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JUNE 2017

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VOL. 6, ISSUE #2, JUNE 2017

TABLE OF CONTENTS

VOLUME 6, ISSUE #1, JUNE 2017

Letter from the Editor

Dear Readers:

With over half of 2017 in the books, EB-5 stakeholders find themselves in a very familiar position as the past two summers: staring down a September 30th reauthorization date with just a few months to encourage lawmakers to come to consensus in reforming and reauthorizing the EB-5 Regional Center Program.

While progress has been slow as a new Congress and Administration took office to start the year, in the last couple of months, key Congressional offices have circulated draft EB-5 reform and reauthorization legislation to diverse stakeholders for discussion and comment. A multi-year EB-5 reauthorization deal is within reach as long as diverse stakeholders remain committed to such an outcome of the legislative process.

This edition of The Journal highlights not just the evolution of the legislative process but also the changing landscape of EB-5 Program rules and regulations. This issue features insightful articles on a range of topics from U.S. Citizenship and Immigration Services (USCIS) updates, macro-trends in EB-5 investment, job creation methodologies and much more.

Through the hard work and dedication of IIUSA's Editorial Committee, our generous authors and IIUSA staff, we are able to consistently produce a high quality Regional Center Business Journal. I welcome all IIUSA members to contribute their expertise in the form of articles to the industry's premier trade publication. We look forward to receiving your ideas and articles for our Fall issue!

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Chair of the Editorial Committee, IIUSA Stone Grzegorek & Gonzalez LLP

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Government Affairs Timeline

March – July, 2017

3/1 – IIUSA hosts Global Banquet Series event in Ho Chi Minh City, Vietnam, updating overseas stakeholders on the state of the EB-5 program

3/3 – USCIS holds an EB-5 stakeholder engagement regarding policy change requiring approval of Regional Center area expansions before investors could file I-526 petitions. This policy change was subsequently reversed

3/6 – IIUSA Executive Director Peter D. Joseph testifies before the Texas State Legislature's International Trade & Intergovernmental Affairs Committee on the importance of FDI-linked to immigration to the US economy

3/8 – The House Judiciary Committee holds a hearing regarding the Department of Homeland Security's (DHS) proposed regulations on the EB-5 program published in January

3/16 – IIUSA hosts a webinar to provide information and insight in advance of its upcoming 10th Annual EB-5 Advocacy Conference in Washington, DC

3/17 – IIUSA submits a statement for the record to the House Judiciary Committee related to the March 8 hearing on proposed EB-5 regulatory changes

3/21 – USCIS announces the launch of its new EB-5 Regional Center Compliance Audit Program as a means to improve Program integrity and verify information submitted in Regional Center applications (I-924) and annual certifications (I-924A)

3/27 – Senator Rand Paul introduces S. 727, the Invest in our Communities Act, a bill to permanently authorize the EB-5 Program, increase visa capacity and implement several integrity measures to improve the Program

4/13 – IIUSA submits comments to DHS on the proposed regulatory changes to the EB-5 Program issued in January. Comments were collected from the full membership and discussed by the Public Policy Committee before being drafted and submitted

4/15 – IIUSA publishes the first-ever Targeted Employment Area (TEA) reform comparative analysis report. The report analyzes seven different proposals to change TEAs and gives context to these changes by showing their impact at the census tract level

4/18 – Senate Judiciary Chairman Charles Grassley (R-IA) and former Ranking Member Patrick Leahy (D-VT) circulated a draft piece of legislation, the American Job Creation and Investment Promotion Reform Act of 2017, to the EB-5 industry that would reform and reauthorize the EB-5 Program

4/21 – USCIS publishes a new form I-829. The most notable changes to the 4/21/17 edition are the collection of additional and more detailed information on the New Commercial Enterprise (NCE) and Job Creating Entities (JCE).

4/26 – IIUSA holds its 12th Annual Membership Meeting, electing a new Board of Directors including a new President and Vice President

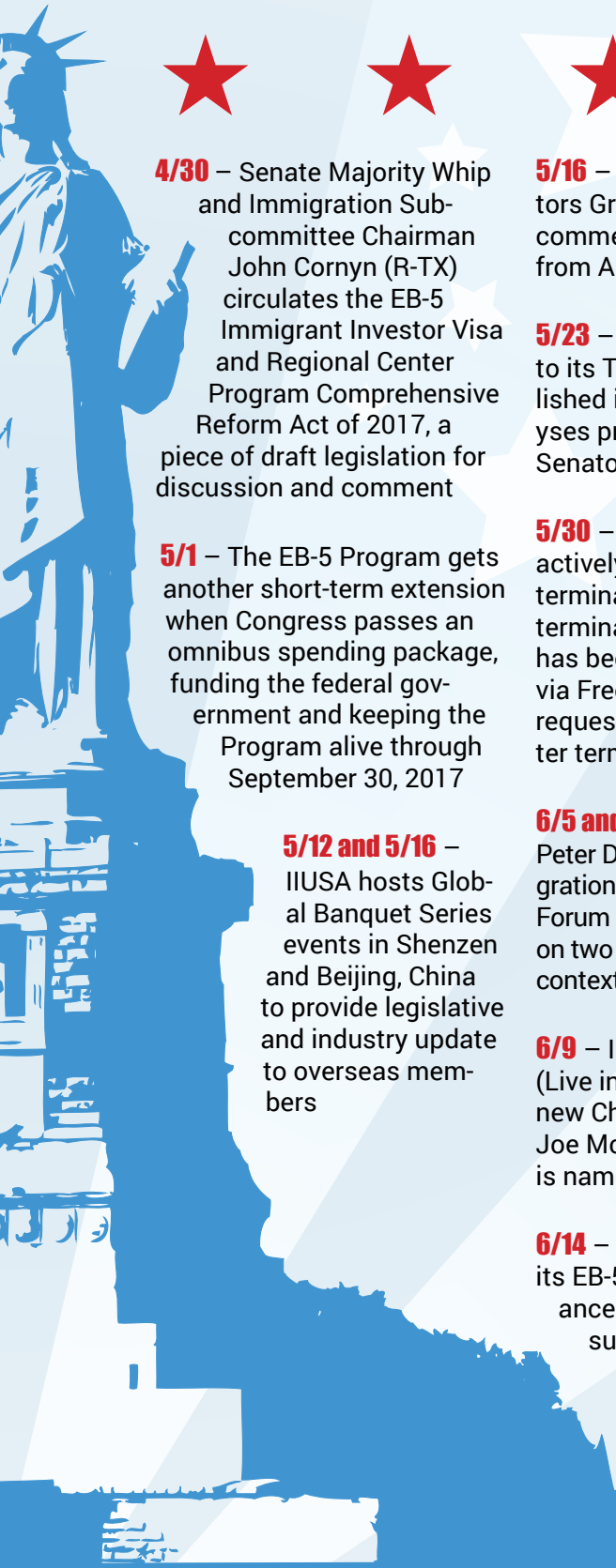
4/26 – USCIS hosts a webinar about the new Form I-924

4/27-4/28 – IIUSA hosts its 10th Annual EB-5 Advocacy Conference at the Marriott Marquis in downtown Washington, DC. The event featured 30+ sponsors, 60+ speakers and over 325 attendees at the EB-5 industry's cornerstone advocacy-focused event.

4/28 – IIUSA's new Board of Directors holds its first Board meeting at the conclusion of the Advocacy Conference. New President Robert Kraft honors the service outgoing officers K. David Andersson and Robert C. Divine and outgoing director Tom Rosenfeld with emeritus status

Government Affairs Timeline

March – July, 2017



4/30 – Senate Majority Whip and Immigration Subcommittee Chairman John Cornyn (R-TX) circulates the EB-5 Immigrant Investor Visa and Regional Center Program Comprehensive Reform Act of 2017, a piece of draft legislation for discussion and comment

5/1 – The EB-5 Program gets another short-term extension when Congress passes an omnibus spending package, funding the federal government and keeping the Program alive through September 30, 2017

5/12 and 5/16 – IIUSA hosts Global Banquet Series events in Shenzen and Beijing, China to provide legislative and industry update to overseas members

5/16 – IIUSA submits a letter to Senators Grassley and Leahy with detailed comments on their draft legislation from April

5/23 – IIUSA publishes an addendum to its TEA analysis report, first published in April. The addendum analyses proposed changes to TEAs in Senator Cornyn's draft bill

5/30 – USCIS announces it will proactively publish Regional Center termination notices to its website for terminated Regional Centers. IIUSA has been collecting these documents via Freedom of Information Act (FOIA) requests since the first Regional Center termination

6/5 and 6/6 – IIUSA Executive Director Peter D. Joseph attends Immigration Migration Council's Immigration Migration Forum in Geneva, Switzerland, speaking on two panels addressing EB-5 in the context of global immigrant investment

6/9 – IIUSA welcomes Adam Greene (Live in America Financial Services) as new Chair of Public Policy Committee. Joe McCarthy (American Dream Fund) is named as Vice Chair

6/14 – USCIS publishes an update to its EB-5 Policy Manual, providing guidance on redeployment of funds and sustainment of investment, and Regional Center termination's effect on immigration status of investors

6/18 – 6/20 – SelectUSA holds its annual Investment Summit in National Harbour, MD. IIUSA attends the event to promote and advocate for EB-5 as a vital foreign direct investment tool in the U.S.

6/19 – IIUSA submits a letter to Senator Cornyn with comments on his draft legislation from May

6/26 – IIUSA President Bob Kraft speaks at the Global Mobility & Tax Strategies conference in London.

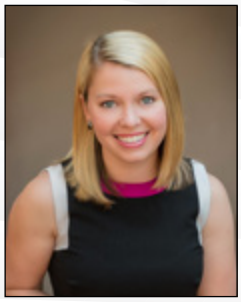
6/27 – IIUSA sends letter to USCIS regarding the publishing of inaccurate I-526 and I-829 statistics by Regional Center to its website. The letter applauds open and transparent information of the Program, but urges USCIS to work with the industry to verify accurate data before making publicly available

6/28 – IIUSA submits comments on the recent updates to the EB-5 Policy Manual, drafted with help from the Public Policy Committee

6/29 – Citizenship & Immigration Services (CIS) Ombudsman releases its 2017 Annual Report to Congress which addresses ongoing issues with the EB-5 Program including visa backlogs, petition processing delays and understaffing at the IPO. ■

GOING LOCAL:

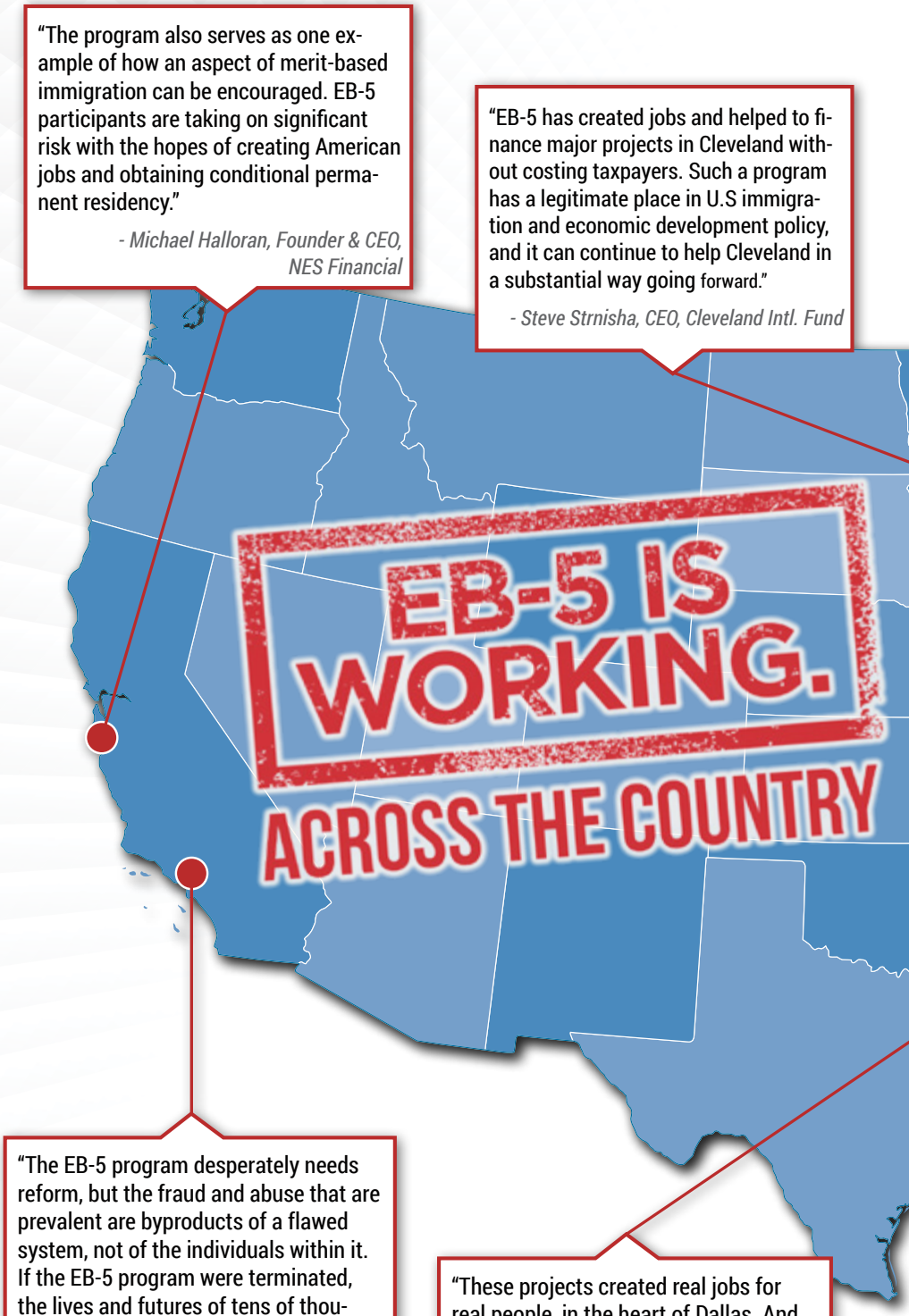
BRINGING THE MESSAGE OF EB-5 TO THE PEOPLE IT IMPACTS THE MOST

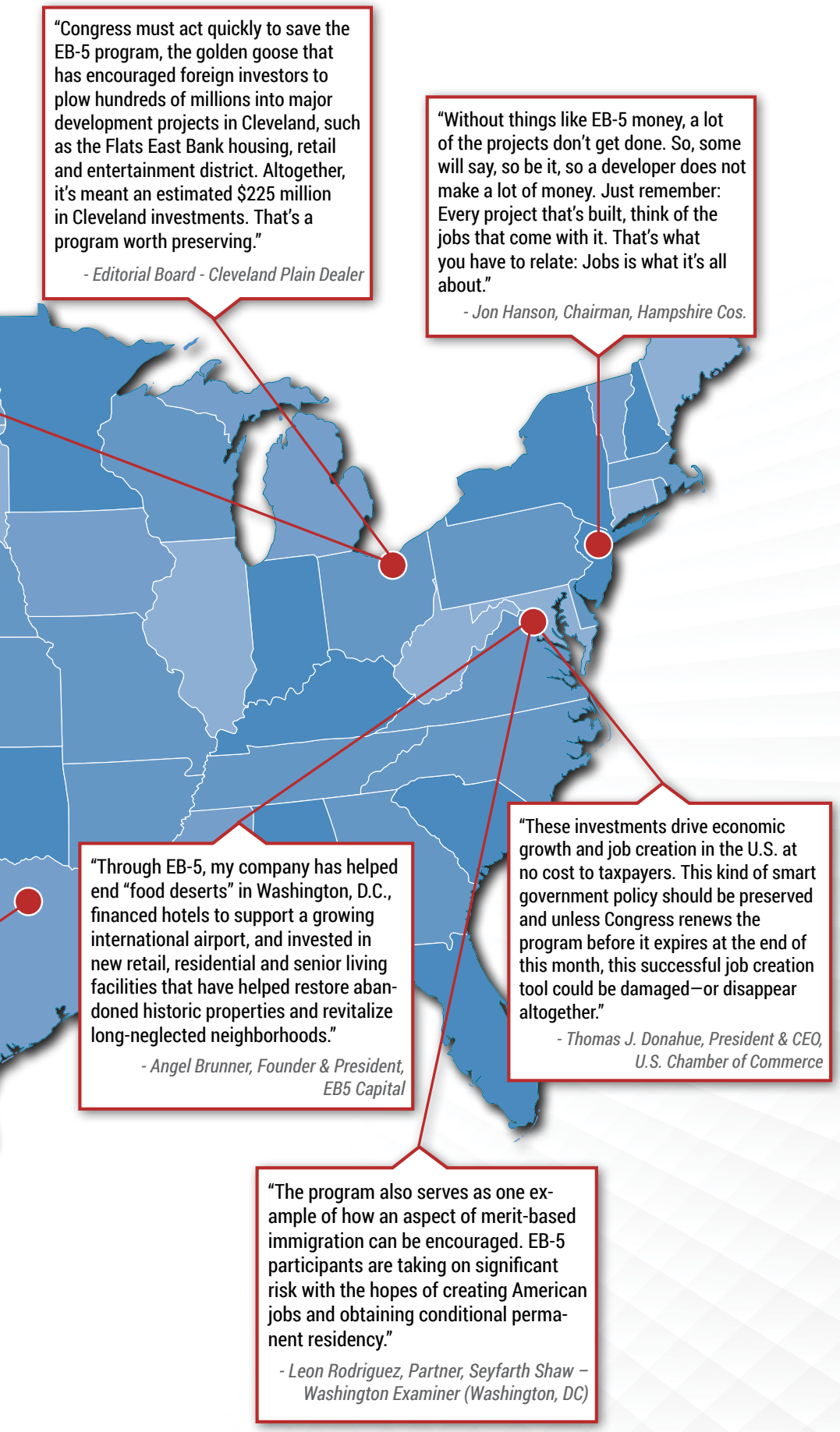


ASHLEY SANISLO CASEY
IIUSA ASSOCIATE DIRECTOR OF ADVOCACY

Over the last two and a half years, most of the conversations within the EB-5 Regional Center industry have centered around advocacy for reform and reauthorization, in one form or another, of the EB-5 Program. This has largely been big picture conversations on Capitol Hill, at EB-5 industry conferences, and in the national media, discussing the Program's impact on the country and ways to reform it to make it stronger and more sustainable for the future. What is sometimes lost in these important interactions, however, are the many economic development success stories at the regional and local levels and that go beyond the headlines.

IIUSA set out to improve the perception of the EB-5 program through a comprehensive public relations strategy that targets local and regional audiences. The strategy seeks to reach the communities that are positively affected by EB-5 economic development through opinions pieces, op-eds, and letters to the editor. This approach allows the author to cut through the noise surrounding the larger conversations around EB-5, and get down to the facts: EB-5 is creating jobs, driving development, and





boosting local economies – all at no cost to the taxpayer. And most importantly, this message is reaching the people who see the success of EB-5 in their everyday lives and may not even know the Program exists to serve their communities.

To amplify this messaging, IIUSA leverages its social media and digital communications to further spread the content through engagement on these platforms with our members, other EB-5 stakeholders, and the general public. Additionally, IIUSA closely monitors all media coverage of EB-5 and gives this same treatment to others who felt compelled to spread the positive message of the Program through their own opinion pieces and op-eds. Most importantly, these articles help correct the unfair characterizations of the Program and illustrate how it continues to provide economic assistance to the communities that need it most.

Below is a map that highlights some of these opinion articles and op-eds. They span the country both geographically and in size of the community they were targeted at, just like EB-5 projects. Some of these were inspired by the help of IIUSA and its public relations consultants, while others were self-driven and not affiliated with IIUSA. They include an opinion piece about the transformative work EB-5 has done in downtown Dallas, a letter to the editor about the past and potential development EB-5 brings to Cleveland, an opinion from a New Jersey developer calling for reform but highlighting the indispensable job creation of the Program, and a California college student coming to the defense of the Program and its investors, just to name a few.

Our work is not finished: With another sunset date approaching on September 30th, there is still time and reason to continue to spread our message. If you are interested in authoring an op-ed in your local media publications, contact Associate Director of Advocacy, Ashley Sanislo Casey, at ashley.casey@iiusa.org. IIUSA staff and consultants can assist in drafting and placing a piece that will help you do your part to advocate in your community.

To follow the many EB-5 success stories, op-eds, and opinion articles highlighted by IIUSA, follow us on Twitter @EB5IIUSA or on LinkedIn at www.linkedin.com/company/association-to-invest-in-the-usa-iiusa- ■

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STEPPING UP TO THE PLATE:

How Promoting Advantages of EB-5 Helps U.S. Remain Competitive in Global Market

PETER D. JOSEPH
EXECUTIVE DIRECTOR, IIUSA

The benefits of foreign direct investment (FDI) to the U.S. economy are generally well-known and appreciated by the American public. It is understood that new investments lead to economic development opportunities and robust job creation for workers. In turn, domestic demand is stimulated, allowing for prosperity in communities all across the country.

However, FDI cannot and should not be taken for granted. With slow global growth projected for the foreseeable future, demand for investment in today's globalized world is ultra-competitive. In the immigration-by-investment space, this pits the EB-5 Program squarely against other viable immigrant investor programs (IIPs) in Australia, Canada, Portugal and elsewhere. To remain the world's top destination for FDI – including immigrant investment dollars – the United States must be willing to compete by demonstrating its abundant advantages such as its innovative capacity and talent-rich workforce, regulatory environment and access to financial markets.

As EB-5 industry stakeholders, we know that the Regional Center Program is essential to U.S. competitiveness globally and stimulates local economies as well. For instance, we know that low-cost, taxpayer-free EB-5 capital propels forward each and every diverse industry sector it powers – from education and energy to manufacturing and medicine. We know that from 2005-2015, more than $15 billion of FDI flowed into the U.S. thanks to EB-5 investments. And we also know that in FY2012 and FY2013 alone, $5.8 billion in EB-5 investments yielded more than 174,000 American jobs.

Yet, the size of the EB-5 stakeholder community and even those who have gained employment as a result of EB-5 investment, pales in comparison to the many millions of people that benefit directly or indirectly from the EB-5 Regional Center Program. And so, it is our collective duty to raise awareness of the benefits of EB-5 investment before it is too late.

Just as we know the EB-5 Program is working, we also know that its future is imperiled and another reauthorization deadline awaits at the end of September. With this urgency, we have obligation to share the many successes that the EB-5 Program has produced and tell the 174,000+ stories behind them. Because the more people learn about the EB-5 Program, the more they understand it and are more willing to support it as a permanent part of 21st century economic development policy in the United States.

Telling your EB-5 success story is simple and disseminating it far and wide is easier than ever. We challenge you, in the next 30 days, to consider writing a letter to the editors of your local newspapers or drafting a blog post highlighting job creation and economic development as a result of your project. IIUSA stands ready to assist in crafting your message and delivering to relevant traditional and social media outlets.

Working together to utilize development capital from the world's investors, we have built towering skyscrapers in our big cities and we have built vital community centers in our small towns. Now, as we gear up for the fall's legislative push, let's work together to build an advocacy presence that is just as towering and just as vital.

The EB-5 program has emerged as the shining example of demonstrating how economic ties to investors abroad are the foundation of peace and prosperity here at home. Let's tell that story – our story, as many times over as the communities we have helped transform for the better. ■

EB-5 INVESTING IS ABOUT PEOPLE, NOT PROJECTS

More than ever before, EB-5 investors need a partner they can trust. Civitas EB-5 Capital is an investment adviser with a team of 50 that hails from 18 countries and speaks 17 languages, and we are proud to earn this trust every day. We dig deeper to find investments that others miss, drawing on broad and deep experience in a range of disciplines to identify compelling, high-quality opportunities. From investment analysis and asset management to securities compliance to EB-5 regulatory expertise, global investors know the Civitas name stands for experience and rigor. Learn more at civitascapital.com/who-we-are.

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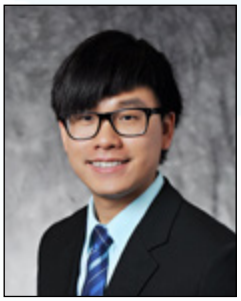
A NEW LENS:

What the Latest Data Tells Us about Raising EB-5 Capital in an Increasingly Challenging Marketplace



LEE LI
POLICY ANALYST, IIUSA

Raising EB-5 capital worldwide has proven to be an increasingly challenging endeavor. As the industry trade association, IIUSA is committed to publishing the latest intelligence on EB-5 investor markets and proactively seeking data via Freedom of Information Act (FOIA) requests about statistics on investors' country of birth. In June 2017, IIUSA obtained a dataset from the U.S. Citizenship & Immigration Services (USCIS) FOIA office that included Form I-526 (Immigrant Petition by Alien Entrepreneur) filings approval and denial statistics for fiscal year (FY) 2016 by petitioner's country of origin. Despite some minor discrepancies in USCIS's data[1], the latest I-526 statistics illustrate new and exciting trends that will help project marketers make informed decisions on where to invest their time and money raising EB-5 capital.

TOP 15 EB-5 INVESTOR MARKETS IN 2016

Approximately 95% of all I-526 filings in FY2016 came from the top 15 EB-5 investor markets (listed in Table 1), representing more than $6.3 billion in potential capital investment for various economic development projects across the U.S. Although its global share in I-526 filings declined by 2.5% from FY2015, investors from Mainland China remained the top participants in the EB-5 Program, accounting for 10,950 I-526 filings (82.5% of all I-526 petitions filed) in FY2016. Coming in second and third place were Vietnam and India, respectively, remaining in the same position as FY2015.

A surprising change was South Korea, which saw a bump of two spots from FY2015 to fourth rank in FY2016. Meanwhile, Brazil saw a 30% decline in number of I-526 petitions filed in FY2016, and is now ranked as the fifth most popular EB-5 investor marketplace. Another highlight was the downward movement of Nigeria, which experienced a decline of almost 60% in I-526 filings in FY2016 and dropped out of the top 15 investor markets in FY2016. In FY2015, Nigeria was ranked 11th for EB-5 investor markets.

As illustrated by Figure 1, EB-5 investors from Asia, including Mainland China, Vietnam, India, South Korea, Taiwan, Hong Kong, and Japan, accounted for over 91% of all I-526 pe-

1 The total I-526 filings worldwide in FY2016 from the dataset that IIUSA obtained via FOIA is 13,273; while the total number of I-526 receipts in FY2016 that USCIS published on its website is 14,147.

