When investing other forms of capital:

(i) Evidence of assets that have been purchased for use in the new commercial enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date(s) of purchase, and purchasing entity;

(ii) Evidence of property transferred from abroad for use in the new commercial enterprise, including U.S. Customs and Border Protection commercial entry documents and transit insurance policies containing ownership information and sufficient information to identify the property; and

(iii) Evidence to indicate the fair market value of any capital other than cash, the methodology used to determine the fair market value of that capital, and the date of such determination.

(5) When using a promissory note as evidence of commitment to invest, evidence that the investor is required to complete payments on the promissory note prior to obtaining conditional permanent resident status and that:

(i) Assets securing the note are owned by the investor;

(ii) The security interests are perfected;

(iii) The assets are amenable to seizure; and

(iv) The assets have an adequate fair market value.

(6) Evidence that the new commercial enterprise has undertaken meaningful concrete business activity, such that the investor's capital is or will be at risk. De minimis actions such as formulating an idea for a future business, forming a business entity, depositing funds in a business account over which the investor exercises control, and executing a lease are generally not meaningful concrete business activities.

(c) *Evidence tracing the path of capital invested in the new commercial enterprise.*

The investor must trace the path of capital back to its origination and provide sufficient evidence the capital remained lawful from the time the capital was derived through the time of investment in the new commercial enterprise. The investor must submit the following evidence:

(1) Bank statements or other third-party statements that establish where the capital originated;

(2) A complete transaction history of the investment capital;

(3) Transfer documents showing movement of the investment capital from the time the investor acquired the capital to the date of investment;

(4) Evidence the investor provided his or her capital to the new commercial enterprise utilizing an authorized money or value transfer services (MVTS) or money services business (MSB) compliant with the laws of the United States and those of relevant regulatory authorities of the host country. These laws and regulations include financial requirements and regulations, to include anti-money laundering and countering the financing of terrorism (AML/CFT) requirements;

(5) The identity of all persons, who transferred or will transfer any capital or funds into the United States on behalf of the investor that are used to meet the capital requirement under § 204.407(b) or pay administrative costs and fees associated with the investor's investment; and

(6) Any other additional documentation necessary to establish the lawful path of the capital.

(d) *Evidence of lawful source of investment funds and administrative costs and fees.*

To establish that the petitioner has invested, or is actively in the process of investing, capital and used funds to pay administrative costs and fees associated with the petitioner's investment that were obtained from a lawful source and through lawful means, the petitioner must submit, as applicable:

(1) If any part of the capital is accumulated by the investor:

(i) Bank records demonstrating the accumulation of capital;

(ii) Income certificates issued by the investor's employer;

(iii) Personal income tax returns for the period when capital was accumulated;

(2) If any part of the investor's capital is obtained from the sale or mortgage of property:

(i) Appraisal or property value;

(ii) Evidence the investor owns the property from which capital was obtained;

(iii) Mortgage contract;

(iv) Purchase or sales contract;

(v) Sales tax or transfer tax payment receipts;

(vi) Evidence of how the funds used to purchase any property were accumulated as described under paragraph (d)(1) of this section;

(3) If any part of the investor's capital is derived from the investor's ownership in a business:

(i) Capital verification reports;

(ii) Company bank statements;

(iii) Financial audit reports;

(iv) Foreign business registration records;

(v) Loan contracts between the investor and the business;

(vi) Shareholder or similar resolutions authorizing the investor to take a loan or receive a distribution;

(vii) Relevant tax returns;

(viii) Evidence of how the funds used to purchase any business ownership was accumulated as described under paragraph (d)(1) of this section;

(4) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States or an attestation that the investor is not subject to any such judgments, actions, or proceedings;

(5) If any part of the capital is gifted or loaned to the investor:

(i) Identification of the person or entity that supplied the gift or loan;

(ii) A letter from the donor acknowledging the gift and confirming the gift has no expectation of repayment;

(iii) A copy of the loan agreement;

(iv) Evidence that the source of any funds provided by a donor or non-bank lender, as applicable, is lawful, including all relevant evidence under this paragraph (d) from such donor or non-bank lender; and

(6) Evidence identifying any other source(s) of capital or funds used to pay administrative costs and fees associated with the investor's investment.

(e) *Evidence of investment in an established new commercial enterprise.*

To establish that the investor is investing in an established new commercial enterprise authorized to do business in the United States, a standalone investor must submit:

(1) Complete formation documents, such as articles of incorporation, organization, association, certificate of merger or consolidation or other similar formation documents, together with all amendments to such document(s);

(2) Complete copies of all other organizational documents, such as a partnership agreement, operating agreement, bylaws, or other similar organizational documents for the new commercial enterprise, together with all amendments to such document(s); and

(3) Certificate(s) evidencing authority to do business in the State, municipality, or other applicable jurisdiction of the United States in which the new commercial enterprise is principally doing business.

(f) *Evidence of sufficient job creation.* To establish that a new commercial enterprise will create not fewer than 10 full-time positions for qualifying employees, a standalone investor must submit:

(1) Evidence of full-time employment, which may consist of the following:

(i) Documentation consisting of photocopies of quarterly State tax records, or equivalent tax records in a U.S. territory, if such employees have already been hired following the investment of the petitioner's capital; or

(ii) A comprehensive business plan showing that such employees will be hired within two years of the date the investor has invested the required amount of capital.

(2) Evidence that employees are qualifying employees, which may consist of the following:

(i) Employment eligibility verification forms for the relevant employees;

(ii) Evidence the new commercial enterprise is using, or commits to use, e-Verify, or successor system, to validate the employees' eligibility to work in the United States; or

(iii) Any other documentation to establish that the claimed employees are or will be qualifying employees.

(3) Evidence that an investor engaging in the reorganization or restructuring of a pre-existing business, as applicable, has not caused and will not cause a net loss of employment.

(4) Evidence that establishes the pre-acquisition level of employment, as applicable, for the new commercial enterprise and shows that the investment created the required number of full-time positions for qualified workers in addition to those that existed before the acquisition.

(g) *Evidence of investment in a targeted employment area or high employment area.* To establish that the new commercial enterprise is principally doing business in a targeted employment area or high employment area, a standalone investor must submit:

(1) In the case of a rural area, a map of the proposed area with the population counts of that area that establish the new commercial enterprise is principally doing business outside any standard metropolitan statistical area as designated by the Office of Management and Budget, and outside the boundary of any city or town with a population of 20,000 or more as based on the most recent decennial census of the United States;

(2) In the case of a high unemployment area, a list of the census tract(s) comprising the proposed area and the unemployment statistics for the area as set forth in § 204.402, and the method or methods by which the unemployment statistics were obtained, as well as the national unemployment rate used to calculate whether the area meets the definition of a high unemployment area; or

(3) In the case of investment in a metropolitan statistical area that is not a targeted employment area, a list of the census tract(s) in which the new commercial enterprise is principally doing business and employment data showing the unemployment statistics for such census tract(s) as compared to the national average unemployment rate and the method or methods by which the unemployment statistics were obtained.

§ 204.409 Decision on an EB–5 immigrant visa petition.

USCIS will notify the investor of the decision on his or her EB–5 immigrant visa petition. If the petition is denied, USCIS will provide the reasons for denial in compliance with § 103.3(a)(1)(i) of this chapter. The investor may appeal a denial to the Administrative Appeals Office under

part 103 of this chapter. If USCIS determines a regional center investor's capital did not meet the lawful source requirements of § 204.407(c), USCIS will notify the regional center.

§ 204.410 Amending an EB–5 immigrant visa petition.

(a) *In general.* An investor who was eligible for classification at the time of filing an EB–5 immigrant visa petition may file an amendment to a pending or approved EB–5 immigrant visa petition on the form designated by USCIS with the appropriate fee. An investor may not file an amendment to correct a deficiency that existed as of the date of filing, amend a denied petition, or amend an approved petition that has had its approval revoked by USCIS. An investor may submit an amendment only to demonstrate continued eligibility because:

(1) There was a material change that affects the immigrant investor's eligibility;

(2) USCIS terminated the immigrant investor's associated regional center; or

(3) USCIS debarred the immigrant investor's associated new commercial enterprise or job-creating entity.

(b) *Material changes.*

(1) USCIS will generally incorporate a material change to a particular investment offering into the EB–5 immigrant visa petitions of impacted investors after the regional center files an amendment to the project application and USCIS approves the amendment. A regional center investor must file an amendment to his or her EB–5 immigrant visa petition if he or she must invest additional capital for any reason to maintain eligibility, supported by evidence that the source of any additional investment capital is lawful under § 204.407(c). USCIS will deny any amendment to modify or change the source of the regional center investor's capital. Any such change would be an impermissible material change. In such a case, a regional center investor may file a new EB–5 immigrant visa petition, except where the regional center investor is barred from seeking an EB–5 immigrant visa under § 204.431.

(2) A standalone investor may encounter situations that require changes to his or her business plan that constitute a material change to the originally filed EB–5 immigrant visa petition. A standalone investor may file an amendment to his or her previously filed EB–5 immigrant visa petition where the change does not affect the standalone investor's eligibility at time of filing, such as where business circumstances require the standalone investor to modify a particular aspect of his or her business plan, provided the business plan was credible when filed. A standalone investor must submit an amendment to his or her previously filed EB–5 immigrant visa petition if he or she must seek to extend or modify a designation of a high unemployment area because of the designation's expiration while the standalone investor was in the process of investing or because the new commercial enterprise is principally doing business in a new location. A standalone investor must file an amendment if the investor must invest additional capital for any reason to maintain eligibility, supported by evidence that the source of any additional investment capital is lawful under § 204.407(c). USCIS will deny any amendment to modify or change the source of the investor's original capital. In such a case, a standalone investor may file a new EB–5 immigrant visa petition, except where the standalone investor is barred from seeking an EB–5 immigrant visa under § 204.431.

(c) *In the case of termination of the regional center designation or withdrawal of the regional center designation.* USCIS will notify an investor if his or her regional center is terminated and may include any job creation credited prior to the termination. To maintain eligibility on the previously filed EB–5 immigrant visa petition, the regional center investor's new commercial enterprise may either associate with another designated regional center in good standing, regardless of the approved geographical boundaries of that regional center, or the regional center investor may make a qualifying investment in another new commercial enterprise associated with a designated regional center.

(d) *In the case of debarment of the new commercial enterprise or job-creating entity.*

USCIS will notify an investor if his or her new commercial enterprise or job-creating entity is debarred and may include any job creation credited prior to the debarment. To maintain eligibility on the previously filed EB–5 immigrant visa petition, the regional center investor must associate his or her investment with a new commercial enterprise in good standing and invest additional capital as necessary to satisfy any remaining job creation requirements. The new commercial enterprise with which the regional center investor associates does not need to remain in the same regional center but must be associated with a designated regional center. To associate with a new commercial enterprise in good standing, the regional center investor must provide evidence of the transfer of his or her capital to the new commercial enterprise and establish any remaining job creation to meet the requirements of this section. A regional center investor associating with a subsequent new commercial enterprise must keep the required amount of investment at risk, which may require the investor to supplement the original investment if the investor has not yet received his or her original investment funds back from the debarred new commercial enterprise or job-creating entity and the investor has not yet met the job creation requirements.

(e) *When to file an amendment to an EB–5 immigrant visa petition.*

(1) An investor must file an amendment to a previously filed EB–5 immigrant visa petition within 30 days after any material change identified in paragraph (a) of this section.

(2) If an amendment is necessary to demonstrate continued eligibility, an investor must file an amendment to a previously filed EB–5 immigrant visa petition within 180 days of the date USCIS issues notification to the investor that the investor's regional center, new commercial enterprise, or job-creating entity, as applicable, has been terminated or debarred, unless the regional center, new commercial enterprise, or job-creating entity appeals the termination or debarment. If the regional center, new commercial enterprise, or job-creating entity appeals the termination or debarment decision, the 180-day timeframe for the filing of an amendment will be extended to 180 days beyond the date of the final determination on the appeal. A motion to reopen or reconsider on either the initial termination or debarment determination or the appeal determination does not stay the 180-day timeframe.

