

Trends in Approvals of Regional Centers in the EB-5 Investor Visa Program

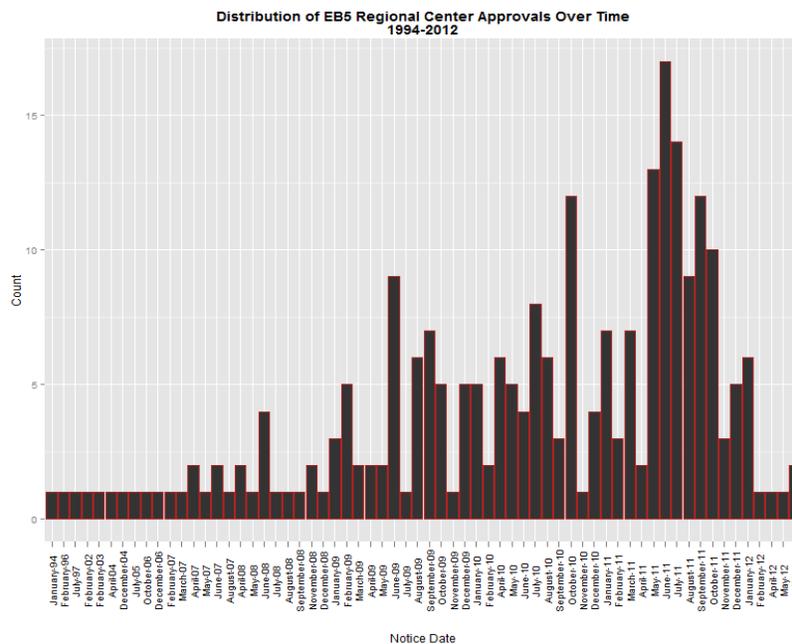
By: Lincoln Stone*

Objectives

During July 2012, in response to a request made by the nonprofit association Invest in the USA (“IIUSA”)¹ under the Freedom of Information Act (“FOIA”), U.S. Citizenship and Immigration Services (“USCIS”) produced 248 letters² authored by USCIS and legacy U.S. Immigration & Naturalization Service (“INS”), approving applicants for designation as a regional center under the Immigrant Investor Pilot Program.³ Some 186 of the letters – the vast majority -- are for original regional center designation, whereas the balance of the letters provide for amendment to existing regional center designations. The FOIA production covers USCIS and INS regional center work product ranging from 1994 to May 2012. While USCIS has yet to release information that it is systematically collecting about regional center applicants and their investment enterprises, the objectives of this paper are to provide a general and high-level overview of the USCIS work product, and to identify a few trends that may lead to further investigation.

Trends in Volume

What is most striking about the first graph is how it clearly depicts the spike in regional center approvals, numbering 75 approvals in total, during the six-month period of May 2011 to October 2011. This productivity accounts for approximately 30% of all regional center approval letters issued throughout the 20-year history of the Pilot Program.⁴ Of those approval letters issued during this time period, 75% (56/75) were tied to regional center proposals submitted to USCIS after it



¹ Invest in the USA (“IIUSA”) is a nonprofit EB-5 industry trade organization, www.iiusa.org. As a complement to this paper identifying trends in regional center approvals, the author is advised by IIUSA that it is preparing an interactive online map tool, and is providing all FOIA-produced materials to its members.