I-526 Filings & Approval Rates by Investor's Country of Birth (FY2016) - Top EB-5 Investor Markets

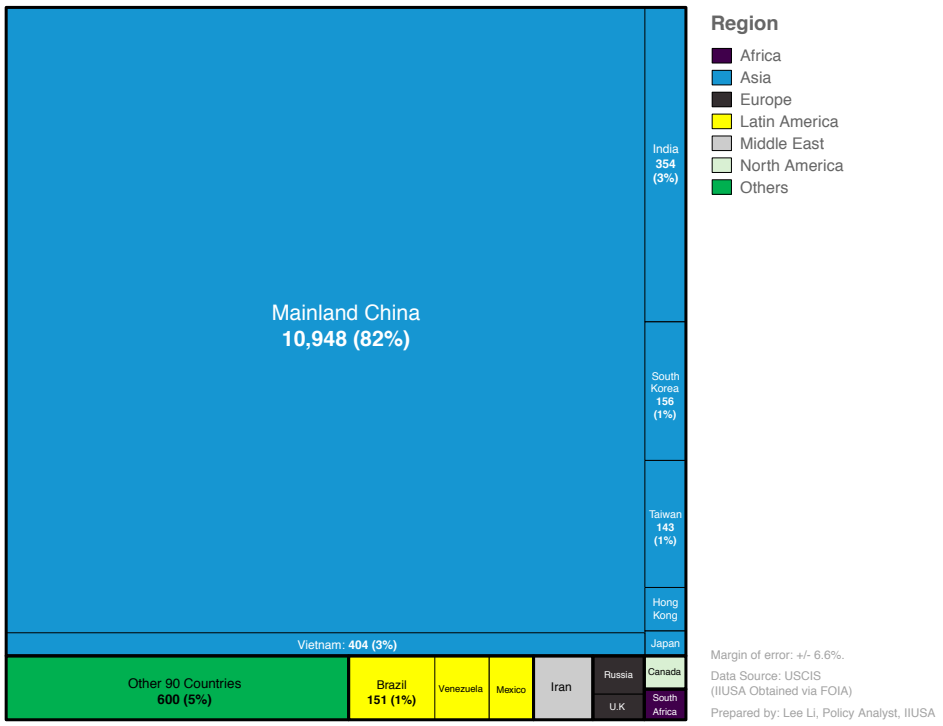
Country/Region	Rankings (Compared to FY'15)	I-526 Filings (Number)	I-526 Filings (Global Share)	EB-5 Investments (in $million)	FY2015-2016 Growth	I-526 Approval Rates
China (Mainland)	1 (-)	10,948	82.5%	$5,474	-19%	83%
Vietnam	2 (-)	404	3.0%	$202	40%	87%
India	3 (-)	354	2.7%	$177	48%	66%
South Korea	4 (+2)	156	1.2%	$78	-7%	82%
Brazil	5 (-1)	151	1.1%	$76	-34%	74%
Taiwan	6 (-1)	143	1.1%	$72	-16%	76%
Iran	7 (-)	104	0.8%	$52	-32%	37%
Venezuela	8 (-)	95	0.7%	$48	-23%	84%
Mexico	9 (-)	78	0.6%	$39	-12%	57%
Russia	10 (-)	54	0.4%	$27	-34%	67%
Hong Kong	11 (+3)	49	0.4%	$25	17%	96%
Canada	12 (-)	38	0.3%	$19	-32%	75%
United Kingdom	13 (-)	36	0.3%	$18	-35%	84%
South Africa	14 (+1)	35	0.3%	$18	-13%	77%
Japan	15 (+1)	28	0.2%	$14	47%	85%
Others 90 Countries	-	600	4.5%	$300	-	-
Grand Total	-	**13,273**	**100.0%**	**$6,637**	**-17%**	**82%**

Data Note: Margin of error: +/- 6.6%. EB-5 investments are calculated based on $500,000 per filing of I-526 petition.
Data Source: U.S. Citizenship and Immigration Services (IIUSA Obtained via FOIA)
Prepared by: Lee Li, Policy Analyst, IIUSA

(Table 1)

95% of All EB-5 Investors in FY2016 Come from the Top 15 Investor Markets

Here is the total numbers and the market shares of I-526 filings by EB-5 investor's country of birth (FY2016)



(Figure 1)

titions filed in FY2016. Latin America, holding top investor markets such as Brazil, Venezuela, and Mexico, remained the second largest region based on I-526 filings in FY2016, generating $187 million worth of EB-5 capital[2] in the last fiscal year.

TOP EB-5 INVESTOR MARKETS GROWTH TRENDS: FY2014 - 2016

In addition to a one year snapshot, it is also instructive to analyze the data year-over-year to assess which statistics may be anomalies and which may be actual trends. A total of 11 of the top 15 EB-5 investor markets in last year's dataset experienced a decline in I-526 filing. Brazil, which had the highest growth rate from FY2013 to FY2015, experienced a decline of 35% in terms of number of I-526 petitions filed in FY2016. Meanwhile, Mainland China, which had a growth rate of 40% in FY2014, experienced a 20% decrease in FY2016 as well.

As illustrated in Figure 2, India and Vietnam demonstrated stable growth in the past few years – with both countries seeing over 100% growth in I-526 petitions filed in FY2015 and a more than 40% increase in FY2016.

The year-over-year growth of Vietnam's and India's EB-5 investor markets are significant. As Figure 3 shows, just as the EB-5 visa category saw its first signs of retrogression for Mainland Chinese applicants in 2014, the demands for EB-5 visas in Vietnam and India started their exponential rise. When viewed in a 10 year prism, the numbers are even more startling. I-526 petitions filed by Indian investors increased by over 2,200% since 2006 and filings by Vietnamese EB-5 investors saw an over 20,000% increase in the same time span.

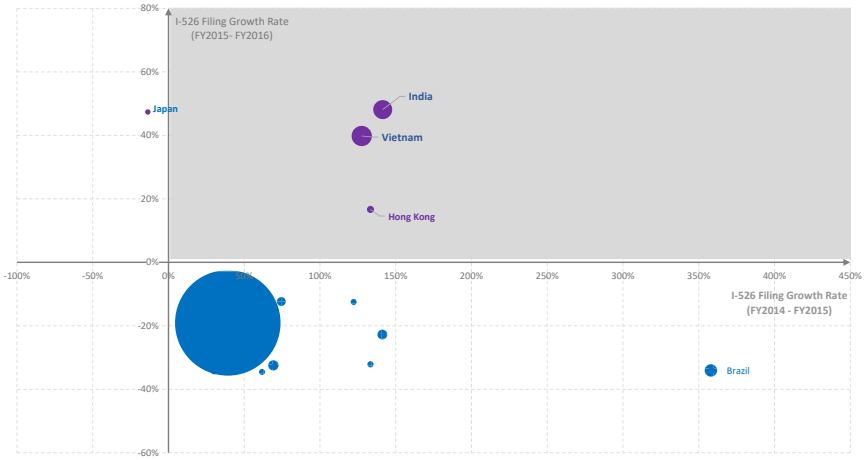
I-526 APPROVAL RATES BY INVESTOR'S ORIGIN

In addition to I-526 filing statistics, the I-526 petitions dataset also includes the numbers of I-526 petition approvals and denials by investor's origin, allowing us to dig deeper into the data. Figure 4 not only shows the average I-526 approval rates for the EB-5 investors from the top 15 investor markets, but also compares those statistics to the overall average approval rate worldwide (82%) in FY2016. According to the data, the vast majority of I-526 petitioners from the top countries had an average approval

2 EB-5 capital is calculated based on $500,000 in capital investment per I-526 filing.

India and Vietnam: Consistent Growth from FY2013 – FY2015

I-526 filing growth rates in FY2014-2015 versus growth rates in FY2015-2016 in top EB-5 investor markets. Bubble size represents the amount of I-526 filings in FY2016.

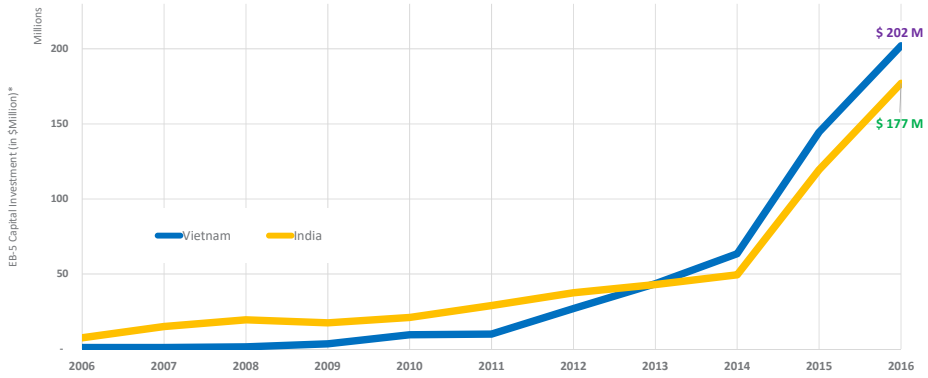


Data Source: U.S. Citizenship and Immigration Services (IIUSA Obtained via FOIA)
Prepared by: Lee Li, Policy Analyst, IIUSA

(Figure 2)

EB-5 Investment from Vietnam and India: Exponential Growth from FY2006 – FY2016

EB-5 capital investment* from Vietnam and Indian based on I-526 filings by fiscal year in the past decade:

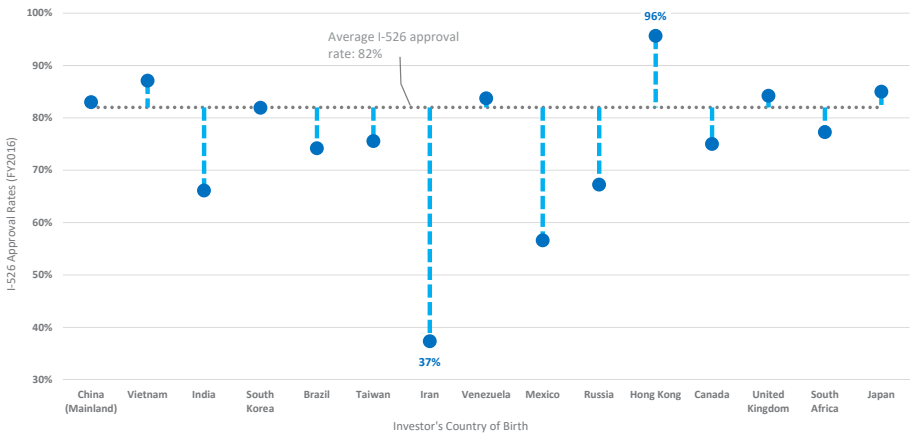


Data Note: Margin of error: +/- 6.6%.
**EB-5 investments are calculated based on $500,000 per filing of I-526 petition.*
Data Source: U.S. Citizenship and Immigration Services (IIUSA Obtained via FOIA)
Prepared by: Lee Li, Policy Analyst, IIUSA

(Figure 3)

Approval Rates of I-526 Petitions Range from 37% to 96% by Investors' Country of Birth

I-526 Approval Rates by Investor's Country of Birth in Comparison to Global Average (FY2016):



Data Source: U.S. Citizenship and Immigration Services (IIUSA Obtained via FOIA)
Prepared by: Lee Li, Policy Analyst, IIUSA

(Figure 4)

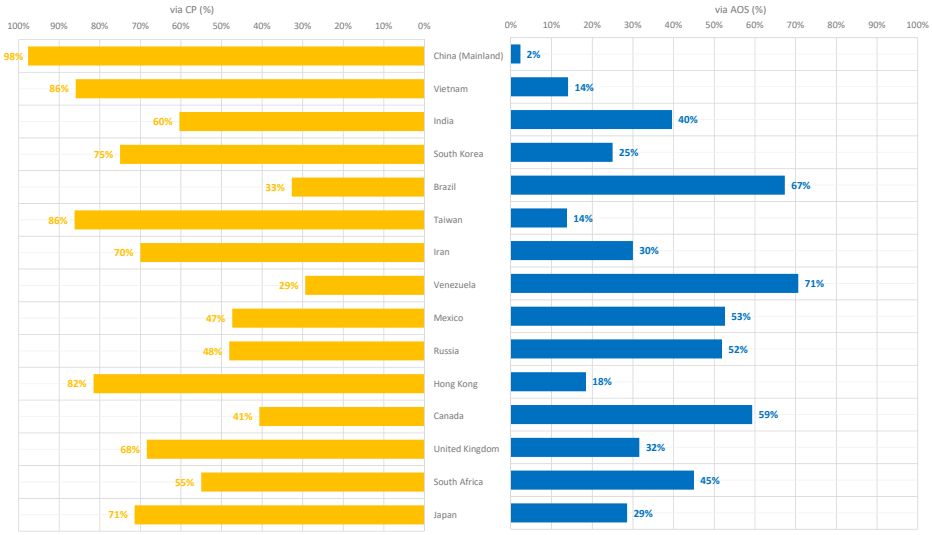
rate ranging from 75% to 85%. The outlier is Iran, which only averages a 37% I-526 petitions approval rate by USCIS, significantly lower than the global average. One might conclude that international sanctions against Iran – and by extension Iranian investment overseas – continued to cloud its prospects for participation in the EB-5 Program moving forward. In contrast, 96% of the I-526 petitioners from Hong Kong ended up receiving their approvals (the highest level among all top 15 markets).

WHERE IN THE WORLD ARE EB-5 INVESTORS? LOOKING AT CONSULAR PROCESSING VS. ADJUSTMENT OF STATUS

Rather significantly, it should be noted that the I-526 petition adjudication data is incomplete because it does not account for the number of investors who are already physically in the U.S. before they filed their petitions and acquired their EB-5 visas through adjustment of status (AOS). Hence, included is the FY2016 EB-5 visa usage statistics [3] published by the Department of State that shows the number of EB-5 visa issued by consular processing (CP) overseas versus EB-5 visas used by AOS to supplement our analyses on the EB-5 investor market trends. The results (Figure 5) indicate that the majority of EB-5 principal investors (and their eligible family members) from Brazil (67%), Venezuela (71%), Mexico (53%), Russia (52%) and Canada (59%) obtained their EB-5 visa via AOS. This information suggests that most EB-5 investors attributed to these markets are already within the U.S.

Majority of Brazilian and Venezuelan Investors Obtained their EB-5 Visa via Adjustment of Status

Total EB-5 Visa Usage by Investor's Country of Birth via Consular Processing versus Adjustment of Status (FY2016):

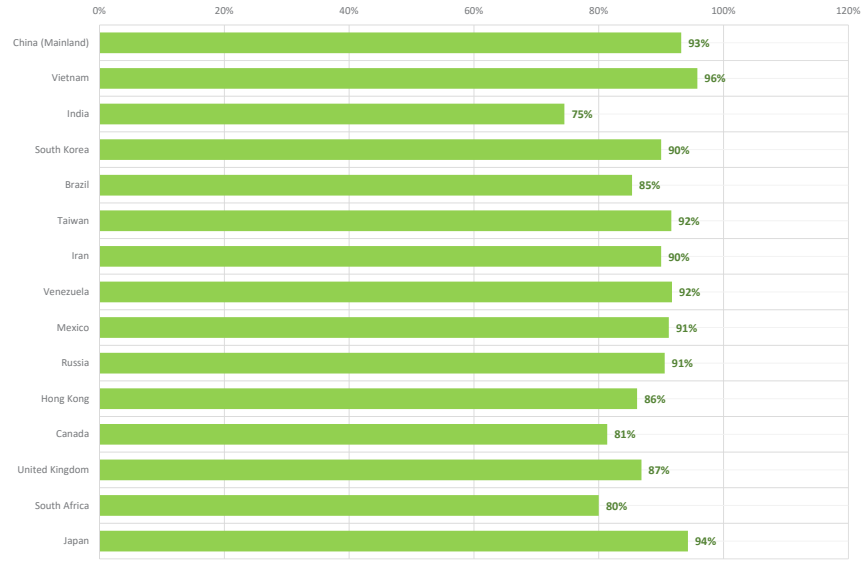


Data Source: U.S. Department of State
Prepared by: Lee Li, Policy Analyst, IIUSA

(Figure 5)

95% EB-5 Investors from Vietnam Chose Regional Center Projects; 25% of Indian EB-5 Visa Holders Invested in Direct EB-5 Projects;

Total Percentage of EB-5 Visa Used through R5 and I5 (Regional Center Projects) by Investor's Country of Birth in FY2016:



Data Source: U.S. Department of State
Prepared by: Lee Li, Policy Analyst, IIUSA

(Figure 6)

Furthermore, in FY2016, 40% of EB-5 visa holders born in India got their green cards through AOS, a much higher percentage in comparison to the other top two EB-5 investor markets (Mainland China: 2% and Vietnam: 14%).

ANALYZING INVESTOR PREFERENCES FOR REGIONAL CENTERS VS DIRECT EB-5 INVESMENTS

The EB-5 visa usage statistics also shed light on which EB-5 markets prefer Regional Center investment projects versus direct EB-5 projects. Overall, the majority (91.5%) of EB-5 visas in FY2016 were used by applicants who invested in a Regional Center project, as shown in Figure 6 . India, in comparison with the other top countries, had a relatively high percentage (25%) of EB-5 visa usage in FY2016 that was associated with direct EB-5 projects, the only top EB-5 investor market with a share of EB-5 investment in Regional Center projects that is lower than 80%.

The EB-5 Program in FY2017 faces unprecedented uncertainty from visa backlogs, ever-increasing processing times, and potential legislative and/or regulatory changes. More than ever, EB-5 industry participants should utilize analytics to optimize its global marketing strategies. Because, in the end, locating EB-5 capital is just the start of spurring economic development projects and job creation in communities all across the country. In these challenging times, IIUSA is proud to continue serving its members and the broader EB-5 stakeholder community with qualitative and quantitative analyses of EB-5 investment trends. ■

3 DOS, Report of the Visa Office 2016, Statistical Tables, Table V (Part3); https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableV-Part3.pdf

Understanding Incentive Proposals for EB-5 Investment: Practical & Policy Considerations

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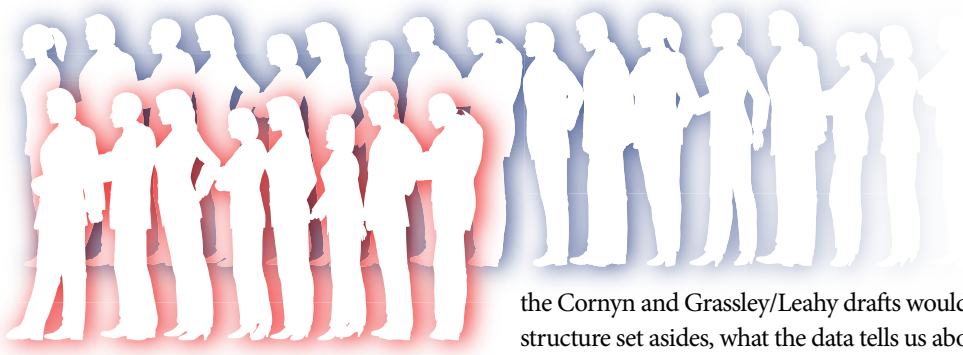
Over the last several years, as the EB-5 industry has sought a long-term legislative reauthorization of the Program, much attention has been paid to reforms proposals that would incentivize investment in a Targeted Employment Areas (TEA). The current incentive for investing in a TEA is a lower investment threshold (a $500,000 investment) versus the non-TEA level (a $1 million investment). Under the current definition of a TEA, 97% of all investments are at the lower investment level [1] – which is one of the reasons reform efforts in Congress have targeted the precise definition of a TEA and how to incentivize investment into good projects in rural or distressed urban areas. This article focuses on the practical issues and policy considerations that must be taken into account for any new incentive structure to have the intended outcome of making EB-5 a more effective tool for regional economic development.

Congress appears to be getting close to a compromise on what price differentials should be between TEA and non-TEA investments. In April, two draft EB-5 reform and reauthorization bills were circulated to stakeholders, one from the office of Senator John Cornyn (R-TX) - known as the "EB-5 Immigrant Investor Visa and Regional Center Program Comprehensive Reform Act of 2017" ("Cornyn draft") - and another from Senators Chuck Grassley (R-IA) and Patrick Leahy's (D-VT) - known as the "American Job Creation and Investment and Promotion Act of 2017" ("Grassley/Leahy draft") for comment. The

1 U.S. Government Accountability Office Testimony Before the Committee on the Judiciary, House of Representatives. (2017). Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas.



Cornyn draft proposes a $125,000 differential while the Grassley/Leahy proposed $200,000.

Narrowing the differential on TEA and non-TEA investment levels from the current $500,000 to somewhere in between $125,000 and $200,000 fits within IIUSA's policy platform that reads: "IIUSA supports a meaningful and reasonable difference in TEA and non-TEA investment levels, up to $200,000 and with phased implementation to minimize disruption to ongoing capital flows."

With the backlog of applicants (and processing times) continuing to grow and overall demand for the annual allocation of 10,000 EB-5 visas exceeding supply by approximately ten years, as reported by the Office of Citizenship and Immigration Services (CIS) Ombudsman, due to demand from Mainland China [2]. Because of this high demand from Mainland China, creating "set asides" (i.e., holding a certain number of visas each for investors in projects each year that meet certain criteria, whether industry sector, geographic, or otherwise) has been proposed as another way to incentivize investment. How long visas would be set aside in any new queue if they remain unused for multiple years, the percentage of the EB-5 annual visa allocation that should be set aside, what projects would quality for a set aside, and the effective dates of such reforms have been the points of negotiation and discussion surrounding this policy matter.

IIUSA can support visa set asides as an additional incentive if properly implemented, meaning it cannot disrupt ongoing economic activity resulting from EB-5 capital flows. For example, IIUSA would have major concerns with any implementation plan that would be retroactively applied to EB-5 investors already in line. The policy was adopted after comprehensive analysis of how set asides would work in practice by IIUSA staff, government affairs team, Public Policy Committee, President's Advisory Council, and Board of Directors. With that mind, we will explore how the Cornyn and Grassley/Leahy drafts would structure set asides, what the data tells us about whether they would work as intended, and what unintended consequences must be taken into consideration for visa set asides to work.

2 U.S. Department of Homeland Security Citizenship & Immigration Services Ombudsman annual report to Congress, published in June 2017, estimated a ten year wait for Mainland Chinese investors who start the EB-5 today.

Based on analysis of data from IIUSA's project database of over 650 projects, the main problem with set asides as an incentive is obvious: investor demand for projects that would qualify for set asides already far outstrips total supply.

In the Cornyn draft, 20% of total visas would be set aside for all rural areas or military bases closed by the Defense Base Closure and Realignment Commission ("BRAC") (see Image 1). This would amount to approximately 2,000 visas or about 667 investors per year. At the proposed new lower price point of $800,000, this number of set aside investors would represent at least $533.6 million in rural or BRAC areas. Based on IIUSA's TEA Policy Report, 21% of census tracts in the U.S. would qualify as a rural area and 10% of project samples are located in a rural area. [3]

In the Grassley/Leahy draft, the first year of implementation of the law would have 7.5% of total EB-5 visas would go to all rural areas, and 7.5% of total visas would go to priority urban areas. In the following year, each of these respective set asides would increase to 15%. This would mean about 250 investors in the first year and 500 investors in subsequent years for each category. The first year each of the two set asides would represent about $200 million, and thereafter represent $400 million. Based on IIUSA analysis, 21% of census tracts in the U.S. would qualify as a rural area and 10% of project samples are located in a rural area. In distressed urban areas based on a 2 of 3 high distress new market tax credit qualification (see Image 1), 18% of census tracts and 18% of projects in the U.S. would qualify for a set aside.[4]

The main issue keeping EB-5 from maximizing its contribution to the U.S. is unreasonable processing times of up to 22 months for I-526 petitions along with extreme limitations on visa capacity that must be addressed. A positive step

3 Lee, L. (2017). Targeted Employment Area (TEA) Reform: Policy Proposals Comparative Analysis by State. Invest in the USA (IIUSA).
4 Ibid. 3.

towards fixing this issue was put forward in the Cornyn Draft by counting only principal applicants towards the cap of total EB-5 visas allocated. With an estimation that three visas be allocated per principal applicant, this solution would nearly triple the number of EB-5 visa beneficiaries – a major relief to the capacity issues for Mainland Chinese EB-5 applicants.

With the next reauthorization deadline of September 30 fast approaching, IIUSA continues to work with all stakeholders and congressional offices towards a legislative solution that reauthorizes the Program for the long term with workable, balanced reform. If Congress is unable to come to a solution, USCIS will be given more reason to move forward as planned with regulatory changes. The EB-5 industry would not see any set asides, but would have to deal with an onerous price increase for TEA and non-TEA investments of $1.34 million for a TEA and $1.8 million for a non-TEA. As IIUSA continues to press forward towards a legislative solution, we encourage you to contact your legislators to tell them how EB-5 is working for you and for America. ■

DRAFT LEGISTLATION	DEFINED: VISA SET-ASIDES	PERCENTAGES OF VISAS SET ASIDE
CORNYN	**RURAL AREA:** Based on most recent decennial census of the U.S. is A) outside of the outer boundary of any city or town having a population of 20,000 or more; and B) (i) is outside of a metropolitan statistical area; or (ii) is within any census tract that is greater than 100 square miles in area and has a population density of fewer than 100 people per square mile. **BRAC:** An area within the geographic boundaries of any military installation that was closed, during the 25-year period immediately preceding the filing of an application for classification as an immigrant investor under this section, based upon a recommendation by the Defense Base Closure and Realignment Commission.	The number of visas allocated to EB-5 shall be reduced by 20% for immigrants who invest in a new commercial enterprise to create employment in a rural area or BRAC area.
GRASSLEY/ LEAHY	**RURAL AREA:** Area that is A) outside of 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 U.S.); and B) (i) is outside of a metropolitan statistical area; or (ii) is within an outlying county of a metropolitan statistical area; or (iii) is within any census tract that is greater than 100 square miles in area and has a population density of fewer than 100 people per square mile. **PRIORITY URBAN INVESTMENT AREA:** An area consisting of a census tract or tracts, each of which is in a metropolitan statistical area and using the most recent census data available, each of which has at least two of the following criteria: (I) an unemployment rate that is at least 150 percent of the national average unemployment rate; (II) a poverty rate that is at least 30 percent; or (II) a median family income that is not more than 60 percent of the greater of the statewide median family income or the metropolitan statistical area median family income.	Of the visas made available for EB-5: **YEAR 1**: 7.5% reserved for rural areas, 7.5 % reserved for priority urban investment areas. **YEAR 2 AND EACH SUCCEEDING FISCAL YEAR**: 15% reserved for rural areas, 15% reserved for priority urban investment areas.