(3) An amendment to an EB–5 immigrant visa petition is not required if, at the time of notice to the investor of termination or debarment of the regional center, new commercial enterprise or job-creating entity, the investor's required amount of capital remained invested in the new commercial enterprise for at least two years and the new commercial enterprise created the required amount of jobs in accordance with § 204.407.

(f) *Exceptions.* An investor that USCIS has reason to believe was a knowing participant in any activity that led to the termination or debarment of the regional center, the new commercial enterprise, or job-creating entity cannot qualify for the provisions of this section. Such determination may be based on actual or constructive knowledge and direct or

indirect participation. USCIS will notify the investor of its intent to determine that the investor was a knowing participant in such activity with a notice of intent to deny or revoke the approval of the EB–5 immigrant visa petition, as appropriate.

§ 204.411 Applying for regional center designation.

Any entity seeking designation as a regional center must properly file, in accordance with § 103.2 of this chapter, the form designated by USCIS. Any entity designated as a regional center prior to the enactment of the EB–5 Reform and Integrity Act of 2022 must properly file, in accordance with § 103.2 of this chapter, the form designated by USCIS to indicate compliance with the requirements of the EB–5 Reform and Integrity Act of 2022. USCIS may reject or deny an application that is not properly filed in accordance with § 103.2 of this chapter.

§ 204.412 Eligibility for regional center designation.

(a) *Geographic area and economic impact.* An entity seeking designation as a regional center must submit, with its application, a proposal consistent with the purpose of concentrating pooled investment within a defined, contiguous, and limited geographic area. USCIS will deny an application for regional center designation where the applicant does not establish that the area identified is contiguous and limited or is not likely to successfully concentrate pooled investments.

(1) *Contiguous.* An area is contiguous where the areas identified share a common boundary or at least one common point, when using legal boundaries recognized or established by the U.S. Census Bureau.

(2) *Limited.* An area is limited if the entity establishes that the proposed economic activity will have a substantive economic impact on the proposed area by credibly demonstrating the extent of those impacts through net positive job creation and capital investment.

(b) *Monitoring and oversight requirements.* An entity seeking designation as a regional center must establish policies and procedures to ensure its compliance with, and to monitor and oversee the new commercial enterprises and job-creating entities with which it will seek investment from regional center investors to ensure such entities' compliance with, this subpart and all applicable laws, regulations and Executive Orders of the United States, including immigration laws, criminal laws, securities laws, and labor laws. Such policies and procedures must include the establishment and maintenance of effective internal controls by the regional center and every new commercial enterprise and job-creating entity associated with the regional center, including non-affiliated job-creating entities, over capital received from regional center investors, that provide reasonable assurance that the ongoing use of the capital complies with all applicable immigration laws, securities laws, labor laws, and the terms and conditions of the investments under the purview of the regional center.

(c) *Information and Attestations.* An entity seeking designation as a regional center must identify all individuals involved in the regional center and submit attestations and information confirming that all persons (including individuals and organizations) involved with the regional center meet the requirements of section 203(b)(5)(H) of the Act as provided by § 204.417(a). USCIS will deny an application for regional center designation where a person has failed to submit a required attestation or information to confirm compliance with section 203(b)(5)(H) of the Act or where a person is precluded from participating in the Regional Center Program under section 203(b)(5)(H) of the Act but remains involved with the entity seeking designation as a regional center.

§ 204.413 Initial evidence to accompany application for regional center designation.

The application for regional center designation must:

(a) Identify the contiguous and limited geographic area of the United States where the regional center will focus its job-creating activities;

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

(c) Include a general market analysis of the proposed job creating activities and explanation regarding how the proposed project activities are likely to promote economic growth and create jobs;

(d) Describe the promotional efforts taken and planned by the regional center to recruit regional center investors, including any planned use of social media platforms and web-based communications tools to advertise, promote, sell, or market the EB–5 visa program and any engagement of direct or third-party promoters;

(e) Provide a detailed statement regarding the direct and indirect ownership and management of the regional center, including biographies for management, officers, directors, and any person with similar responsibilities;

(f) Describe the relevant experience and expertise of the persons involved with the regional center that would demonstrate the likelihood of the regional center's success in creating jobs and increasing capital investment;

(g) Describe, in writing, the specific policies and procedures reasonably designed to cause associated parties to comply, as applicable, with the immigration laws, criminal laws, labor laws, and securities laws of the United States and the laws of the applicable States in connection with the offer, purchase, or sale of securities of the regional center and its associated new commercial enterprises or job-creating entity(ies), as applicable, which may be further documented in:

(1) The business plan;

(2) Policy documents;

(3) Standard operating procedures; or

(4) Written supervisory procedures;

(h) Describe how the regional center will monitor and oversee all investment offerings and business activities associated with, through, or under the sponsorship of the regional center, including those occurring at any associated new commercial enterprise or associated job-creating entity(ies) to ensure compliance with sections 203(b)(5) and 216A of the Act, which must include documentation of programs of internal controls by the regional center that provide regular reviews of individual projects and examination of financial records and any planned use of independent reviews by local third-party accountants or auditors; and

(i) Include an attestation under § 204.417(a) for each person involved with the regional center.

§ 204.414 Decision on regional center designation.

USCIS will notify the applicant of the decision, and, if the application is denied, of the reasons for the denial in compliance with § 103.3(a)(1)(i) of this chapter, except where reasons for the denial are exempted, including by sections 203(b)(5)(H) and 203(b)(5)(N) of the Act or otherwise. The applicant may appeal a denial to the Administrative Appeals Office under part 103 of this chapter.

§ 204.415 Duration of regional center designation.

Regional centers designated to participate in the Regional Center Program will remain designated unless the regional center withdraws its designation under § 204.416 or has its designation terminated under § 204.431.

§ 204.416 Amending or withdrawing a regional center designation.

(a) *Changes requiring an amendment.* A regional center must file an amendment to its designation based on:

(1) Any change to the name of the regional center;

(2) Any significant proposed changes to the regional center's organizational structure, ownership, or administration, including the sale of the regional center or changes to the regional center's policies and procedures to monitor and oversee associated new commercial enterprises and job-creating entities under § 204.412(b);

(3) Any other change resulting in a person becoming involved with the regional center that was not previously subject to the requirements of section 203(b)(5)(H) of the Act;

(4) The departure of a person previously involved with the regional center that held a significant role in the management or oversight of the regional center, which must also include information about the person now filling the position vacated; or

(5) Any proposed change to the geographic area of the regional center.

(b) *Filing an amendment.* A designated regional center must file the form designated by USCIS with the appropriate fees to amend its designation for the reasons in paragraph (a) of this section at least 120 days prior to implementation. Any amendment must include an attestation required under § 204.417 for any person that becomes involved with the regional center. In exigent circumstances, the regional center must notify USCIS within 5 business days of the change along with a description of the temporary aspects of such change, including identifying information for any persons temporarily involved with the regional center, and file an amendment within 30 days of the change identifying all relevant aspects of the change, including attestations required under § 204.417 for any persons who continue to be involved with the regional center at such time that were not previously subject to section 203(b)(5)(H) of the Act based on their involvement with the regional center. Exigent circumstances must be based on significant, unanticipated disruptions to the operations of the regional center that are outside the control of the regional center and make prior notice impossible or impractical.

(c) *Impact on associated project applications and associated immigrant visa petitions.*

(1) USCIS will hold the adjudication of any pending project applications or EB–5 immigrant visa petitions where an amendment is submitted to report any change in ownership of a regional center resulting in a change in control of the regional center or change in ownership that results in someone becoming involved with the regional center who was not previously subject to section 203(b)(5)(H) based on his or her involvement with the regional center. USCIS will resume adjudication of the project applications and EB–5 immigrant visa petitions after adjudication of the amendment. The regional center may not submit new project applications until after USCIS has adjudicated the amendment.

(2) USCIS will continue to adjudicate any project application submitted by the regional center and any EB–5 immigrant visa petitions associated with the regional center while USCIS reviews the regional center's amendment. If any information in the amendment filing negatively impacts program eligibility of the regional center, its projects, or associated EB–5 immigrant visa petitions, USCIS will hold the adjudication of any pending project applications or EB–5 immigrant visa petitions until the amendment is adjudicated.

(d) *Withdrawal From Regional Center Program.* A regional center may elect to withdraw from the Regional Center Program and request a termination of its designation. The regional center must notify USCIS of such election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its acknowledgement of the withdrawal request and termination of the regional center's designation in writing.

§ 204.417 Bona fides of persons involved with the Regional Center Program.

(a) *Information and Attestation.* Any person involved with a regional center, new commercial enterprise, or affiliated job-creating entity must submit information and an attestation to establish that he or she is not precluded by section 203(b)(5)(H) of the Act from participating in the Regional Center Program by submitting the form designated by USCIS according to the form instructions, including the required biometrics. Persons involved with a job-creating entity that is not an affiliated job-creating entity may be required to submit such information and attestation. Any person that becomes involved with an entity that has not previously submitted the required information and attestation for his or her involvement with that entity must submit the attestation within 14 days of becoming a person involved.

(b) *Notice to regional center, new commercial enterprise, or job-creating entity(ies).*

USCIS will notify an affected regional center, new commercial enterprise, and job-creating entity(ies), as appropriate, if USCIS becomes aware that any person involved in the regional center, new commercial enterprise, or job-creating entity(ies) does not meet the requirements of section 203(b)(5)(H) of the Act for participation in the Regional Center Program. USCIS will provide such notice to the last known address of the affected entity(ies).

(c) *Notice to USCIS.* The regional center, new commercial enterprise, or job-creating entity, as applicable, must notify USCIS if any person involved with the regional center, new commercial enterprise, or job-creating entity(ies) does not meet the requirements of section 203(b)(5)(H) of the Act, within 14 days of acquiring such knowledge, unless the entity acquired such knowledge from a notice issued by USCIS.

(d) *Remedial action.* If any person identified in an application for designation or amendment to a regional center designation as involved with the regional center is ineligible to participate in the Regional Center Program, USCIS will issue a notice under paragraph (b) and provide the entity seeking designation an opportunity to remove the person from involvement with the entity. Within 14 days of the date USCIS issued a notice under paragraph (b) of this section or within 14 days of the date that an entity acquired knowledge on its own that a person involved with a regional center, new commercial enterprise, or job-creating entity(ies), as applicable, does not meet the requirements of section 203(b)(5)(H) of the Act for participation in the Regional Center Program, the regional center, new commercial enterprise, or job-creating entity(ies), as applicable, must take commercially reasonable efforts to remove the person from his or her involvement and provide information to USCIS on the steps taken to remove the person from his or her involvement with the affected entity(ies).

(e) *Penalties.* USCIS may suspend or terminate a regional center or suspend or bar a new commercial enterprise or job-creating entity under § 204.431 if

any person involved with the regional center, new commercial enterprise, or job-creating entity(ies):

(1) Fails to submit the form under paragraph (c) of this section or appear for biometrics under § 103.2(b)(9) of this chapter;

(2) Knowingly submits false information, or omits relevant information on the form;

(3) Does not provide notice to USCIS as required under paragraph (c) of this section; or

(4) Does not discontinue the involvement of a prohibited person within 14 days of acquiring knowledge of the person not meeting the requirements of section 203(b)(5)(H) of the Act.

§ 204.418 Regional center annual statements.

