REGIONAL CENTER BUSINESS JOURNAL

May 2019

IN THIS ISSUE

IIUSA INVEST IN THE USA

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VOLUME 7, ISSUE #1, MAY 2019

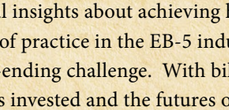
Letter from the Editor

Dear Readers:

This edition of the *Regional Center Business Journal* again brings to readers helpful insights about achieving higher levels of practice in the EB-5 industry -- a never-ending challenge. With billions of dollars invested and the futures of immigrant families riding on success, there is much at stake. The immigration issues, seemingly, get more difficult. Where government guidance is lacking, there's always room for new ideas about responsible innovation especially in the realm of regional center compliance. Trending topics include Opportunity Zones and what the pending federal regulations mean for the various stakeholders in the EB-5 industry.

As you pore over your favorite article within these pages -- a conference edition for IIUSA's 12th Annual EB-5 Advocacy Conference in Washington DC – you may be awestruck by the complexity of this multi-disciplinary industry. And to boot there are the DC politics!

With gratitude to the IIUSA staff members for orchestrating things, the Regional Center Business Journal is now in its 7th year of publication. Many thanks go as well to the dedicated members of the Editorial Committee for finding time where there is none, helping to steer the articles to readable form and consequential content.



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CMB Regional Centers

CMB Regional Centers is one of the oldest active regional centers within the EB-5 industry with over twenty years of experience. Patrick F. Hogan, the CEO and Founder of CMB Regional Centers, has been involved in the EB-5 industry since 1994, and CMB's first regional center was established in 1997.

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NES Financial provides technology-enabled services for the efficient middle- and back-office administration of highly specialized financial transactions. Their technology-enabled solutions include EB-5 and Opportunity Zone Fund administration, 1031 exchanges, and private equity fund administration services. Many of the world's largest financial institutions and corporations rely on their proprietary technology, unparalleled expertise, and outstanding services to ensure the secure, transparent, and compliant management of funds while also lowering operational costs, reducing risk, and improving ROI. For more information, please visit www.nesfinancial.com.

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WA Law Group, LLC, formerly known as Wilde & Associates LLC, solely focuses on employment and investment immigration. The firm distinguishes itself from others in that EB-5 cases are only done by its two partners , ensuring that these cases get the best and most experienced attention.

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Established in 1984 as one of the first investment immigration agencies in Korea Club Emigration has been working with the EB-5 Regional Center Program since 1992. To date they have completed over 700 EB-5 cases ; 3,700 permanent residence through EB-5. Among Club's accomplishments are first I-526 filing and approving in the world, first I-829 filing and approving in the world, and the largest number of EB-5 investors in Korean market.

golden gate global EB-5 INVESTMENT FUND

As a leading EB-5 Immigrant Investment Regional Center and trusted partner in the EB-5 industry, Golden Gate Global has raised over $600 MM in EB-5 funds and helped more than 1,200 client families from 25+ countries achieve their dreams of moving to the United States.
Our institutional-quality investment platform of premier projects, carefully chosen through a rigorous selection process, has achieved a 100% USCIS approval rate and resulted in over 20,000 jobs opening new pathways to economic opportunities for both U.S. communities and EB-5 investors. Learn more at 3gfund.com

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EB5DEALS Let's empower the Investor.

EB5Deals is an experienced broker with an easy-to-use digital platform for investors to review and compare over 140 EB-5 qualified investments, including exemplar-approved options. We help immigration attorneys reduce liability by helping their clients invest in a suitable project for their immigration and financial needs.

EB5 CAPITAL™

EB5 Capital is a commercial real estate investment firm which owns and operates USCIS-approved Regional Centers, most notably in Washington, D.C., California and New York. Led by Angelique Brunner, the company raises foreign capital through the EB-5 Immigrant Investor Program to invest in job-creating business ventures in the United States. EB5 Capital is proud to maintain a 100 percent I-526 and I-829 project approval rating from USCIS and boasts an impressive 26-project portfolio composed of hotels, multi-family residential buildings, mixed-use developments, and senior housing facilities. EB5 Capital has achieved project repayments on multiple projects and currently serves clients from over 60 countries.

CA CanAm Enterprises

CanAm Enterprises is one of the leading immigration-linked investment fund operators with seven regional centers under its belt. For more information, please visit: canamenterprises.com

2019 EB-5 ADVOCACY CONFERENCE HANDBOOK

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Jackson Walker LLP

For more than 130 years and with over 350 attorneys in 7 offices, Jackson Walker LLP assists clients of all sizes navigate the increasingly complex legal landscape.