How Reliable is that State TEA Certification Letter?

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The current EB-5 statute and regulations set the minimum investment amount for EB-5 immigration at $1,000,000, which may be adjusted downward to $500,000 for a new commercial enterprise ("NCE") or, commonly in the regional center context, a job creating entity ("JCE"), that is principally doing business in a targeted employment area ("TEA"). To demonstrate that the NCE in which an EB-5 investor has invested (or the JCE into which the capital is or will be deployed) is principally doing business in a TEA, the investor must submit with his or her I-526 petition evidence that the area, at the time of investment (or if the funds are in escrow and not yet released to the NCE, then at the time the I-526 petition is filed with USCIS), qualifies as a TEA – either as a "rural area" or a "high unemployment area" – as defined in the current EB-5 regulations. According to the USCIS Policy Manual published November 30, 2016 (and amended June 14, 2017), an NCE (or JCE) is "principally doing business" in the location where it regularly, systematically, and continuously provides goods or services that support job creation. This article focuses on the types of evidence that demonstrate a "high unemployment area" TEA, and the uncertainty of USCIS deference in certain situations to such evidence.

A high unemployment area is an area that has experienced unemployment of at least 150 percent of the national average rate. To evidence a high unemployment area, an investor may submit either of the following: (1) evidence that the Metropolitan Statistical Area ("MSA") or county in which the investment was made has experienced an average unemployment rate of 150 percent of the national average rate as of the time of investment; or (2) where the county or MSA as a whole does not qualify, a letter from the authorized state governmental body of the relevant state designating a particular geographic or political subdivision (that is located outside a rural area) as a high unemployment area for EB-5 purposes. If an investor's funds are held in escrow pending satisfaction of a particular condition (such as approval of the I-526 petition) and not yet transferred to the NCE, then under the USCIS Policy Manual, the "time of investment" for TEA analysis purposes is deemed to be the time of I-526 filing. The USCIS Policy Manual also makes clear that it will not grant deference to outdated TEA evidence which may have been relied upon by other EB-5 petitioners who invested earlier in the same NCE; the individual investor must establish that at the time of their individual investment or filing of the I-526 petition, the geographic area in question qualifies as a TEA.

Uncertainty can arise when a high unemployment area TEA is based on a state designation letter that certifies an aggregation of contiguous census tracts where the job-creating project is located as having a qualifying unemployment rate. Such state designation letters are common in EB-5 filings. What if a state letter declares that the designation is valid for a specified period of time—is USCIS bound to defer to the validity period? For example, the state of California issues TEA certifications stating that the certification is valid for one year from the date of issuance. The EB-5 regulations and published USCIS policy do not guarantee it will automatically defer to state-determined TEA validity periods, although there may be anecdotal accounts of USCIS accepting this type of TEA letter without questioning the stated validity period. There are also instances where the state does not clearly indicate a validity period in its TEA letter, which leaves vulnerable the scope of its applicability. Another concern is whether a TEA certification is still valid if more recent data – which may be adverse to previously-approved TEA determination – emerge during the certification's stated validity period.

First, USCIS has clarified that high unemployment area calculations must be based on the most recent publicly available data from governmental sources (e.g., the U.S. Census

Bureau and Bureau of Labor Statistics) at the time of investment. Unemployment data are refreshed annually. Most states publish unemployment data for the preceding calendar year by May of the following calendar year. If a state publishes the prior calendar year's unemployment data on May 1, what happens to the validity of TEA designation letters issued by the state before May 1 that were based on unemployment data from two calendar years prior? In our experience, if new calendar year data are publicly available on May 1, investors investing (or filing, if the funds remain in escrow) after May 1 will need a designation letter based on the newly published data. We believe they cannot rely on a pre-May 1 designation letter (i.e., on data from two years prior) simply because the letter said that the TEA designation would be valid for a year from the date of issuance, even if their investment occurs within that stated one-year validity period.

Second, USCIS has clearly limited its policy of deference to state agencies with respect to TEA designations. The USCIS Policy Manual, Volume 6, Part G, Chapter 2, Part A.5. states: "Consistent with the regulations, USCIS defers to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area. However, for all TEA designations, USCIS must still ensure compliance with the statutory requirement that the proposed area designated by the state has an unemployment rate of at least 150 percent above the national average. To do this, USCIS reviews state determinations of the unemployment rate and assess the method or methods by which the state authority obtained the unemployment statistics." In other words, USCIS will independently verify TEA eligibility against the most recent published data available at the time of the investor's investment, and will not simply defer to the validity period provided in a state TEA designation letter. USCIS has issued Requests for Evidence in I-526 cases where it believes a high unemployment area TEA claim is based on stale data, notwithstanding the purported validity of the state TEA designation letter submitted with the I-526 petition.

Even if a state TEA designation appears to be valid due to the validity period specified in the state letter, it is best to confirm that the data underpinning the state TEA designation still remain the most recent publicly available data at the time of the relevant investor's investment. If not, the investor should not submit his or her I-526 petition unless and until the investor is able to obtain an updated state TEA designation letter or provide other evidence of high unemployment.

Lastly, it should be noted that USCIS and/or Congress may change TEA designation rules in the near future to eliminate state designations of TEAs altogether and give USCIS exclusive authority over all TEA determinations. Centralizing TEA designations within a single federal agency might create nationwide consistency in how geographic areas are designated as TEAs and result in predictability in deference to prior TEA designations — but could also result in lengthy delays in obtaining TEA designations or more restrictive approaches to designating particular areas as TEAs. ■

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USCIS Finalizes EB-5 Sustainment and Redeployment of Capital Issues and Consequences of Regional Center Termination

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On June 14 USCIS issued a revised Volume 6 of its Policy Manual which concerns EB-5 investors. The goal was to finalize policy first drafted in a 2015 memo concerning "sustainment of the investment, a crucial topic in this era when the period Chinese investors wait for a visa number exceeds the duration of the initial capital deployment. The agency also addressed the important issue of consequences of regional center termination on sponsored investors.

USCIS published an alert cryptically summarizing the changes and without publishing any document showing what the actual changes are. Luckily, I had made a Word version of the prior Volume 6, and I made a new one and ran a comparison to detect the changes. Further below I quote the changes, but immediately below I summarize them and provide some commentary. NCE means new commercial enterprise, and JCE means job creating enterprise.

PERIOD OF SUSTAINMENT DEFINED

SUMMARY: The period of conditional residence is clarified to begin with the date of CPR admission (the "resident since" date on the green card) and end exactly two years later (the "expires" date on the green card, which is also the final due date for the I-829). This seems to mean that nothing needs to stay in place past the date the I-829 was due, so there could be complete redemption to the EB-5 investor during the excessive period of time while the I-829 is pending.

IMPLICATIONS: That's a big deal in itself, and good.

LIQUIDATION AND RE-DEPLOYMENT BEFORE CPR ADMISSION

Summary: Once the jobs have been created (ostensibly that means once enough jobs have been created to cover the requirements of the EB-5 investors, and not every last operational job that was predicted in the business plan), the requirement to keep the capital at risk in the original JCE(s) ends, even before the investor is admitted as a conditional resident, as long as the capital is re-deployed at risk (with chance for loss and gain) "within a commercially reasonable period of time" and "consistent with the scope of the NCE's ongoing business" as set forth in the I-526 record. As examples, USCIS mentions loans into more residential construction projects or "new issue municipal bonds, such as for infrastructure spending." These two examples implicitly involve more job creation, but it is not stated whether more job creation-- or what type or how much -- is actually required, and USCIS does not state whether the new activity must be in the same regional center area or targeted employment area as the original project(s).

IMPLICATIONS:

GOOD: The general notion that the JCE interest can be liquidated to the NCE once jobs are created, without regard to whether the I-526 petition has been approved or a visa number

has become available or the investor has been admitted as a conditional resident, is excellent.

BAD: The parameters for re-deployment of capital by the NCE remain terribly unclear. It is not clear whether an NCE that had reserved a broad latitude for reinvestment can take full advantage and what are the limits. For instance, would purchase of shares in a mutual fund of publicly traded stocks qualify? And if the NCE had failed to provide for re-deployment or wants to add a type of re-deployment not previously specified, would adding or changing a re-deployment provision constitute a material change? The draft 2015 memo explicitly had said not, but the Policy Manual's footnote referencing eligibility at the time of filing ominously suggests otherwise. Finally, the requirement to have adequately described the re-deployment in the I-526 record is hopelessly unclear.

LIQUIDATION AND REDEPLOYMENT AFTER CPR ADMISSION

SUMMARY: Once the investor has been admitted as a conditional resident, liquidation from JCE to NCE and redeployment are allowed even if no such redeployment was contemplated in the I-526 papers and beyond the scope of anything in such papers and even if not all the required jobs had yet been created.

IMPLICATIONS: This is essentially consistent with prior policy. But it won't help the China-born investor in a project that got repaid before a visa number became available and whose NCE did not happen to reserve the right to redeploy returned capital.

CONSEQUENCES OF REGIONAL CENTER TERMINATION

SUMMARY: Termination of a regional center before an investor's admission as a conditional resident constitutes a material change requiring denial or revocation of the I-526, but for an investor who already obtained conditional residence it does not have an effect on I-829, even for claiming indirect job creation.

IMPLICATIONS: For investors who were admitted as conditional residents before their sponsoring regional center was terminated, this is a godsend and a sensibly generous interpretation of the existing regulation which was frighteningly unclear. But for those who were waiting on a visa number and or otherwise not yet admitted, it is a sickening shame that they will lose their place in the visa number queue (and probably have a child "age out" of eligibility) purely because their regional center messed up, even in matters having nothing to do with the investor's project. This should be challenged as arbitrary and capricious in lawsuits against USCIS brought by denied investors. And Congress needs to pass proposed legislation that would provide better treatment for innocent investors who become victims of fraud and regional center termination.

CONCLUSION

At least USCIS has finalized some policy, and in many respects it is favorable and merciful to investors and developers. But it penalizes investors in NCEs that did not have good counsel to provide explicitly for redeployment in the event of liquidation of the JCE interest, and it is frighteningly unclear on topics where parties need to be able to plan with confidence. And it is cruel to the investor whose regional center gets terminated before admission to conditional residence.

THE ACTUAL CHANGES IN THE POLICY MANUAL

CHAPTER 2.A.2

(ELIGIBILITY, INVESTMENT OF CAPITAL), ADDS:

At-Risk Requirement Before the Job Creation Requirement is Satisfied

The full amount of capital must be used to undertake business activity that results in the creation of jobs.1 Before the job creation requirement is met, the following at-risk requirements apply:

- The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
- There must be a risk of loss and a chance for gain;
- Business activity must actually be undertaken; and
- The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.

AT-RISK REQUIREMENT AFTER THE JOB CREATION REQUIREMENT IS SATISFIED

Once the job creation requirement has been met, the capital is properly at risk if it is used in a manner related to engagement in commerce (in other words, the exchange of goods or services) consistent with the scope of the new commercial enterprise's ongoing business.[2] After the job creation requirement is met, the following at- risk requirements apply:

- The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
- There must be a risk of loss and a chance for gain; and
- Business activity must actually be undertaken.[3]

For example, if the scope of a new commercial enterprise was to loan pooled investments to a job-creating entity for the construction of a residential building, the new commercial enterprise, upon repayment of a loan that resulted in the required job creation, may further deploy the repaid capital into one or more similar loans to other entities.

Similarly, the new commercial enterprise may also further deploy the repaid capital into cer-

1 See Matter of Ho, 22 I&N Dec.206, 209-210 (Assoc. Comm. 1998). See Matter of Izummi, 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

2 See 8 CFR 204.6(e) for the definition of commercial enterprise.

3 See Matter of Ho, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998). See Matter of Izummi, 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

tain new issue municipal bonds, such as for infrastructure spending, as long as investments into such bonds are within the scope of the new commercial enterprise in existence at the time the petitioner filed the Immigrant Petition by Alien Entrepreneur (Form I-526).

Officers must determine whether further deployment has taken place, or will take place, within a commercially reasonable time and within the scope of the new commercial enterprise's ongoing business.[4]

CHAPTER 4.C. (I-526, MATERIAL CHANGE), ADDS:

If the new commercial enterprise undertakes the commercial activities presented in the initially filed business plan and creates the required number of jobs, the new commercial enterprise may further deploy the capital into another activity. The activity must be within the scope of the new commercial enterprise and further deployment must be within a commercially reasonable period of time. Further deployment of this nature will not cause the petition to be denied or revoked under certain circumstances.

In all cases where further deployment is envisioned, officers review the evidence submitted with the petition to determine whether the petitioner has presented sufficient evidence to demonstrate continuing eligibility with the capital at risk requirement. The investor must show that the capital is, and will remain, at risk of loss and gain and is and will be used in a manner related to engagement in commerce within the scope of the new commercial enterprise's business. Further deployment of capital that occurs before the immigrant investor becomes a conditional permanent resident must be adequately described in the Form I-526 record.

Further, the termination of a regional center associated with a regional center immigrant investor's Form I-526 petition constitutes a material change to the petition. See 8 CFR 204.6(j). See 8 CFR 204.6(m)(7).

CHAPTER 5.A.2 (I-829, EVIDENCE OF INVESTMENT AND SUSTAINMENT) CHANGES "THE 2 YEARS OF CONDITIONAL RESIDENCE" (AS THE PERIOD TO SUSTAIN THE INVESTMENT) TO "SUSTAINMENT PERIOD" AND ADDED A CORRESPONDING FOOTNOTE FOR THAT TERM:

See 8 CFR 216.6(c)(1)(iii). The sustainment period is the investor's 2 years of conditional permanent resident status. USCIS reviews the investor's evidence to ensure sustainment of the investment for 2 years from the date the investor obtained conditional permanent residence. An investor does not need to maintain his or her investment beyond the sustainment period.

CHAPTER 5.C. (I-829, MATERIAL CHANGE)

1. ADDS:

Therefore, during the conditional residence period, an investment may be further deployed in a manner not contemplated in the initial Form I- 526, as long as the further deployment otherwise satisfies the requirement to sustain the capital at risk. In addition, further deployment may be an option during the conditional residence period in various circumstances. For example, further deployment may be possible in cases where the requisite jobs were created by the investment in accordance with the business plan, as well as in cases where the requisite jobs were not created in accordance with the original business plan, and even if further deployment had not been contemplated at the time of the Form I-526 filing.

2. ADDS THE PARENTHETICAL AT THE END OF THE SECOND OF FOUR ITEMS TO BE SHOWN TO GET I-829 APPROVAL IN THE EVENT OF A "CHANGE IN COURSE":

The required amount of capital was made available to the business or businesses most closely responsible for creating jobs (unless the job creation requirement has already been satisfied);

3. ADDS:

Further, with respect to the impact of regional center termination, an immigrant investor's conditional permanent resident status, if already obtained, is not automatically terminated if he or she has invested in a new commercial enterprise associated with a regional center that USCIS terminates. The conditional permanent resident investor will continue to have the opportunity to demonstrate compliance with EB-5 program requirements, including through reliance on indirect job creation. ■

About the Author:

Robert C. Divine leads the Global Immigration Group of Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., a law firm of 800 lawyers and public policy advisors with offices in 24 cities in the U.S. including Washington, D.C. Mr. Divine served from July 2004 until November 2006 as Chief Counsel and for a time Acting Director of U.S. Citizenship & Immigration Services (USCIS). He is the author of Immigration Practice, a 1,600 page practical treatise on all aspects of U.S. immigration law now in its Fifteenth Edition (see www.jurispub.com). He has practiced immigration law since 1986 and has served as Chair of various committees of the American Immigration Lawyers Association. He served seven years as elected Vice President of the Association to Invest in the USA (IIUSA), an association for EB-5 regional centers. Under his leadership, Baker Donelson serves a wide range of legal needs for regional centers, developers, and investors, including immigration, securities, business, real estate, tax, international, government investigations, and litigation. His bio and contacts are available at www.bakerdonelson.com/robert-c-divine.

4 See 8 CFR 103.2(b)(1) (A petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication)

USCIS COMPLIANCE AUDITS
Preparing Regional Centers for the First Wave

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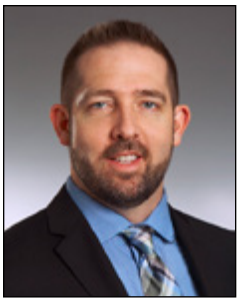

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REGIONAL CENTER COMPLIANCE AUDITS

On March 20, 2017, U.S. Citizenship and Immigration Services (USCIS) announced the launch of the EB-5 Regional Center Compliance Audit Program. The program was characterized as an additional way to enhance EB-5 program integrity and verify regional center applications and annual certifications.

The audit process, as described by USCIS on its website, will include: (1) reviewing a regional center's Application for Regional Center Designation Under the Immigrant Investor Program (Form I-924), its Annual Certification of Regional Center (Form I-924A), and associated records; (2) reviewing public records and available information about the regional center; (3) verifying the information submitted with the applications and annual certifications; and (4) conducting site inspections and interviews with personnel to confirm that the information provided in the applications and certifications is accurate.

VOLUNTARY NATURE OF THE AUDITS

Without specific statutory authority to issue subpoenas as part of the newly announced audit program, USCIS has publicly characterized these audits as "voluntary" and the USCIS website specifically states that if a regional center "expresses an unwillingness to participate in the site inspection, the visit will be terminated." Exactly how voluntary the program truly is remains unclear. USCIS notes on its website that if a regional center declines to participate in an audit, USCIS "may follow-up with [the regional center] separately regarding compliance …." USCIS does not indicate how the separate follow-up regarding compliance will differ from the voluntary audit. USCIS' website further notes that if the site inspection is terminated at the regional center's request, the audit team will still "complete the audit report using the data available and indicate that the site inspection was terminated at the request of the regional center."

Regardless of the voluntary nature of the audit program, regional centers should be prepared. Although we can assume USCIS will provide some advance notice to a regional center prior to commencing an audit, its website states that regional centers should be prepared to present any information submitted with the applications or certifications and should "immediately provide any readily available documents and information that the audit team requests to verify information provided in the applications or certifications" during the site inspections.

PARALLEL EXAMPLE – I-9 COMPLIANCE AUDITS

Due to the lack of statutory and regulatory authority specifying the procedure for regional center compliance audits, regional centers are left to speculate as to what a USCIS-led audit would entail. Following the mantra of "how you do anything is how you do everything," the Form I-9 audit process utilized by the U.S. Department of Homeland Security to inspect a company's compliance with employment verification requirements provides an illustrative parallel example for regional centers to consider as they design internal policies and procedures to prepare for their first audit.

In early 2009, U.S. Immigration and Customs Enforcement (ICE) rolled out a revised worksite enforcement strategy designed to prioritize Form I-9 compliance by utilizing civil and administrative tools, including Form I-9 inspections, civil fines, and debarment to cultivate a culture of compliance and reduce the amount of illegal employment of unauthorized individuals. As part of this relaunch of the worksite enforcement program, ICE hired hundreds of auditors, most with accounting backgrounds, and placed them in ICE field offices across the country.

Once ICE hired its auditors, it developed a

target list of companies to audit based on information received from other investigative agencies (inter-agency information sharing) or through random selection of companies. ICE auditors commence audits by serving the selected company with a Notice of Inspection and administrative subpoena providing the company three business days to produce its Forms I-9 and other documents for inspection. After gathering the documents, an ICE auditor performs the audit. Once the audit is complete, the ICE auditor issues various notices to the company including: a Notice of Suspect Document letter, which lists employees working under potentially fake or fraudulent documents; a Notice of Intent to Fine, which specifies the violations found and levies a fine for each violation; or a Notice of Compliance, which informs the company that it is in compliance with the employer verification regulations. If a Notice of Intent to Fine is issued, the company has due process rights to defend itself against the civil fines.

WHAT TO EXPECT

If USCIS follows a similar approach to the I-9 audit process, regional centers can expect the following if they are chosen for a regional center compliance audit:

(1) a brief amount of advance notice before being requested to provide copies of documentation including applications, certifications, and associated records;

(2) an auditor, likely hired by the Fraud Detection and National Security Directorate (FDNS) unit of USCIS, with specialized knowledge in corporate structures and other capital investment information required on the Form I-924 and Form I-924A, will likely be the first person to contact the regional center and will likely oversee the document collection and review;

(3) some amount of direct interaction with the auditor, including site visits and tours, email correspondence and telephone follow-up;

(4) the auditor will issue a final audit report that outlines the regional center's compliance rating and highlights discrepancies within the applications and certifications that will likely be made a part of the regional center's record;

(5) a regional center may be given an opportunity to review the final audit report and amend applications and correct discrepancies within a specified time period; and

(6) in the event of an adverse action taken as a result of the audit, such as a denial or revocation of an already approved application, the regional center will likely have some sort of an appeal right or right to a hearing.

Regardless of the procedure used by USCIS, regional centers are strongly advised to immediately seek counsel if and when they are served with advance written notice of a USCIS regional center audit. Experienced counsel will be able to: (1) utilize the advance notice of the audit to review and prepare the regional center's documentation, (2) negotiate and navigate the scope of the audit on the regional center's behalf, and (3) serve as the regional center's point of contact with USCIS during the audit. Counsel may also be able to help regional centers avoid adverse actions taken by USCIS by creating and communicating a plan for correction of any discrepancies discovered during the audit.

CONDUCTING INTERNAL AUDITS – CONSIDERING INTERAGENCY REFERRALS

Additionally, regional centers are urged to conduct their own internal audits to assess and address compliance risk areas prior to being contacted by USCIS. An internal audit should include not only a review of the regional centers applications, certifications, and supporting documents, but also compliance with securities laws, including, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940, as they relate to the regional center's business practices and their involvement in raising EB-5 capital in conjunction with its new commercial enterprises or new commercial enterprises that have entered into a sponsorship or similar agreement with the regional center. For example, complete investor subscription documentation, offering documents and any supplemental disclosure given to investors, and copies of agreements with anyone involved in the marketing of the regional center's EB-5 investment opportunities should be reviewed.

Regional centers should expect that USCIS will refer any questionable findings from these audits to other government agencies such as the Securities Exchange Commission (SEC) and the Department of Justice (DOJ). As stated in the SEC's Office of Investor Education and Advocacy and USCIS joint Investor Alert on the EB-5 Program released on October 1, 2013, the USCIS and SEC have announced "a strong partnership with an emphasis on fostering EB-5 Program integrity" and it is anticipated that the two agencies will continue coordinating "at the case-specific and programmatic levels."

AUDIT RESPONSE PLANS

Moreover, regional centers (similar to companies that have ICE raid response plans in place to prepare for unexpected visits from ICE) should also develop an audit response plan that designates an EB-5 point person who will be responsible for interacting with the USCIS auditor in the event of an audit. The point person should be generally aware of the EB-5 requirements and should be capable of quickly accessing any and all documentation needed to establish EB-5 compliance. The point person should be the only employee authorized to discuss the regional center's EB-5 compliance and to provide site tours to the auditor. The point person should literally not leave the side of the auditor during the site inspections and should document anything and everything that is done by the auditor, including what documents are taken from the facility.

A regional center is best served by being proactive in verifying its compliance with USCIS requirements and securities laws prior to the start of an audit. An internal audit conducted by reputable parties may shorten the audit process or possibly eliminate it entirely. ■

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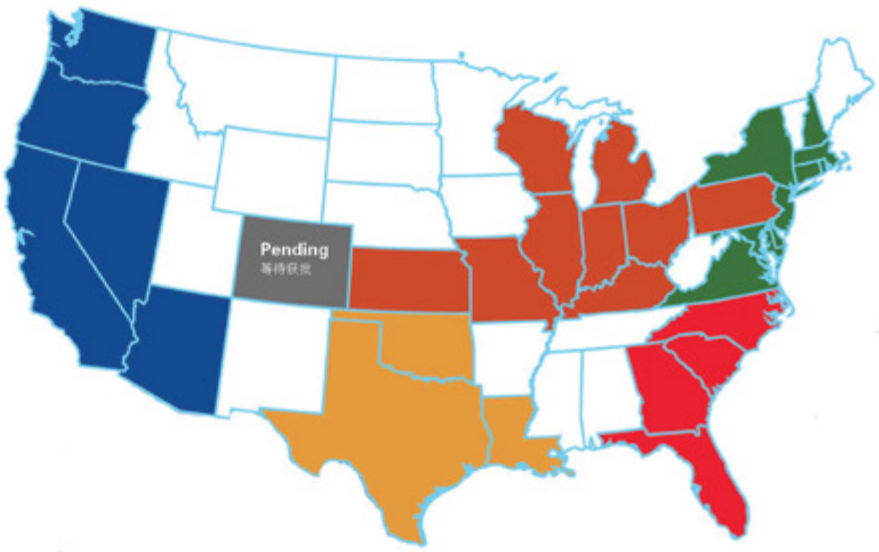

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Is the Convergence of EB-5 Capital with Traditional Private Equity the **Next Big Thing?**

REID THOMAS
EXECUTIVE VICE PRESIDENT, NES FINANCIAL

The EB-5 industry has lived in relative obscurity for most of its history. The employment-based fifth preference category that was first created in 1990 as part of an initiative to produce U.S. jobs was barely used in its earliest days. When the financial crisis of 2008 came along, the use of the EB-5 visa program and deployment of EB-5 capital began to grow. In the last few years, the program has reached capacity with a waiting list of EB-5 investors ensuring that the program will remain at capacity for years to come.

The tremendous growth in the program began as it became recognized as an important financing tool and job creation engine. Both were critical needs during the Great Recession. EB-5 funds were no longer an obscure form of foreign capital. Today, it is commonly used within the capital stack of some of the largest and most prestigious developments and projects in the country.

The most recent Department of Commerce report confirmed that between 2012 and 2013 over 174,000 jobs were created as a result of the EB-5 program. The 174,000 jobs represents 4.3% of all U.S. job growth during that period. These are staggering numbers that are not lost on Congress. Considering the ambitious objectives under the Trump administration, EB-5 will most definitely get consideration as one of the engines that can be used for job creation and infrastructure upgrades.