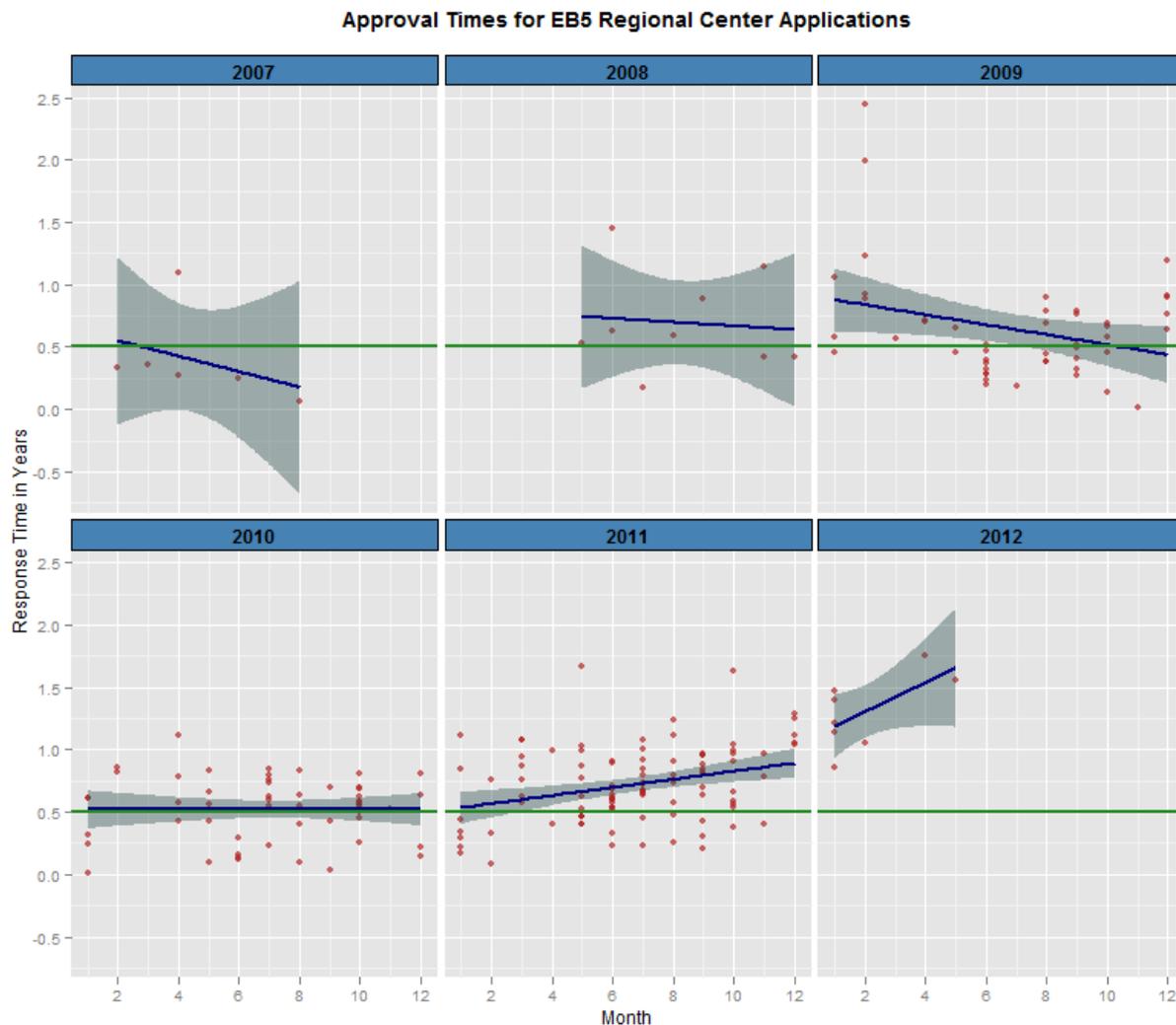
² There are 248 notices in the FOIA sample, of which 5 are duplicates. All information in the sample was obtained either directly from the approval notice and by further inference or through a qualitative coding process.

³ The Immigrant Investor Pilot Program, Pub. L. 102-395, sec. 610, 106 Stat. 1828; 8 C.F.R. 204.6 (m), provides for EB-5 investment in “designated regional centers”. It is a part of the EB-5 investor visa program, INA sec. 203(b)(5), 8 C.F.R. 204.6. The USCIS website, www.uscis.gov, includes an entry for “EB-5 Regional Centers”.

⁴ 56 out of 75 are for original regional center designations and 19 are for amendments. Both subtotals account for close to 30% of their respective totals throughout the 20-year period.

had imposed the requirement beginning in November 2010 to submit such proposals on Form I-924.⁵

The heightened activity in issuing regional center approvals in mid-2011 is starkly contrasted with the most recent four-month period from February to May 2012 when according to the FOIA production USCIS issued only 3 regional center approvals in total.⁶ This paltry output in the latter case is curious in light of the public statements by USCIS indicating it has a much larger workforce available in the EB-5 adjudications unit at the California Service Center, and it has more than 100 pending regional center applications.⁷ Of course, one missing piece here is that the FOIA production does not cover INS/UCSCIS denials of regional center proposals. (The July 2012 statistics issued by USCIS indicate it denied 143 proposals submitted on Form I-924, beginning with fiscal year 2010.) Setting aside for now the USCIS work product on regional center denials, what is obvious from the plot below is that processing times in approved cases have trended upward since the start of 2011.