(a) *Filing.* Each designated regional center must file an annual statement on the form designated by USCIS according to the form instructions with the appropriate fees. A certifier for the regional center must complete the required certifications on the annual statement, including, to the best of the certifier's knowledge after a due diligence investigation, the regional center's compliance with section 203(b)(5)(H) of the Act, the regional center's compliance with securities laws of the United States and the securities laws of any State, the regional center's compliance with section 203(b)(5)(K) of the Act, and the regional center's compliance with its ongoing monitoring and oversight obligations under § 204.412(b).

(b) *Required information and documentation.* The regional center must submit the following information and documentation with the annual statement:

(1) An accounting of all individual regional center investor capital invested in the regional center, new commercial enterprise, and job-creating entity(ies), which must include an annual financial statement;

(2) Any litigation or bankruptcy proceedings involving the regional center, new commercial enterprise(s), or job-creating entity(ies) initiated or resolved in the prior year; and

(3) For each new commercial enterprise with any investors who have a pending or approved EB–5 immigrant visa petition or who have obtained conditional permanent resident status but not yet filed a petition to remove conditions prior to the reporting period of the annual statement:

(i) A list of all regional center investors who have committed capital to the new commercial enterprise and the job-creating entities to which that capital was provided;

(ii) An accounting of the aggregate capital invested in the new commercial enterprise and any job-creating entity(ies) by regional center investors for each capital investment project undertaken by the new commercial enterprise, including a description of how the capital is being used to execute each capital investment project and evidence that 100 percent of the capital has been committed to each capital investment project;

(iii) Detailed evidence of the progress made toward the completion of each capital investment project, which must include, as applicable, photographs, expenditure reports, invoices, permits, certificates of occupancy, or other evidence that describe or show the progress of each capital investment project;

(iv) A statement describing the amount and purpose of the fees and accounting of all fees collected from regional center investors by the regional center, the new commercial enterprise, any affiliated job-creating entity(ies), any affiliated issuer of securities, or any promoter, finder, broker-dealer, or other entity employed by such entities;

(v) An accounting of the aggregate direct jobs created or preserved, which may include a summary update to the economic impact analysis;

(vi) Material changes to the documents submitted with the associated project application made during the preceding fiscal year; and

(vii) Information regarding the separate account required to be maintained by the new commercial enterprise or affiliated job-creating entity, as applicable, under § 204.425, which must include a bank statement to document the separate account.

(4) Any additional information or documentation requested by USCIS, when necessary to determine the regional center's ongoing eligibility for designation under § 204.412.

(c) *Amendments.* USCIS may require a regional center to amend or supplement its annual filing if USCIS determines the statement is insufficient or that an amendment or supplement is necessary.

§ 204.419 Submitting a project application.

For any regional center investor to submit an EB–5 immigrant visa petition, a designated regional center must first properly file a project application on the form designated by USCIS according to the form instructions with the appropriate fees and required documentation. Any designated regional center suspended from participation in the EB–5 program may not file a new project application during any period of suspension. Any regional center designated before May 14, 2022, that had previously submitted an exemplar Form I–526 or had previously had an immigrant investor's EB–5 immigrant visa petition adjudicated must file a project application before any new regional center investors in the particular investment offering may submit an EB–5 immigrant visa petition.

§ 204.420 Eligibility for a project application.

A designated regional center seeking approval of a particular investment offering must establish that:

(a) The proposed project to be undertaken in connection with the particular investment offering is realistic and credible;

(b) The particular investment offering complies with applicable eligibility requirements for classification of regional center investors into such offering under section 203(b)(5) of the Act, including investment of the requisite amount of capital and that the project to be undertaken in connection with such offering will create a sufficient number of jobs per regional center investor;

(c) The regional center will maintain sufficient oversight of the particular investment offering for compliance with all applicable immigration and securities laws;

(d) All persons involved with the new commercial enterprise or job-creating entity(ies) are eligible to be persons involved with that particular entity under the Regional Center Program, including appearing for biometrics when requested; and

(e) The new commercial enterprise or affiliated job-creating entity, as applicable, identified in the project application have established a separate account and fund administrator as required by § 204.425.

§ 204.421 Initial evidence to accompany a project application.

(a) *Evidence of investment in an established new commercial enterprise.* To establish the particular investment offering described in the project application is in an established new commercial enterprise, the regional center must submit:

(1) Complete formation documents, such as articles of incorporation, organization, association, certificate of merger or consolidation, or other similar formation documents, together with all amendments to such document(s);

(2) Complete copies of all other organizational documents, such as a

partnership agreement, operating agreement, bylaws, or other similar organizational documents for the new commercial enterprise, together with all amendments to such document(s); and

(3) Certificate(s) evidencing authority to do business in the State, municipality, or other applicable jurisdiction of the United States in which the new commercial enterprise is principally doing business.

(b) *Evidence of sufficient job creation.* To establish sufficient job creation in the project application, the regional center must submit a comprehensive business plan for the specific capital investment project along with an economic impact analysis estimating job creation related to the job-creating activity showing that the project will create full-time employment for not fewer than ten qualifying employees per regional center investor within the timeline identified in the comprehensive business plan. The economic impact analysis must be based on an economically and statistically valid and transparent methodology in which model outputs are reproducible and all the inputs and any adjustments to the model are fully explained. At least one job per regional center investor must be a direct job, which may be established using an economically and statistically valid and transparent methodology.

(c) *Evidence of investment in a targeted employment area, infrastructure project, or high employment area.*

To establish that a particular investment offering in a targeted employment area, infrastructure project or high employment area, the regional center must submit:

(1) In the case of a rural area, a map of the area where the new commercial enterprise will principally be doing business with the population counts of that area that establish the new commercial enterprise is principally doing business:

(i) Outside any standard metropolitan statistical area as designated by the Office of Management and Budget; and

(ii) Outside the boundary of any city or town with a population of 20,000 or more as based on the most recent decennial census of the United States;

(2) In the case of a high unemployment area, a list of the census tract(s) comprising the proposed area and the unemployment statistics for the area as set forth in § 204.402, and the method or methods by which the unemployment statistics were obtained, as well as the national unemployment rate used to calculate whether the area meets the definition of a high unemployment area; or

(3) In the case of an infrastructure project, evidence of a contract with a Federal, State, local, or tribal agency or authority to provide EB–5 investment capital to a public works project; or

(4) In the case of investment in a metropolitan statistical area that is not a targeted employment area, a list of the census tract(s) in which the new commercial enterprise is principally doing business and employment data showing the unemployment statistics for such census tract(s) as compared to the national average unemployment rate and the method or methods by which the unemployment statistics were obtained.

(d) *Evidence of documentation required to be submitted and maintained by the regional center.* The regional center must submit a copy of any agreements between any investor in the particular investment offering and the regional center or its related entities, or agreements between the regional center and its related entities that relate to the transfer of any capital described in the project application, including, but not limited to, offering memoranda, subscription agreements, escrow agreements, organizational documents, term sheets, side letters, documentation of oral agreements, and any other marketing materials used or to be used in connection with the offering, including the identification of any social media platforms and web-based communications tools to advertise, promote, sell, or market EB–5 visas or related businesses.

(e) *Attestations from persons involved with the new commercial enterprise or affiliated job-creating entity.* The regional center must include an attestation required under § 204.417 for any person involved with the new commercial enterprise or affiliated job-creating entity. USCIS may waive the submission of the attestation under § 204.417, in its discretion, for an entity identified in the project application that is involved with the new commercial enterprise or job-creating entity.

(f) *Separate account documentation.* The regional center must include documentation to show that the new commercial enterprise or affiliated job-creating entity, as applicable, identified in the project application has established a separate account and retained a fund administrator as required by § 204.425. Such documentation must include bank statements for the separate account(s) required to be established.

(g) *Additional documentation.* The regional center must include a description of the following, which may be included as appropriate in the documents in paragraphs (a) through (d) of this section. Where this information has not been addressed in other documents submitted with the project application, the regional center must include:

(1) Biographies for management, officers, directors, and any person with similar responsibilities at the new commercial enterprise and job-creating entity(ies);

(2) Risks associated with the new commercial enterprise and job-creating entity(ies);

(3) Any investment and offering documents provided to potential investors related to the particular investment offering described in the project application;

(4) Any documents related to the investment offering filed with the Securities and Exchange Commission under the Securities Act of 1993 (15 U.S.C. 77a *et seq.*) or with the securities regulator of any State, as required by law;

(5) Conflicts of interest that currently exist or may arise among the regional center, new commercial enterprise, job-creating entity(ies), or the attorneys, owners, officers, managers, directors, or other persons acting in a similar capacity of these entities; and

(6) Pending investigations, litigation, bankruptcy, or adverse judgments or bankruptcy orders issued during the most recent 10-year period, in the United States or abroad, involving the regional center, new commercial enterprise, or job-creating entity(ies), or its owners, officers, managers, directors, or other persons acting in a similar capacity, or any other enterprise in which such persons held majority ownership.

§ 204.422 Decision on a project application.

(a) *In general.* USCIS will notify the regional center, in writing, of the decision on the project application and on any subsequent amendment. USCIS may deny any project application that does not establish eligibility under § 204.420 or does not include the evidence required under § 204.421. If denied, USCIS will specify the reasons for the denial in compliance with § 103.3(a)(1)(i) of this chapter. The regional center may appeal the denial to the Administrative Appeals Office according to § 103.3 of this chapter.

(b) *Effect of denial of project application on regional center investors.* A regional center investor cannot rely on a denied project application approval to demonstrate eligibility for an EB–5

immigrant visa. Pending visa petitions associated with a denied project application will be denied. USCIS will hold adjudication of any pending visa petitions associated with a denied project application until the time for appeal has lapsed or a decision on the appeal has been rendered.

§ 204.423 Amending a project application.

(a) *In general.* The regional center must file an amendment to an approved project application on the form designated by USCIS according to the form instructions, with the appropriate fee and required documentation. The regional center must notify any regional center investors who have filed an EB–5 immigrant visa petition associated with the particular investment offering of the change.

(b) *Amendment required for regional center investors to remove conditions.*

(1) At least 90 days prior to the first regional center investor in a particular investment offering becoming eligible to file a petition to remove conditions on his or her residence, a designated regional center must submit an amendment to its project application to provide updated information regarding the progress and job creation of the investment offering.

(2) With this amendment, the regional center must submit:

(i) An updated comprehensive business plan;

(ii) An updated economic impact analysis; and

(iii) Updated reasonable and transparent methodologies to establish job creation.

(3) In adjudicating the amendment, USCIS will determine the amount of job creation that has been established.

(i) If the amendment is approved with a determination that sufficient job creation has been established to satisfy the job creation requirement for all associated regional center investors, the amendment approval will satisfy the regional center investors' evidentiary burden to establish sufficient job creation under § 216.6(e) of this chapter.

(ii) If USCIS determines that job creation has been established, but the amount of job creation established is less than the amount needed to satisfy the job creation requirement for all associated regional center investors, USCIS will allocate established job creation as described in § 204.407(e)(2). USCIS will issue a notice of partial approval of the amendment in these circumstances, which will identify the amount of job creation that has been established. This partial approval will satisfy the evidentiary burden to establish sufficient job creation under § 216.6(e) of this chapter for those regional center investors eligible to be allocated credit for the job creation pursuant to § 204.407(e)(2). The regional center must submit an additional amendment under this paragraph (b) to establish any remaining job creation for any regional center investors that receive a one-year extension under § 216.6(g)(3) of this chapter or have not yet filed to remove the conditions on their permanent residence at least 90 days prior to such an investor filing a petition to remove conditions on his or her residence. A regional center may appeal this decision.