One noticeable development of the program is that the use of EB-5 capital has gone mainstream in the last few years. Today, EB-5 funds are regularly used by developers of all sizes on projects of all sizes in locations across the country. A key benefit of this program maturation has been the positive impact it has had on industry best practices. Because many of these larger firms also raise capital from more traditional sources such as private equity capital from institutional investors, rigorous processes and due diligence protocols are already in place. Compared to your typical EB-5 investor, these institutional investors are extremely demanding. They are very concerned about the security, transparency, and compliance practices of the developers they invest with. These developers naturally embrace higher standards of best practices, such as third party fund administration and controls, specified in the recent iterations of EB-5 proposed legislation.

The focus of this article is the latest step in the evolution of EB-5 capital: EB-5 funds are increasingly being used alongside traditional private equity funds. This emerging trend is likely to have a very positive effect on the EB-5 industry and its stakeholders, including issuers, developers, and investors. There are several forces that can be identified as contributing factors as to why this is occurring.

BANKS ARE TIGHTENING CONSTRUCTION LENDING STANDARDS

Post financial crisis the banking industry is one of the most heavily regulated in the United States. One key metric bank regulators look for is how well capitalized banks are relative to their outstanding loans. Regulators require that banks hold a minimum amount of capital in reserve to absorb any anticipated losses on the loan books. The capital reserve requirement is a ratio against the banks' total assets (which include loans). These minimum ratios were established in order to act like a buffer against bank failure during economic downturns.

As part of the new Basel III regulatory framework that banks are subject to, a new regulation called the High Volatility Commercial Real Estate (HVCRE) rule went into effect in 2015. This rule says that loans classified as HVCRE must maintain a higher ratio of capital reserves than non HVCRE loans. Commercial Real Estate construction loans fall into this HVCRE category under the regulations. As such banks are required to hold 50% more capital in reserve than on other loan types, they are less attractive loans from the banks' perspective.

Bank regulators have not hesitated to go public with their concerns. In December 2015, bank regulators issued a letter expressing concern about the growth and concentration of commercial real estate construction loans on certain bank balance sheets. In addition, the letter also criticized the underwriting practices at some banks and warned that loan standards were beginning to show signs of weakness.

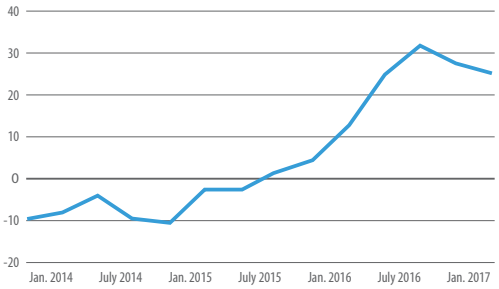
In mid-2016, the Office of the Comptroller of the Currency (OCC) released their Spring 2016 Semiannual Risk Perspective Report. After the report was released, the head of the OCC was quoted as saying, "With commercial real estate lending, we are signaling a flashing yellow or a caution light."

With the increased regulatory focus and more stringent compliance requirements in place, banks have begun to pull back and take a more conservative approach to construction lending. The resulting market fallout is beginning to be felt in a number of ways. Compared to recent years, construction loans are harder to get and loans that are being made typically contain

more demanding terms, higher costs for borrowers, and lower funding levels.

The chart above, published by the U.S. Federal Reserve System shows the dramatic shift in

Net Percentage of Domestic Banks Tightening Standards for Commercial Real Estate Loans with Construction and Land Development Purposes



Source: Board of Governors of the Federal Reserve Sustem (US)

banks tightening their lending standards with the implementation of these new regulations beginning in 2015.

The majority of EB-5 projects today involve commercial real estate development and therefore are often dependent on construction loans to complete the overall capital stack. With banks reducing the amount they are willing to lend, project principals are left with wider gaps in financing than they have seen in the past.

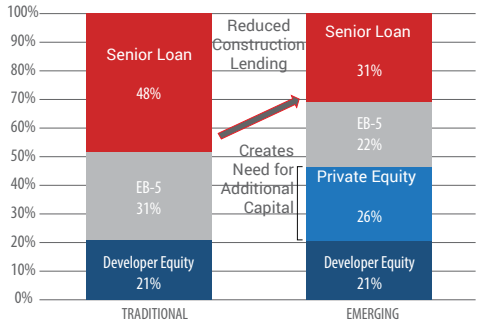
In the earlier years of EB-5, closing this incremental gap with additional EB-5 funds might have been a possible solution. However, as this article will explain, that is no longer a realistic possibility in this new era of EB-5. As a result, one solution that is emerging with increased frequency is to fill this gap with private equity capital.

EB-5 INVESTORS ARE MORE DEMANDING

As the EB-5 market has become more mainstream, the due diligence carried out by EB-5 investors and migration agents has become much more sophisticated. Investors evaluate a project through a number of lenses to determine factors such as the likely immigration result, the security of investment, and the potential for any return.

A successful immigration outcome is dependent on creating enough jobs to satisfy USCIS requirements. To that end, the number of jobs expected to be created per investor has become a key due diligence item. Projects that do not have any room for error and have only enough

Shifting Trends in EB-5 Project Capital Stack



Source: NES Financial Database 2010-2016

jobs to meet the minimum requirement are much less attractive than projects that have jobs that exceed minimum requirements, or a "job-cushion." A big focus item in due diligence is the "job-cushion" associated with a project. The higher the "job-cushion" the better.

An obvious way to create a higher job-cushion is to decrease the percentage of EB-5 funds within the overall capital stack. In the early days of EB-5, it was not uncommon to see EB-5 funds representing 70%-100% of the overall project financing! But with the demand for greater job-cushions, it is much more common to see EB-5 capital limited to 20%-30% of the overall project cost.

Therefore, attempts to make up the shortfall in construction lending through additional EB-5 capital works against strong market forces. As a result, most projects find themselves with an additional gap in the capital stack that must be filled. This creates an opportunity for more traditional private equity capital raises, and issuers are beginning to respond.

GLOBAL INVESTMENT IN US REAL ESTATE IS AT RECORD HIGH LEVELS

The United States has always been viewed globally as a desirable target for investment. This has become particularly obvious over the last few years. Foreign investment into U.S. real estate in particular has reached all-time high levels.

Since 2010, the growth in investments from all parts of the world has been increasing. Of particular note is the explosive growth in real estate investments between 2014 and 2015 from China, which was almost 300% year over year.

With economic uncertainty in many foreign markets, the surge in the strength of the US Dollar creating concern about the stability of foreign currencies, and a new administration perceived to be real estate friendly, demand from foreign investors looking for U.S. real estate opportunities is expected to remain robust.

Private equity firms are well aware of this demand and are increasingly putting real estate investment opportunities together to appeal to foreign high net worth investors. According to the Private Equity Real Estate (PERE) 2016 Annual Report, private equity funds raising capital in two or more regions of the world represented 35% (the largest portion) of all private equity real estate funds raised last year.

As such, the competition amongst private equity funds competing for foreign investors continues to grow. Private equity funds are beginning to differentiate their offerings by adding an immigration investment opportunity alongside traditional private equity real estate investment opportunities.

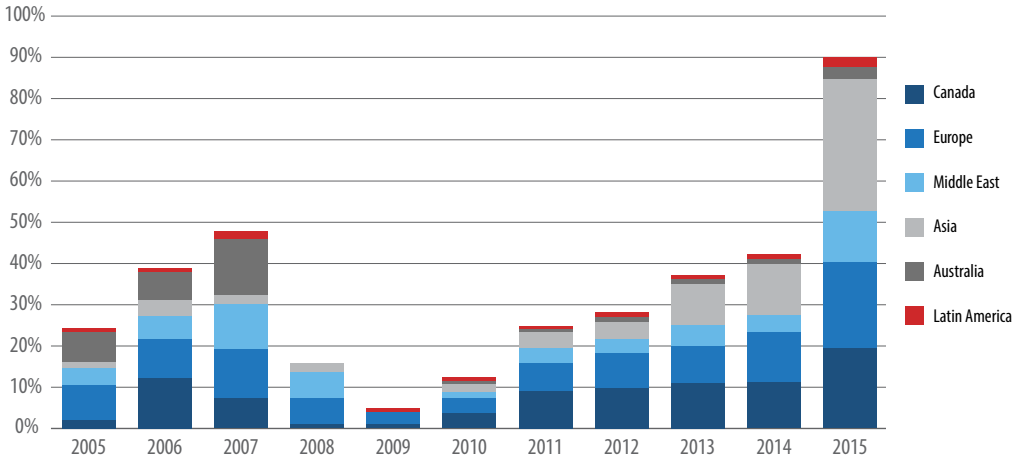
This is a logical strategy. Presumably, if an investor is interested in making a larger equity investment into a real estate venture, adding an additional nominal amount for the potential of a Green Card creates a significant added incentive.

CONSIDERATIONS FOR EB-5 REGIONAL CENTERS

All of the above are contributing factors to what could be another shift in the market toward institutional practices. It will and has already impacted the way EB-5 projects are structured, how and where projects are marketed, and the operational and compliance platforms that Regional Centers need to implement.

In many cases, structuring projects within this new environment will require new expertise to be hired and developed. The private equity offering will need to be competitive with offerings from traditional private equity firms. Not only will a competitive offering need to include comparable investment returns and risk profiles, it will also require a significantly more sophisticated degree of investor servicing, reporting, and transparency than the EB-5 industry is accustomed to. The marketing of these offers will become more complex as each of the EB-5 and private equity investment offerings will have their own characteristics. When investing solely for an immigration benefit, the expected return (i.e., a Green Card) is an acceptable market norm for most countries. However, when it comes to traditional private equity investments, a wide range of variance from country to coun-

Cross-Border Capital Invested in U.S. Commercial Real Estate (By Region of Origin, in Billions of Dollars)



Note: "Latin America" includes all countries in North, South and Central America except the U.S. and Canada.
Source: RCA US Capital Trends, January 2016

try should be expected.

This parallel investment offers benefits to investors and Regional Centers at the same time. A successful immigration outcome for an EB-5 investor will, in many cases, create a desire to transfer wealth into the United States. Presumably after doing due diligence on a potential EB-5 project, investors will become familiar enough to consider making a parallel private equity investment into the same project. From an investor perspective, this has the benefit of providing a greater overall return while facilitating the transfer of wealth into the United States.

From the Regional Center point of view, this has the potential of significantly reducing marketing costs. Enabling an investor to make a larger investment than required by USCIS into a project means that the capital stack may be filled out more quickly and thereby reduce marketing costs. From an operational perspective, the number of limited partners required to fund the project is ultimately going to decrease, meaning reduced operational costs for investor servicing and reporting.

EB-5 regulations may introduce additional complexities, both for investors and for the Regional Center, relating to the lawful source of investment funds. EB-5 investors making a parallel private equity investment may be required to demonstrate the lawful source of those investment funds in addition to the source of the EB-5 capital. Additionally, the regulations at 8 C.F.R. 204.6(g) permit USCIS to require identification of all investors and documentation of the lawful sources of all capital, including capital from private equity investors and other non-EB-5 capital. These provisions may take on new significance with the introduction of more private equity into EB-5 projects.

All EB-5 stakeholders benefit as the market expands. The EB-5 program is limited to 10,000 visas annually and is likely to remain at that level in the near term. Traditional private equity offerings are not bound by similar restrictions and as such create broader opportunity.

While there are certainly going to be challenges for Regional Centers, those that embrace the coming changes early and get ahead are likely to be rewarded. ■

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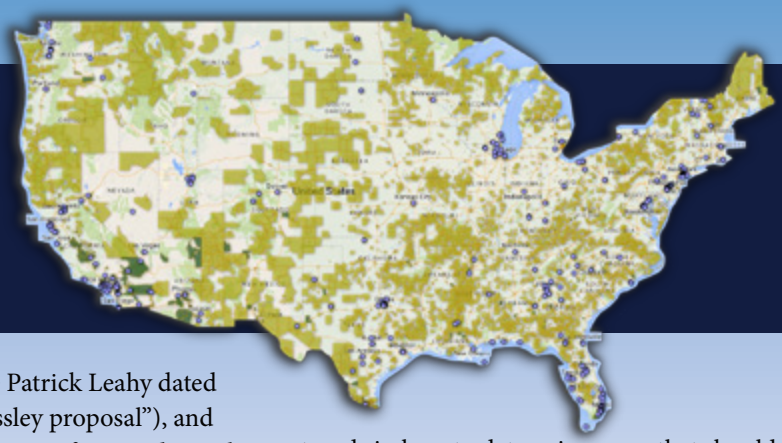
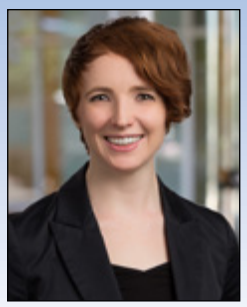
Trends In Proposed Legislation Suggest Very Strict Definitions Of TEAs In The Future





MAGGIE MULLANE
ECONOMIST,
IMPACT DATASOURCE

In the previous publication, several large issues regarding Targeted Employment Areas ("TEAs") from the Department of Homeland Security ("DHS") January-proposed regulations were presented and discussed. Since that time, revisions have continued to be under debate in the legislative branch – and two notable pieces of legislation have been proposed: a draft of EB-5 reform and reauthorization legislation from Senate Judiciary Chair Chuck Grassley and Ranking Member of the Senate Appropriations Committee Patrick Leahy dated April 15th (the "Grassley proposal"), and draft legislation for EB-5 reform and reauthorization released from Senate Majority Whip and Immigration Subcommittee Chairman Senator John Cornyn dated April 30th (the "Cornyn proposal").

The two proposals suggest myriad changes for the EB-5 Program – including new proposed definitions of TEAs. Both proposals offer one TEA type for rural areas and one for urban areas – a similar approach to the current definitions; both also include a new TEA type, which is a closed military base. The table below provides a summary of the proposed criteria for TEAs, as well as other proposed incentives.

A review of the proposals reveals several new trends in how to determine areas that should receive incentivized investment and how to provide that incentive.

For determining TEAs, two primary trends are noted: (1) the removal of aggregation options; and (2) the incorporation of New Market Tax Credit ("NMTC")-type criteria (reflective of NMTC's Severely, or Highly, Distressed criteria). The NMTC program is intended to support economic growth in "underserved" communities, which are determined by unemployment rates, poverty rates, and/or median income rates. By taking an NMTC-type approach, TEAs would be determined under a wider array of criteria than just unemployment rate, MSA status, and/

	GRASSLEY		CORNYN	
TARGETED EMPLOYMENT AREAS (qualifying for reduced investment amount)	Rural Area	- outside any city/town with 20,000 population, AND - meets one of three: ▪ outside of MSA ▪ within an outlying county of an MSA ▪ within a census tract that is > 100 square miles with population density < 100 people per square mile - also receives set-aside provisions	Distressed Rural Census Tract (also qualifies for set-asides)**	- any population census tract [that meets the definitions of a rural area*] , AND - meets one of three: ▪ poverty rate > 20% ▪ median family income < 80% of statewide ▪ a census tract that is > 100 square miles with population density < 100 people per square mile
	Priority Urban Investment Area	- single census tract - in MSA - meets two of three criteria: ▪ unemployment rate ≥ 150% of national unemployment rate ▪ poverty ≥ 30% ▪ median family income ≤ 60% of statewide/MSA median family income (whichever is greater) - also receives set-aside provisions	Distressed Urban Census Tract	- any population census tract - in MSA - meets ALL three following: ▪ unemployment rate ≥ 150% national unemployment rate ▪ poverty rate ≥ 30% ▪ median family income ≤ 60% of statewide/MSA median family income (whichever is greater)
	Military Base	Any area within a military installation that has closed in the last 25 years	Military Base	Any area within a military installation that has closed in the last 25 years - also receives set-aside provisions
RURAL AREA	(See Above)		Rural Area	If a location qualifies as a Rural Area, but is not a Distressed Rural Census Tract, it still qualifies for set-asides.* Definition - outside any city/town with 20,000 population, AND - meets one of two: ▪ outside of MSA ▪ within a census tract that is > 100 square miles with population density < 100 people per square mile
OTHER	Manufacturing & Infrastructure		N/A	

* It is noted that the language in the latest version of the Cornyn proposal, as of June 2017, omits the requirement that the distressed rural census tract be outside of an MSA, which is presumed to be a drafting oversight.
** Our best interpretation is that, since Distressed Rural Census Tracts are (presumed to be) in Rural Areas, the set-aside rules of the Cornyn proposal also include these Distressed Rural Areas.

A Glance at the EB-5 Industry Today

Transparency: What Our Mutual Clients Should Understand

We at CMB Regional Centers have a simple philosophy, and that is to take care of the EB-5 petitioner and their family. If this is done properly, the goals of all other stakeholders in the EB-5 industry will be accomplished as well.

As you all know, there has been a lot of scrutiny in the EB-5 industry lately including many legislative proposals demanding reform as well as some asking to shut down the program. CMB supports the legislative changes requiring a higher standard of transparency and disclosure as we believe this information is critical to the due diligence that should be conducted by each prospective EB-5 investor.

CMB understands that individuals and businesses should be paid adequately for the work that they provide to prospective EB-5 investors. This is a simple concept that nearly all of us should agree upon. It is important that each prospective EB-5 investor knows: (1) who is being paid, (2) how they are being paid, (3) how much they are being paid, (4) why they are being paid, (5) what service is being provided for this payment, (6) do these payments align with the goals of the prospective EB-5 investor and (7) are there any additional risks to the prospective EB-5 investor that are being created by these payments and do they add any additional risk to the structure of the EB-5 investment. Many times a referral source works with multiple regional centers and the amount of a referral fee is often the primary motivator to work with one regional center over another.

CMB has always encouraged those considering immigration to the United States through the EB-5 program, to do their proper due diligence on the regional center and EB-5 project by: (1) asking questions, (2) demanding the answers and (3) requiring an independent source that can verify the information being provided. Due diligence is the key for prospective clients to choose the right EB-5 project.

CMB will continue to get on top of our "soapbox", until we feel the industry is working on behalf of every EB-5 investors' best interest. With today's run away referral fees it seems as though many prospective EB-5 investors are being "sold off like cattle" and these practices must stop or at least those that are involved in this practice should disclose all fees that are being paid. CMB has been advocating for reforms to the EB-5 program for many years now. Our earliest demands for reform in the EB-5 program predate the current swell of interest in EB-5. It is important that CMB and every regional center, attorney, placement agent and stakeholder put the clients' goals first. By doing so, our industry can achieve the success that all parties envision.

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or population. The incorporation of NMTC-type criteria is found in both proposals. Both utilize the NMTC-criteria for urban-based TEAS, and a variant of the approach is also used in the proposed Distressed Rural TEAs in the Cornyn proposal.

A secondary trend is that urban areas must meet two or more of the new criteria: the single census tract that contains the proposed project must qualify on its own by meeting at least two (out of three) of the unemployment, median income, and/or poverty criteria. Individually, both of these requirements - the single census tract and the two-or-more criteria – impose limitations on TEAs that are much stricter than the current definitions; taken together, these requirements reduce potential TEA project locations significantly, especially for non-rural projects.

FOR CENSUS TRACTS THAT ARE IN MSAs*

	% OF TOTAL
Total No. of Census Tracts	100.0%
Single MSA tracts that meet current TEA High Unemployment criteria	19.3%
Single MSA tracts that do not meet any NMTC-type criteria	69.5%
Single MSA tracts that meet 1 or more NMTC-type criteria	30.5%
Single MSA tracts that meet 2 or more NMTC-type criteria	16.1%
Single MSA tracts that meet 3 or more NMTC-type criteria	8.4%

Notes: The estimates do not account for overlap with areas that could potentially qualify as rural TEAs under the "MSA Outlying Counties" or large area/small density provisions; inclusion of the overlap has an almost negligible impact. The estimates also do not account for the requirement of a "population census tract", as required under the Cornyn proposal; inclusion of a greater-than-zero population parameter has a negligible impact on the estimates.

Data from the most recent American Community Survey ("ACS") were analyzed to see how the two requirements would affect potential urban TEA locations. The table below shows the estimated number of non-rural census tracts that would qualify with these criteria.

Out of the total number of MSA census tracts in the entire nation, approximately 19% meet the current TEA High Unemployment criteria on an individual basis. As is common knowledge within the EB-5 industry, the volume of potential high unemployment TEA locations is actually much higher than 19%, as TEAs currently can be created by combining census tracts. For illustrative purposes, under the DHS-proposed contiguous-and-adjacent methodology, up to 41% of urban-area census tracts would qualify as high unemployment TEAs, according to research by IIUSA ("Targeted Employment Area (TEA) Reform: Policy Proposals Comparative Analysis State by State", by Lee Li, May 2017).

Compared to those numbers, only about 16% of MSA census tracts would meet Grassley's criteria for a Priority Urban Investment Area. Similarly, only 8% of the entire national MSA geography would meet Cornyn's criteria for a Distressed Urban Census Tract. If a more lenient definition was imposed, requiring only one of three NMTC criteria to be met at a single tract-level, roughly 30% of the nation's MSA geography would meet the urban TEA definition,.

The proposed legislation also highlights trends in legislative attempts to incentivize investment in the targeted areas by implementing set-asides, as summarized in the table below. "Set-aside" visas, under the proposals, are a set number of visas out of the total allotted to the EB-5 Program overall (currently approximately 10,000) that are reserved for investors who invest in the specified areas.

The introduction of set-asides shows an intent to drive investment into rural areas (and/or special urban areas) by allowing qualified projects to avoid visa backlogs, which can add years to the investor's immigration process. Concurrently, both proposals would increase the TEA investment amount to $800,000 (up from $500,000), while the standard investment level would either remain at $1,000,000 under the Grassley proposal or be lowered to $925,000 under the Cornyn proposal. Under either scenario, the "delta" (the difference between the TEA amount and the standard amount) is smaller than under current practice and much smaller than that in the DHS proposed regulations – and the avoidance of the backlogs would therefore likely become the stronger incentive than a lower investment level.

The use of set-aside has been in several of the pieces of proposed legislation over the past few years. Notably, the Cornyn proposal also excludes investors' spouses and children from the overall EB-5 visa cap of 10,000, which would help free up the number of visas available for investors and reduce backlogs.

Beyond the trends summarized above, a review of the proposals' details related to TEAs demonstrates other interesting differences and similarities. While certain aspects of the latest draft proposals are unclear, the following provides a brief summary of these additional noteworthy points.

▪ TEAS IN RURAL AREAS: GRASSLEY'S PROPOSAL EXPANDS CURRENT DEFINITION

Under Grassley's proposal, the definition of a rural-based TEA continues to only consider general geography and population – and, further, the definition would be expanded to include outlying counties of Metropolitan Statistical Areas ("MSAs") and large, low-population census tracts. Rural-based TEAs under

GRASSLEY		CORNYN	
Rural Areas	- 7.5% in 2018 - 15% in 2019	20% of visas (estimated to be approximately 2,000) for rural areas (including distressed rural census tracts) and closed military bases. Set-asides are for projects through regional center projects.*	
Priority Urban Investment Areas	- 7.5% in 2018 - 15% in 2019		
Roll over?	- Any unused visas will remain in the category for one more year; then made generally available	Roll over?	- Any unused visas at end of year will be made available

*The exact language of the proposal is a bit unclear on this matter; this is our best interpretation.

this definition would not be restricted to singular census tracts.

By contrast, Cornyn's proposal requires rural-based TEAs to be determined at the tract level and to be "distressed" to qualify – but the proposal seems to also allow rural-based TEAs to qualify for both reduced investment and visa set-asides. To qualify, the area must be rural and show a high poverty rate, low median income, or a large census tract with low population density. While the language is unclear, it is presumed that, if a location is within a "Rural Area", but not within a "Distressed Rural Census Tract", it still qualifies for the set-asides (but not the reduced investment level of the TEA).

- ROLE OF CENSUS TRACTS

TEAs under the Cornyn proposal rely on singular census tracts for both the urban-based and rural-based TEA definitions. The Cornyn proposal also requires that the individual tracts be "population" tracts. Urban-based TEAs under the Grassley proposal are similarly required to be determined on a singular basis, without the population requirement. (The language in Grassley's proposal technically allows for an area "consisting of a census tract or tracts" – however, all of them must qualify on their own, so the definition essentially applies solely to the single census tract hosting the project.) As discussed above, rural-based TEAs are not restricted to census tracts under the Grassley proposal.

- DATA FOR DETERMINING TEAS: CORNYN'S PROPOSAL IS CLEARER THAN GRASSLEY'S

While specific methodologies are not addressed, Cornyn's proposal does specifically state that TEAs would be defined based on "the most recent five-year estimates of the American Community Survey", for TEAs in both rural and urban areas.

Under Grassley's proposal, the necessary data source(s) and methodologies for determining TEAs in urban areas is not specified. The language states that urban-based TEAs will be based on the "most recent census data available"; it is unclear if the intention is to use only ACS data, or if the use of Census-Share methodology, as currently used, would still be required/allowed.

- DHS TO DETERMINE TEAS: SAME FOR BOTH PROPOSALS

Under both proposals, the role of state authorities in the designation of TEAs would be removed completely. TEA requests would be submitted to and approved by DHS.

- LENGTH OF TEA DESIGNATIONS: GRASSLEY'S PROPOSAL IMPOSES AN EXPIRATION DATE; CORNYN'S PROPOSAL APPEARS TO LOCK-IN THE TEA AT TIME OF EXEMPLAR FILING.

Grassley's proposal specifically states that TEA designations would last for two years. Cornyn's proposal does not give a specific timeline – however, it could be interpreted that the TEA status would remain for the life of the project (from the date of the exemplar filing) and would not need renewal.

- SPECIAL PROJECTS: GRASSLEY'S PROPOSAL INCLUDES INFRASTRUCTURE/MANUFACTURING PROJECTS

Grassley's proposal allows for the TEA-level investment amount for projects that are considered to be infrastructure or manufacturing projects, regardless of location. Cornyn's proposal does not include any language regarding special projects.

After over 15+ years without any major changes or revisions to the Program, the trends in the proposed legislation regarding TEAs seem to have swung from very accessible to extremely stringent, by imposing not only the stricter NMTC criteria, but also by removing state involvement, removing the ability to aggregate census tracts, and raising the TEA minimum investment amount. Similar trends are also present in the DHS proposed regulations, with slight variances.