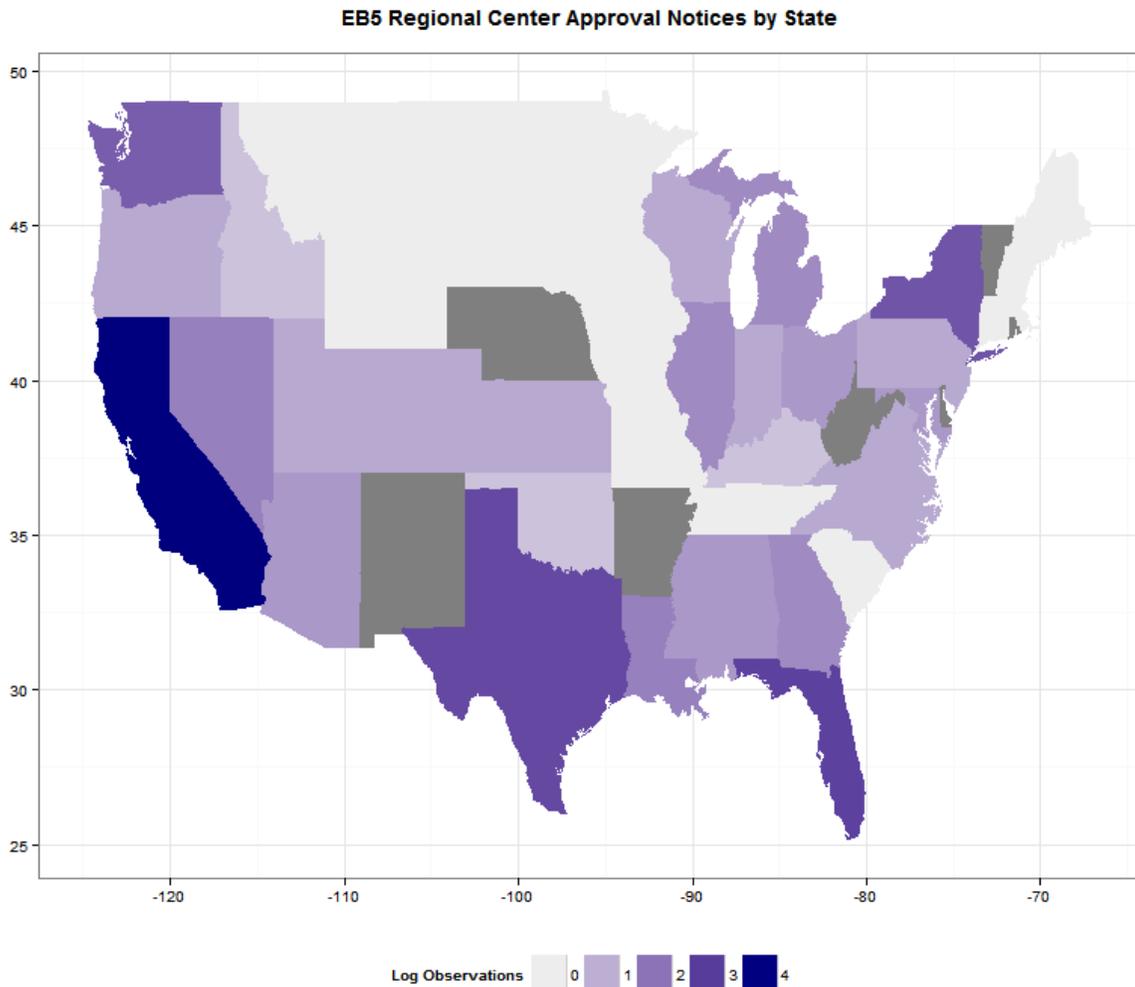
⁵ The Form I-924 and Instructions can be accessed on the USCIS website at <http://www.uscis.gov/i-924>.