(c) *Changes requiring an amendment within 30 days.* Within 30 days of the change, the regional center must file an amendment to an approved project application based on any of the following:

(1) Change of location of the new commercial enterprise or job-creating entity(ies);

(2) Change in the manner capital is contributed by a regional center investor to the new commercial enterprise or the subsequent disbursement of such capital to any job-creating entity(ies), including changes to the separate account or other escrow arrangements;

(3) Change to the evidence required in § 204.421(b) such that any investors seeking classification as a regional center investor will be relying on a different economically and statistically valid and transparent methodology than reflected in the previously approved project application;

(4) Change in the substantive rights or obligations associated with the regional center investor's ownership of the new commercial enterprise;

(5) Changes to the expenditure of capital or capital structure reflected in any business plan submitted in connection with the previously approved project application in response to or otherwise materially impacting the credibility or viability of such plans that could adversely impact eligibility for associated investors including, but not limited to, increases in the maximum number of investors identified in the project application, payments to parties related to the business plan, and the loss of financing or addition of outside financing from sources not previously identified in the approved project application or otherwise obtained from any source other than a federally regulated bank or other financial institution (as defined in 18 U.S.C. 20); and

(6) Extension or modification of a high unemployment designation.

(d) *Good faith.* The initial project application and amendment must be submitted in good faith by the regional center.

(e) *Impact on associated EB–5 immigrant visa petitions.*

(1) At the time of filing the amendment, the regional center must identify any EB–5 immigrant visa petitions associated with an approved project application and any regional center investors relying on the project to remove conditions on their residence. USCIS will incorporate any changes and updates reflected in such amendment into associated EB–5 immigrant visa petitions and petitions to remove conditions and will be considered with the other evidence submitted with each such EB–5 immigrant visa petition and petition to remove conditions for purposes of determining eligibility.

(2) USCIS will hold the adjudication of any pending EB–5 immigrant visa petitions related to a project application where an amendment is submitted under paragraph (c) of this section to report any change to the ownership or location of the new commercial enterprise or job-creating entity. USCIS will resume adjudication of the EB–5 immigrant visa petitions after adjudication of the amendment. New regional center investors in the project may continue to submit an EB–5 immigrant visa petition, but USCIS will not review or adjudicate those petitions until the amendment is adjudicated.

(3) Except as otherwise provided in paragraph (e)(2) of this section and this paragraph, USCIS will continue to adjudicate any EB–5 immigrant visa petitions associated with the project application while USCIS reviews the amendment submitted under paragraph (c) of this section. If, upon review of the amendment, USCIS determines that any information in the amendment filing may negatively impact program eligibility of the project or associated EB–5 immigrant visa petitions, USCIS will hold the adjudication of any pending EB–5 immigrant visa petitions until the amendment is adjudicated.

(4) USCIS will hold the adjudication of petitions to remove conditions based on a particular investment offering until the regional center has submitted an amendment to its approved project application under paragraph (b) of this section. If the regional center does not submit an amendment required under paragraph (b) of this section, USCIS may sanction the regional center under § 204.431(b) and may request from the investor any evidence necessary to establish eligibility under § 216.6 of this chapter to remove the conditions on his or her residence that should have been submitted by the regional center under this section.

§ 204.424 Revocation of a project application approval.

(a) *Reasons for revocation.* USCIS may revoke the approval of a project application in the following circumstances:

(1) Denial of or failure to file an amendment to an approved project application required under § 204.423;

(2) The discovery of any evidence negatively affecting program eligibility that was not disclosed by the regional center during the project application process; or

(3) A material mistake of law or fact in the adjudication of the project application.

(b) *Notification.* If USCIS determines that one or more grounds for revocation exist, USCIS will send a written notice of intent to revoke the approval to the regional center explaining the reasons for revocation. The regional center will have 30 days from the date of the notice of intent to revoke to rebut the ground(s) stated in the notice of intent to revoke. USCIS will hold adjudication of any pending regional center investor petitions based on an approved application that is subject to a notice of intent to revoke until a decision has been reached on the revocation of the approval. USCIS will notify the regional center of the decision in writing. If USCIS determines that the approval should be revoked, USCIS will state the specific reasons for revocation in the written decision, the approval of an investment in a commercial enterprise will be revoked, and USCIS will notify associated investors of the revocation as and in a manner that USCIS determines is appropriate. The regional center may appeal the revocation decision to the Administrative Appeals Office according to the procedures in § 103.3 of this chapter.

(c) *Effect of termination of regional center designation on approved project application.* The termination of the regional center's designation to participate in the Regional Center Program, after any appeal filing period lapses or a filed appeal is adjudicated, results in the automatic revocation of the project application. Automatic revocation of the project application may not be appealed. A new commercial enterprise previously covered by the revoked project application may associate with another designated regional center, irrespective of that regional center's approved geographic area, provided that regional center submits a new project application for that particular investment offering within 180 days of USCIS notifying investors of the termination of the regional center resulting in revocation. The filing of a motion to reopen or reconsider a decision made on appeal does not stay the 180-day timeframe.

(d) *Effect of revocation of project application approval on regional center investors.*

(1) A regional center investor generally cannot rely on any revoked project application approval to demonstrate eligibility for an EB–5 immigrant visa, except that the investor may continue to be eligible notwithstanding the revocation of the project application approval where sufficient jobs were already created and the investor's capital was invested for at least 2 years under applicable requirements before the revocation.

(2) Within 180 days of revocation, a regional center investor may maintain his or her eligibility by submitting an amendment to his or her EB–5 immigrant visa petition under § 204.410. If the regional center investor makes an investment in another new commercial enterprise, the regional center investor must make any additional investment in a new commercial enterprise covered by a project application.

(3) If the regional center investor is not otherwise eligible as provided under paragraph (d)(1) and takes no action within 180 days of receiving notification of the revocation of the project application approval, USCIS will either revoke the approval of an EB–5 immigrant visa petition based on a project application approval that is revoked, or deny a pending EB–5 immigrant visa petition based on a project application approval that is revoked.

(4) USCIS will reject or deny any EB–5 immigrant visa petition filed after the date the project application approval is revoked regardless of whether 180 days have elapsed since notification of the revocation.

§ 204.425 Separate accounts and fund administrators for regional center investor capital.

(a) *Separate account and fund administrator.* The new commercial enterprise or affiliated job-creating entity(ies), as applicable, participating in the Regional Center Program must establish a separate account and retain a fund administrator that is licensed, active, and in good standing as a certified public accountant, attorney, broker-dealer, or investment adviser registered with the Securities and Exchange Commission. The fund administrator must be independent of the new commercial enterprise, affiliated job-creating entity(ies), or any of its owners, officers, managers, or any person in a similar position and:

(1) Monitor and track any transfer of amounts from the separate account;

(2) Serve as a cosignatory on all separate accounts;

(3) Verify that any transfer of amounts invested by regional center investors complies with all governing documents before the amounts are transferred;

(4) Approve the transfer of amounts invested by regional center investors with a written or electronic signature;

(5) Periodically, but not less than quarterly, provide each regional center investor with information about the activity of the account in which the investor's investment is held, to include the name and location of the bank or financial institution where the account is maintained, and the history of the account; and

(6) Make, preserve, and provide to the regional center, during the 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred, books, ledgers, records, and other documentation necessary to comply with this section and which USCIS may request at any time, including during any audit required by § 204.430.

(b) *Waiver of fund administrator.* Any new commercial enterprise or affiliated job-creating entity(ies), as applicable, that commissions an annual independent financial audit of the new commercial enterprise or the job-creating entity(ies) receiving investment funds from regional center investors that is conducted according to Generally Accepted Auditing Standards does not have to retain a fund administrator otherwise required by paragraph (a) of this section for the period covered by the audit and the succeeding year. The audit must cover the new commercial enterprise and any job-creating entity(ies) to which the new commercial enterprise has disbursed investment funds from regional center investors. The new commercial enterprise or affiliated job-creating entity(ies), as applicable, must provide a copy of the audit to all of the new commercial enterprise's investors and its associated regional center. The regional center must include a copy of the audit(s) in its annual statement as required under § 204.418.

(c) *Discretionary waiver of fund administrator.* USCIS, after consultation with the Securities and Exchange Commission, may waive the fund administrator required by paragraph (a) of this section for any new commercial enterprise or affiliated job-creating entity that is controlled by or under common control of an investment adviser or broker-dealer that is registered with the Securities and

Exchange Commission if USCIS, in its discretion, determines that the commission provides comparable protections and transparency for investors as those provided by paragraph (a) of this section. A regional center may request a discretionary waiver of the fund administrator requirement for the new commercial enterprise when filing its project application or by submitting an amended project application.

(d) *Use of funds.* Capital investment from each regional center investor must be deposited and maintained by a new commercial enterprise or affiliated job-creating entity(ies), as applicable, in a separate account, including amounts held in escrow. A new commercial enterprise may only transfer the investment funds received from regional center investors to a separate account in the United States, transfer the investment funds received from regional center investors to a job-creating entity, deploy the investment funds received from regional center investors into a capital investment project for which they were intended, or transfer the investor's investment funds back to the investor as a refund of the investment. If the new commercial enterprise makes the investor's investment available to an affiliated job-creating entity, the affiliated job-creating entity must keep the funds in a separate account until they are deployed into the capital investment project for which they were intended. Before any amounts held in a separate account may be transferred, a fund administrator must verify that the transfer complies with all governing documents (including organizational, operations, and investment documents) and approve such transfer with a written or electronic signature.

§ 204.426 Redeployment of alien investor capital.

(a) *When a new commercial enterprise may redeploy investor capital.*

A new commercial enterprise may redeploy regional center investor capital anywhere within the United States or its territories for the purpose of maintaining the investor's capital at risk if:

(1) The new commercial enterprise has executed the business plan for a capital investment project in good faith, including through any properly filed and approved amendments;

(2) The new commercial enterprise has created a sufficient number of new full-time positions to satisfy the job creation requirements of the program for all investors in the new commercial enterprise in accordance with the provisions of this section;

(3) The job-creating entity has repaid the capital initially deployed according to the initial investment contemplated by the business plan, or any properly filed and approved amendment; and

(4) The capital, after repayment by the job-creating entity, remains at risk and is not redeployed in any passive investment, such as secondary market securities or primary market securities that are unrelated to use in commercial activities.

(b) *Timeframe for a new commercial enterprise to redeploy investor capital.* Any redeployment of investor capital must be made within 3 months of the return of the capital to the new commercial enterprise. USCIS will consider evidence showing that a longer period was reasonable for a specific type of commercial enterprise or into a specific commercial activity under the totality of the circumstances.

(c) *Improper redeployment of investor capital.* USCIS will terminate a regional center's designation and may debar or otherwise sanction the new commercial enterprise from participation in the Regional Center Program under § 204.431 if the new commercial enterprise does not comply with the parameters of redeployment provided in this section.

§ 204.427 Prohibition on purchase of publicly available bonds.

Immigrant investor capital may not be utilized, by a new commercial enterprise or otherwise, to purchase municipal or any other bonds, if the bonds are available to the general public, either as part of a primary offering or from a secondary market. This prohibition applies to:

(a) The initial investment by the immigrant investor into the new commercial enterprise;

(b) Immigrant investor capital in escrow awaiting deposit into the new commercial enterprise;

(c) Use of immigrant investor capital by the new commercial enterprise or job-creating entity(ies) in the course of business operations;

(d) Redeployment of immigrant investor capital after job creation requirements have been met; and

(e) Any other use of immigrant investor capital during the period in which the immigrant investor's capital is required to remain at risk.

§ 204.428 Direct and third-party promoters.

(a) *Registration.* Any direct or third-party promoter of the EB–5 program, including migration agents, must register with USCIS by submitting the form designated by USCIS, including the information and certifications required under paragraph (b) of this section, prior to engaging in any promotional activities. If USCIS determines that a request for registration does not meet applicable requirements, USCIS may issue a first notice of non-registration to the promoter and provide an opportunity to respond prior to issuing a final notice of non-registration. If USCIS issues a final notice of non-registration, a promoter must stop all promotional activities. After a promoter has registered with USCIS, such promoter must file an amended registration with USCIS on the form designated by USCIS within 30 days of any change to the information provided by the promoter, including entering into a new written agreement required under paragraph (f) of this section or substantively amending a previously disclosed written agreement.