However, this stricter TEA criteria need to be considered in light of the concurrent narrowing of the investment-level gap. The proposed bills raise the TEA minimum investment amount, but not the standard investment amount – therefore, the "delta" is smaller than under current practice. From a capital-raising standpoint, it is possible that the smaller delta may offset the challenges imposed by stricter TEA definitions. In short, the "TEA question" may not be the make-or-break issue it currently is, as the driving incentive could become visa set-asides (instead of monetary differences).

Taking the trends observed in the TEA definitions discussed above, combined with trends regarding other integrity matters, it is clear that policymakers want to see a change in the Program. Some of the trends gaining steam, however, may have some important kinks to be ironed out - for example, the proposal that DHS be the authority on certifying TEAs. As processing times for I-924, I-526, and I-829 petitions are all currently averaging more than a year, many EB-5 stakeholders are concerned that DHS might not be able to accommodate the additional workload of TEA certifications in a timely fashion.

While the final details of the future TEA definitions are clearly still unknown, it remains possible that they will follow the trends outlined here, at least in some variation. As EB-5 stakeholders, we can all prepare by becoming more familiar with NMTC-type criteria and by continuing to discuss, ask questions, and monitor the legislative and regulatory proposals. ■

EB-5 ESCROW ACCOUNTS:
Useful Tools That Can Protect Investors

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Escrow accounts play a critical role in the EB-5 industry by providing investors with comfort their funds will be deployed into a project as intended, and that their funds will be returned to them if a project or I-526 petition is denied by USCIS. The challenge for escrow participants has been getting a baseline understanding of what constitutes escrow best practices.

All industries mature over time as best practices are better understood and begin to take hold. The same holds true for the EB-5 industry and associated escrow services. With strong participation from its members, the 2016 IIUSA Banking Committee took on the challenge of developing an escrow best practices document for the EB-5 industry by defining the most prevalent types of escrows associated with EB-5, the unique ways those escrows are used in the industry, and the best practices associated with the use of escrows. The following paragraphs summarize the Banking Committee's Best Practices for EB-5 Escrows document.

WHEN ARE ESCROW ACCOUNTS USED?

While there are no legal or statutory requirements to use an escrow account in the EB-5 process, investors often feel more secure knowing there is a mechanism in place to monitor the flow of funds into EB-5 projects. In addition to ensuring funds properly flow to the intended parties, a properly structured escrow agreement will also provide a method for the investor's return of funds should their I-526 petition be denied. Escrow accounts are typically used for subscription funds, administrative fees and construction funds, which collectively span the EB-5 lifecycle. Participants in the escrow process may include investors, new commercial enterprises (NCE), custodial banks, escrow agents, escrow administrators and fund administrators.

SUBSCRIPTION ESCROW ACCOUNTS

A subscription escrow account is used as a vehicle to receive an investor's subscription proceeds and release funds once the agreed upon conditions have been met. A properly structured agreement will also provide a method to repay the investor's principal and/or subscription fees in the event of an I-526 petition or project denial. Industry best practice recommends holding funds in escrow until approval of the I-526 petition as this provides the most security for the investor. Consequently, escrow agreements providing for any release of funds prior to individual investor I-526 approval should factor in the I-526 approval history of the regional center (or lack thereof), and consider the use of a funds

holdback provision or corporate guaranty that provides for the full return of all potentially rejected investor funds.

While the 'Hold until Approval of I-526 Petition" model provides the highest level of funds security, competitive market forces may require alternative structures. Alternative structures may include, but are not limited to:

1) Early Release

Subscription funds are deposited into escrow and released upon the filing of the individual investor's I-526 petition. Evidence of the I-526 petition filing – in the form USCIS Form I-797 Notice of Action confirming receipt of the I-526 petition – signals the immigration process has commenced and triggers release of the investor's funds from escrow. While this type of escrow provides some assurances, it can be considered to involve a higher degree of risk, as funds may not be readily available in the event of denial of an investor's petition. Additionally, there is no assurance the issuer will be able to raise sufficient funds to complete the project.

2) Minimum Threshold/Holdback

Under this scenario, all subscription funds are held in escrow until the agreed upon minimum number of investors have subscribed. While minimum thresholds may vary, the amount is usually sufficient to demonstrate there is adequate investor interest in the project and there will be enough funds to substantially complete the project. Once the minimum threshold is met, approximately 50 to 80 percent of the funds of investors who have filed I-526 petitions are released, and the balance of funds remain in escrow as a holdback to repay denied investors. A 50 percent holdback would be very conservative, while the typical holdback ranges from 20 to 25 percent. Once an investor's I-526 petition is approved, the holdback funds for that investor are then released.

3) Early Release/Corporate Guaranty

The primary reason to use an escrow is to provide investors with a level of protection in the event their I-526 petition is denied. One way to address the tension between the borrower's capital needs and the investors' desire for some level of protection is to allow for early release, but have the developer provide a corporate guaranty to refund investor capital in the event any I-526 petitions are denied. Of course, the form of guaranty and the financial strength of the guarantor must be carefully considered in these instances.

The above scenarios illustrate some of the more common approaches to providing project developers with quicker access to funds, while at the same time providing some protection to investors in the event of I-526 petition denial. Most of the EB-5 escrows today use one of the structures discussed above or a variation of these same concepts.

ADMINISTRATIVE FEE ESCROW

Administrative fees may be paid by the investors, in addition to the subscription fee. The administrative fees are applied to expenses associated with the offering, and the triggers for release of these funds are usually different than those for release of subscription funds. Administrative fees are often kept in a separate escrow account apart from the subscription fees to avoid co-mingling of the funds.

CONSTRUCTION ESCROW

Once the conditions to release funds from the EB-5 investor subscription funds escrow account are met, those funds are usually transferred to a construction escrow account, which is essentially a "blocked" or "controlled" bank account that is controlled by the lender. Most lenders will retain the services of an independent, third-party to perform commercial construction loan monitoring services.

Construction escrows are a crucial piece of the EB-5 funds management puzzle. For purposes of both financial and immigration security it is imperative that investor funds be deployed as intended, and that the resulting business activities generate the requisite economic impact and job creation. Documenting these core eligibility requirements by requiring the Borrower to submit properly documented construction draw requests prior to the release of each tranche of EB-5 funding is necessary if the EB-5 investor is to successfully obtain the eventual removal of conditions on permanent residence. By requiring such verification of construction expenditures as conditions precedent to release of funds, a construction escrow can be structured to mitigate the risk of funds being misdirected away from their intended purpose. The verification documentation also provides essential evidence needed by EB-5 investors to demonstrate their funds were used for job creating activities.

CONCLUSION

Escrow remains an important piece of the EB-5 flow of funds process, providing investors with confidence their funds will be used as intended throughout the EB-5 lifecycle. Increased confidence in the process will in turn benefit the entire EB-5 industry, and by outlining a best practices document that can be referenced by industry stakeholders the IIUSA Banking Committee believes the EB-5 industry is strengthened.

Find the entire Best Practices for EB-5 Escrow document, including comments on best practices relevant to the Anti-Money Laundering Law and Bank Secrecy Act at iiusa.org/bestpractices/. ■

U.S. Supreme Court:

SEC Disgorgement Powers Down but Not Out

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PARTNER, WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

The United States Supreme Court recently delivered a strong blow to the SEC's disgorgement powers in its 9-0 decision in Kokesh v. SEC, No. 16-529. In Kokesh, the Court held that the five-year statute of limitations of 28 U.S.C. § 2462 applies to SEC enforcement actions seeking disgorgement. The immediate significance of this case to those in the EB-5 industry, however, is that "boilerplate" agreements and offering documents may present new and different risk management considerations for Regional Centers, especially when used with Chinese investors.

In facts that unfortunately mirror recent misconduct in the EB-5 arena, the investment adviser in Kokesh allegedly misused $35 million of managed assets to live a lavish lifestyle, which included among other things a polo chukka and horse stable. The Enforcement Division of the SEC, as it usually does, sought "disgorgement" of those funds, plus interest and fines in excess of the misused funds.

DISGORGEMENT TODAY

Disgorgement has morphed over the past 50 years in SEC actions to encompass a full spectrum of ill-gotten gains, namely to encompass acts that may have occurred more than five years before the filing of such actions. More succinctly, the SEC has used disgorgement as an equitable tool to prosecute stale frauds or those not pursued in a timely manner. The Supreme Court's decision in Kokesh essentially puts an end to what many SEC practitioners call "Zombie Enforcement Actions" for disgorgement. Disgorgement is now to be viewed as a punitive remedy subject to the five-year statute of limitations under 28 U.S.C. § 2462, rather than as an "equitable" remedy outside the statute.

To summarize, the Kokesh court identified three reasons to consider the remedy of disgorgement as punitive rather than remedial:

- Disgorgement is a remedy for wrongs "committed against the United States rather than an aggrieved individual."
- Disgorgement is punitive due to its intended effect to deter further bad conduct.
- While some disgorged funds are paid to fraud victims by the SEC, those funds remaining are paid to the U.S. Treasury.

Those reasons notwithstanding, fraudsters are well advised not to uncork champagne bottles in celebration of the Kokesh ruling. Equitable tolling doctrines such as "fraudulent concealment" (SEC v. Wyly, 950 F. Supp. 2d 547 (S.D.N.Y. 2013)) and "continuing violations" (SEC v. Strebinger, 114 F. Supp. 3d 1321 (N.D. Ga. 2015)) may still be invoked in civil enforcement proceedings by the SEC under § 2462, except in requests for disgorgement. These concepts were neither raised by the SEC nor addressed by the Court in Kokesh. Many tools still remain in the SEC's arsenal.

Also not addressed by either the SEC or the Court in Kokesh, and especially important in the EB-5 context, is the application of the five-year limitation period under § 2462 where the defendants are not physically present in the United States. E.g., SEC v. Straub 921 F. Supp. 2d 244, 259-261 (five-year limitation is triggered only when the defendants are "within the United States" as provided in § 2462). Whether the literalist reading of § 2462 in Kokesh will render cases such as Straub of questionable force remains to be seen.

RISK MANAGEMENT ISSUES

As previously noted, the recent decision in Kokesh presents several risk management issues for operators of Regional Centers, including but not limited to the following:

- Regional Centers may wish to include risk disclosures in offering documents to address the potential extinguishment of available remedies and sources of recovery available to investors due to visa backlogs that may exceed five years.
- Regional Centers may wish to consider choice-of-law clauses, dispute-resolution clauses, venue clauses and incorporation options of investment vehicles that may (1) preclude the application of state fraudulent conveyance statutes in excess of the five-year limitation period of § 2462 and/or (2) be less favorable to equitable tolling of § 2462.
- The use of tolling agreements by the SEC during the course of routine investigations of wrongful conduct approaching five years will now increase. Those facing SEC scrutiny will need to consider the limitations on disgorgement in settlement discussions and requests to enter into tolling agreements, especially those of unlimited or significant duration.
- Proposed integrity reforms to EB-5 legislation often have included provisions confirming that the securities laws of the United States apply to EB-5 transactions.

In summary, Regional Centers should continue to address or limit potential exposure to disgorgement remedies given the pending reforms and the "within the United States" language of 28 U.S.C. § 2462. ■

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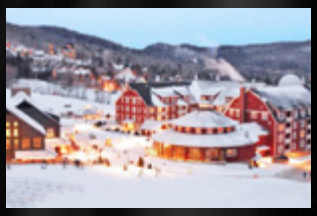
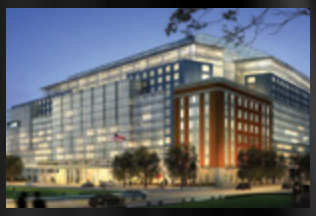


Sugarbush Ski Resort
Warren, VT

City Market at O Street
Washington, DC



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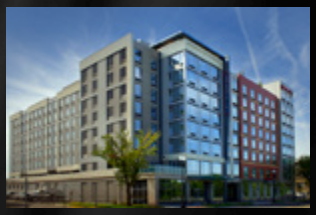
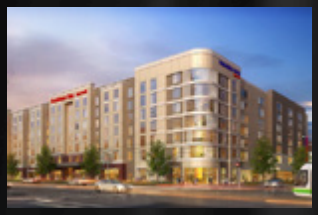
Washington, DC



DC Hilton Hotels
Washington, DC



San Jose Marriott Hotels
San Jose, CA

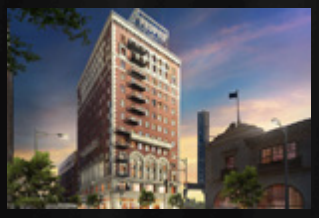
Kensington Place of Redwood City
Redwood City, CA

Riverfront at the Navy Yard
Washington, DC

Columbia Place
Washington, DC

The Coliseum
Washington, DC

1000 F
Washington, DC

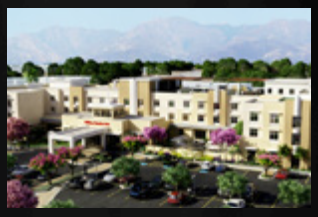


Proper Hotel
Los Angeles, CA

The Highline
Washington, DC

Portland Hilton Canopy
Portland, OR

225 North Calvert
Baltimore, MD



Goleta Hilton Garden Inn
Goleta, CA

300 M
Washington, DC

Temecula Hilton Home2 Suites
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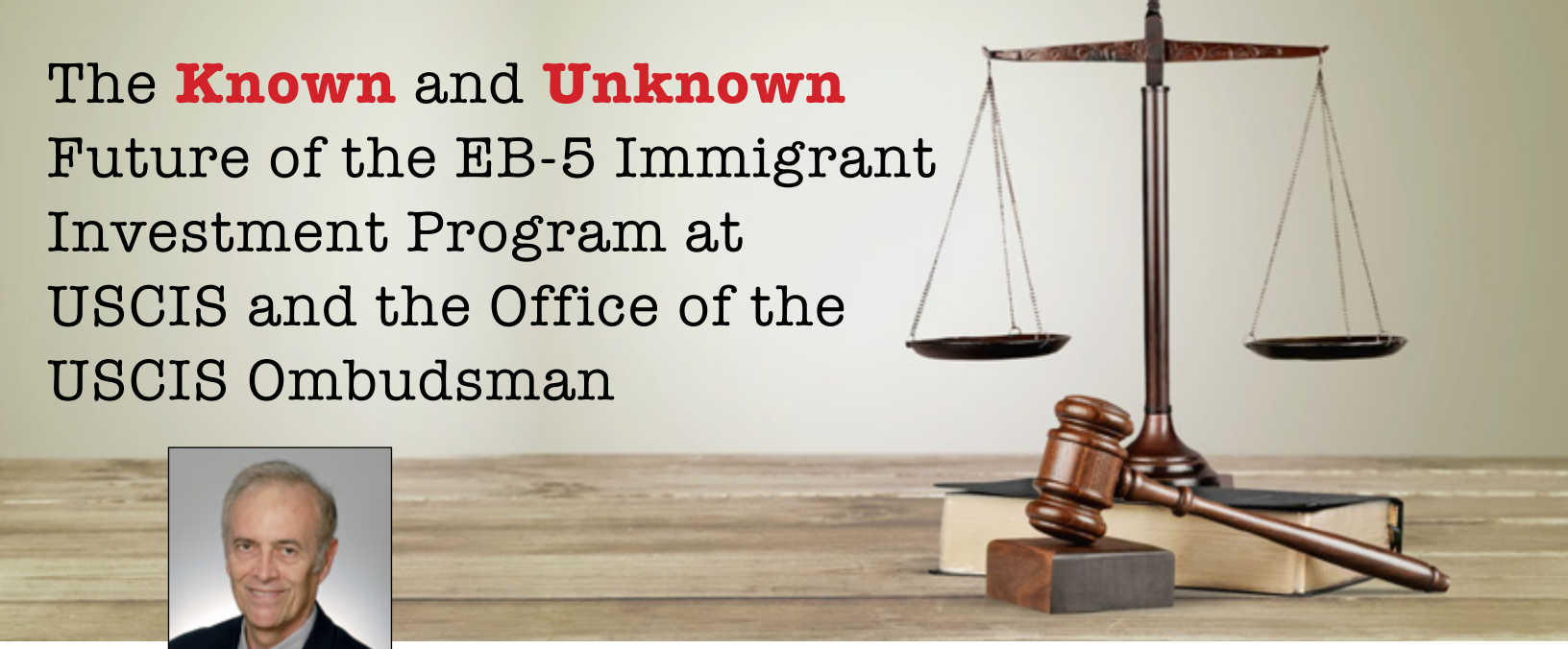
The **Known** and **Unknown** Future of the EB-5 Immigrant Investment Program at USCIS and the Office of the USCIS Ombudsman



ANGELO A. PAPARELLI
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Memes, apocrypha, obfuscation, head feints, hand-wringing, and supposition: These are the misleading and unreliable stuff of the Interweb. To a great extent, alas, they also infect the EB-5 ecospace. This article will avoid conjecture and look at the few hard facts we know about Administration appointees and the positions they will hold, while encouraging EB-5 stakeholders momentarily to suspend their hopes and fears.

FACTS: Former Senator Jeff Sessions (a stalwart opponent of legal immigration) is the Attorney General. Sen. Charles Grassley (no friend of the EB-5 program) has proposed legislation, with Sen. Dianne Feinstein, to eliminate the EB-5 program.

FACTS: Trump Administration appointees and nominees have previously worked closely with Messrs. Sessions and Grassley, or with the Federation for American Immigration Reform (FAIR), a nonprofit widely regarded as an anti-immigrant advocacy group. The decisionmakers include:

SESSIONS ALUMNI

Stephen Miller, now Senior Advisor to the President for Policy.

Gene Hamilton, now Deputy Chief of Staff at the Department of Homeland Security (DHS) for Policy and Senior Counselor.

GRASSLEY ALUMNI

Lee Francis Cissna, nominee for Director of U.S. Citizenship and Immigration Services (USCIS).

Kathy Nuebel Kovarik, now Chief of the USCIS Office of Policy and Strategy.

FAIR ALUMNI

Julie Kirchner, now USCIS Ombudsman.

Aside from Stephen Miller, reportedly an author or coauthor of Versions 1.0 and 2.0 of the controversial Executive Order described by the President as the "travel ban," not much is known publicly about the intended policy positions of these individuals, except for Mr. Cissna[1] and Ms. Kirchner[2], both lawyers of strong pedigree.

Mr. Cissna has been most recently "detailed" to Sen. Grassley where he helped write S.2266,[3] the H-1B and L-1 Visa Reform Act of 2015 -- a bill that would have dramatically enlarged the enforcement authority of the U.S. Department of Labor and restricted H-1B and L-1 visa requirements and benefits, as well as S.1501,[4] the American Job Creation and Investment Promotion Reform Act of 2015 -- introduced by and Sen. Grassley and Sen. Leahy -- which included an array of what have come to be known as EB-5 "integrity" measures.

Before and after his stint with Sen. Grassley, Mr. Cissna spent years as a lawyer at DHS immersed behind the scenes in immigration policy. His testimony before the Senate Judiciary Committee and his written answers to questions from three Senators tell us how he intends to deal with the EB-5 program if approved as USCIS Director:

- He will finalize the two prior rulemaking efforts of USCIS during the Obama Administration (an advance notice of proposed rulemaking and a proposed rule) into final effect "according to the process set forth in the Administrative Procedure Act and related DHS and OMB [Office of Management and Budget] guidance."[5]
- He is "committed to enforcing USCIS policies ensuring the integrity of all USCIS adjudications, no matter who the applicant or petitioner is, as well as policy deliberations, including their independence from any inappropriate external influences."[6]
- He has observed that the "USCIS Ombudsman and the USCIS director should maintain an independent, yet respectful and cooperative relationship, as both share the goal of improving USCIS" and acknowledged the "USCIS Director's statutory obligation to 'meet regularly with the Ombudsman . . . to correct serious service problems identified by the Ombudsman . . .'"[7]
- He confirmed his intention to "strive to ensure that the agency carries out its mission in a fair, lawful, efficient, and expeditious manner."[8]

1 Mr. Cissna's legal career is outlined in his answers to the questionnaire of the Senate Judiciary Committee, accessible here: https://www.judiciary.senate.gov/imo/media/doc/Cissna%20SJC%20Questionnaire%20Public.pdf (unless otherwise noted, all links are current as of June 12, 2017).
2 Ms. Kirchner's official biography can be found at: https://www.dhs.gov/person/julie-kirchner.
3 S.2266 is available at: https://www.congress.gov/bill/114th-congress/senate-bill/2266.
4 S.1501 is available at: https://www.congress.gov/bill/114th-congress/senate-bill/1501
5 May 27, 2017 Responses of Lee Francis Cissna to Questions for the Record from Sen. Dianne Feinstein), No. 11 (Responses).
6 Responses to Sen. Durbin, No. 9. Sen. Durbin expressly asked "How would you ensure that President Trump's family business interests won't affect the adjudication of [the EB-5 program] . . . or the consideration of possible reforms to [the program]."
7 Responses to Sen. Durbin, No. 6.
8 Responses to Sen. Feinstein, No. 2. In the preface to her question Sen. Feinstein stated that "one of the agency's strategic goals

Before becoming the Ombudsman, Ms. Kirchner apparently did not make any public statements revealing her personal views on the EB-5 program.[9] During her tenure as Executive Director of FAIR, however, the organization actively opposed EB-5 program.[10]

In accepting her position and taking her oath of office, Ms. Kirchner is no doubt aware of Section 452 of the Homeland Security Act, the statutory mandate prescribing the authority and duties of the Ombudsman, which provides:

> Section 452 of the Homeland Security Act (HSA) provides:
>
> **(A) IN GENERAL** – Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the 'Ombudsman'). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.
>
> **(B) FUNCTIONS** – It shall be the function of the Ombudsman—
>
> 1) To assist individuals and employers in resolving problems with [U.S.] Citizenship and Immigration Services;
>
> 2) To identify areas in which individuals and employers have problems in dealing with [U.S.] Citizenship and Immigration Services; and
>
> 3) To the extent possible, to propose changes in the administrative practices of [U.S.] Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

In addition, Section 452(c)(F) of the HSA requires the Ombudsman to report annually to Congress and recommend "such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications[.]"[11]

The responsibilities of the Ombudsman are particularly significant given that in August 2015 USCIS published a set of EB-5 "Protocols," which limited the direct intervention of USCIS leadership in specific EB-5 cases, but exempted the USCIS Ombudsman from its prohibitions.[12] Since direct outreach to USCIS senior leadership in specific cases is now greatly restricted, the statutory role of the USCIS Ombudsman in assisting "individuals and employers in resolving problems with" USCIS becomes essentially the only way that EB-5 stakeholders can raise quality assurance problems in specific cases. To be sure, the USCIS Office of Public Engagement (OPE) conducts regular EB-5 stakeholder engagements and listening sessions. These OPE opportunities, however, are often structured to preclude posing questions or concerns about specific cases.

Ms. Kirchner, the fifth individual to hold the title of Ombudsman, will likely review and adapt for herself the varying approaches of her predecessors. At least one Ombudsman took a more aggressive approach, which understandably produced resistance at USCIS. Others in varying degrees have been more or less assertive, innovative, affable and collaborative in finding ways to communicate directly with USCIS Service Center adjudicators and help resolve individual and employer problems.

So, how much power does an Ombudsman have in interacting with USCIS? As a matter of historic practice, prior incumbents often achieved a measure of success by acting as disinterested intermediaries, but did not offer or make public the Office's own interpretations of the Immigration and Nationality Act (INA), deferring instead to USCIS. As a coequal component of DHS with USCIS, however, the Ombudsman is authorized by its mandate in HSA § 452(b)(2) and (b)(3) to "identify" problematic areas in the public's "dealing with [USCIS]" and to "propose changes in the administrative practices" of USCIS.

Clearly, therefore, the Ombudsman's duties of identifying problems and proposing changes to USCIS's administrative practices are sufficiently broad to include problems and practices stemming from misinterpretations of the INA and agency regulations. A recent instance in which a legal interpretation by the Ombudsman would have been appropriate and welcome is on long-unresolved issues of the period during which EB-5 conditional resident's funds must be redeployed and whether the redeployment must be in "at-risk" assets once the investment project has concluded but before conditions on residency have been removed.[13]

Knowledgeable immigration lawyers recognize that the role of the Secretary of Homeland Security, and the Department's component agency, USCIS, is to "administer" and "enforce" the INA and all other immigration laws, whereas the Attorney General possesses exclusive authority within the Executive Branch to determine and rule on all questions of law.[14]

Since the Ombudsman's role is to identify problematic areas in the public's dealings with USCIS and to propose changes in its administrative practices, the Ombudsman undoubtedly holds coequal authority with USCIS to challenge the latter's legally unsupportable and troublesome administrative interpretations of the law and regulations underpinning the EB-5 program, subject only to the Attorney General's power to conclusively determine questions of law that are

is 'providing effective customer-oriented immigration benefit and information services' . . . [and] one of USCIS's core customer service principles is 'to approach each case objectively and adjudicate each case in a thorough and fair manner.'"

9 Based on the remarks made by a representative of the USCIS Ombudsman at the Federal Bar Association Annual Immigration Conference on May 12, 2017, Ms. Kirchner reportedly has indicated to staff that she is interested in the EB-5 investor program, the H-1B visa category and other areas of employment-based immigration law.

10 Ms. Kirchner is listed, for example, as a lobbyist in 2012 concerning S.3245 sponsored by Sen. Leahy, a bill to "permanently reauthorize the EB-5 Regional Center Program, the E-Verify Program, the Special Immigrant Nonminister Religious Worker Program, and the Conrad State 30 J-1 Visa Waiver Program," regarding provisions "relating to more controversial issues in three of the four programs because of significant deficiencies in oversight and fraud." See Form LD-2 for Third Quarter 2012, accessible at https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=3306B29A-DAE3-4E17-8635-6411112B21A4&filingTypeID=69 Also, in 2012, while Ms. Kirchner served as FAIR's Executive Director, the organization published "Selling America Short: The Failure of the EB-5 Visa Program," accessible here: http://www.fairus.org/site/DocServer/FAIR-EB5-2012_rev.pdf.

11 As discussed in the text below, on June 29, 2017 Ms. Kirchner, in her formal capacity as Ombudsman, submitted to Congress her Office's 2017 Annual Report ("2017 Report"). The report, discussed later in the text, is available at: https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017_0.pdf (last accessed on July 12, 2017).