EB5 REDEPLOYMENT MARKETPLACE
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Our Redeployment Program is designed to mitigate risks to the general partners or managers of NCEs of potential claims of breach of fiduciary duty, violation of U.S. securities laws, and legal liabilities associated with redeployment of the NCE's funds into a new investment. For more info visit http://eb5redeploy.com/. **POWERED BY** NES Financial · CapUnited · Greystone

PINE STATE® REGIONAL CENTER
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Pine State Regional Center, LLC, a subsidiary of the Arkansas Capital Corporation draws on a combined 92 years of experience, we is dedicated to continuing that success through our EB-5 investment offerings, providing confidence and security for our EB-5 investors.

TORRES LAW
EB-5, Corporate, Securities & Media

Torres Law, P.A., is a South Florida law firm that concentrates on complex corporate and securities law matters. For the past 8 years, the firm has been active in the EB-5 industry and is recognized as one of the leading EB-5 securities law firms.

FGI FAKHOURY GLOBAL IMMIGRATION

Fakhoury Global Immigration USA, PC (FGI), is an AV-ranked firm with Martindale-Hubbell and one of the largest independently owned business-based immigration law firms in the United States. FGI's clients represent many of the world's innovative brands in the automotive, IT, engineering, architecture, and health care industries.

FRAGOMEN WORLDWIDE

Fragoman is the world's leading single-focus provider of immigration guidance and support, with over 500 offices and more than 4,000 immigration professionals and support staff worldwide.

FPP FirstPathway partners
Immigration Through Investment

FirstPathway Partners (FPP) helps foreign investors become U.S. Citizens through the DHS Immigrant Investor (EB-5) program. The partnership provides an investment vehicle that qualifies investors for a Green Card and Citizenship, if so desired. For over a decade FPP has assisted investors from over 40 different countries through the EB-5 program, raising millions in EB-5 funds for job creating enterprises.

MONA SHAH & ASSOCIATES
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This is a great opportunity for you to learn how current organizations have benefited from the Program and the Program can impact your community's economic development.

KLINGNER KJ LAW FIRM JAZAYERLI LLP

At Klingner Jazayerli LLP, our founding attorneys have more than 10 years' experience representing both individuals and regional centers under the EB-5 investor visa program.

Brownstein Hyatt Farber Schreck

Founded in 1968, Brownstein Hyatt Farber Schreck practices in the areas of real estate, corporate law, public policy, natural resources, intellectual property and litigation.

KKTP KURZBAN KURZBAN TETZELI & PRATT P.A.

As the leading immigration litigation law firm in the U.S., KKTP provides legal services to regional centers, individual investors, & other industry stakeholders.

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At Customers Bank, the region's leading super-community bank, we are dedicated to providing exceptional value, service and convenience as part of an overall effortless banking experience.

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The leading Online Portal, Conference Series and Magazine devoted to helping Investors, Developers & EB-5 Professionals.

SCHEDULE of Events

SUNDAY MAY 6, 2019

TIME	
2PM 3PM	**IIUSA COMMITTEE MEETINGS** (Park Hyatt) 2:00PM - 4:00PM
4PM 5PM	**BUS SHUTTLES TO EB-5 INDUSTRY ACHIEVEMENT BANQUET** 4:00PM - 6:00PM
6PM 7PM 8PM	**EB-5 INDUSTRY ACHIEVEMENT BANQUET** 6:00PM - 9:00PM MAY 6, 2019 • WASHINGTON D.C. EB-5 Industry Achievement Banquet IIUSA A CELEBRATION OF EB-5 SUCCESS

MONDAY MAY 7, 2019

TIME	GALLERY BALLROOM	SALON
9AM 10AM	**IIUSA MEMBERSHIP MEETING** (Members Only) 9:00AM - 10:30AM	
11AM	**KEYNOTE SPEAKER** (TBA) 11:00AM - 11:30AM	
12PM	**ADVOCACY PANEL:** IIUSA Policy Positions and How to Conduct a Hill Meeting 11:30AM - 12:30PM	
1PM	**LUNCH** 12:30PM - 1:15PM	
2PM	**VISA UPDATE WITH GUEST OF HONOR SPEAKER CHARLES OPPENHEIM** What is Retrogression? Does it Mean the Market is Dead? 1:15PM - 2:30PM	
3PM	**HNWI:** How to Target Them Where They Work and Live 2:30PM - 3:30PM	**USCIS POLICY TRENDS:** Redemption Agreements, Indebtedness and More - What They Mean for Your Business and Your Investors 2:30PM - 3:30PM
	NETWORKING BREAK 3:30PM - 4:00PM	
4PM	**EB-5 SECURITIES LAWS AND ENFORCEMENT:** Analyzing the Trends 4:00PM - 5:00PM	**CREATIVE THINKING AND DATA ANALYSIS:** How Can EB-5 Benefit Your Community's Local Economic Development Initiatives? 4:00PM - 5:00PM
5PM 6PM	**IIUSA LEADERSHIP CIRCLE RECEPTION** (Invite Only)	