(b) *Required information and certifications.* At the time the promoter files for registration with USCIS or as otherwise requested by USCIS, the promoter must:

(1) Provide identifying and contact information for such promoter, which must include submission of government-issued identification documents such as a passport for individual promoters or current formation documents file-stamped by an applicable government authority for organizational promoters, and any social media platforms and web-based communications tools used to advertise, promote, sell, market or communicate EB–5 visa program information to prospective regional center investors;

(2) Provide information related to the requirements of section 203(b)(5)(H)(i) of the Act and certify that the promoter meets such requirements to maintain eligibility for participation in the program;

(3) Certify that he or she is familiar with and understand the rules and standards under this subparagraph, including the guidelines set forth in paragraphs (c) through (e) of this section; and

(4) Confirm the existence of each written agreement required under paragraph (f) of this section and submit of a full and complete copy of each such written agreement.

(c) *Guidelines for accurately representing the United States immigrant visa process.*

Any direct or third-party promoter, including migration agents, must understand, be familiar with, and accurately represent the Regional Center Program and the United States immigrant visa process to prospective investors sought for participation in the Regional Center Program. This includes

being familiar with and understanding applicable legal requirements and policies related to the Regional Center Program and the United States immigrant visa process and permanent resident status.

(d) *Guidelines for permissible fee arrangements.*

(1) Any fees, ongoing interest, or other compensation, including transaction-based compensation such as finder's fees, that have been or will be received by a promoter in connection with an investment in an offering under the Regional Center Program must be contained in the written agreement required under paragraph (f) of this section and disclosed in writing to each investor in such offering.

(2) Any fee arrangement described in paragraph (d)(1) of this section must also contain a disclosure of any material conflicts of interest or potential material conflicts of interest relating to the promoter and the regional center, new commercial enterprise, affiliated job-creating entity, or applicable issuer of securities.

(3) The disclosures required under paragraph (d)(2) of this section may be made:

(i) Individually to each investor in a language the investor understands, which must be signed by the investor and included in such investor's petition for classification; or

(ii) Collectively to all investors in an offering in the related business plan provided to all investors in such offering and submitted to USCIS by the regional center with its project application.

(e) *Other guidelines for the promotion of investment offerings under the Regional Center Program.*

(1) No offering promoted by a promoter may be based on manipulative, deceptive, or fraudulent claims, including in any promotional materials used by the promoter. Manipulative, deceptive, or fraudulent claims include:

(i) An untrue statement or omission of material fact;

(ii) Information that would reasonably cause an untrue or misleading implication or inference to be drawn;

(iii) Discussion of potential benefits without also adequately describing the material factors that make the investment offering speculative or risky and explaining how each factor affects the issuer of the securities;

(iv) Information that projects or predicts either financial returns or immigration outcomes without also adequately describing and being accompanied by meaningful cautionary statements identifying the material factors that could cause actual results to differ from those projected or predicted, or that are not derived from metrics (*e.g.,* forecasted sales, revenues, customers) provided by the issuer of the securities;

(v) Any statements that USCIS or the U.S. Government or any of its agencies has approved or reviewed any calculation or presentation of performance results, except for a general statement regarding USCIS approval of a related project application; or

(vi) Any statements that may be otherwise materially misleading.

(2) Any promotional materials containing a testimonial or endorsement by an individual investor must clearly and prominently disclose the relationship of such investor to the promoter, regional center, new commercial enterprise, affiliated job-creating entity, or applicable issuer of securities and any compensation received by such investor.

(3) Each promoter must perform adequate due diligence to ensure that all promotional materials used by the promoter do not contain any manipulative, deceptive, or fraudulent claims and, to the best of his or her knowledge after due diligence investigation, comply with all applicable immigration and securities laws.

(4) Each promoter must make and retain adequate records of all promotional materials, which must be made available within 60 days to USCIS upon request and, as applicable, accompanied by a full English language translation as specified under § 103.2(b)(3) of this chapter.

(5) Each promoter must comply with all applicable Federal and State securities laws, including those related to broker-dealer registration.

(f) *Written agreements.* Each promoter operating on behalf of a regional center, new commercial enterprise, or affiliated job-creating entity must have a written agreement with any such entity that outlines the rules and standards under this section and provides for the monitoring and reporting of compliance of the promoter with such rules and standards. An employee of an organization registered as a promoter that must also register as a promoter does not have to submit a copy of the same agreement already provided by the organization as part of the organizational registration, provided there have been no changes to the written agreement since the organization provided the written agreement to USCIS.

(g) *Violations.* USCIS may, under § 204.431, suspend or permanently bar any promoter from participating in the Regional Center Program who violates any of the rules and standards under this section, including failure to register with USCIS, failure to certify eligibility in accordance with § 204.417, or violation of any applicable securities laws.

(1) *Suspensions.* If USCIS seeks to suspend a direct or third-party promoter from participation in the Regional Center Program, USCIS will follow the procedures outlined under § 204.431(d)(3).

(2) *Debarment.* If USCIS seeks to bar a direct or third-party promoter from participation in the Regional Center Program, USCIS will follow the procedures outlined under § 204.431(d)(5).

(3) *Impact on regional center, new commercial enterprise, or affiliated job-creating entity.* If USCIS suspends or bars a promoter from participation in the Regional Center Program and USCIS can determine from its records any regional center, new commercial enterprise, or affiliated job-creating entity that used that promoter, USCIS may notify the affected entities of the promoter's suspension or bar. USCIS may sanction a regional center, new commercial enterprise, or affiliated job-creating entity, including suspension, termination, or debarment, if any such entity knowingly associates with a promoter that does not meet the requirements for participation in the Regional Center Program, or fails to take commercially reasonable efforts to discontinue the promoter's involvement within 14 days of learning the person is not eligible to participate in the Regional Center Program as outlined in § 204.431(b)(2).

§ 204.429 Site visits.

USCIS may perform a site visit to any designated regional center after providing at least 24 hours' notice. USCIS may perform a site visit to any new commercial enterprise or job-creating entity at any time. For purposes of this subpart D, a site visit may be conducted in person and, at USCIS' discretion, may include or be completed through communications via electronic means. A site visit may also include review of open-source information from commercial, or proprietary databases to verify evidence submitted to USCIS by the petitioner. Prior to adjudicating any petition to remove conditions on permanent resident status filed on or after March 15, 2024, by a regional center investor, USCIS will perform a site visit to the new commercial enterprise or job-creating entity, or the business locations where any jobs are

claimed as being created, as applicable. If USCIS is unable to verify facts related to an investment or particular investment offering, including due to the failure or refusal of an entity participating in the Regional Center Program to cooperate in a site visit, then such inability to verify facts, including due to failure or refusal to cooperate, may result in termination of a designated regional center or debarment of a new commercial enterprise or job-creating entity that is the subject of a site visit.

§ 204.430 Audits.

(a) *Frequency.* USCIS will perform an audit of a designated regional center at least once every five years during its designation.

(b) *Scope of the audit.* USCIS will audit the regional center according to Generally Accepted Government Auditing Standards to the extent practicable as determined by USCIS. USCIS will evaluate whether the regional center is continuing to operate consistent with its designation. USCIS will review all records previously submitted to USCIS or otherwise required to be maintained by the regional center under paragraph (c) of this section. USCIS may request documents from, conduct interviews with, or conduct site visits under § 204.429 to, any new commercial enterprise and job-creating entity(ies) associated with the regional center.

(c) *Records requirements.*

(1) *In general.* A designated regional center must maintain all documents submitted with its application for designation (and any amendments) and all project applications (and any amendments), as well as five years of annual statements. The regional center must make and preserve any books, ledgers, records, and other documentation from the regional center, new commercial enterprise, or job-creating entity used to support any claims, evidence, or certifications contained in the regional center's annual statement. The regional center must maintain records of each immigrant investor in each new commercial enterprise or job-creating entity(ies) under the purview of the regional center, his or her current filing status with USCIS, total capital received from each investor, and the disbursement and flow of each investor's capital to the new commercial enterprise or job-creating entity, as appropriate. All records must be preserved for a 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred.

(2) *Electronic records.* If the regional center uses an electronic storage system to maintain its records, the system must index, store, preserve, retrieve, and reproduce all electronically stored records and the regional center must make the system available for a USCIS audit. Any electronic system used to retain records must have:

(i) Reasonable controls to ensure the integrity, accuracy, and reliability of the system;

(ii) Reasonable controls to prevent and detect the unauthorized creation, addition, alteration, deletion, or deterioration of electronically stored records; and

(iii) An inspection and quality assurance program evidenced by regular evaluations of the system, including periodic checks of electronically stored records.

(d) *Audit notification.* USCIS will issue an audit notification to the regional center when the regional center is selected for an audit. The regional center must respond to the notification within 30 days to coordinate scheduling the audit with USCIS. USCIS may schedule an audit site assessment at an agreed upon time and date at the location where the regional center is conducting its operations, which may include site assessments of any new commercial enterprise or job-creating entity(ies) under the regional center's purview. USCIS will issue a notice of intent to terminate the regional center's designation under § 204.431 if the regional center does not respond to the notification within 30 days. The regional center may submit one request for additional time to prepare for the audit, not to exceed 30 days.

(e) *Results of the audit.* USCIS will document the results of the audit in an audit report and will add the report to the regional center's record of proceeding. If the report contains any indicators of fraud or the regional center is not continuing to operate consistent with its designation, USCIS may take appropriate action under § 204.431.

§ 204.431 Enforcement.

(a) *In general.* If USCIS determines there has been a violation as described in paragraph (b) of this section, USCIS may issue a sanction under paragraph (d) of this section against, as applicable, to:

(1) A regional center;

(2) A new commercial enterprise;

(3) A job-creating entity;

(4) An issuer of securities offered or intended to be offered to investors seeking classification as an immigrant investor; or

(5) Any associated party of the entities in paragraphs (a)(1) through (4) of this section, including owners, promoters, and other persons involved with such entities as defined in § 204.401.

(b) *Violations.* USCIS may issue sanctions for any of the following violations, as applicable. USCIS may issue more than one sanction for any given violation.

(1) False statements and omissions made in the following circumstances:

(i) The knowing submission of any information to USCIS that is false or omits material facts.

(ii) The knowing submission of, or causing to be submitted, a statement, certification, or any information submitted under § 204.418 that contains an untrue statement of material fact or an omission that affects materiality.

(2) Impermissible involvement in the program.

(i) Failure to ensure any person involved with the regional center, new commercial enterprise, job-creating entity, or issuer of securities meets the requirements of section 203(b)(5)(H) of the Act.

(ii) Failure to take commercially reasonable steps to discontinue an ineligible person's involvement after USCIS provides notice of the person's ineligibility under § 204.417.

(iii) Failure to provide notice to USCIS within 14 days of discovering a violation or take commercially reasonable steps within that time to discontinue the prohibited person's involvement as required by § 204.417.

(iv) Knowingly involving any person ineligible to participate in the Regional Center Program based on either actual or constructive knowledge of such person's ineligibility.

(v) Failure to provide the information or attestations under § 204.417.

(vi) Continuing to operate as a new commercial enterprise or job-creating entity with capital that is not established as lawful capital.

(3) Noncompliance with USCIS audit or site visit.

(i) Failure to consent to a USCIS audit under § 204.430.

(ii) Deliberately attempting to impede a USCIS audit under § 204.430. A regional center is attempting to impede an audit if the regional center:

(A) Intentionally withholds material information;

(B) Conceals fraudulent activities;

(C) Fails to keep and maintain records required under § 204.430; or

(D) Fails to respond to a request for documentation as part of any USCIS audit.

(iii) Failure to consent to or cooperate with a site visit under § 204.429.