12 Entitled, "Ethics and Integrity: Protocols for Processing of EB-5 Immigrant Investor Visa Petitions and EB-5 Regional Center Applications, Including Stakeholder Communications," the document is available here: https://www.uscis.gov/sites/default/files/USCIS/Working%20in%20the%20US/eb5protocols.pdf.

13 The USCIS's continuing at-risk "sustainment" requirement for redeployed funds, lasting until conditions on residency have been removed, is an issue that begs for interpretation by the USCIS Ombudsman. See June 14, 2017 USCIS Policy Alert, "Job Creation and Capital At Risk Requirements for Adjudication of Form I-526 and Form I-829," (accessible here: https://www.uscis.gov/policymanual/Updates/20170614-EB5JobsAndCapitalAtRisk.pdf) and amendments to the USCIS Policy Manual at Volume 6: Immigrants, Part G, Investors [6 USCIS-PM G] (accessible here: https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG.html). See also, "USCIS Finalizes EB-5 Sustainment and Redeployment of Capital Issues and Consequences of Regional Center Termination," by Robert C. Divine in the current issue. For arguments opposing the USCIS redeployment and sustainment interpretations, see American Immigration Lawyers Association Comments on the USCIS Policy Manual Regarding Eligibility Requirements for Regional Centers and Immigrant Investors. Volume 6: Immigrants, Part G, Investors (December 14, 2016; AILA Doc. No. 16121565 Posted 12/15/16 ["AILA Comment"]), at pp 6-7 (noting that the at-risk requirement is a creature of the regulations and not the INA, and that as a matter of law the EB-5 investment need merely be "... sustained over the two years of the petitioner's conditional permanent residence in the United States").

14 See INA § 103(a).

binding within the Executive Branch.

Recently, Ms. Kirchner provided welcome insights on the EB-5 program. In the Ombudsman's 2017 Report to Congress, she acknowledged the adverse consequences caused by the lack of robust anti-fraud and national- security protections, and by the failure of the House and Senate to agree on a permanent or multi-year reauthorization of the Regional Center program. Concerning the unfortunate pattern of successive short-term EB-5 Regional-Center reauthorizations, Ms. Kirchner observed:

> Legislative efforts to reform the EB-5 program have stalled over numerous issues, including the methodology for determining TEAs, the two-tiered investment framework, and effective dates for any new provisions. In the meantime, Congress has reauthorized the Regional Center program in a series of short-term extensions. These short-term extensions trigger filing surges by investors seeking to secure a place in the queue before the minimum investment amount is increased or changes are made to other provisions. They also contributed to delays in updating EB-5 regulations as the agency yielded to signals from Congress that it intended to make statutory changes to the program.[15]

In addition, Ms. Kirchner observed in her 2017 Report that extremely long backlogs in EB-5 adjudications at USCIS continue to plague the program, and, with regard to the predominant segment of all EB-5 investors, namely, individuals born in mainland China, that the lack of annual EB-5 immigrant visa numbers "will likely [require them to] wait 10 years or longer for their EB-5 immigrant visas due to oversubscription, absent an increase in or recalculation of the annual quota."[16]

One troubling observation in the 2017 Report hinted that the Office of the Ombudsman may not offer its own independent statutory and regulatory analysis in situations where USCIS's policy guidance appears to deviate from the INA and agency regulations, even though the views of USCIS cause problems for individuals and businesses:

> In November 2016, USCIS released an addition to its Policy Manual titled "Investors." This six-chapter policy treatment is a significant achievement, as it synthesized and aligned the agency's regulations, decisional law, policies, and procedures with enabling statutes. Given the complexity of the EB-5 Program, the creation of this comprehensive and authoritative resource has been well received by EB-5 stakeholders.[17]

This statement no doubt comes as a surprise to many external EB-5 legal experts. The lawyers who submitted an eight-page AILA Comment replete with numerous and wide-ranging suggested corrections to the EB-5 chapters in the USCIS Policy Manual would likely disagree with the characterization that this sub-regulatory guidance can be fairly characterized as a "comprehensive and authoritative resource [that] has been well received by EB-5 stakeholders." Thus, it remains to be seen just how much future federal litigation (likely brought under the Administrative Procedure Act, the INA, and other statutes) will be spawned raising substantive legal questions on the degree to which the manual is in fact comprehensive or authoritative. Hence, scholars of EB-5 jurisprudence must stay tuned as EB-5 jurisprudence evolves.

* * *

In the final analysis, insufficient hard facts are known to foretell how Mr. Cissna, Ms. Kirchner, and their respective agencies will discharge their responsibilities under the immigration laws. As noted, they are both accomplished lawyers, and during their respective honeymoon periods, EB-5 stakeholders should accord them the respect and confidence, consistent with existing rules of professional responsibility, that the views of their former employers are not necessarily predictive of their future policies.[18]

Time will tell whether and how well Ms. Kirchner and Mr. Cissna engage together in resolving EB-5 stakeholder concerns over backlog reduction, wayward adjudications, kitchen-sink requests for additional evidence, and other frustrations. Until more is known about real-world actions of the Ombudsman and adjudications at USCIS, EB-5 stakeholders and their immigration lawyers must decide for themselves whether resort to Ombudsman intercession will more likely help or hurt regional centers and immigrant investors in specific cases. The calculus in approaching or avoiding the Ombudsman should be based on a variety of factors, such as, the financial strength of the project and its potential or actual job-creation activities; the factually-demonstrable urgency in receiving an adjudication; the presence or absence of red-flag factual or legal issues; and the likelihood that the particular case presents issues that, once resolved, would benefit multiple EB-5 stakeholders, and thereby allow the Ombudsman to husband its scarce resources, and get more bang for its intercessory buck; and other relevant considerations.

This author believes that USCIS (under Mr. Cissna) and the Office of the USCIS Ombudsman (under Ms. Kirchner) will be led in good faith by talented and accomplished lawyers who have taken oaths to support and uphold the Constitution and the immigration laws of the United States, unless either of them, by their conduct, demonstrates otherwise.

For the time being, as a matter of fact, this author will continue to seek the intervention of the Ombudsman in worthy cases, given that (a) Office of the Ombudsman continues to be staffed by experienced lawyers and other career officers who have historically been helpful in employment-based immigration matters, (b) the EB-5 program continues to be a tax-generating engine of economic growth and job creation, and (c) fully law-compliant EB-5 petitions continue to encounter "problems" at USCIS.

As for USCIS itself, the agency's widely-known endemic problems continue to cry out for resolution. Submission of well-documented cases establishing EB-5 eligibility, participation in public engagement, advocacy at public conferences and through print and social media, and litigation -- this author believes -- remain the tools of choice. ■

15 See, 2017 Annual Report at 32
16 Id. at 33.
17 Id. at 31-32
18 Rules of legal ethics generally hold that "a lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities." See American Bar Association
Model Rules of Professional Conduct Rule 1.2(b)("Scope Of Representation And Allocation Of Authority Between Client And Lawyer"), accessible here: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html. The author understands that Ms. Kirchner apparently did not serve as an attorney of FAIR, but as its Executive Director. In this author's view, however, merely because an individual on behalf of a prior employer has opposed immigration relief for unauthorized immigrants (see, e.g., Ms. Kirchner's November 8, 2007 testimony before Congress to that effect, accessible here: https://judiciary.house.gov/_files/hearings/pdf/Kirchner071108.pdf) does not require or necessarily justify the conclusion that she would ipso facto take steps to maintain America's legal immigration system in its clearly dysfunctional state.

ADVENT OF THE EB-5 BROKER-DEALER

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WHAT IS A BROKER-DEALER?

Broker-dealers serve an important role in U.S. financial markets to ensure integrity and transparency. Broker-dealers are registered with the Securities and Exchange Commission (SEC) and are members of the Financial Industry Regulatory Authority (FINRA), each of which provides regulatory oversight. In addition to conducting independent due diligence on companies seeking capital, the broker-dealer has a duty to only offer "suitable" investments to potential investors. In other words, each investment offered by a broker-dealer must be suitable for that investor in light of their: (1) stated investment objectives, (2) risk tolerance, (3) liquidity needs, (4) investment experience and (5) investment time horizon.

For an EB-5 investor, "suitability" carries additional immigration burdens. EB-5 investors seek to obtain immigration status within the U.S., which adds a component to their investment goals not present with traditional investors. The feasibility of the immigration goals must be evaluated as part of the diligence process just as closely as the financial soundness of a project. Accordingly, EB-5 broker-dealers must obtain additional FINRA approvals before they can raise money from investors for EB-5 projects.

RECENT SEC ACTIONS

The September 2016 Government Accountability Office (GAO) report identified that the most frequent incidents of fraud in the EB-5 program are associated with securities fraud, whereby immigrant investors were defrauded by unscrupulous regional center principals, developers and/or their associates. Recent enforcement actions brought by the SEC underscores this trend.

According to the SEC, between February of 2013 and December of 2015, the Commission filed 19 cases involving EB-5 offerings, of which almost half (7 cases) involved fraud allegations. Additionally, 11 of the 19 cases involved unregistered persons acting as broker-dealers.

The SEC brought forth the first stand-alone unregistered broker-dealer case in the EB-5 industry in June of 2015. The case involved two firms claiming to help investors choose the right regional center, but in fact the firms directed most of the EB-5 investors to regional centers paying the firms commissions of roughly $35,000 per investor. The firms handled EB-5 investments for more than 150 investors.

The most recent SEC enforcement actions against Pacific Proton Therapy Regional Center and the sponsors of the Jay Peak project in Vermont share elements that are common in fraud cases. In these and other instances of investor fraud, (1) there was no independent verification of the claims made by the project sponsors and (2) there were no independent controls on the management of investor funds. EB-5 investors trusted the assertions of the parties raising the money about the status of the project, and once the money was in the company's account, no safeguards were in place to control how the money would be spent.

BENEFITS TO EB-5 INVESTORS

Intentional or not, these situations are more likely avoided when working with a FINRA licensed broker-dealer, largely because of the independent and thorough due diligence conducted by the broker-dealer. This includes conducting background and credit checks on key personnel, evaluating third-party valuations and feasibility studies, conducting site visits, reviewing significant contracts and agreements, confirming the status of the necessary approvals (permitting, zoning, etc.) for the project and critically evaluating the job projection study. The independent investigation of the EB-5 offering provides investors an elevated level of comfort that the offering has been vetted by a securities professional. This may also give project sponsors and immigration agents a marketing benefit with investors, as projects sold by a broker-dealer carry the weight of an institutional third party validation.

In addition, some EB-5 broker-dealers insist (or strongly encourage) that EB-5 projects retain a third party manager of the New Commercial Enterprise (NCE) to oversee the release of capital to the project and verify that the capital is being used for authorized expenditures.

BENEFITS TO PROJECT SPONSORS

Although the "peace of mind" benefit to investors discussed above may be compelling to some, arguably the biggest beneficiary of an EB-5 broker-dealer is the project sponsor. Even in the absence of fraud, project sponsors may one day find themselves dealing with disgruntled EB-5 investors.

Legitimate projects can have issues that arise from development delays, changes to the business plan or perhaps operational shortcomings. Absent fraud, the burden of handling such issues becomes the responsibility of the broker-dealer that sold the investment. In the event of a dispute, the broker-dealer must demonstrate that they conducted proper due diligence and that the investment was "suitable" for the investor. This aligns the project sponsor and the broker-dealer and provides the project sponsor with an additional defense against investor claims. Using a broker-dealer reduces the potential for investors to prevail on a claim of recession (in which they would get their money back from the project sponsors) or class action lawsuits. When an investor is a customer of the broker-dealer, all disputes are handled by a FINRA arbitration panel trained to deal with complex financial instruments and offerings. This means that any dispute (outside of fraud) will likely be isolated and handled more quickly, efficiently and confidentially than if the dispute were litigated in court.

Another benefit to project sponsors is increased confidence that the capital raised is compliant with state and federal exemptions under the securities laws. Most EB-5 offerings are done under the Regulation S and/or the Regulation D exemptions.

To qualify under Regulation S, the offering must meet two conditions: (1) the offer or sale is made as part of an "offshore transaction" and (2) none of the parties make any "directed selling efforts" in the United States. To qualify under Regulation D, the offering must: (1) be made primarily to accredited investors that meet certain income or net worth thresholds, and (2) not have been marketed as a general solicitation (i.e., mass advertising), unless the "accredited" status of every investor is verified with credible documentation. Since each investor is a customer of a broker-dealer, the broker-dealer is in a position to confirm and verify that the factual requirements necessary to ensure compliance with the offering's relevant exemption(s). The broker-dealer is required to maintain these records in compliance with FINRA regulations.

To be clear, marketing an EB-5 investment under a Regulation D or Regulation S is an exemption from registration, and does not exempt a project sponsor from following other federal or state securities laws. For example, EB-5 offerings must have a comprehensive disclosure document (i.e., Private Placement Memorandum) that satisfies the sponsor's "anti-fraud" obligation.

Broker-dealers, as part of their due diligence review, carefully examine the Private Placement Memorandum and other documents provided to investors, with the goal of fostering compliance. In addition, no project sponsor can legally pay transaction-based compensation to agents or finders who conduct any activity in the U.S. and are not registered with FINRA. The SEC has refused to issue 'no action letters' protecting the current industry practice of paying transaction-based compensation to foreign persons selling EB-5 offerings under the Regulation S exemption, thus preserving the right of the SEC to enforce rules that prohibit the payment of transaction-based compensation to unlicensed foreign persons.

In conclusion, working with a broker-dealer can provide several benefits to both investors and project sponsors. Investors may take comfort in the FINRA regulations that require broker-dealers to (i) vet the offerings they bring to market and (ii) confirm that the offering is suitable for the investor. Project sponsors may take comfort in the FINRA regulations that require broker dealers to (i) confirm each investor meets exemption requirements, and (ii) review the offering documents with the goal of improving compliance. These benefits should give greater "peace of mind" to investors and project sponsors in offerings in which a broker-dealer is involved. ■

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OF KIDS & COWBOYS:

SEC Enforcement Outside EB-5 Parallels Inside EB-5

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WHAT DO THE FOLLOWING SECURITIES ENFORCEMENT ACTIONS HAVE IN COMMON?

1. *SEC Obtains Asset Freeze and Appointment of Receiver in Fraudulent Real Estate Investment Scheme* – A U.S. district judge entered an asset freeze and appointed a receiver over a company that the Securities and Exchange Commission ("SEC") brought charges against for defrauding 50 investors in a commercial real estate investment scheme using false statements on the company's website and in its written offering materials as to amount of return, use of escrow, and that investments were "bonded." [1]

2. *SEC: Oil and Gas Promoter Misappropriated Investor Funds* – The SEC complaint charged a promoter with recycling offering documents from prior (failed) projects, falsely addressing commingling of funds, and falsely claiming government licensure allowing the promoter to misappropriate most of the funds raised from investors on a project to rework and recomplete an oil and gas well, spending those funds on personal expenses, including $236,000 for gambling charges and cash withdrawals and $240,000 on house and car payments, vacations, dining and shopping, and jewelry. [2]

3. *FINRA Charges Broker Over Misleading Offering Docs* – FINRA brought a complaint alleging that a California broker obtained $1.6 million from 23 of his retail customers for interests in a pooled investment fund that he both created and controlled through a false and misleading PPM, which misrepresented and failed to disclose material information to investors about potential fees, costs and risks associated with the fund, including those relating to the individual controlling their capital, who was engaging in bank fraud and fraudulent trading in another unrelated pooled investment program at the same time, enabling the unrecoverable transfer of $650,000 to a third-party financier. [3]

ANSWER: NOT ONE OF THEM INVOLVES AN EB-5 PROJECT.

They may sound like the high-profile EB-5 securities cases that have attracted considerable attention, but not one of them has anything to do with EB-5. Instead, they are "garden variety" securities law enforcement actions of the sort witnessed across the over 80 years of the SEC's existence, yet collected just from the month of April 2017. There are many more from April—and, of course, thousands upon thousands during those over 80 years.

Since 2013, the EB-5 industry has witnessed an increasing number of litigation matters, including civil enforcement actions, regulatory proceedings, and criminal prosecutions, brought by the SEC, U.S. Attorneys of the Department of Justice, and state and financial industry regulators to catch, halt, and punish securities law violations by issuers, regional centers, brokers, lawyers, and other actors in the industry.

Some of those actions have involved large and complex deals involving scores and even hundreds of investors and tens of millions of dollars, while others have been more modest. (Compare the Jay Peak case,[4] $350 million raised from

1 SEC v. 4D Circle LLC a/k/a Enoetics, LLC, et al., No. CV 4:17-cv-0321 (N.D. Tex. Filed Apr. 13, 2017) per SEC Litigation Release No. 23806, April 14, 2017 http://www.sec.gov/litigation/litreleasees/2017/lr23806.htm.

2 SEC v. Matthew W. Fox and Wayne Energy, LLC, No. 4:17-cv-271 (E.D. Tex.) per SEC Litigation Release No. 23809, April 19, 2017 http://www.sec.gov/litigation/litreleases/2017/lr23809.htm.

3 FINRA Dept. of Enforcement v. Robert R. Tweed, Disciplinary Proceeding No. 2015046631101, April 27, 2017 http://disciplinaryactions.finra.org/Search/ViewDocument/68737.

4 SEC v. Quiros, Case No. 1:16-cv-21301 (S.D. Fla. Filed April 21, 2016).

more than 700 investors, and the USANOW[5], $5 million raised from 10 investors, and Ireeco[6], an unregistered broker-dealer case focusing on two entities.) In some matters, large companies have been the target, while in other cases the focus has been on individual attorneys. In still other cases, an initial civil action has been followed or accompanied by criminal prosecution (e.g., SEC v. Chicago Convention Center[7], resulting in civil fines and penalties, then upon completion followed by U.S. v. Sethi[8], culminating in a sentence of 3 years' imprisonment).

None of these cases are unique to EB-5, beyond their immediate facts and the industry in which they happen to arise.

In fact, EB-5 securities cases can be likened to private equity enforcement cases. Private equity funds share various similarities with the new commercial enterprises ("NCE") capitalized with EB-5 investor funds. Private equity funds are typically partnerships where the investors are limited partners and the general partner performs certain services in exchange for a management fee and a percentage of the profits. The general partners often engage in related party transactions by hiring related entities and persons to provide services to the fund or its portfolio companies. As for investors, they may not obtain a return on their investments for a decade or more and may be unable to easily withdraw their investments.[9] Despite the potential conflicts of interest and the various fees involved, limited partnership agreements often lack clear descriptions of how fees and expenses are charged to portfolio companies and protocols regarding conflicts of interest and provide insufficient investor information rights. As a result, investors in private equity funds often lack the ability to monitor their investments. Like the EB-5 industry, private equity continues to grow: as of June 2016, the private equity market was larger than ever, with $2.49 trillion in assets under management by approximately 1,800 funds.[10] As the size and number of private equity firms have grown, the SEC has been increasingly involved in regulating these firms, which had gone largely unregulated until 2012.

In 2012, the Dodd-Frank Wall Street Reform and Consumer Protection Act began to require private equity advisers with over $150 million in assets to register with the SEC. Through its examinations, the SEC discovered that over half of advisers failed to fully comply with regulations involving fees and expenses.[11]

It is certainly regrettable that these violations occurred in the EB-5 industry (as well as in the private equity fund arena) and needed to be uncovered, corrected and punished, with civil damages and also criminal sanctions. Ideally, all such misbehavior would be prevented in the first place, and the industry's active encouragement of best practices and support for the adoption of enhanced integrity requirements would wipe away the lingering misimpression (fostered by a media still wedded to focusing on the sensational) that EB-5 is an industry inhabited only by crooks and rip-off artists.

But, as demonstrated by the private equity cases described above, the fact that bad stuff happens, does not mean that only bad stuff is happening, nor that bad stuff only happens in EB-5. In fact, similarly to the SEC actions brought against EB-5 actors, almost all of the settled actions against private equity funds and their advisers have involved nondisclosure and misallocation of fees and expenses and insufficient disclosure of conflicts of interest.[12]

Those in (and out of) the EB-5 industry should thus keep in mind that the across its over 80-year history, the broader world of securities outside EB-5 has seen (and continues to see) very much the same reality we observe today in EB-5. Some portion of participants in every area of human endeavor, especially where people are trying to accomplish their goals using other people's money, has invariably included Kids and Cowboys—Kids, who do not know what they are doing (and should not be doing it), and Cowboys, who know they are doing wrong, and do not care. Kids and Cowboys are not just an EB-5 phenomenon; they are a significant (albeit greatly unwanted) minority of all those involved in the investor financing universe.

But as with the world outside EB-5, Kids and Cowboys are a minority inside EB-5. Their misbehavior draws headlines, just as outside. And just like outside, the many EB-5 success stories attract significantly fewer headlines. For example, consider these largely unsung EB-5 success stories:

- In 2015, a total of $122 million was repaid to 244 investors involved in the financing of the Philadelphia Convention Center.
- Also in 2015, a $100 million EB-5 loan used to fund film and television production for major film studio in Los Angeles was repaid to investors.
- In 2017, a $60 million EB-5 loan used for redevelopment of the Brooklyn Navy Yard, New York City's largest industrial park was repaid to 120 investors.
- In 2017, a hotel project in Los Angeles is in the final stages of repaying 40 investors the $20 million invested.

Ultimately, the "securities misbehavior" portrait of the EB-5 industry tracks that of the broader investing world. No doubt this is why SEC representatives appearing at EB-5 industry conferences consistently answer the question, "Is EB-5 worse than non-EB-5?" with the reply, "It's the same." ■

5 SEC v. Ramirez, Civil Action No. 7:13-cv-00531 (S.D. Tx. Filed Sept. 30, 3013).
6 In the Matter of Ireeco, LLC, Adm. Proc. File No. 3-16647 (June 23, 2015).
7 SEC v. A Chicago Convention Center, No. 13-cv-982 (N.D. Ill. Filed Feb. 6, 2013).
8 U.S. v. Sethi, No. 1:14-cr-00485-1 (N.D. Ill. April 3, 2017).
9 Securities Enforcement Forum West 2016 Keynote Address: Private Equity Enforcement, speech by Andrew Ceresney, Director, SEC Division of Enforcement, May 12, 2016, https://www.sec.gov/news/speech/private-equity-enforcement.html.
10 2017 Preqin Global Private Equity and Venture Capital Report—Sample Pages, https://www.preqin.com/docs/reports/2017-Preqin-Global-Private-Debt-Report-Sample-Pages.pdf.
11 Spreading Sunshine in Private Equity, a speech by Andrew Bowden, Director, Office of Compliance Inspections and Examinations, May 6, 2014, https://www.sec/gov/news/speech/2014--spch05062014ab.html.
12 Todd Ehret. Insight: SEC Delivering on Promise to Scrutinize Private Equity Firms. Thomson Reuters Regulatory Intelligence, Sept. 15, 2016, http://blogs.reuters.com/financial-regulatory-forum/2016/09/15/insight-sec-delivering-on-promise-to-scrutinize-private-equity-firms/.

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Job Creation: A Job is a Job, Economic Models and the Intent of Congress

KYLER JAMES

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ABOUT ECONOMIC MODELS

One erroneous statement continues to come up during the numerous recent discussions surrounding reform, regulations and the continued growth of the EB-5 program. This statement is that the modeled jobs created with EB-5 investments are not real jobs and cannot be proven. In some form or another, this unfounded statement continues to hold-up progress with the legislative process for the continuation of the program. The lack of understanding about modeled job creation also fuels equally unfounded beliefs that EB-5 is simply a residency for sale program that doesn't truly have positive economic impact on the US economy.

However, the economic modeling that is accepted within EB-5 practice is the very same economic modeling that many governmental agencies and private companies rely upon in making their most important decisions. These government entities include the Department of Defense in measuring impacts of military base realignment and closure decisions, and the US Forest Service in determining the impacts of uses for specific land, measuring the differences in recreational, grazing and mining uses. Also, universities use the same economic modeling in determining the impacts of a satellite campus or investment in a new department.

Input-output models are regularly used, both within and outside of EB-5, as tools to predict the impact of variety of changes to a particular economy. RIMS II[1] (a product of the Federal Bureau of Economic Analysis) references its usefulness to investors, planners and elected officials in assessing the impacts of regulations, construction projects, changes in tourism, expansions of existing facilities and other uses. Similarly, IMPLAN[2] (originally created in conjunction with the US Forest Service and the Federal Emergency Management Agency) allows government, corporate and academic users the ability to determine how "businesses, projects, or policies interact with and shape the economy." The list of available economic modeling software which is available goes on, but the simple premise remains the same. Economic models are an effective tool for determining the impacts of a change in the economy. These analyses are utilized throughout a variety of industries as a trusted tool to determine impacts within an economy. The tools vary in price, format and uses, but each tool is regularly used within a large variety of industries.

What makes the economic modeling in EB-5 practice even more reliable is the use of models at both ends of the process. In the initial filing with USCIS, the petitioner must pres-

1 See http://www.bea.gov/regional/rims/index.cfm

2 See http://www.implan.com/company

ent a reasonable methodology for estimating creation of at least ten new American jobs as a result of the investment. This is done by providing a credible and feasible business plan including third-party validation of the reasonableness of estimated future expenditures, revenues, and on-site employment (as necessary). This initial petition, however, will only avail the investor of conditional residency. Within the final three months of the two-year conditional residency, the investor must petition USCIS to remove the conditions of the residency. In order to do this, the investor must now show that the jobs were, in fact, created or are likely to be created within a reasonable period of time. At this point the investor is not estimating, but utilizing the experienced revenues, expenditures or on-site jobs as the basis for the job creation analysis. At both ends of the process, the investor is using highly reliable figures (either estimates independently validated as reasonable, or actual experienced data) as the data inputs into a broadly accepted economic model.

THE INTENT OF CONGRESS

Many policy discussions surrounding the EB-5 program refer to the original intent of Congress when the law was enacted. Policy points are made with varying force as to whether, for example, the 10,000 visa allocation was intended to include dependent family members, or the geography of a targeted employment area was intended to be expansive. But there's no disputing the intent of Congress to authorize an investor to claim credit for indirect job creation. In 1992, following two years of the standalone EB-5 investment program, Congress introduced the Regional Center program for EB-5 investors. The benefit of the regional center program is truly singular, to allow investors to indirectly invest and thereby indirectly create the requisite jobs. Congress sanctioned the use of economic modeling to prove the job creation required by the law. Congress so desired the use of reasonable methodologies for proving job creation that it established a distinct set-aside of visas for investors who participated through regional centers. With the passage of the regional center program, the intent of Congress was clear with respect to indirect jobs. A job is a job.