SCHEDULE
of Events

TUESDAY MAY 8, 2019

TIME	GALLERY BALLROOM	SALON
8AM	**REDEPLOYMENT:** How to Inform Your Current Investors and How to Structure Future Deals 8:00AM - 9:00AM	**HOW TO STAY COMPETETIVE IN THE GLOBAL MIGRATION BY INVESTMENT MARKET** 8:00AM - 9:00AM
9AM	**COMPLIANCE REVIEWS AND SITE VISITS:** What We Know and How to Be Prepared 9:00AM - 10:00AM	**INVESTOR RELATIONS:** Fiduciary Duties Post-Securities Closing, Record Keeping, Monitoring and Investor Communications 9:00AM - 10:00AM
10AM	**NETWORKING BREAK** (Exhibit Hall) 10:00AM - 10:30AM	
11AM	**ECONOMIC DEVELOPMENT FINANCE:** Empirical Knowledge for How to Use EB-5, NMTC and Other Funding Sources 10:30AM - 11:30AM	**RFES, NOITS, AND REGIONAL CENTER TERMINATIONS:** Trends and How to Respond 10:30AM - 11:30AM
12PM	**OPPORTUNITY ZONES AND EB-5:** Working Together to Create Local Economic Advancement 11:30PM - 12:30PM	**HOW TO MARKET TO AND FIND INVESTORS ALREADY IN THE U.S.:** E-2 and EB-5 and Other Visa Backlog Solutions 11:30PM - 12:30PM
1PM	**GRASSROOTS ADVOCACY:** Capitol Hill Meetings (Schedule and Attend on Own) 12:30PM - 5:00PM	**IIUSA BOARD OF DIRECTORS MEETING** (Victoria Park) 1:00PM - 3:00PM
2PM		
3PM		
4PM		
5PM		

PANEL & SPEAKER
Lineup

MONDAY MAY 7, 2019

ADVOCACY PANEL: HOW TO CONDUCT A HILL MEETING AND IIUSA POLICY POSITIONS
11:30AM - 12:30PM

Bill Gresser (Moderator), *EB-5 New York State Regional Center*
George McElwee, *Commonwealth Strategies*
Joe McCarthy, *American Dream Fund*
Keith Pemrick, *Commonwealth Strategies*

VISA UPDATE (OPPENHEIM)/WHAT IS RETROGRESSION? DOES IT MEAN THE MARKET IS DEAD?
1:15PM - 2:30PM

Charlie Oppenheim (Guest of Honor), *Chief, Visa Control and Reporting Division, U.S. Department of State*
Robert Divine (Moderator), *Baker Donelson Bearman Caldwell & Berkowitz PC*
Bob Kraft, *FirstPathway Partners*
Leon Rodriguez, *Seyfarth Shaw LLP*
Cletus Weber, *Peng & Weber PLLC*

PANEL & SPEAKER
Lineup

HNWI: HOW TO TARGET THEM WHERE THEY WORK AND LIVE AND TRANSFERRING THEIR FUNDS
2:30PM - 3:30PM

Irina Rostova (Moderator), *Rostova Westerman Law Group*
Keumhee Hong, *Club Emigration*
Janak Mehta, *FRR Shares & Securites Ltd.*
Darrell Sanders, *American Life Inc.*
Kripa Upadhahy, *Orbit Law, PLLC*

USCIS POLICY TRENDS: REDEMPTION AGREEMENTS, INDEBTEDNESS EB-5 SECURITIES LAWS & ENFORCEMENT: ANALYZING THE TRENDS
4:00PM - 5:00PM

Rikard Lundberg (Moderator), *Brownstein Hyatt Farber Schreck LLP*
Ronnie Fieldstone, *Saul Ewing Arnstein & Lehr LLP*
Doug Hauer, *Mintz Levin Cohn Ferris Glovsky Popeo, PC*
Clem Turner, *Chiesa Shahinian & Giantomasi PC*