⁶ USCIS released statistics in connection with its July 23, 2012 EB-5 stakeholder engagement. These statistics (hereinafter “July 2012 statistics”), represented to be current through the quarter ending June 30, 2012, reveal that USCIS approved sixteen Form I-924s in the first half of 2012.

⁷ In the USCIS EB-5 stakeholder meetings conducted in January, May and July 2012, the agency reported on a four-fold increase in staffing for the EB-5 program, and a tremendous increase in volume of cases filed including the large volume of pending I-924 applications.

Geographic Distribution

The next visual is a simple chart indicating by state the geographic distribution of regional center designations. What is clear is that nearly every state in the United States is tied to at least one regional center designation. The territory of Guam also is covered by a regional center. Based solely on the FOIA production, we observe that only the states of Alaska, Arkansas, Delaware, Massachusetts, Nebraska, New Mexico, Rhode Island, West Virginia, and Wyoming are not presently involved in the Pilot Program. However, based on the author's personal knowledge as well as the USCIS website listing of one regional center each for Massachusetts and Wyoming, we know a comprehensive, reliable list of uninvolved states would be shorter than that suggested by the initial FOIA production.⁸



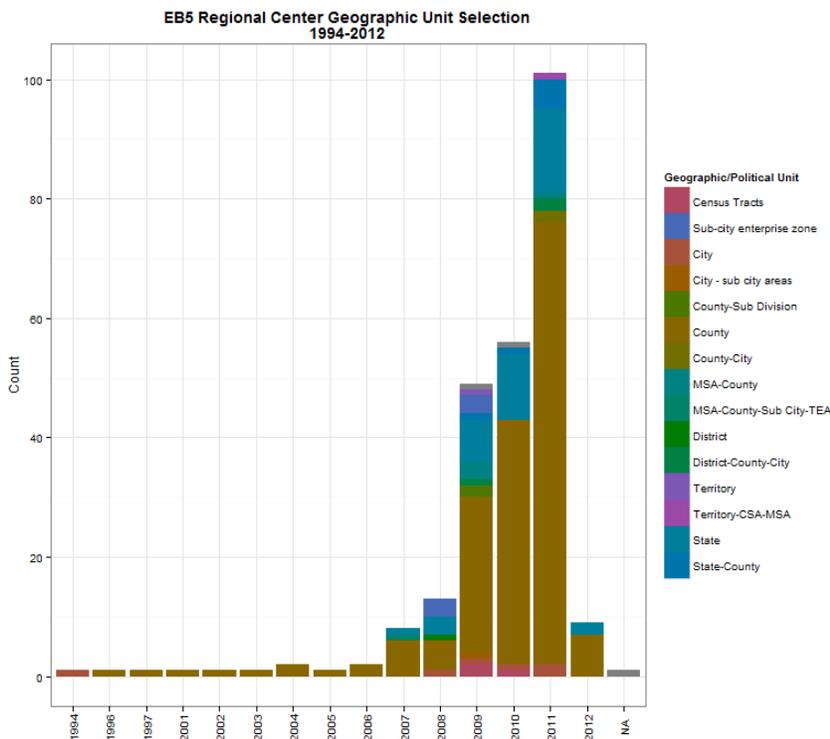
Another indication of the fact that the initial FOIA production does not include every regional center approval letter ever issued by INS and USCIS is that there are nine “orphan

⁸ The USCIS website lists approved regional centers, www.uscis.gov/eb-5centers, and it appears to be updated regularly.

amendments” – amendment letters without a corresponding original regional center approval letter. A supplemental IIUSA request under FOIA is directed at filling in the holes of the initial production.

The map of the United States colorfully shows the distribution of original regional center approvals,⁹ which are heavily concentrated in certain states, most prominently in California (55), Florida (18), Texas (16), and New York (13). As we would expect, the activity is most focused in states with the largest economies.¹⁰

Regional Center Boundaries



The next chart examines the regional center approvals by boundaries. We reviewed the approval letters for indications of boundaries by state, county, city, and alternative boundaries. We made no effort to measure actual size of the regional center territory, as the size of counties and cities can vary widely from state to state.