AN ECONOMIC ENGINE

Consider a facility producing printer paper where the key material input to production is wood. In order for that facility to produce more paper, they will need to increase their inputs to production. That is to say, they will need to hire more laborers (direct jobs) and material inputs. Those materials include wood, water, electricity, and the various machines to turn wood to pulp and finally paper. For this example we will only consider wood – however, the increase in demand for other inputs would be tracked and modeled as well.

The wood that is used is purchased from a tree farm (representative of the industry, not necessarily a single farm). That tree farm will inevitably have to expand in order to meet the increased demands of the paper manufacturer. This means they will both hire more laborers (indirect jobs) and purchase more material inputs (fertilizer, saplings, etc.). The fertilizer and sapling producers in turn increase their production by increasing laborers and inputs. Each of their providers does the same (all indirect jobs). Further, each of these firms will increase their purchases of office supplies, back office support and so on (indirect jobs).

Furthering the example, consider the new employees that are at each of these now expanded facilities. Each of them is now taking home a pay check as a result of the paper facility expanding. With their increased income, these workers buy food, transportation, insurance and a variety of other goods and services. This in turn creates jobs within each of those industries (induced jobs).

THE TRANSFORMING POTENTIAL OF EB-5

Recently Pat Hogan, CEO of CMB Regional Centers shared with me an experience of his while attending a ribbon cutting at a project in rural Stutsman County, North Dakota. His taxi driver began talking excitedly when he learned where Mr. Hogan was traveling. He explained how excited he was to see the impacts of the rural EB-5 project, which he counted as a large home improvement store among other new investments coming to the area. For this individual, the region was seeing the transforming potential of an EB-5 investment into a rural area. The typical EB-5 economic models do not measure the full range of economic transformation that could be attributed to EB-5 investment, but the local population usually has its finger on the economic pulse.

Similarly, I was recently impressed with another story of a rural project told by Sam Walls, Managing Director of Pine State Regional Center during his testimony before the House Judiciary Committee. Mr. Walls discussed a project in Arkansas that included the construction of a steel manufacturing plant. The plant, alone, employs several hundred people at an average salary of $75,000. In researching the plant, I found many articles that discussed the success of the plant in terms of the ability to attract new businesses to the region and referring to it as a game changer for the state of Arkansas.[3]

An important note here is recognizing that these impacts are not the jobs traditionally modeled through input-output analyses. This magnet or anchor concept occurs outside of the generally accepted models which are tuned to account for increases in the material inputs needed for the newly existing facility.

CONCLUSION

While the examples of EB-5 funded projects which have come to completion and truly had a tremendous impact are numerous and astounding, the EB-5 law requires accounting for job creation. The requirement to look back and measure experienced revenues and/or expenditures is critical as it ensures the inputs to the economic modeling are now proven inputs. The economic modeling practices used are simple and logical and do not differ from those used by the government and throughout the private sector. ■

3 See, for example http://www.kait8.com/story/34644128/big-river-steel-holds-grand-opening

Regional Center Terminations and Impacts on Immigrant Families

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We know from the pleas of immigrant families that not everything is Zen when it comes to regional center (RC) terminations and the feared consequences for their immigration status. When the head of an immigrant family, young parent of two pre-K US born children, cries out "our lives are ruined if we are forced to leave", there's no sense in silence. What policy objective is advanced by dashing the immigrant family's dream, which is legitimately based on having made the required investment in good faith toward creating US jobs? Try to see it the immigrant's way. We take the occasion of recent USCIS announcements to do that.

REGIONAL CENTER TERMINATIONS

Just weeks ago, on May 31, USCIS announced it had posted to its website in the interest of program transparency the notices of terminations of dozens of RCs. We reviewed the posted notices as well as the bounty of RC terminations IIUSA received in Q4 2016 via FOIA efforts. The Immigrant Investor Program Office (IPO) appears to have found the strike zone for terminating RCs and with as many as 859 RCs to pitch to we can be confident IPO will mow through hundreds more. By our count, USCIS has terminated 119 RCs in the 25-year history of the RC program. While only a handful of RCs were terminated from 2008 to 2013, over 94% of RC terminations occurred since 2014. Of the 119 total terminations, USCIS posted 69 termination notices as of June 2017, reflecting most of the notices issued through November 1, 2016.

Although some of the termination notices have been partially redacted, these disclosures provide a window into the underlying reasons for RC terminations under 8 CFR 204.6(m)(6)(ii). The regulation separates the grounds of RC termination into two categories, namely, for failure to file the annual information (Form I-924A) with the required filing fee, or for failure to continue to serve the purpose of promoting economic growth. Based on actual RC experience, however, the latter category is split between RCs with insufficient activity and RCs with "bad actor" problems that typically have attracted SEC or other law enforcement attention. Either way, USCIS concludes the RC "no longer serves the purpose of promoting economic growth."

Approximately 39% (27 in total) of the RCs were terminated for failure to file the I-924A that USCIS now requires annually. This statistic suggests that the requirement of filing the I-924A annually – first imposed in FY2011 -- has helped USCIS to weed out the weaker of the RC species. The I-924A is not difficult to complete and mail to IPO once each year; these RCs have not been paralyzed by yet another government form. Rather, without any scientific basis for our making the observation, we believe based on limited interactions with a few RC principals that these "white flag" RCs have abandoned the EB-5 fight due to overwhelming competitive forces. Note that these RCs failed to file the I-924A despite there being no I-924A filing fee at the time. With the filing fee for the annual I-924A now set at $3,035 as of December 23, 2016, we expect that when IPO dumps the next bucket of RC termination notices to its website we will see the white flag from a growing multitude of RCs.

We estimate that as of June 5, 2017, USCIS had designated 859 RCs. A perfect storm exists for a massive number of white flag RC terminations. First, there are the added costs for maintaining an RC. As indicated the annual RC I-924A filing fee of $3,035 is now in effect. That could be just the start of many new fees, if Congress reforms the EB-5 program as expected. Both draft versions of the Senate reform bill impose an integrity fund fee of $20,000 (or no lower than $10,000 for smaller RCs) annually for each RC, as well as a project-related fee of $17,795 that must be paid prior to filing of any I-526 petition for each project/new commercial enterprise (NCE) sponsored by the RC. Fees of $17,795 already are due for a request for project approval and for any RC amendments (for changes in geography, name, organization structure, etc.). The draft reform legislation also authorizes a fee of $5,000 for 120 day processing of the I-924 NCE/project filing. Then there are numerous additional obligations for RCs, all of which involve substantial administrative costs, including – stiffer obligations to monitor NCEs sponsored by an RC, oversight and certification of compliance with securities laws, added responsibilities and documentation concerning the promoters of a project, RC compliance audits, and project site visits. Of course these added RC costs could be met by fees and revenues generated by attracting EB-5 investors

for worthwhile US projects. But without some other changes to the EB-5 reform package, the substantial visa backlog for EB-5 investors from China and the likely increased minimum investment thresholds (as high as $1.35 million and $1.8 million per the January 13, 2017 Notice of Proposed Rulemaking -- NPRM) will have untold depressive impact on investor demand, making matters only worse for RCs struggling to survive in the current competitive RC environment.

Approximately 49% (34 in total) of the RCs were terminated for "failure to promote economic growth" due to inactivity, a conclusion that IPO reached based on information submitted in the RC I-924A filings over a 3 year period that indicated no EB-5 project sponsorships and no EB-5 investors. Of the 34 RCs that received a Notice of Intent to Terminate (NOIT) from IPO for this reason, 23 essentially flew the white flag, by not responding at all, requesting a withdrawal of their RC designation, or requesting an extension that was denied. Only 11 of the 34 RCs challenged the NOIT with a substantive response and claimed to be promoting economic growth. Most of the responses attempted to demonstrate progress in pursuing the sponsorship of an EB-5 project. Responses included evidence of:

- Continuous interactions with brokers and borrowers in a seven-year effort to find a project for EB-5 investors
- Lack of traditional construction financing due to recession
- Potential joint venture projects, and three failed past attempts to sponsor suitable projects
- Five project agreements "nearing execution"
- Potential investor interest and architectural planning
- PowerPoint presentation of the RC's plans, which USCIS called less substantive than what it expects for a hypothetical project
- A statement that a change of RC ownership justified additional time to select and sponsor a suitable project
- A statement that the RC was limited in the potential projects it could sponsor due to its one-county geographic designation
- Contentions that the numerous mini-extensions of the RC program did not permit reasonable assessment of business risks
- Arguments that developers of large-scale real estate projects in economically advantaged areas had monopolized the EB-5 investor market leaving prospects dim for RCs not promoting such projects

On the one hand, these challenged RC terminations reveal that IPO appears to have found the threshold for a minimum amount of RC activity that it requires for an RC to stave off RC termination. On the other hand, note that the grounds for RC termination also are a topic addressed in the Advanced Notice of Proposed Rulemaking (ANPRM) DHS published January 11, 2017, indicating the agency is keen on settling the legal bases for RC termination in scenarios where the RC seems to be making genuine efforts but is not getting traction with actual EB-5 projects and investors. Until the legal bases for RC termination are well settled, substantial arguments may be available to RCs desiring to challenge IPO on its interpretation of "continuing to promote economic growth". In a recent non-precedent decision by the Administrative Appeals Office (AAO), for example, the appeal of a decision to terminate a RC for inactivity was upheld and the AAO remanded the case to IPO to further consider the totality of circumstances. (AAO, Matter of [name redacted], March 15, 2017) The AAO directed IPO on remand to apply a balancing test, weighing all the positive and negative factors relevant to promotion of economic growth.

The remaining 8 terminations (12% of the total) we reviewed were of active RCs. USCIS terminated these RCs as the result of a "bad actor", mismanagement, or other RC problems. Note that the published RC terminations at the USCIS website typically do not present a comprehensive picture of the underlying facts, as the final termination notices generally refer back to the "reasons stated earlier" in the NOIT which typically is not published. The FOIA production to IIUSA, however, does yield a few more details about RC terminations for El Monte RC, Mamtek RC, Victorville RC, and Lake Buena Vista RC (all of which were featured in the RCBJ article by R. Loughran, Q4 2013, pages 20-22), Intercontinental Trust RC of Chicago (covered in the RCBJ article by R. Loughran, Q2 2014, page 42), and the RC terminations of USA Now RC and Path America RC. (See also the RCBJ article by R. Divine, Q1 2015, page 18-19, for a general description of the RC termination process.) These articles can be found in their respective editions of the RCBJ at www.iiusa.org/magazine.

These RC terminations often but not always accompany SEC or other law enforcement activity, and depending on the circumstances, the continuing RC designation can be heavily litigated alongside or after the enforcement actions. One current example illustrates the heightened coordination of federal agencies in taking down a RC alleged to be directed by bad actors. In April 2017, IPO issued a 31 page NOIT emphasizing the common ownership of the RC, NCE and project entities, and thus the RC culpability for project delays, gaps in funding, and diversion of EB-5 funds among various projects to the possible detriment of immigrant investors who must connect their EB-5 capital investment to job creation. In June 2017, SEC filed a securities fraud lawsuit against the RC and its principal owner, and attached the NOIT as an exhibit to the complaint seeking injunctive relief, freeze on assets, appointment of a Receiver, disgorgement, and penalties. https://www.sec.gov/litigation/litreleases/2017/lr23866.htm

IMPACTS ON IMMIGRANT FAMILIES

All available data signal that RC terminations

are on the rise, and their frequency is likely to accelerate for the foreseeable future. Sensational RC flops seed readable news and a business narrative for the purveyors of compliance products and services. Given that IPO terminations of "active" RCs are for bad acts or mismanagement, the likelihood is strong that coincident with these RC terminations immigrant families may be victimized by diversion of funds, poor business performance and the like. The financial loss is real for these immigrant families. What's the sense in imposing further punishment by closing the door to their immigration dreams?

The January 2017 NPRM includes a provision for priority date retention for EB-5 investors in NCEs sponsored by terminated RCs, if the investor holds an approved I-526 petition. This provision, if made law, would keep the investor's place in the visa queue based on the original I-526 petition filing date, notwithstanding RC termination. Granted, this form of relief is tangible for those holding an approved I-526 petition, but it rates as only a slight benefit because (i) it presumes the EB-5 investor must file a new I-526 petition and wait the approximate 20 months it presently takes for USCIS to adjudicate I-526 petitions with no guarantee USCIS would approve the second I-526 petition, and (ii) it provides no relief for EB-5 investors with a pending I-526 petition who are stranded by RC termination.

Separately, just weeks ago on June 14, 2017, USCIS announced it had updated the EB-5 sections of the Policy Manual (PM Update), allowing just two weeks for public comment. Included within the PM Update is a disappointing section indicating that for EB-5 investors who do not yet have conditional permanent residence (non-CLPR), RC termination is a material change that requires the EB-5 investor's I-526 petition to be denied, or the approved I-526 petition to be revoked. Although the PM Update confirms that the EB-5 investor who already has conditional permanent residence would not suffer from RC termination, it memorializes as current policy the dreadful result of petition denial or revocation for non-CLPRs. The same harsh outcome for immigrant families has followed on the heels of actual RC terminations even in circumstances where there is evidence they are victims with clean hands.

Whether it is via the NPRM or the PM Update, or both, USCIS aims to do far too little for immigrant families who would be harmed by RC termination. Instead of these gestures benefiting a limited group of EB-5 investors in a narrow way, USCIS should promulgate a rule and/or adopt as policy a far more robust set of proposals that would provide an immigration safety net for immigrant families. An immigration safety net is warranted given that (i) immigrant families acting in good faith already have done what the law requires of them – to place at least the minimum level of capital at complete risk of loss, and (ii) the immigration safety net merely allows the immigrant families acting in good faith to cure the problem of RC termination.

The only existing law that references RC termination and impact on EB-5 investors is a 25-year old regulation concerning "effect of" RC termination, 8 CFR 204.6(m)(9), that speaks of the agency sending a notice to the EB-5 investor who has not yet obtained removal of conditions on permanent residence status. It reads:

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

By its very terms ("…can establish continued eligibility…") this regulation requires providing notice to the EB-5 investor who in turn may act to cure the adverse effects of RC termination. It certainly does not prohibit the agency from establishing policy that clarifies the opportunity for an immigrant family to cure the fact of RC termination.

In arriving at the harsh outcome it does – i.e., a determination that RC termination standing alone is "material change" that always carries with it the need to start over and file a new I-526 petition -- the PM Update cites the regulation at 8 CFR 204.6(m)(7). That regulation, however, requires only that an EB-5 investor who is using the indirect job creation concept afforded by the RC program file a petition that identifies a designated RC. Notably, the cited regulation is not about material change; it does not require USCIS to revoke or deny an existing I-526 petition.

An exhaustive discussion of the USCIS policies surrounding material change is beyond the scope of this article, and just a few comments are offered here. However, it may be enough to observe that in the very same PM Update, on account of lengthy processing times and visa backlogs, USCIS found reason to protect from the harsh consequences of a material change determination those non-CLPR investors who are redeploying their capital into a new project not described in the I-526 petition. Experience and this sensible, flexible part of the PM Update show that material change is a malleable concept formed to suit ever-changing policy objectives.

"Materiality" according to USCIS writings, and the Kungys v. United States case the agency cites, is determined by the elements of eligibility for the immigration benefit, and the central question is whether new facts make the petitioner ineligible for the desired benefit. Unlike, for example, in the case of a family-based first preference petition where a subsequent marriage would render the beneficiary categorical-

ly ineligible for the visa classification, RC termination does not render the I-526 petitioner categorically ineligible for the EB-5 investor classification because continued eligibility for EB-5 classification does not necessarily turn on continued association with a particular RC.

The existing legal framework does not marry the EB-5 investor to a particular RC. Rather, the regulation for I-526 petition filing requires the EB-5 investor using indirect job creation methodology to indicate the association with a RC, but there is no requirement the EB-5 investor have any legal relationship with the RC entity, own or invest in the RC, oversee the RC, or have any responsibility for management or monitoring. On the other hand, the obligations of a RC are defined and limited to include promotion of the RC geographic area for investment, and reporting data to USCIS (collectively, Reporting Duties). In practice – and we are not commenting here about all RCs -- USCIS currently allows RCs to operate with a highly peripheral and passive role at least in the case of the "affiliation only" model, which may not involve the RC directly in any promotional activity, NCE management, or project oversight, but instead by design is a user-friendly platform for NCEs/projects to link to the benefits of the RC program. Right or wrong, existing USCIS practice allows RCs to exist substantially detached from investors and their immigration eligibility, not to mention from coordinated economic development of a region of the country. The flip side of that coin is that the EB-5 investor's association with a particular RC is not essential. The legal relationship between the typical immigrant investor and RC is not required and is non-existent unless the RC itself is also the NCE manager. The investor typically has no control, leverage or power to affect the actions of the RC. By comparison, the law requires the EB-5 investor to have a contractual relationship as an equity investor in the NCE and the law further requires that the EB-5 investor's capital be infused into the project entity as described in a comprehensive business plan. The EB-5 investor thus is cemented to the NCE and project entity described in the I-526 petition, but is only loosely connected with the RC in terms of what the law requires. With respect to the relationship between RC and EB-5 investor, the law requires the RC to do nothing more than confer the indirect job creation benefit on the EB-5 investor, and otherwise the RC owes Reporting Duties.

In cases of RC termination, investors typically have clean hands and are victims of the actions or inaction of the RC and its principals. Moreover, RC termination, considered alone, does not impair, threaten or compromise any of the salutary outcomes of investor actions – a substantial investment is made in the U.S. economy and specifically into the NCE, and expenditures of capital by the NCE are creating economic benefits and job creation throughout the U.S. economy. In the circumstances it is manifestly unjust to deny and revoke investor petitions based on RC termination.

In considering the form of new legislation, regulation or policy that would enable good faith investors to cure RC termination, we see a foundation in the draft reform legislation that is circulating among legislative staff in the Senate. Provision is made for the non-CLPR EB-5 investor who is an owner of an NCE that acts to associate with another RC ("regardless of approved geographic boundaries") within 180 days of RC termination. The non-CLPR investor may proceed to obtain CLPR status and then remove conditions, without filing a new I-526 petition. The same draft reform legislation provides further protection for immigrant families where there has been SEC or other law enforcement action alleging fraud, specifically authorizing USCIS to hold EB-5 petitions in abeyance during the pendency of SEC and law enforcement action, and authorizing US district courts to enter orders extending deadlines and preventing age-outs of children. Stakeholders from all corners who claim to be concerned with integrity and fairness should be prioritizing these legislative efforts that would provide at least some measure of protection for immigrant families.

The fact remains USCIS is withholding an important form of protection for immigrant families who have acted in good faith. Right now, without new legislation, USCIS is at liberty to add to its new EB-5 regulations or its further PM Updates an immigration safety net by proclaiming the following:

- RC termination, alone, is not material change
- upon RC termination (after administrative appeal is final)v, IPO must send a notice to affected EB-5 investors allowing for 84 days to respond by indicating an intent to cure by way of association with a replacement RC that undertakes the Reporting Duties, and thereafter, must send another request to affected EB-5 investors providing for an additional 84 days to respond with evidence of the perfected cure
- in cases where meeting the required job creation requirement is jeopardized due to diversion of EB-5 capital to unauthorized uses, any recovered funds from insurance, litigation, or enforcement actions that are subsequently deployed for job creation may be the basis for crediting additional jobs to the EB-5 investors' benefit
- diversion of funds and fraudulent activities will be cause for extending the timeframes IPO uses to measure job creation
- consequent amendment of the NCE business plan is not a material change

Cure of RC termination by involving a replacement RC that undertakes Reporting Duties is a sensible solution that provides the desired immigration safety net for immigrant families. USCIS should act decisively with regulations and/or policy to protect immigrant families.

About the authors: Lincoln Stone, Michele Franchett and David Strashnoy are attorneys focused on complex EB-5 and immigration law matters in their practice with Stone Grzegorek & Gonzalez LLP in Los Angeles.

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IIUSA HOSTS 10th ANNUAL EB-5 ADVOCACY CONFERENCE AT **CRITICAL TIME FOR REGIONAL CENTER INDUSTRY**

MCKENZIE PENTON
IIUSA MEMBERSHIP COORDINATOR

Between April 26-28, 2017, IIUSA hosted over 350 industry participants at its 10th Annual EB-5 Advocacy Conference and 12th Annual Membership Meeting in Washington, D.C. The EB-5 Advocacy Conference, hosted each spring by IIUSA, is the premier EB-5 advocacy event focused on providing EB-5 stakeholders with updates on the state of EB-5 legislation and reform efforts, access to expert panels on a wide range of topics and invaluable business development opportunities with industry leaders.

Coincidentally, the conference dates aligned with the most recent EB-5 Regional Center Program re-authorization deadline of April 28, creating an atmosphere with an unusual amount of suspense. With the future of the EB-5 Program in the balance, IIUSA organized a series of panels that elucidated the key issues of the EB-5 reform debate including Targeted Employment Areas (TEAs), minimum investment amounts, set asides and looming proposed Department of Homeland Security (DHS) regulations. The conference programming also included updates from U.S. Citizenship and Immigration Services (USCIS) Immigrant Investor Program Office (IPO) Deputy Chief Julia Harrison and panel presentation from former USCIS Director León Rodríguez. To top it off, U.S. Congressman Chris Collins (R-NY, 27th District) addressed conference goers on the broad bipartisan support for the EB-5 Program and extended his goodwill in getting a long-term reauthorization completed.

On Thursday April 27, news began to trickle out that Congress that a continuing resolution (CR) would extend the federal government, including the EB-5 Program, for an additional week (On Monday May 1, a bipartisan omnibus spending deal was filed by Congressional Leadership to fund the government through September 30, 2017, including a clean extension of the EB-5 Regional Center Program through the same date). The mood of the conference shifted from nervous to grateful for another extension of the Regional Center Program and the opportunity to achieve a legislative solution for a long-term reauthorization in the weeks and months ahead.

Aside from the educational panels centered on EB-5 Program advocacy, attendees also heard from over sixty speakers, including industry experts, government officials, and other global immigration and investment thought leaders. Panels on topics such as macro-economic trends affecting EB-5 investments provided insights into how foreign exchange restrictions in key investor markets and which U.S. markets are adapting well to the current market realities. Other noteworthy panels focused on enforcement and compliance trends, litigation in the EB-5 arena, preparing for USCIS compliance audits and site visits and investor market trends and considerations for EB-5 project issuers.

IIUSA would like to extend a special thank you to all 30+ sponsors of this year's event whom without which we would have been unable to once again provide the ultimate advocacy, education, and business development platform.

To all attendees and speakers, thank you again for making the 2017 Advocacy Conference a great success. We at IIUSA are thankful for the opportunity to represent a dynamic global industry that is using the macroeconomics of globalization to create jobs here in the U.S. at no cost to the taxpayer.

12TH ANNUAL MEMBERSHIP MEETING

Wednesday, April 26

During the 12th Annual Membership Meet-

ing, nearly 200 members gathered to discuss association business, including updates from IIUSA committees, the association's yearly budget report and to hold the annual elections for Board of Directors positions.

In total, four positions on the IIUSA Board of Directors were filled, including two new directors and a new President and Vice President. The IIUSA membership elected Robert Kraft, CEO, FirstPathway Partners to the position of President and William P. Gresser, President, EB-5 New York State Regional Center to the position of Vice President. IIUSA's President and Vice President, K. David Andersson, President Whatcom Opportunities Regional Center and Robert C. Divine, Shareholder, Baker, Donelson, Bearman, Caldwell and Berkowitz, LLP, did not seek re-election to their positions.

Ginny Fang, CEO, Golden Gate Global and Adam Greene, President, Live in America Financial Services were newly elected while Patrick F. Hogan, CEO, CMB Regional Centers and Angelique Brunner, CEO, EB5 Capital were both re-elected to their positions on the Board of Directors.

In addition to new leaders elected, IIUSA appointed Mr. Andersson and Mr. Divine to President Emeritus and Vice President Emeritus, respectively, after seven years of dedicated service to the organization. Tom Rosenfeld, President, CanAm Enterprises, was also honored for his service on the Board and was named Director Emeritus.

COMMITTEE MEETINGS

Wednesday, April 26

On Wednesday, IIUSA's eight standing committees (Banking, Best Practices, Compliance, Editorial, Investor Markets, Membership, Public Policy, Public Relations) met in-person to discuss the work completed over the past year and to develop strategic initiatives for the year ahead. IIUSA committees, which are comprised of members from across the industry, are the backbone many organization initiatives. Committee members volunteer their time to work on projects ranging from developing industry best practices, providing thoughtful analyses of legislative proposals, supporting IIUSA's staff and advisers on membership growth efforts and resources, and everything in between.

As a membership-based organization, IIUSA truly thrives only through an engaged and dedicated membership. The nearly 100 active committee members demonstrate that important fact on a daily basis. We would like to thank all our dedicated committee members who went above and beyond to advance organization and industry goals and we look forward to working with all committees in the year ahead.

Left: IIUSA's newly-elected president Bob Kraft and wife Pat enjoy the IIUSA Welcome Reception on April 26, 2017 in Washington D.C.

KICKOFF RECEPTION (ABOVE)

Wednesday, April 26

After a long day of committee meetings and the Annual Membership Meeting, IIUSA members welcomed some time to unwind at the conference's kickoff reception. Hosted in the exhibit hall and surrounded by sponsor booths from nearly 30 organizations, the kickoff reception gave attendees a much-needed respite and the opportunity to network with the exhibitors, meet potential business partners and connect with colleagues and friends. Refreshed and recharged, attendees went to bed with two full days of education ahead.

GUEST OF HONOR SPEAKERS

Thursday, April 27

As the only EB-5 advocacy-focused conference, IIUSA ensures that attendees not only receive important education from industry experts, but also that they hear from important outside stakeholders, like government officials. This year, IIUSA was honored to welcome a distinguished group of federal government stakeholders that included Congressman Chris Collins (R-NY-27); Julia Harrison, Deputy Chief, USCIS Immigrant Investor Program Office (IPO); Leon Rodriquez, Former Director, U.S. Citizenship and Immigration Services (USCIS); and Charlie Oppenheim, Chief, Visa Controls Office, U.S. Department of State (DOS).