USCIS POLICY TRENDS: REDEMPTION AGREEMENTS, INDEBTEDNESS AND MORE - WHAT THEY MEAN FOR YOUR BUSINESS AND YOUR INVESTORS
2:30PM - 3:30PM

Kristal Ozmun (Moderator), *Miller Mayer LLP*
Rana Jazayerli, *Klingner Jazayerli LLP*
Parisa Karaahmet, *Fragomen Worldwide*
Ira Kurzban, *Kurzban Kurzban Tetzeli & Pratt PA*

CREATIVE THINKING AND DATA ANALYSIS: HOW CAN EB-5 BENEFIT YOUR COMMUNITY'S LOCAL ECONOMIC DEVELOPMENT INITIATIVES?
4:00PM - 5:00PM

Jeff Carr (Moderator), *EPR Economics*
Rush Deacon, *Pine State Regional Center*
Noreen Hogan, *CMB Regional Centers*
Gonzalo Lopez-Jordan, *American Regional Center Group LLC*
Steve Strnisha, *Cleveland International Fund*

TUESDAY MAY 8, 2019

REDEPLOYMENT: HOW TO INFORM YOUR CURRENT INVESTORS AND HOW TO STRUCTURE FUTURE DEALS
8:00AM - 9:00AM

Ozzie Torres (Moderator), *Torres Law, PA*
Bob Cornish, *Wilson Elser Moskowitz Edelman & Dicker LLP*
Tom Rosenfeld, *CanAm Enterprises*
Brad Stedem, *CapUnited*

COMPLIANCE REVIEWS AND SITE VISITS: WHAT WE KNOW AND HOW TO BE PREPARED
9:00AM - 10:00AM

Christian Triantaphyllis (Moderator), *Jackson Walker LLP*
David Andersson, *WORC Regional Centers*
Jennifer Hermanski, *Greenberg Traurig*
Al Rattan, *Continental Regional Center LLC*

ECONOMIC DEVELOPMENT FINANCE: EMPIRICAL KNOWLEDGE FOR HOW TO USE EB-5, NMTC AND OTHER FUNDING SOURCES
10:30AM - 11:30AM

Mary King (Moderator), *New York City Regional Center*
Justin Blackhall, *American Lending Center*
Phillip Mendiola-Long, *American Northern Marianas Regional Center*
Toby Rittner, *Council of Development Finance Agencies (CDFA)*
Abteen Vaziri, *Brevet Capital Management*

OPPORTUNITY ZONES AND EB-5: WORKING TOGETHER TO CREATE LOCAL ECONOMIC ADVANCEMENT
11:30AM - 12:30PM

Kyle Walker (Moderator), *Green Card Fund*
Allison Berman, *Greystone*
Tim Fischer, *Council of Development Finance Agencies (CDFA)*
Oleg Karaman, *Customers Bank*
Scot O'Brien, *Akerman LLP*

INVESTOR RELATIONS: FIDUCIARY DUTIES POST-SECURITIES CLOSING, RECORD KEEPING, MONITORING AND INVESTOR COMMUNICATIONS
8:00AM - 9:00AM

Jill Jones (Moderator), *NES Financial*
Dan Healy, *Civitas Capital Group*
Michael Homeier, *Law Office of Michael G. Homeier PC*
Alexei Kondenkov, *Axos Bank*
Kurt Reuss, *EB5 Diligence*

HOW TO STAY COMPETITIVE IN THE GLOBAL MIGRATION BY INVESTMENT MARKET
9:00AM - 10:00AM

Eren Cicekdagi (Moderator), *Golden Gate Global*
Pat Hogan, *CMB Regional Centers*
Mona Shah, *Mona Shah & Associates*
Rohit Turkhud, *Fakhoury Law Group, PC*

RFES, NOITS, AND REGIONAL CENTER TERMINATIONS: TRENDS AND HOW TO RESPOND
10:30-11:30AM

Michele Franchett (Moderator), *Stone Grzegorek & Gonzalez LLP*
Aaron Goforth, *Baker Tilly*
Robin Gray, *Law Office of Robin J. Gray*
Michael Kester, *Impact DataSource LLC*
Marisa Marconi, *Pinnacle Plan Writing LLC*

HOW TO MARKET TO AND FIND INVESTORS ALREADY IN THE U.S.: E-2 AND EB-5 AND OTHER VISA BACKLOG SOLUTIONS
11:30AM - 12:30PM

Jinhee Wilde (Moderator), *WA Law Group, LLC*
Ed Beshara, *Beshara Global Migration Law*
Jessica DeNisi, *Klasko Immigration Law Partners*
Phuong Le, *David Hirson and Partners*

2019 AWARDS FOR

ECONOMIC ADVANCEMENT NOMINEES

IIUSA is proud to announce the nominees for the 2019 EB-5 Awards for Economic Advancement. Below you will find a list of all of the esteemed nominees, nominated by you, the EB-5 industry.