(4) Any violation of section 203(b)(5)(I) of the Act, including actions by any parties associated with the regional center that the regional center knew or reasonably should have known about.

(5) Any knowing participation in conduct related to a determination by USCIS that the approval of a petition, application, or benefit under 203(b)(5) of the Act is contrary to the national interest in accordance with § 204.432.

(6) Any knowing participation in conduct related to a determination by USCIS that the approval of a petition, application, or benefit under 203(b)(5) of the Act was predicated on or involved fraud, deceit, intentional material misrepresentation, or criminal misuse in accordance with § 204.433.

(7) Conduct inconsistent with regional center designation.

(i) Any activity USCIS determines is contrary to the provision of visas to qualified immigrants that demonstrate a substantive and positive economic impact under section 203(b)(5)(E) of the Act or fails to adhere to the policies and procedures adopted by the regional center to monitor compliance of new commercial enterprises or job-creating entities.

(ii) Any willful, undisclosed, and material deviation by an associated new commercial enterprise from any business plan in a project application filed by the regional center for which an amendment is not submitted under § 204.423.

(iii) Failure to submit a required amendment under § 204.416 or § 204.423.

(iv) Failure to submit a required annual statement under § 204.418.

(v) Late filing of required forms or other documents, such as annual statements under § 204.418.

(vi) Failure to have a substantive positive economic impact on the regional center's designated geographic area in accordance with the requirements of the Regional Center Program based upon the denial of a significant number of associated EB–5 immigrant visa petitions or petitions to remove conditions.

(vii) Continuing to operate with capital that is not established as lawful capital.

(viii) Overseeing a new commercial enterprise or job-creating entity that is continuing to operate with capital that is not established as lawful.

(8) Any improper redeployment of investor capital that does not meet the requirements of § 204.426.

(9) Failure to pay required fees or comply with imposed sanctions.

(i) Failure to pay the fee required under section 203(b)(5)(J)(ii) of the Act within the periods specified by such section.

(ii) Failure to pay a monetary penalty when due or comply with any other sanction imposed under this paragraph.

(10) Violations of rules and standards for promoters.

(i) Failure to follow the rules and standards for promoters provided in § 204.428.

(ii) Failure to register as a promoter as required under § 204.428.

(iii) Use of an unregistered promoter by a regional center, new commercial enterprise, job-creating entity, or issuer of securities.

(iv) Violations of any applicable Federal or State securities laws as described in § 204.428.

(c) *Factors affecting sanction assessment.* USCIS will impose sanctions with consideration to the manner, nature, and magnitude of the violation. USCIS will consider the following factors when determining severity of any sanction to be imposed:

(1) Willful or reckless violation of law (including concealment of material facts or illegal activities), pattern of conduct (if prior notice of a violation was given by another government agency or USCIS issued a notice as described in paragraph (d) of this section), and evidence of knowledge, direction, or involvement of an owner, manager, or executive officer in conduct leading to any violation provided in paragraph (b) of this section.

(2) Awareness of conduct including actual knowledge, reason to know, and knowledge, direction, or involvement of any owner, manager, or executive officer in conduct leading to any violation provided in paragraph (b) of this section.

(3) Harm to the reputation or integrity of the EB–5 program, such as any benefit received by the entity or individual derived from illegal or fraudulent activity committed while participating in the EB–5 program, conduct against the interests of immigrant investors that causes material damage to their EB–5 immigrant visa petition or financial injury, and implications arising from criminal or national security foreign policy-related grounds.

(4) Nature and adequacy of, as well as adherence to, the policies and procedures in place to ensure compliance, such as a risk-based compliance program and results of recent compliance audits.

(5) Cooperation with USCIS and other agencies, including whether the violation(s) were voluntarily self-disclosed or the result of a subpoena or other enforcement action, voluntarily providing relevant information, and prompt responses to official government inquiries.

(6) Any relevant disciplinary history, including pending or settled litigation or criminal conduct.

(7) Other circumstances and characteristics of the entity involved, including current financial resources, the size and sophistication of business operations, history of similar violations or misconduct, good faith, and remedial response.

(d) *Types of Sanctions.*

(1) USCIS may issue a finding of violation in a notice that will be included in the relevant USCIS record of proceeding. USCIS may issue other sanctions in addition to such notice.

(2) USCIS may impose a monetary penalty on regional centers equal to not more than 10 percent of the total capital provided by immigrant investors to the regional center's new commercial enterprises or job-creating entity(ies) directly involved in the violations resulting in such fine. Monetary penalties may be imposed on regional centers based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1), (4), (7), and (9) of this section. Any payment of a monetary penalty cannot include any immigrant investor capital. USCIS will deposit all monetary penalties in the EB–5 Integrity Fund.

(3) USCIS may temporarily suspend a person from participating in the EB–5 program.

(i) USCIS will base any suspension on the nature and significance of the violation and last for the period USCIS specifies. USCIS will specify the scope of the suspension, which may be total or limited only to certain aspects of the EB–5 program, such as suspending the sanctioned entity's ability to file or be associated with new project applications. USCIS may lift the suspension if the suspended person cures the violation on which the suspension is based. A person may resume participation in the EB–5 program without reapplication when the period of suspension ends.

(ii) USCIS may suspend a regional center based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1), (2), (3)(iii), (4), (7), (9)(ii), and (10) of this section. The designation of a suspended regional center is not terminated during a period of suspension. A suspended regional center may not file any new project applications during a period of

suspension. Depending on the circumstances leading to suspension, USCIS may also preclude a suspended regional center from promoting existing investment offerings under the EB–5 program or the filing of any new EB–5 immigrant investor petitions associated with the suspended regional center during a period of suspension. Additionally, USCIS may continue to adjudicate or hold in abeyance previously filed project applications and EB–5 immigrant visa petitions associated with a suspended regional center during a period of suspension. A suspended regional center must continue to comply with all requirements applicable to a designated regional center during a period of suspension, including payment of the EB–5 Integrity Fund fee and filing of annual statements under § 204.418.

(iii) USCIS may suspend a new commercial enterprise or job-creating entity based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1), (2), (3)(iii), (4), (7), (9)(ii) and (10) of this section. A suspended new commercial enterprise or job-creating entity may not be associated with any new project applications or EB–5 immigrant investor petitions during a period of suspension. USCIS will hold in abeyance previously filed project applications and EB–5 immigrant visa petitions associated with a suspended new commercial enterprise or job-creating entity during a period of suspension. A suspended new commercial enterprise or job-creating entity may not promote any investment offerings under the EB–5 program during a period of suspension.

(iv) USCIS may suspend a promoter based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(9)(ii) and (10) of this section. A suspended promoter may not promote any investment offerings under the EB–5 program during a period of suspension. A suspended promoter will remain registered and must continue to comply with all requirements applicable to promoters during a period of suspension.

(v) USCIS may suspend other persons from participation in the EB–5 program, including persons involved with a regional center, new commercial enterprise, or job-creating entity, based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraph (b)(1), (7), and (9)(ii) of this section. A suspended person involved with a regional center, new commercial enterprise or job-creating entity may remain in his or her position or role with the associated EB–5 entity but may not actively participate in any aspect of the EB–5 program, including acting as a certifier for the associated EB–5 entity or exercising any authority over or being involved in the pooling, securitization, investment, release, acceptance, or control or use of any EB–5 capital.

(4) USCIS may terminate the designation of a regional center based on an applicable violation to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1) through (10) of this section.

(i) A terminated regional center is no longer authorized to participate in the Regional Center Program and may not solicit capital from an investor seeking classification as an immigrant investor. USCIS will notify an affected regional center investor if USCIS terminates his or her regional center.

(ii) USCIS will terminate the designation of a regional center based on a violation described in paragraphs (b)(3)(i), (3)(ii), (5), (6), (8), and (9) of this section (if not paid within 90 days of the due date for failure to pay the fee described in (b)(9)(i)) of this section).

(5) USCIS may temporarily or permanently bar a person from current and future participation in the EB–5 program. Regional centers may be debarred based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1), (2), (3)(iii), (4) through (8), (9)(ii), and (10) of this section.

(i) New commercial enterprises and job-creating entities may be debarred based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1), (2), (3)(iii), (5), (6), (7), (9)(ii) and (10) of this section. Promoters may be debarred based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(9)(ii) and (10) of this section. Other persons, including persons involved with a regional center, new commercial enterprise, or job-creating entity, may be debarred based on applicable violations to the full extent authorized by law including, but not limited to, those described in paragraphs (b)(1), (7), and (9)(ii) of this section. A debarred person may not participate in any aspect of the EB–5 program, including the solicitation of investors seeking classification as an immigrant investor. Any existing participation in the EB–5 program, including the designation of a debarred regional center, will be terminated as of the date of debarment and any pending applications, petitions, or other benefit requests filed by or associated with a debarred person may be denied or revoked, as applicable. If the bar is temporary, USCIS will specify the period of debarment, after which time the person may apply for reinstatement. USCIS will notify affected immigrant investors if USCIS debars a regional center, new commercial enterprise, or job-creating entity(ies) associated with their petition.

(ii) USCIS will permanently debar any person that USCIS determines, in its discretion, to have conducted or been a knowing participant in the conduct leading to termination or debarment under paragraphs (b)(5) or (6) of this section.

(iii) In its discretion, USCIS may temporarily debar any person based on a consideration of the underlying reason for which the debarment itself is temporary, such as time-bound orders, judgements, or findings of any courts, and State or Federal regulators. When a period of temporary debarment has ended, the person may seek to resume participation in the EB–5 program, including by filing a new application for regional center designation, submitting the required filing under § 204.417 based on involvement with an applicable entity, or being associated with a project application or EB–5 immigrant visa petitions.

(e) *Pre-Sanction Notices.* USCIS may take reasonable actions before implementing sanctions to collect information regarding a potential or suspected violation, pursue remedial action, deter future violations, and ensure compliance with the EB–5 program. Such actions may include the issuance of a pre-sanction notice or other correspondence regarding the potential or suspected violation prior to the issuance of a sanction, which will include an explanation of the potential or suspected violation, the type of sanction that may apply if the person or entity does not remedy the violation, and instructions for response within 30 days of the date of the notice. USCIS may consider the relevant factors in paragraph (c) of this section and may determine whether the person or entity is likely to remediate the issue without sanction. However, if the severity of violation or if other factors so warrant, USCIS may issue a sanction following procedures set forth in paragraph (f) of this section without first issuing a pre-sanction notice or other correspondence.

(f) *Sanction Process.*

(1) Monetary penalties are due as of the date the notice under paragraph (f)(2) of this section is issued and must

be paid within 30 days. Suspensions, terminations, and debarments will take effect as of the date the notice under paragraph (f)(2) of this section is issued. Suspensions will last for the period USCIS specified. Debarments will be permanent unless USCIS determines, in its discretion, to impose a debarment temporarily for a period specified by USCIS. Each sanction will be deemed to be separately imposed such that sanctions will be considered independently for purposes of any properly filed motion or appeal.

(2) Upon a determination that a violation has occurred and a sanction should be issued, USCIS will issue a notice to the affected person or entity. The notice will include:

(i) A summary of the violations; and

(ii) A description of the sanction, including, as applicable, the calculation of any monetary penalty and the duration of any suspension or debarment.

(g) *Motions to Reopen or Reconsider.* A person may file a motion to reopen or a motion to reconsider a sanction in accordance with part 103 of this chapter. USCIS will assess any new information provided using the factors noted in paragraph (c) of this section. If a properly filed motion on a sanction has been pending for 180 days and no final action has been taken, then the person may withdraw his or her motion and within 14 days of notifying USCIS of the withdrawal of its motion, may appeal the sanction to the USCIS Administrative Appeals Office under paragraph (h) of this section. Motions on a determination made by the USCIS Administrative Appeals Office are excluded from this provision.