A majority of the approved regional centers are for boundaries ranging from 5 to 9 counties. Although USCIS has stated in numerous iterations that a regional center area must

be contiguous,¹¹ we made no effort to confirm that the approved regional center boundaries consist solely of contiguous areas.

⁹ The figures for New York, Massachusetts, and Wyoming were derived from both the FOIA production and information on the USCIS website, as several of the approval letters concerning the three states were not included in the initial FOIA production. The map uses a natural log scale, allowing for a state like California with 55 original notices to be pegged at level “4”. (The scale is $\ln(55) = 4.007$.) The states colored in dark gray have no notices listed in either the FOIA production or the USCIS website. All other states have at least one original regional center approved.

¹⁰ This relationship is depicted in the chart in the appendix. The simple linear relationship between state/national GDP and state/total approvals is highly significant. The variation in proportion of economic activity explains 68% of the variation in EB5 regional activity and there is less than 0.000001% (3.839⁻¹⁴) probability that the relationship is owing to chance alone. For every 1% increase in the proportion of state/national GDP, one should expect a 1.3% increase in regional center approvals. Data on state and national GDP was obtained from the Bureau of Economic Analysis: http://www.bea.gov/newsreleases/regional/gdp_state/gsp_newsrelease.htm

¹¹ See, e.g., USCIS Executive Summary, USCIS Quarterly EB-5 Stakeholder Meeting, January 23, 2012.

An estimated 31 of the regional center approval letters are for geographic areas including entire states, with a proportionally larger share occurring over time. We did not attempt to reconcile these outcomes with the statutory limitation on regional center boundaries to “a limited geographic area” and “consistent with the purpose of concentrating pooled investment in defined economic zones.”¹²

A smattering of the regional center approval letters include boundaries defined by cities, Metropolitan Statistical Areas, enterprise zones within cities, and even census tracts.

Input-Output Models

Insofar as the approval letters constitute the government’s authorization to operate as a regional center under the Pilot Program, we refer to the approval letter as the “Charter” or the “RC Charter letter”. The FOIA production reveals a definite trend toward identifying in RC Charter letters the specific input-output model that the regional center applicant proposes to use for estimating job creation. Prior to implementation of Form I-924, the RC Charter letter did not mention the proposed input-output model in at least two-thirds of the observed cases. But post-implementation of Form I-924, almost uniformly the RC Charter letter specifies a particular input-output model. A description of the various input-output models is not within the scope of this paper,¹³ but we did observe that a majority of the RC Charter letters identify IMPLAN, and the next in frequency was RIMS II. A dozen RC Charter letters indicate REDYN, and a few RC Charter letters refer to REMI and the State of Washington input-output model.

Clusters, Industry Sectors, and Business Activities

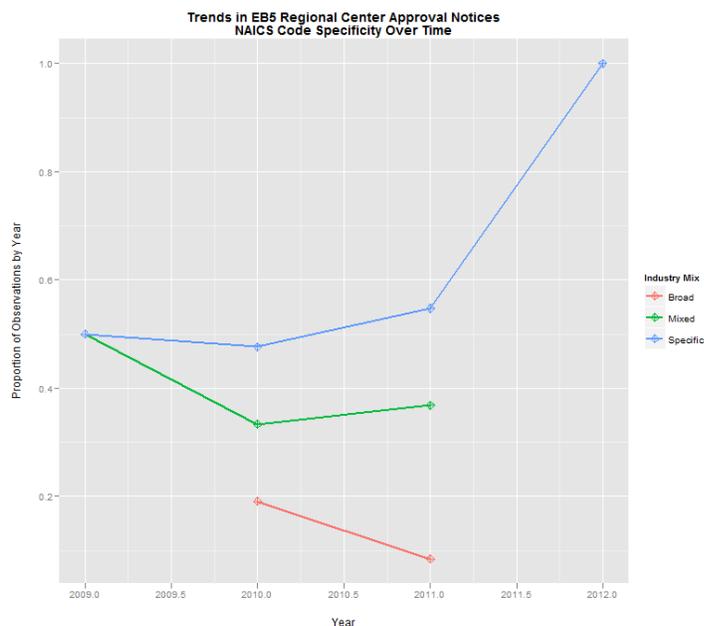
The final topic covered in the presentation is perhaps a preview to the problem of mixed language in RC Charter letters. The confusion in language used by USCIS in these letters is troubling, but full consideration of the practical, negative consequences of this confusion of language is beyond the scope of this paper. Nevertheless, the FOIA production does reveal that from the beginning of the Pilot Program, first legacy INS and later USCIS has confused and alternated the terms “clusters” with “industry sectors” and then again with “business activities”. These terms have different meanings, and thus, the interest in logging their appearance in the history of regional center approval letters.