U.S. CHAMPION

Regional Centers rely on many partners and service providers to achieve success. This award recognizes a domestic service provider which is a catalytic collaborator within the EB-5 Regional Center program.

Baker Tilly Capital
Customers Bank
Hillwood
Lennar
NES Financial
Saul Ewing Arnstein & Lehr
Stone Grzegorek & Gonzalez LLP
WA Law Group, LLC

INTERNATIONAL CHAMPION

Foreign partners are critical to EB-5 industry success. This award recognizes a foreign migration agency, overseas representative, or other international partner who is working in their country as an ambassador and champion for the EB-5 program.

Club Emigration (Korea)
FRR Shares (India)
Investment Migration Council (Switzerland)
USIS Group (Vietnam)
Visas Consulting Group (China)

INNOVATOR

The EB-5 industry is constantly changing. This award recognizes a member business that's driving a new trend in EB-5 industry, forging unique partnerships, creating innovative project ideas, and is setting new trends within the industry.

American Dream
Atlantic American Partners
Beshara PA
Brevet Capital
EB-5 Deals
GoodHope
Mona Shah & Associates

ECONOMIC IMPACT

The EB-5 program facilitates economic development. This award recognizes the regional center who has had an exceptional impact on all aspects of economic growth, including impacts in infrastructure, technology, talent, capital, or sustainability.

American Life
American Northern Marianas Regional Center
CanAm Enterprises
Cleveland International Fund
CMB Regional Centers
FirstPathway Partners
Golden Gate Global
Maryland Center for Foreign Investment
Oriental Dolphins Regional Center
Pine State Regional Center

EMERGING CHAMPION

Newcomers to the EB-5 industry help assure new ideas, fresh perspectives and ultimately drive the industry forward. This award recognizes an EB-5 industry newcomer who's innovation and passion are representative of where the EB-5 industry is heading.

Robert Blanco (Wolfsdorf Rosenthal)
Jessica DeNisi (Klasko Immigration Law Partners)
Phuong Le (David Hirson & Partners)
Philip Mendiola-Long (American Northern Marianas Regional Center)
Vivian Zhu (Wolfsdorf Rosenthal)

REGIONAL CENTER OF THE YEAR

Regional Centers are the cornerstone of the EB-5 Industry. This award recognizes a member Regional Center who has demonstrated excellence as it relates to the core values of IIUSA: collaboration, ethics, and strategic thinking. This center has served as a leader and example for all Regional Centers throughout the past year.

American Life
Brevet Capital
CanAm Enterprises
Civitas Capital Group
CMB Regional Centers
EB5 Capital
EB-5 New York State Regional Center
Education Fund of America
Extell EB-5 Regional Centers
Gold Coast Florida Regional Center
Golden Gate Global
Pine State Regional Center

LIFETIME ACHIEVEMENT

There are many who are dedicated to the EB-5 Industry. Annually, IIUSA will accept nominations and consider recognizing an individual with the Lifetime Achievement Award. Nominees should be true champions of EB-5 who have dedicated many years of service to the positive advancement of IIUSA and the industry.

Ed Beshara (Beshara PA)
Angel Brunner (EB5 Capital)
Robert Divine (Baker Donelson)
George Ekins (American Dream Fund)
David Hirson (David Hirson & Partners)
Pat Hogan (CMB Regional Centers)
Keumhee Hong (Club Emigration)
Ron Klasko (Klasko Immigration Law Partners)
Ira Kurzban (Kurzban Kurzban Tetzeli & Pratt)
Henry Liebman (American Life)
Mona Shah (Mona Shah & Associates)
Lincoln Stone (Stone Grzegorek & Gonzalez)
Reid Thomas (NES Financial)
Rohit Turkhud (Fakhoury Law)
Abteen Vaziri (Brevet Capital)
Bernard Wolfsdorf (Wolfsdorf Rosenthal LLP)

IIUSA Sends Memo to USCIS on Redeployment Policy

AARON GRAU
EXECUTIVE DIRECTOR, IIUSA

ASHLEY SANISLO CASEY
DIRECTOR OF EDUCATION & PROFESSIONAL DEVELOPMENT, IIUSA

In October 2018, members of IIUSA's Board of Directors met with representatives of the U.S. Citizenship & Immigration Services (USCIS), including the Immigrant Investor Program Office (IPO), to establish an open dialogue about EB-5 policy and the future of the EB-5 Regional Center Program. Many topics were discussed, but one of the most pressing was redeployment of EB-5 investments and USCIS's policy and guidance on the matter.