Each of the distinguished guests provided a unique perspective on the EB-5 Program, including reform efforts and investor and program trends which enabled attendees the opportunity to have their important questions addressed.

CHRIS COLLINS

Congressman (R-NY-27)

IIUSA welcomed Congressman Chris Collins on Thursday morning. As an important member of the Trump Administration transition team, Congressman Collins provided attendees with his unique perspective on the new administration. The Congressman also highlighted some of the important economic development taking place in his home district, in and around the Buffalo area, thanks in large part to the EB-5 Program. He further elaborated on the role that foreign direct investment can play in economic development across the country.

JULIA HARRISON

Deputy Chief, USCIS Immigrant Investor Program Office

For the second year in a row Julia Harrison, Deputy Chief of the IPO addressed attendees. Ms. Harrison discussed important agency updates and elaborated on the growing EB-5 petition backlog and steps that the agency is taking to address it. She also discussed new oversight measures not in process with the IPO, such as compliance audits and site visits. Ms. Harrison reserved time in her address to

answer questions from attendees. The address was once again a welcome addition to the event and we are thankful for Ms. Harrison's participation and USCIS's continued efforts to enhance dialogue with industry stakeholders.

LEON RODRIQUEZ

Former Director, USCIS

On Thursday afternoon, Mr. Leon Rodríguez took the stage with a distinguished group of panelists to discuss the first 100 days of the Trump Administration and what it could mean for the EB-5 Program. As the Director of USCIS from July 2014 to January 2017, Mr. Rodríguez brought a unique perspective to the discussion.

The panel came at a perfect time, presenting attendees with the opportunity to hear the former Director's thoughts on the EB-5 Program, USCIS initiatives to address petition backlog, and legislative outlook.

CHARLIE OPPENHEIM

Chief, Visa Controls Office, U.S. Department of State

IIUSA was pleased to welcome back Charlie Oppenheim, Chief, Visa Controls Office, at the U.S. Department of State as a guest of honor on Thursday afternoon. Mr. Oppenheim took the stage with Kraig Schwigen, President, CMB Regional Centers and Bernie Wolfsdorf, Partner, Wolfsdorf Rosenthal LLP to discuss the current visa waiting line for Mainland-China petitioners and the growing EB-5 visa demand from emerging investor markets.

GENERAL SESSION PANELS

Thursday, April 27

WHAT IS AT STAKE IN EB-5 RE-AUTHORIZATION & REFORM: REVIEW OF LEGISLATIVE AND REGULATORY ISSUES

- Adam Greene, Director, IIUSA; President Live in America Financial Services LLC
- Bill Gresser, Vice President IIUSA; President, EB-5 New York State, LLC
- Michael Homeier, Founding Shareholder, Homeier & Law, P.C.
- Peter D. Joseph, Executive Director, IIUSA
- Hans Rickoff, Senior Counsel, Akin Gump Strauss Hauer & Feld, LLP

ROUNDTABLE FOCUS: HOT TOPICS IN EB-5 REFORM DEBATE

- Jon Baselice, Director, Immigration Policy, U.S. Chamber of Commerce
- Angel Brunner, Director, IIUSA; President, EB5 Capital
- Rush Deacon, CEO, Pine State Regional Center, LLC
- Tom Rosenfeld, Director Emeritus, IIUSA; President, CanAm Enterprises, LLC
- Steve Yale-Loehr, President Emeritus, IIUSA; Of Counsel, Miller Mayer, LLP
- Peter D. Joseph, Executive Director, IIUSA

FIRST 100 DAYS OF THE TRUMP ADMINISTRATION: WHAT DOES IT MEAN FOR EB-5?

- Robert C. Divine, Vice President Emeritus, IIUSA; Shareholder, Baker Donelson Bearman, Caldwell & Berkowitz, PC
- George Foresman, NYSA Capital, LLC
- Charles Foster, Director, IIUSA; Chairman, Foster LLP
- Tom Loeffler, Senior Counsel, Akin Gump Strauss Hauer & Feld LLP
- Leon Rodriquez, Partner, Seyfarth Shaw LLP

"KEEP CALM & EB-5 ON": A MACRO PERSPECTIVE ON EB-5

- Jonathan Bloch, Partner, Brownstein Hyatt Farber Schreck, LLP
- Dan Healy, Director, IIUSA; CEO, Civitas Capital Group
- Reid Thomas, Executive Vice President, NES Financial
- Abteen Vaziri, Director, Greystone EB-5
- Devin Williams, President, EB5 Global

ENFORCEMENT & COMPLIANCE: EB-5 UNDER A MICROSCOPE BY REGULATORS & LAW ENFORCEMENT

- Michael Fitzpatrick, Partner, Baker Tilly Capital, LLC
- Michael Goldberg, Co-Chair, Fraud & Recovery Practice Group, Akerman, LLP
- Robert Whyte, Managing Partner, Whyte & Co
- John Pratt, Partner, Kurzban Kurzban Weinger Tetzel & Pratt, P.A.
- Chris Robertson, Partner, Seyfarth Shaw

EB-5 Litigation: Examining How EB-5 Policy is Shaped by the Courts

- Dan Lundy, Partner, Klasko Immigration Law Partners, LLP
- Brandon Meyer, Principal, Lewis Brisbois Bisgaard & Smith LLP
- John Pratt, Kurzban Kurzban Weinger Tetzel & Pratt, P.A.
- Spencer McGrath-Agg, Attorney, Boundary Bay Law
- Clem Turner, Partner, Barst, Mukamal & Kleiner LLP

GENERAL SESSION PANELS

Friday, April 28

CAPITAL REDEPLOYMENT: HOW THE INDUSTRY IS HANDLING THE LACK OF GUIDANCE FROM USCIS

- Allison Berman , General Counsel, Greystone EB-5
- Mary King, COO, New York City Regional Center
- Brad Stedem, Partner, EB-5 United
- Lincoln Stone, Managing Partner, Stone Grzegorek & Gonzalez LLP
- Osvaldo Torres, President, Torres Law, PA

PREPARE FOR SUCCESS: USCIS COMPLIANCE AUDITS & SITE VISITS OF REGIONAL CENTERS

- Jessica DeNisi, Attorney, Klasko Immigration Law Partners
- Bob Kraft, President, IIUSA; President, FirstPathway Partners
- Dawn Lurie, Partner, Seyfarth Shaw LLP
- Ginny Fang, Director, IIUSA; CEO, Golden Gate Global

YEAR OF THE ROOSTER: CAN EB-5'S LARGEST INVESTOR MARKET CONTINUE TO RISE AND SHINE?

- Kelvin Ma, Attorney, Demei Law Firm
- Larry Wang, President, Welltrend United, Inc
- Howard Wu, CEO, Shanghai Can-Achieve Exit-Entry Services Co. Ltd
- Jenny Zhan, President, Good Hope Investment Services (CreditEase)
- Rachel Zou, Chairman, Guangzhou Lainhong Overseas Consultants Limited

BREAKOUT SESSION PANELS

Friday, April 28

CHANGING FAST: SOURCE OF FUNDS IN THE FATCA, POST-PANAMA PAPERS WORLD OF TODAY

- Ed Beshara, Managing Partner, Beshara PA
- Ed Carroll, Principal, Carroll & Associates, P.C.
- Rana Jazayerli, Partner, Phillips Lytle LLP
- Julia Park, Managing Partner, Advantage America EB-5 Group
- Jinhee Wilde, Principal, Wilde & Associates LLC

THINK GLOBAL, ACT GLOBAL: WHICH INVESTOR MARKETS ARE WORTH YOUR TIME (AND WHICH AREN'T) & WHY

- Rupy Cheema, Partner, EB5 Diligence
- Mark Davies, Global Managing Partner, Davies & Associates LLC
- Julian Montero, Partner, Arnstein & Lehr, LLP
- Adrian Pomery, Business Development and EB-5 Training Program Manager, EB5investors.com

BANKING IN EB-5: CONSIDERATIONS, OPPORTUNITIES, CHALLENGES AND SOLUTIONS

- Jill Jones, Senior Attorney, NES Financial
- Oleg Karaman, Senior Managing Director, Sterling National Bank
- Mark Morely, CEO, Education Fund of America, LLC
- Steve Shpilsky, Managing Member, California Real Estate Regional Center

LEADERSHIP LUNCHEON & BOARD OF DIRECTORS MEETING (BELOW)

Friday, April 28

With another conference in the books, members of the IIUSA President's Advisory Council and the Board of Directors met on the rooftop of the offices of Baker, Donelson, Bearman, Caldwell and Berkowitz, PC. to recap another successful event and unwind after a busy three days. After lunch, the IIUSA Board of Directors held their first official meeting of the newly-elected Board. During the meeting, new members of the board were welcomed and the service of past directors was acknowledged. The Board also discussed draft EB-5 legislation, policy objectives and a strategic plan for the months ahead.

IIUSA looks forward to working with our Board on Program reform and reauthorization and to ensure that the EB-5 Program remains a valuable tool for economic development across the country.

LOOKING AHEAD

With the EB-5 Regional Center Program extended to September 30, 2017, IIUSA looks forward to building off of the important work done during the conference to achieve a legislative solution to ensure that our members and the EB-5 industry as a whole can continue to be a meaningful and important avenue for economic development in American communities.

SEE YOU IN MIAMI, FLORIDA FOR THE 7TH ANNUAL EB-5 INDUSTRY FORUM

IIUSA is pleased to announce that the next EB-5 Industry Forum will be held in Miami, Florida this fall. The Industry Forum, the premier business development conference hosted annually by IIUSA, offers the ultimate platform for attendees to engage in continued education and most importantly establish and maintain important business connections in the industry. This year's event will be provide a relaxed setting for attendees to discuss the state of the EB-5 industry and hear important first-hand updates from industry experts on the future of the Program. ■

For more information regarding the event, including agenda and sponsorship opportunities, please visit the event page at iiusa.org/miami2017.

IIUSA CONGREGATES INDUSTRY LEADERS AT GLOBAL BANQUET SERIES EVENTS IN KEY EB-5 INVESTOR MARKETS

ALLEN WOLFF
IIUSA ASSOCIATE DIRECTOR OF MARKETING & COMMUNICATIONS

In addition to supporting congressional and industry efforts to find consensus on a multi-year EB-5 reauthorization, IIUSA has also been engaging with EB-5 stakeholders in key overseas markets over the past 6 months. Given the persistent uncertainty surrounding the Program, including potential legislative or regulatory reforms and looming sunset dates, ballooning processing times and an increasingly untenable backlog for Mainland Chinese applicants, it has never been more important for the EB-5 trade association to communicate the facts with its members and partners in the largest EB-5 investor markets.

In the first half of 2017, IIUSA held three separate events as part of its v Series – Ho Chi Minh City, Vietnam in March and May in Shenzhen and Beijing, China – to honor the support from its international members and provide critical first-hand updates regarding the state of the EB-5 Program. The Global Banquet Series serves as the platform to bring together industry leaders in the two largest EB-5 investor markets.[1] Below is a summary of each of these events from earlier this year.

1 According to Department of State data, in Fiscal Year 2016, China and Vietnam issued 7,516 and 334 EB-5 visas, respectively.

HO CHI MINH CITY, VIETNAM MARCH 1, 2017

On March 1, IIUSA held a banquet at the InterContinental Saigon Hotel, its first-ever event in Vietnam. Given this fact, IIUSA reached out to the top 50 migration agencies and law firms in Ho Chi Minh City to introduce the mission of IIUSA and invite them to attend. In total, over 150 EB-5 stakeholders participated in the banquet, which featured a cocktail hour, dinner, sponsor introductions and a special panel with four IIUSA Directors. Then IIUSA Director (now President) Bob Kraft (FirstPathway Partners), Secretary-Treasurer Steve Strnisha (Cleveland International Fund), Director George Ekins (American Dream Fund), and Director Tom Rosenfeld (CanAm Enterprises) provided keen insights into the outlook for EB-5 Program reauthorization. Additionally, the IIUSA leaders took "Q&A" from the audience and answered practical questions about the administration of the EB-5 Program and steps migration agents can take to protect their clients.

SHENZHEN AND BEIJING, CHINA MAY 12 & 16, 2017

Over the years, IIUSA has demonstrated a steadfast commitment to industry development and has garnered significant support from EB-5 stakeholders in China, the industry's largest investor market. For example, IIUSA translates into Chinese key industry resources and well as its quarterly magazine, The Regional Center Business Journal and has maintained a vibrant WeChat account that updates its followers on a daily basis with important EB-5 industry developments. Also, in each of the past five years, IIUSA has held events in cities across China with the mission of enhancing strategic relationships with local partners, growing its membership base and keeping industry participants informed regarding efforts to reform and reauthorize the EB-5 Program.

To this end, IIUSA held banquets on May 12 and May 16 in Shenzhen and Beijing, respectively. A total of 250 EB-5 stakeholders participated in the two dinners, an indication that industry stakeholders in China are eager to hear from IIUSA leaders on the future of the EB-5 Program. Furthermore, IIUSA honored its 30+ China-based members and invited several to address attendees. IIUSA International Membership Chairman Kelvin Ma (Shanghai Demei Law Firm) and Directors Cletus Weber (Peng & Weber, PLLC) and George Ekins gave a comprehensive legislative update and answered questions from the audience.

UPCOMING GLOBAL BANQUET SERIES EVENTS

IIUSA thanks the sponsors and attendees that participated in the Global Banquet Series events in the first half of the year. Given positive feedback, IIUSA has plans to return to China and Vietnam later this year. IIUSA is also looking at expanding its reach into other growing EB-5 markets, including India, Brazil and the Middle East.

IIUSA believes in an informed marketplace, both among U.S.-based and overseas industry participants. As such, the constantly evolving nature of the EB-5 industry necessitates that IIUSA continue its efforts to engage the EB-5 industry's most important marketplaces with reliable information and access to resources. ■

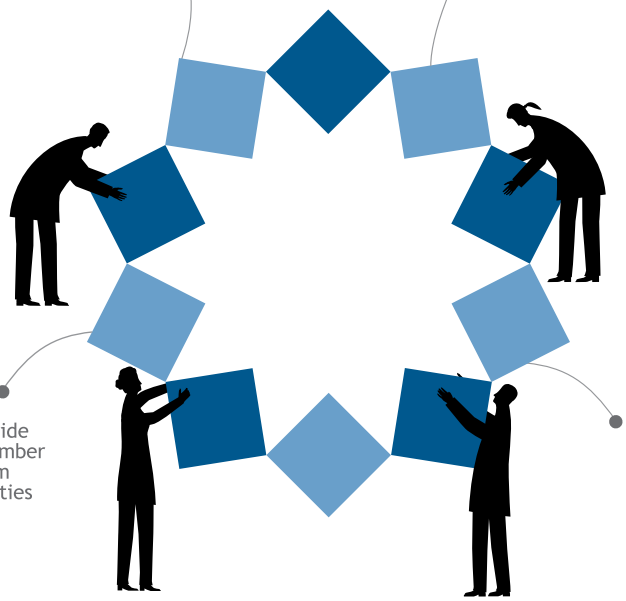
INVESTMENT MIGRATION COUNCIL

Be part of the global association concerned with investment migration

The Investment Migration Council (IMC) is the worldwide association for Investor Immigration and Citizenship-by-Investment, bringing together the leading stakeholders in the field and giving the industry a voice. The IMC sets the standards on a global level and interacts with other professional associations, governments and international organisations in relation to investment migration.

Global Recognition
Get worldwide recognition to safeguard your business interests and improve industry reach through various initiatives

Expertise Sharing
Participate in the industry's leading advocacy group and contribute to industry developments including regulation & best practice



Networking Opportunities
Participate at worldwide events at reduced member rates and benefit from networking opportunities

Industry Updates
Access on-line resources exclusive to members and ahead of general release

Our Members' Privileges

Whether you are an individual practitioner, an academic, professional firm, a non-profit organisation, student or a member of the general public - joining the IMC entitles you to privileged access to a wealth of resources, first-hand data and host of promotional and networking opportunities. The IMC offers different levels of membership for practitioners, academics, firms, associations and governments.

For more information, list of benefits and to join us, visit www.investmentmigration.org/membership/

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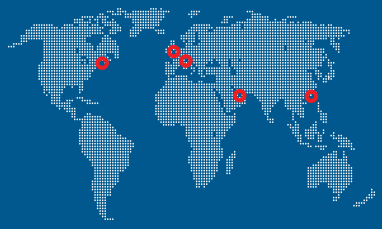

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The Worldwide Association for Investor Immigration and Citizenship-by-Investment

COMMITEE CORNER

BANKING
Develop educational materials for banks on the EB-5 Regional Center Program and best practices in popular financial services (escrow, bridge or other) loans, fund administration, etc.) that provides leadership in the ongoing institutionalization of the Program.

BEST PRACTICES
Develop recommended industry best practices that contribute to a transparent and informed marketplace with the highest degree of professional behavior that aligns the interests between investor, project, and Regional Center to the greatest extent possible.

BUDGET AND FINANCE
Recommends IIUSA annual budget to membership, oversee budget reporting, and ensure compliance with all applicable laws and regulations.

BYLAWS
Ad hoc committee that recommends amendments to IIUSA's corporate bylaws on an as needed basis.

COMPLIANCE
Proactively seek out market intelligence to inform IIUSA of current trend drivers, while contributing to market transparency by making potentially aggrieved parties aware of IIUSA's industry code of ethics policies and enforcement processes to address unethical behavior in the marketplace.

EDITORIAL
Curate IIUSA's industry-leading quarterly magazine, the Regional Center Business Journal (and other select publications) by providing essential input into IIUSA industry data collection/analysis process and carefully considering submissions for publication on various IIUSA communication platforms.

INVESTOR MARKETS
Track how world events are driving EB-5 investor market demand around the world and report through IIUSA's various communication platforms, while also providing essential input
into IIUSA's market research efforts that empower member marketing decisions.

MEMBERSHIP
Improve IIUSA's value proposition to members through consistent benefits analysis, recommending new programming, and leading outreach efforts to desirable new members.

INTERNATIONAL SUBCOMMITTEE:
Recruit desirable new members based outside of the United States, while leading efforts to develop partnerships with international governmental entities and interest groups.

PUBLIC POLICY
Consider public policy issues, both proactively and reactively, while developing and recommending industry positions for all elements of IIUSA's advocacy and government affairs activities.

PUBLIC RELATIONS
Provide ongoing input to IIUSA public affairs strategy and its implementation, and assisting with outreach efforts to members and media alike.

TECHNOLOGY
Lead IIUSA efforts in understanding members technology needs, delivering empowering, cutting-edge industry technology tools to members, and
optimizing all facets of IIUSA's existing web presence.

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CUSTOMIZE YOUR IIUSA MEMBER EXPERIENCE TODAY!

IIUSA now offers members the option to choose their subscription preferences for all IIUSA communications, including e-newsletters, blog posts, *Regional Center Business Journal* subscription, Member Portal daily recap messages and more! Get started by reviewing the subscription center tutorial now (**iiusa.typeform.com/to/HZnzFz**)!

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- **MEMBER PORTAL RECAP (DAILY)**
  Latest updates on government and public affairs related to the EB-5 Regional Center Program, including legislation, regulatory reforms, policy deliberations and more.
- **BLOG POSTS (DAILY)**
  Sign up for daily email updates from IIUSA's blog, featuring the latest updates on the EB-5 Industry.
- **INDUSTRY REPORTS (WEEKLY)**
  Weekly update on the latest EB-5 news and developments for industry stakeholders.
- **ADVOCACY E-NEWSLETTERS AND ALERTS (MONTHLY)**
  Latest updates on government and public affairs related to the EB-5 Regional Center Program, including legislation, regulatory reforms, policy deliberations and more.
- **REGIONAL CENTER BUSINESS JOURNAL (QUARTERLY)**
  Hard copy of IIUSA's Regional Center Business Journal – the EB-5 Industry's premier publication featuring the latest legislative updates, industry trends, quantitative analyses of program statistics and international markets.
- **CHINA E-NEWSLETTERS (QUARTERLY)**
  Updates sent to the world's largest EB-5 investor market featuring the latest EB-5 industry hot topics. This e-Newsletter is in Chinese.

EB-5 HISTORY

MARCH - JULY

The feature This Date in EB-5 History serves to highlight EB-5 Program milestones and chang¬es, key pieces of legislation, pub¬lishing dates of U.S. Citizenship and Immigration Services (US¬CIS) memos, IIUSA achieve¬ments and important industry events that have occurred over the past two decades. To access the memos, be sure to visit the IIUSA Member Portal.

member.iiusa.org

MAY

- May 8, 2012 - U.S. Citizenship and Immigration Services (USCIS) publishes guidance on EB-5adjudications involving the tenant-occupancy methodology.
- May 10, 2005 - IIUSA was Founded as the national membership-based 501 (c)(6) not-for-profit industry trade association for the EB-5 Regional Center Program. IIUSA advocates for polices that will maximize economic benefit to the U.S. from the Program through advocacy, education, industry development, and research.
- May 30, 2013 - U.S. Citizenship and Immigration Services (USCIS) issues memo on EB-5 Adjudications Policy.
- May 4, 2016 - U.S. Citizenship and Immigration Services (USCIS) Proposes New Fee Rules Related to EB-5 Petitions and Applications that significant increases EB-5 Program filling fees for projects and investors. The Form I-526 Petition fee increased by 145% to $3,675 and Form I-924 Application increased by 186% to $11,565.
- May 26, 2016 - IIUSA released a first-of-its kind EB-5 Projects & Policy Mapping Tool, which plots the location of over 470 EB-5 projects from a wide variety of industries and located in diverse communities across the U.S. This data has served as the baseline for Targeted Employment Area (TEA) Policy mapping tools, which are essential to negotiations for the long term reauthorization of the EB-5 Regional Center Program.

JUNE

- June 1, 2013 - IIUSA publishes Recommended Best Practices for EB-5 Regional Centers to provide guidance to regional centers seeking to conduct business in a manner that will foster the growth and success of the EB-5 Program.
- June 1, 2014 - ICIC Report: Increasing Economic Opportunity in Distressed Urban Communities with EB-5 which analyzed how EB-5 could best be utilized in America's distressed urban core.
- June 10, 2003 - U.S. Citizenship and Immigration Services (USCIS) issues Yates Memo on Amendments affecting Adjudication of Petitions for Alien Entrepreneurs.
- June 17, 2009 - U.S. Citizenship and Immigration Services (USCIS) issues Nuefeld Memo on Job-Creation Issues.
- June 24, 2014 - IIUSA publishes Code of Ethics and Standards of Professional Conduct to promote responsible, professional and ethical behavior by IIUSA's members to help protect the public and reinforce the public's confidence in the EB-5 Program and EB-5 Regional Center industry.

JULY

- July 11, 2015 - National Association of Counties (NaCo) publishes permanent resolution in support of EB-5 Program.
- JULY 28, 2016 - United States Citizenship and Immigration Services (USCIS) hosts EB-5 Stakeholder Engagement in Miami, FL. IPO Chief Nicholas Colucci highlights cooperation with the U.S. Immigration and Customs Enforcement (ICE), Federal Bureau of Investigation (FBI), and the U.S. Securities and Exchange Commission (SEC) in rooting out malfeasance in the EB-5 Program.

2017 INDUSTRY EVENTS

- **7/27-7/28** - EB5 Investors Magazine: 2017 San Francisco EB-5 & Immigration Convention (San Francisco, CA)
- **10/13** - Klasko EB-5 Fall Seminar (Philadelphia, PA)
- **10/15-10/16** - CCIM Institute Global Conference 2017 (Toronto, Canada)
- **10/21-10/24** - Association for University Business Economic Research: 2017 AUBER Fall Conference (Albuquerque, NM)
- **10/23-10/25** - 7th Annual IIUSA EB-5 Industry Forum (Miami, FL)
- **11/14** - 16 11th Global Residence and Citizenship Conference (Hong Kong)

EB-5 INDUSTRY BY THE NUMBERS

$20 billon Since fiscal year 2008 more than $20 billion in capital investment has been invested through the EB-5 Regional Center Program.

700% The number of I-829 petitions pending with U.S. Citizenship and Immigration Services has increased by over 700% in the last five fiscal years. As of April 30, I-829 petitioners on average have to wait 30 months to have their I-829 petition adjudicated.

22,152 According to U.S. Citizenship and Immigrations Services as of Q2 2017 there were a total of 22,152 pending I-526 petitions which represents a 9% growth rate in a year over year comparison. However, the number of pending petitions decreased 5% from the previous quarter.

46 As of July 2017, U.S. Citizenship and Immigrations Services has terminated 46 Regional Center in this year, 54% of which were terminated in May (one month).

450+ This October 23-25 IIUSA will host the 7th Annual EB-5 Industry Forum in Miami, FL. The event will attract over 450 industry stakeholders from around the world for three days of networking, business development and educational opportunities.

06/08/14 The U.S. Department of State-Bureau of Consular Affairs released its revised visa bulletin for the month of July, revealing for mainland-China born visa applicants, the cutoff date is June 08, 2014 which remains unchanged from the previous month's bulletin.

2,700 + The Regional Center Business Journal (RCBJ) has an international distribution list with over 2,700 participants across the EB-5 Regional Center Industry. The RCBJ is distributed to all of our 250+ Regional Center Members nationally as well as our 200+ Associate Members worldwide. In addition to being featured on our website which receives thousands of unique page views per month. Purchase and ad or contribute an article for the next issue!

THE EB-5 INDUSTRY IS COMING TO MIAMI OCTOBER 23-25, 2017

The EB-5 Industry Forum is the year's premier EB-5 conference focusing on education and business development on a global scale. We welcome all industry stakeholders to join us in Miami, Florida from October 23-25 at this pivotal moment for the EB-5 industry.

This year's EB-5 Industry Forum will be held at The Ritz-Carlton Key Biscayne, Miami. The resort is located on a tropical island oasis just minutes from downtown Miami and 20 minutes from Miami International Airport.

GLOBAL CONNECTIONS. LOCAL RESULTS.

To purchase your tickets today, visit IIUSA.org

Early bird tickets are now on sale ($650/member, $850/nonmember).

INTERESTED IN SPONSORING?

For sponsorship inquires, contact info@iiusa.org or (202) 795-9669.

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