¹² Pub. L. 107-273 (2002), amending Pub. L. 102-395, sec. 610.

¹³ See generally, P. Sommers & L. Stone, “Regional Economics and Job Creation in EB-5 Immigrant Investor Practice”, (AILA, April 2012).

The language of “clusters”¹⁴ surfaces in 102 – easily a majority (102/178)-- of the RC Charter letters from 2007 to the present. The language of “industry sector” was not uniformly included in the RC Charter letters from 2006 and earlier. But by 2011, and now in 2012, RC Charter letters always refer to the approved industry sectors. Furthermore, in 2011 and 2012, the RC Charter letters almost always include NAICS code references. By contrast, in the period 2009 and earlier, involving more than 80 regional center approvals, only 3 RC Charter letters – or less than 2% -- included NAICS code references. Lastly, approval notices also seem to interchange the terms “sector” and “cluster” when referring to industries that are delineated with NAICS codes.

With respect to NAICS codes appearing in RC Charter letters, there is a trend toward more specificity as indicated in the next chart.¹⁵ Whereas in the past USCIS had identified broad two-digit NAICS codes, more and more RC Charter letters in 2011 and 2012 include specific six-digit NAICS codes.¹⁶ A discussion of the legal issues and the practical, negative consequences of this trend is not within the narrow scope and objectives of this paper.



The reference to “business activities” in RC Charter letters appears to relate to general economic/business activities rather than specific clusters of economic activity or industries. There were five discernable main categories and one sub-category of business activities listed in RC Charter letters. The main categories of business activities include loans, equity investments, management/operations, real estate, and construction. The notable sub-category that we observed was for startup equity investments. Interestingly, though, the author’s practice experience suggests that this sub-category is not presently a significant factor in terms of frequency of occurrence as a business activity in the Pilot Program.

¹⁴ The centerpiece of cluster economic development theory is “geographic concentrations of interconnected companies.” See Porter, “Location, Competition, and Economic Development: Local Clusters in a Global Economy”, 14 Economic Development Quarterly, No. 1 (Feb. 2000). For a website source on cluster issues, see <http://www.isc.hbs.edu/econ-clusters.htm>. See also L.Stone, “Immigrant Investment in Local Clusters”, 80 Interp. Rel. 837 (June 16, 2003).

¹⁵ In this plot, “broad” is defined as less than or equal to three digits (most were two digits), “specific” is greater than 3 digits (although almost all in this category were six digits); and “mixed” includes both types of codes. USCIS has stated in stakeholder engagements during 2012 that it requires a minimum of 4 digits and sometimes 6 digits.

¹⁶ The NAICS code system (“North American Industry Classification System”) is the standard used by federal statistical agencies in classifying business establishments.

Conclusion

Our review of the FOIA materials provided by USCIS reveals significant trends in the USCIS administration of the Pilot Program for regional centers, namely, increased volume of regional center proposals handled by USCIS, longer processing times for adjudication of regional center proposals, expansion of the Pilot Program to include nearly every state in the country, a prevalence of county-based regional center boundaries, and the ever-growing significance of specific NAICS codes for identifying permissible regional center business activities and/or industry sectors. While a supplemental FOIA request should be helpful in terms of compiling a comprehensive repository of the entire INS/USCIS work product on RC Charter letters, the added substantive information to be gleaned from a supplemental production by USCIS, amounting to an estimated dozen approval letters, would not alter the basic findings in this analysis.

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APPENDIX