IIUSA expressed concern about the lack of guidance to date and requested specificity given the enormous impact redeployment has on the EB-5 industry; the immediate nature of its relevancy to Regional Center operations, deal structuring, and transparency in investment offerings.

In the spirit of good faith and open dialogue, USCIS requested a memorandum outlining the industry's concerns and specific areas of needed clarification or changes. (The current policy was published in an update to the EB-5 Policy Manual on June 14, 2017.)

IIUSA's Public Policy Committee drafted the memo and after several months of debate, discussion, and edits, the Board of Directors approved it to be delivered to USCIS. Below is a summary. The document can be found in full in IIUSA's Member Portal at member.iiusa.org.

At-Risk Redeployment of NCE Investments Is Not Required by Law

The memo addresses the question of the legal basis upon which redeployment of investors' funds is a requirement. The investment remains at-risk even if the job creating entity (JCE) repays the new commercial enterprise (NCE) so long as the NCE does not repay investors until the end of the investors' two-year conditional residency period, per the Program requirements.

IIUSA asserted it does not see a legally-based requirement to redeploy investors' funds if their two-year conditional residency period is not completed by the time the project in which they invested is completed.

If Redeployment is Required, Any NCE Redeployment Investment Should be Acceptable

If USCIS rejects IIUSA's position

Continued On Page 15

IIUSA SENDS MEMO TO USCIS ON REDEPLOYMENT POLICY

Continued From Page 14

that additional and continued at-risk redeployment beyond the NCE level is not required, then any investment (including investment in marketable securities) made after the job creation requirements have been satisfied should be acceptable. The letter goes on to state that the scope of business identified in the approved I-526 record should not be taken under additional review during the post-job creation sustainment period and any subsequent investment undertaken by the NCE in an effort to satisfy the at-risk requirement during this period should be permitted.

Redeployment Investments Should be Allowed Outside of the Regional Center Territory and Outside of TEAs

IIUSA's memorandum went on to assert that post job-creation redeployment by NCEs should be permitted anywhere within the U.S. There should not be a continued requirement to redeploy investments within the regional center's territory or within a Targeted Employment Area (TEA).

If, however, additional job creation credit is sought, IIUSA proposes that any regional center in good standing be permitted to sponsor redeployment job-creation, that the TEA character be maintained, and that an economic analysis or other evidence of job-creation for the redeployed investment be provided by the investor. To further facilitate efficient and responsible redeployment opportunities, unless credit for new job-creation resulting from the redeployment is sought, there should not be a requirement that redeployment be made within a TEA.

Clarification in the Redeployment Policy Regarding Material Change and Withdraws is Needed

IIUSA suggested that:

1.) Revisions to NCE and JCE governing documents should be permitted without material change disqualification to accommodate the Redeployment Policy.;

2.) Redeployment prior to issuance of conditional permanent residency should not be considered a material change.; and

3.) Investors should have the right to withdraw at redeployment without violating the requirement to be irrevocably committed to the investment

The letter concludes by stating IIUSA's eagerness to continue open and productive dialogue with USCIS in order to have sustainable and practical implementation of the Redeployment policy while seeking flexibility in policy interpretation so the industry stakeholders can be responsible and efficient in accomplishing redeployment for both their projects and their investors.

To read the letter to USCIS in its entirety, please visit member.iiusa.org/resources and go to the Advocacy Toolkit.

A special thank you to IIUSA's Public Policy Committee and Best Practices Committee for their diligent work on this letter.