(h) *Appeals.* A person may appeal final decisions regarding any sanction to the USCIS Administrative Appeals Office according to part 103 of this chapter and paragraph (g) of this section. If a person is the subject of multiple sanctions, a separate appeal must be filed for each sanction requiring appellate review. The USCIS Administrative Appeals Office may consolidate or join two or more appeals arising from the same or substantially similar facts, if doing so does not adversely affect the interests of the parties. At its discretion, the USCIS Administrative Appeals Office may sever consolidated or joined appeals into separate appeals. Except as provided in this paragraph or as otherwise determined by USCIS in its discretion, sanctions imposed under this section will be stayed upon the timely filing of appeal. Suspensions and sanctions imposed based on violations described in paragraphs (b)(5) or (6) of this section will not be stayed upon the timely filing of an appeal. If USCIS determines in its discretion not to stay the imposition of a sanction upon the timely filing of an appeal, USCIS will include the reason for this determination in the applicable notice. Immigrant investors associated with a terminated regional center or debarred new commercial enterprise or job-creating entity may seek to amend their petition under § 204.410 based upon such termination or debarment regardless of whether of such termination or debarment is stayed upon the timely filing of an appeal.

§ 204.432 Threats to public safety or national security.

(a) *Determination.* At any time, USCIS may determine, in its discretion, that the approval of a petition, application, or benefit described in section 203(b)(5) of the Act (including participation in the EB–5 program) is contrary to the national interest of the United States for reasons relating to threats to public safety or national security regardless of when such petition, application, or benefit was filed or approved. USCIS may consider relevant conduct prior to enactment of the EB–5 Reform and Integrity Act of 2022 for purposes of making a determination that a threat to the national interest arose or continued to exist after enactment of the EB–5 Reform and Integrity Act of 2022. Upon such determination, USCIS will deny or revoke the approval of such petition, application, or benefit and, as applicable, terminate the permanent resident status of the investor (and the investor's spouse and children) and terminate or debar from participation in the EB–5 program the associated regional center, new commercial enterprise, or job-creating entity, in each case effective as of the date of determination.

(b) *Debarment.* USCIS will, under § 204.431, permanently debar any person associated with a regional center, new commercial enterprise, or job-creating entity that has had its designation or participation in the EB–5 program terminated or debarred for reasons related to public safety or national security if USCIS determines, in its discretion, that such person was a knowing participant in the conduct that led to the termination or debarment. Such determination may be based on actual or constructive knowledge.

(c) *Notice.* If USCIS determines that the approval of a petition, application, or benefit described in section 203(b)(5) of the Act is contrary to the national interest of the United States for reasons relating to a threat to public safety or national security under paragraph (b) of this section, USCIS will provide notice to the relevant person, regional center, new commercial enterprise, or job-creating entity(ies) of the determination. In the notice, USCIS will include an explanation of the determination, unless the relevant information is classified or disclosure is otherwise prohibited under law.

(d) *Appeal.* Except for terminations of conditional permanent resident status obtained under section 216A of the Act and denials or revocations of petitions to remove conditions under section 216A of the Act, determinations made under this section may be appealed to the Administrative Appeals Office under part 103 of this chapter.

§ 204.433 Determinations of fraud, misrepresentation, deceit, or criminal misuse.

(a) *Determination.* At any time, USCIS may determine, in its discretion, that the approval of a petition, application, or benefit described in section 203(b)(5) of the Act (including participation in the EB–5 program) was predicated on or involved fraud, intentional material misrepresentation, deceit, or criminal misuse regardless of when such petition, application, or benefit was filed or approved. USCIS may consider relevant conduct prior to enactment of the EB–5 Reform and Integrity Act of 2022 for purposes of making a determination that such fraud, intentional material misrepresentation, deceit, or criminal misuse arose or continued to exist after enactment of the EB–5 Reform and Integrity Act of 2022. Upon such determination, USCIS will deny or revoke the approval of such petition, application, or benefit and, as applicable, terminate the permanent resident status of the investor (and the investor's spouse and children) and terminate or debar from participation in the EB–5 program the associated regional center, new commercial enterprise, or job-creating entity, in each case effective as of the date of determination.

(b) *Debarment.* In accordance with § 204.431, USCIS will permanently debar any person associated with a regional center, new commercial enterprise, or job-creating entity that has had its designation or participation in the EB–5 program terminated or debarred for reasons related to fraud, misrepresentation, deceit, or criminal misuse if USCIS determines, in its discretion, that such person was a knowing participant in the conduct that led to the termination or debarment.

Such determination may be based on actual or constructive knowledge.

(c) *Notice.* If USCIS determines that the approval of a petition, application, or benefit described in section 203(b)(5) of the Act was predicated on or involved fraud, intentional material misrepresentation, deceit, or criminal misuse under paragraph (a) of this section, USCIS will provide notice to the relevant person, regional center, new commercial enterprise, or job-creating entity(ies) of the determination. The notice will include an explanation of the determination, unless the relevant information is classified or disclosure is otherwise prohibited under law.

(d) *Appeal.* Except for terminations of conditional permanent resident status obtained under section 216A of the Act and denials or revocations of petitions to remove conditions under section 216A of the Act, determinations made under this section may be appealed to the Administrative Appeals Office under part 103 of this chapter.

§ 204.434 Compliance with FIRRMA.

Every regional center, new commercial enterprise, job-creating entity, regional center investor, and standalone investor must comply with the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) and any superseding acts or regulations. A regional center, new commercial enterprise, or job-creating entity may not divulge controlled materials or information that poses risk to the U.S. national interest to regional center investors, unless specifically authorized by the applicable administering government agency in accordance with applicable law. This section is not intended to modify any existing rules or regulations related to FIRRMA and any superseding acts or regulations. Any violation of these requirements may result in adverse action or other sanction, including but not limited to those specified under § 204.431 and § 204.432.

§ 204.435 Severability.

Any provision of this subpart held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

■ 4. The authority citation for part 205 continues to read:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a, and 1324a.

■ 5. Section 205.1 is amended by:

■ a. Adding ''other than employment-based fifth preference'' after ''In employment-based preference cases'' in the first sentence of paragraph (a)(3)(iii)(C).

■ b. Adding new paragraph (a)(3)(iii)(E); and

■ c. Adding new paragraph (c).

The amendments read as follows:

§ 205.1 Automatic revocation.

(a) * * *

(3) * * *

(iii) * * *

(C) In employment-based preference cases, other than employment-based fifth preference cases, upon written notice of withdrawal filed by the petitioner to any officer of USCIS who is authorized to grant or deny petitions, where the withdrawal is filed less than 180 days after approval of the employment-based preference petition, unless an associated adjustment of status application has been pending for 180 days or more. A petition that is withdrawn 180 days or more after approval, or 180 days or more after the associated adjustment of status application has been filed, remains approved unless its approval is revoked on other grounds. If an employment-based petition on behalf of an alien is withdrawn, the job offer of the petitioning employer is rescinded and the alien must obtain a new employment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

* * * * *

(E) In employment-based fifth preference cases, upon written notice of withdrawal filed by the petitioner to any officer of USCIS who is authorized to grant or deny petitions.

* * * * *

(c) Automatic revocation does not preclude USCIS from revoking an approval on other grounds at any time.

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 6. 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.

■ 7. Revise and republish § 216.2, for the section to read:

§ 216.2 Notification requirements.

(a) *When an alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, USCIS will notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When an alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, USCIS may notify the alien a second time of the requirement that the alien and the petitioning spouse or investor must file a petition to remove the conditional basis of the alien 's lawful permanent residence. USCIS will mail such notification to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of USCIS to provide notification as required by either paragraph (a) or (b) of this section does not relieve the alien and the petitioning spouse, or investor of the requirement to file a petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

■ 8. Revise and republish § 216.3 for the section to read:

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* USCIS will send a written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if USCIS determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an investor who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the

sale of illegal drugs). If USCIS issues a notice of intent to terminate an alien's conditional resident status, USCIS will not adjudicate a petition to remove conditions on residence until it has been determined that the alien's status will not be terminated. During this time, the alien continues to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the notice of termination, USCIS will provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), will take effect as of the date of such determination by USCIS, although the alien may request a review of such determination in removal proceedings. In addition to the notice of termination, USCIS will issue a notice to appear in accordance with part 239 of this chapter. During the ensuing removal proceedings, the alien may submit evidence to rebut the determination of USCIS. The burden of proof will be on USCIS to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien investor who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, USCIS determines that an alien spouse obtained permanent resident status through a marriage that was entered into for the purpose of evading the immigration laws or an investor obtained permanent resident status through a new commercial enterprise that was improper under section 216A(b)(1) of the Act, USCIS may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or removal proceedings under section 240 of the Act.

■ 9. Amend § 216.6 by:

■ a. Revising paragraphs (a) through (d); and

■ b. Adding new paragraphs (e) through (h).

The amendments read as follows:

§ 216.6 Petition by investor to remove conditions on permanent resident status.

(a) *Filing the petition to remove conditions.* An investor that obtained conditional permanent resident status based on an approved EB–5 immigrant visa petition must file a petition to remove the conditional basis of the permanent resident status on the form designated by USCIS according to the form instructions. A petition to remove conditions is properly filed if the petition is signed by the petitioner and is accompanied by the appropriate fees and all required evidence. USCIS may reject a petition that is not properly filed. A petitioner may include any other supporting documentation to establish eligibility.

(1) *When to file the petition.* The investor must file a petition to remove conditions within the 90-day period preceding the second anniversary of the date on which the investor acquired his or her conditional permanent resident status. An investor who makes a subsequent investment after his or her regional center is terminated or his or her new commercial enterprise or job-creating entity is debarred must file within the 90-day period preceding the second anniversary of the subsequent investment.

(2) *Physical presence at the time of filing.* An investor may file a petition to remove conditions regardless of his or her physical presence in or outside the United States. If the investor is outside the United States at the time of filing, the investor must return to the United States, with his or her spouse and children, if necessary, to attend any required biometrics appointment or interview. USCIS may deny the petition of any investor, spouse, or child that does not appear for a required biometrics appointment or interview under § 103.2(b)(9) of this chapter. An investor who is not physically present in the United States during the filing period, but subsequently applies for admission to the United States, will be processed according to § 235.11 of this chapter.

(3) *Travel outside the United States after filing.* An investor may travel outside the United States after filing a petition to remove conditions and return if in possession of documentation set forth in § 211.1(b)(3) of this chapter, provided the investor complies with the biometrics and interview requirements of this section.

(4) *Extension of conditional permanent resident status.* Upon receipt of a properly filed petition, USCIS will automatically extend the investor's conditional permanent resident status and provide documentation of the extension until USCIS has adjudicated the petition.

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

(1) *In cases where the investor is deceased.* If the investor is deceased, the spouse and children seeking to remove conditions on his or her permanent resident status obtained based on his or her relationship to the deceased investor may:

(i) Each file his or her own petition to remove conditions; or

(ii) File one petition to remove conditions including the spouse and children.

In either case, the spouse and child must file the petition(s) at any time before his or her conditional permanent resident status expires and establish eligibility to remove conditions as specified in paragraph (d) of this section and submit the documentation required under paragraph (e) of this section.

(2) *In cases where the child has turned 21 years of age or married.* An investor may include any child who turned 21 years of age or married during the period of conditional permanent resident status on his or her petition to remove conditions. If the investor does not include the child on his or her petition to remove conditions, the child must file his or her own petition to remove conditions.

(3) *In cases where the investor and spouse divorced.* An investor may include a former spouse who was divorced from the investor during the period of conditional permanent resident status on his or her petition to remove conditions. If the investor does not include the former spouse on his or her petition to remove conditions, the former spouse must file his or her own petition to remove conditions.

(4) *In cases where the investor does not file to remove conditions.* 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 his or her relationship to the investor may remove the conditions on his or her status if he or she can establish that he or she remains eligible to remove the conditions on his or her residence under paragraph (d) of this section.