IIUSA Adopts New Code of Conduct Enforcement Procedure

JAYSON VAIL
ASSOCIATE VICE PRESIDENT EB-5 OPERATIONS, CIVITAS
ON BEHALF OF THE IIUSA BEST PRACTICES COMMITTEE

On August 23, 2017, IIUSA's Board of Directors adopted a new Code of Conduct to demonstrate our member's commitment to integrity and high ethical standards of business conduct. The Code of Conduct is an expression of our shared commitment to be: guardians, professionals, reliable, champions, and committed in our EB-5 business endeavors. As the most prominent organization representing the business interests of the EB-5 community, IIUSA's members are responsible for ensuring that the conduct of our community reflects the shared commitment to these core values. That is why IIUSA is proud to announce the Board of Directors' adoption of a new Enforcement Procedure that establishes a process by which members may hold one another accountable as we pursue our collective mission.

Beginning in April of last year, the Best Practices Committee formed several subgroups that were tasked with addressing a variety of initiatives. These initiatives included the development of a continuing education curriculum and structure, development of best practices for escrow account usage, creation of EB-5 banking consideration guidelines, the curation of an ethics and integrity resources library, and revision of the Code of Conduct's Enforcement Procedure.

The Best Practices Committee sought to develop an Enforcement Procedure that would align more closely with the updated Code of Conduct. The goal was a to create a clear and concise oversight process specific to the EB-5 industry that would meet the current needs of IIUSA and its members. The Best Practices Committee evaluated ethics code enforcement procedures across several organizations and gathered feedback from IIUSA members to shape the Enforcement Procedure's foundation.

Following much careful consideration, the Best Practices Committee created a simple procedure by which members and non-members may securely report potential Code of Conduct violations and feel confident that these concerns will be taken seriously and resolved in a timely manner. Procedurally, concerns of violations to the Code of Conduct may be reported through three separate means: 1) an online portal, 2) telephone, and 3) electronic mail. Concerns will be investigated promptly, and consideration will be given to the seriousness of the issue raised, the credibility of the concern, and likelihood of confirming the allocation from attributable sources. To protect the integrity of the Enforcement Procedure, malicious or knowingly false allegations may result in disciplinary action.

IIUSA and its members continue to be committed to integrity and high standards of business conduct. To ensure that the strength of our community continues, we urge all members to review the Code of Conduct, familiarize themselves with the revised Enforcement Procedure, and to alert IIUSA of any potential violations via the process outlined therein.

The full Code of Conduct can be view at www.iiusa.org/bestpractices

IIUSA INVEST IN THE USA®

IIUSA CODE OF CONDUCT

ADOPTED 8/23/2017

This Code of Conduct (our "Code") is our commitment to conduct EB-5 business with high ethical standards. Our commitment goes beyond technical Code interpretation. Where unspecific, our Code's virtuous spirit prevails. IIUSA members and everyone working on IIUSA's behalf, including its board of directors, officers, committee members, and employees are bound by our Code. When working with non-members, you should provide our Code and ask that they abide. Our Code is no substitute for sound judgment. When in doubt, ask: (1) Is this consistent with our Code? (2) Would I take responsibility? (3) Is this good for our EB-5 community? Be integrity's voice. Hold each other accountable.

WE ARE:

1. **GUARDIANS.** Protect EB-5 investors and their families from fraud, misrepresentation, and unethical practices in EB-5 transactions. Do not misstate or omit material information.

2. **PROFESSIONAL.** Be informed and stay educated to comply with laws and regulations that govern your EB-5 endeavors.

3. **RELIABLE.** Be honest, fair, and transparent in EB-5 endeavors. Avoid conflicts of interest and disclose all actual and potential conflicts in writing.

4. **CHAMPIONS.** Further the EB-5 Program's stated objective – stimulating the U.S. economy through job creation and capital investment. Strengthen the EB-5 Program's reputation by adhering to our Code.

5. **COMMITTED.** Foster ethical culture in the EB-5 industry. Analyze our Code and apply it. Promptly report Code compliance concerns. Cooperate fully in Code compliance investigations.

IIUSA
CODE OF CONDUCT
ENFORCEMENT PROCEDURE

Adopted February 12, 2019

IIUSA is committed to its Code of Conduct. This procedure provides an avenue for raising good faith concerns related to violations of the Code of Conduct. This procedure allows those raising concerns ("Reporters") to remain anonymous at their option. Concerns expressed anonymously will be investigated and consideration will be given to the seriousness of the issue raised, the credibility of the concern, and the likelihood of confirming the allegation from attributable sources. Malicious or knowingly false allegations may result in disciplinary action.

1. **Procedure**. Concerns related to violations of the Code of Conduct should be reported to: **conduct@iiusa.org**.

2. **Anonymity**. Reporters will have the ability to remain anonymous to those against whom a concern is expressed, if they choose. The information provided by a Reporter may be the basis of an internal and/or external investigation into the issue reported and anonymity will be protected to the extent possible. However, a Reporter's identity may become known during the course of the investigation.