(c) *Interview requirement.* USCIS may, in its discretion, require an investor to appear for an interview regarding his or her petition to remove conditions. USCIS may waive this requirement if the petition establishes the investor's eligibility to remove conditions.

(1) *Exceptions.* USCIS will not waive the interview requirement if the investor:

(i) Invested in a regional center, new commercial enterprise, or job-creating entity that was sanctioned under § 204.431 of this chapter; or

(ii) Raises public safety or national security concerns.

(2) *Location of interview.* Unless waived, USCIS will conduct the interview, in its discretion, at the office that has jurisdiction over:

(i) The adjudication of the petition;

(ii) The location of the investor's new commercial enterprise in the United States; or

(iii) The investor's residence in the United States.

(3) *Failure to appear for required interview.* If the investor cannot appear for a scheduled interview, the investor may submit a written request to USCIS prior to the interview date asking that the interview be rescheduled or that the interview be waived. The request should explain his or her inability to appear for the scheduled interview, and if requesting a waiver of the interview, the reasons such waiver should be granted. If USCIS determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If USCIS waives the interview, it will proceed to adjudicate the investor's petition.

(d) *Eligibility to remove conditions.*

(1) *For petitions based on an EB–5 immigrant visa petition filed before March 15, 2022.* If the investor filed his or her EB–5 immigrant visa petition before March 15, 2022, USCIS will remove the conditions on permanent resident status if the investor can establish he or she:

(i) Invested or were actively in the process of investing the requisite amount of lawful capital;

(ii) Sustained the investment at risk throughout the two years of the investor's conditional residence in the United States. The investor will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment for at least two years from the date he or she obtained conditional resident status in the United States;

(iii) Created or can be expected to create within a reasonable period of time 10 full-time jobs for qualifying employees; and

(iv) In the case of investment in a troubled business, as defined in § 204.6(e) of this chapter, maintained the number of existing employees of the new commercial enterprise at no less than the pre-investment level for the previous two years.

(2) *For petitions based on an EB–5 immigrant visa petition filed on or after March 15, 2022.* If the investor filed his or her EB–5 immigrant visa petition on or after March 15, 2022, USCIS will remove the conditions on an investor's permanent resident status if the investor can establish that he or she:

(i) Invested the required amount of capital no later than the date on which the investor obtained conditional permanent resident status;

(ii) Remained invested for at least two years from the date the investment was placed at risk in a new commercial enterprise, including being made available to the job-creating entity(ies) and redeployed in accordance with the requirements under § 204.426 of this chapter as applicable; and

(iii) Created at least 10 full-time jobs for qualifying employees.

(3) *Death of investor and effect on spouse and children.* If an investor dies during the period of conditional permanent resident status, the spouse and children of the investor will be eligible to remove the conditions if they can demonstrate that the investment met the requirements of this paragraph.

(i) If the investor filed his or her EB–5 immigrant visa petition before March 15, 2022, and dies before the end of his or her sustainment period, the spouse and child may inherit the investor's interest and be eligible to remove their conditions if they continue to sustain the investment for two years from the date the investor obtained conditional residence, which may differ from the date the spouse or child obtained conditional residence.

(ii) If the investor filed their EB–5 immigrant visa petition on or after March 15, 2022, and dies before their investment has been placed at risk with a new commercial enterprise for at least two years, the spouse and child may use an inheritance of the investor's interest to establish eligibility to remove their conditions if they maintain the investment for at least two years from the date the investment was placed at risk with a new commercial enterprise.

(e) *Evidence to accompany petition to remove conditions.*

(1) *For petitions filed based on an EB–5 immigrant visa petition filed before March 15, 2022.* If the investor filed his or her EB–5 immigrant visa petition before March 15, 2022, the investor must submit with his or her petition to remove conditions:

(i) Evidence that the investor invested or was actively in the process of investing the required amount of lawful capital. Such evidence must include bank statements of the petitioner and new commercial enterprise showing the transfer of the investor's capital to the new commercial enterprise and, if applicable, from the new commercial enterprise to any job-creating entity;

(ii) Evidence that the investor sustained his or her investment at risk for at least 2 years from the date the investor obtained immigrant investor status. Such evidence must include all relevant Federal and State income tax returns, quarterly tax returns, and tax forms (including Form K–1, Form 941, and Form 1065) over the applicable period and may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses; and

(iii) Evidence that the investor created or is actively in the process of creating ten full-time jobs for qualifying employees. In the case of a troubled business as defined in § 204.6(e) as in effect before March 15, 2022, the investor must submit evidence that the new commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. For regional center investors, such evidence must include an updated comprehensive business plan, an updated economic impact analysis, updated reasonable and transparent methodologies to establish job creation and evidence supporting the inputs used in such methodologies including, but not limited to, payroll records, tax documents, invoices and receipts, purchase agreements, bank statements, or other probative evidence, which the regional center must provide to the investor. For standalone investors, such evidence must include payroll records and employment eligibility verification forms.

(2) *For petitions filed based on an EB–5 immigrant visa petition filed on or after March 15, 2022.* If the investor filed his or her EB–5 immigrant visa

petition on or after March 15, 2022, the investor must submit with his or her petition to remove conditions:

(i) Evidence that the investor invested the required amount of lawful capital, which remained invested for at least two years from the date of investment. Such evidence must include all relevant Federal income tax returns and quarterly tax returns for the petitioner and new commercial enterprise, tax forms (including Form K–1, Form 941, and Form 1065), and bank statements of the petitioner and new commercial enterprise showing the transfer of the investor's capital to the new commercial enterprise and, if applicable from the new commercial enterprise to any job-creating entity; and

(ii) Evidence that the investor created or is actively in the process of creating ten full-time jobs for qualifying employees before the third anniversary of the alien's lawful admission for permanent residence. For regional center investors, the regional center investor should include evidence of ongoing association with a project application that has been amended by the regional center under § 204.423(b) of this chapter to establish sufficient job creation. If the regional center does not properly file an amendment to its project application under § 204.423(b) of this chapter before a regional center investor submits a petition to remove conditions under paragraph (a) of this section, the regional center investor must establish that his or her investment created the required amount of jobs for qualifying employees, which may include an updated comprehensive business plan, an updated economic impact analysis, and updated reasonable and transparent methodologies and may also include evidence supporting the inputs used in such methodologies including, but not limited to, payroll records, tax documents, invoices and receipts, purchase agreements, bank statements, or other probative evidence. For standalone investors, such evidence must include payroll records and employment eligibility verification forms.

(f) *Site visit.* Prior to adjudicating any petition by a regional center investor to remove conditions on his or her permanent resident status that is based on an EB–5 immigrant visa petition filed on or after March 15, 2024, USCIS will perform a site visit to each new commercial enterprise or job-creating entity associated with the investment, or the business locations where any jobs are claimed as being created, as applicable. USCIS may conduct a site visit as defined at 8 CFR 204.429.

(g) *Decision.*

(1) *Approval.* If, after initial review or after the interview and not before completion of a site visit, if required, USCIS approves the petition, USCIS will remove the conditional basis of the investor's permanent resident status as of the second anniversary of the date on which the investor acquired conditional permanent residence except as otherwise provided in paragraph (g)(4). USCIS will provide written notice of the decision to the investor. USCIS may request the investor, and any spouse or children that obtained status based on their relationship to the investor, to appear for biometrics at a USCIS facility for processing for a new permanent resident card.

(2) *Denial.* If, after initial review or after the interview, USCIS denies the petition, USCIS will provide written notice to the investor of the decision and the reason(s) for the decision in compliance with § 103.3(a)(1)(i) of this chapter, and will issue a notice to appear. The investor's lawful permanent resident status and that of his or her spouse and any children will be terminated as of the date of USCIS' written decision. An investor cannot appeal a denial of his or her petition to remove conditions to the Administrative Appeals Office. The investor may seek review of the denial in removal proceedings. In proceedings, USCIS has the burden to establish by a preponderance of the evidence that the petition was properly denied.

(3*) One-year extension of conditional permanent resident status on a petition submitted to remove conditions based on an EB–5 immigrant visa petition filed on or after March 15, 2022.* If, after initial review or after the interview, USCIS determines the investor has invested the required amount of lawful capital and is actively in the process of creating the employment required under section 203(b)(5)(A)(ii) of the Act and will create the number of jobs required under § 204.407(e) of this chapter before the third anniversary of the investor's conditional permanent resident status, USCIS may extend the investor's conditional permanent resident status for one year, provided the investor's capital will remain invested until the required number of jobs are created. USCIS will provide the investor documentation of the extension. At the end of the third year, the investor must file to remove the conditions according to paragraph (a) of this section no later than 30 days after the third anniversary of the investor's conditional permanent resident status. If, after initial review or after the interview and not before completion of a site visit, USCIS approves the petition, USCIS will remove the conditional basis of the investor's permanent resident status as of the third anniversary of the date on which the investor acquired conditional permanent residence.

(4) *Investors associated with a terminated regional center or debarred new commercial enterprise or job-creating entity.* If, after filing a petition to remove conditions on permanent resident status and before USCIS has approved or denied such petition, the investor's regional center is terminated or his or her new commercial enterprise or job-creating entity is debarred, as applicable, such investor may make a qualifying investment in another new commercial enterprise or associate with another new commercial enterprise in good standing in accordance with section 203(b)(5)(M) of the Act. Such investor may respond to any notice of termination or debarment as described in such notice or in accordance with applicable form instructions with evidence establishing his or her subsequent investment for the purpose of amending his or her pending petition to remove conditions on his or her permanent resident status. USCIS will review such amended petition, including any evidence submitted in response to any notice of termination or debarment, to determine whether the investor has demonstrated eligibility under section 203(b)(5)(M) of the Act. If USCIS approves the petition, the conditions on the investor's permanent resident status will not be removed and USCIS will extend the investor's conditional permanent resident status for 2 years from the date of his or her subsequent investment. If USCIS denies the petition, such denial will be as described in paragraph (g)(2) of this section.

(h) *Termination of conditional permanent resident status.* If the investor fails to appear for a required interview in connection with the petition to remove conditions or does not submit a petition to remove conditions, USCIS will terminate the investor's permanent resident status as of the second anniversary of the date on which the investor obtained permanent residence (or third anniversary of the date on which the investor obtained permanent residence for investors granted an extension under paragraph (f)(3) of this section. USCIS will provide the investor with written notification of the termination and the reasons for the termination. DHS will issue a notice to appear placing the investor in removal proceedings. The investor may seek review of the decision to terminate his or her status in such proceedings, but the burden will be on the investor to

establish by a preponderance of the evidence that he or she complied with the filing and interview requirements.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 9. The authority citation for part 235 continues to read as follows:

Authority: 6 U.S.C. 218 and note; 8 U.S.C. 1101 and note, 1103, 1158, 1182, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1185 note, 1201, 1224, 1225, 1226, 1228, 1357, 1365a and note, 1365b, 1379, 1731–32; 48 U.S.C. 1806 and note; 1807, and 1808 and 48 U.S.C. 1806 notes (title VII, Pub. L. 110–229, 122 Stat. 754); 8 U.S.C. 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638, and Pub. L. 112–54, 125 Stat. 550).

■ 10. Section 235.11 is amended by:

■ a. In paragraph (a), heading, removing the em-dash at the end and adding, in its place, a period; and

■ b. Revising paragraph (a)(2).

The amendments read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General.*

* * *

(2) *Conditional residence based on investment in a new commercial enterprise in the United States.* An alien seeking admission to the United States with an immigrant visa as an alien investor (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an investor shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the principal investor must file a petition to remove the conditions on his or her permanent residence within the 90-day period immediately preceding the second anniversary of the alien's admission for conditional permanent residence.

* * * * *

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–13392 Filed 7–1–26; 8:45 am]

BILLING CODE 9111–97–P