3. **Timing**. The earlier a concern is expressed, the easier it is for IIUSA to take action. You are encouraged to promptly report any potential violation of the Code of Conduct.

4. **Evidence**. Although a Reporter is not expected to prove the truth of an allegation, a Reporter will be expected to help demonstrate that there are sufficient grounds for concern.

5. **Initial Inquiries**. Initial inquiries will be made to determine whether an investigation is appropriate, and the form that it should take. Some concerns may be resolved by agreed-upon action without the need for an investigation. The action taken will depend upon the nature of the concern.

6. **Feedback to Reporter**. Reporters will be given the opportunity to receive follow-up on their concern:

    - acknowledging that the concern was received;
    - indicating how the matter will be dealt with;
    - giving an estimate of the time that it will take for a final response;
    - indicating whether initial inquiries have been made; and
    - indicating whether further investigations will follow and, if not, why not.

7. **Further Information**. The amount of contact between the Reporter and the investigator of the concern will depend upon the nature of the concern, the clarity of information provided, and whether the Reporter is accessible for follow-up. Further information may be sought from the Reporter.

8. **Outcome of an Investigation**. At the discretion of IIUSA and subject to legal and other constraints, the Reporter may be entitled to receive information about the outcome of an investigation.

EB-5 Visa Backlogs and How HR 1044 or Proposed USCIS Regulations Could Affect Them

CLETUS WEBER
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ELIZABETH PENG
FOUNDER & PARTNER,
PENG & WEBER PLLC

Regional centers and related EB-5 professionals are now well aware of the massive EB-5 visa backlog for China, the substantial one for Vietnam, the soon-to arrive EB-5 visa backlog for India, and the possibly modest future backlogs for a few other countries. At the same time, H.R. 1044's proposed removal of per-country caps or USCIS's proposed regulations could completely change everything. This article therefore explains how EB-5 visas are allocated generally, why they are so backlogged now for China and other countries, and how these backlogs could drastically change if Congress or the Administration move forward on pending proposals.

EB-5 Annual Quota of Approximately 10,000 Visas Per Year

Congress created the EB-5 visa category in 1990, and only Congress has the authority to set numerical limits on the issuance of all types of U.S. visas, including EB-5 immigrant visas. Although most in the industry use the shorthand figure of "10,000" visas per year, the actual annual quota for EB-5 is 9,940, plus or minus technical adjustments prescribed by various sections of the Immigration and Nationality Act (INA). This roughly 10,000-visa supply must be allocated among not only EB-5 investors but also their spouses and eligible children (unmarried and under 21 years of age), which means that the annual quota is enough only to cover a few thousand EB-5 investors per year.

How the U.S. Government Currently Allocates EB-5 Visas

The INA sets forth procedural rules governing the allocation of EB-5 visas, cascading as follows:

- **General Rule: First-In/First-Out (FIFO).** INA 202(a)(1)(A) states that with some exceptions, such as the 7% Per-Country Limit, visa allocation cannot discriminate based on a person's race, nationality, place of birth, etc. Effectively, this means that the general rule for EB-5 visa allocation is FIFO on a worldwide basis.

- **Exception: 7% Per-Country Limit.** INA 202(a)(2) provides that natives of any single foreign state under any of the family- and employment-based categories, including EB-5, may not exceed 7% in any fiscal year. Further, the INA generally makes "country" assignments on the basis of country of birth, not country of current citizenship or residence.

- **Override of 7% Per-Country Limit:** INA 202(a)(3) allows the 7% Per-Country Limit to be overridden to the extent that imposing the 7% Per-Country Limit would cause visa numbers to go unused during the quota period. By analogy, nobody cares who ate how many slices of pizza if slices still remain at the end of dinner.

In turn, the foregoing rules cause the INA to allocate EB-5 visas through the following four conceptual steps:

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1. Start with worldwide FIFO—i.e., starting with the oldest priority date (I-526 filing date) irrespective of country of birth—and continue until at least one country (e.g., China) hits its 7% Per-Country Limit of approximately 700 visas per fiscal year.

2. Temporarily block additional investors from any country that has already reached the 7% Per-Country Limit while still allowing all other countries' investors to continue to use visas. If a second or third or fourth, etc. country (e.g., Vietnam, India, etc.) also reaches the 7% Per-Country Limit, temporarily block investors from that country or those countries, too, but continue to allow everyone else to use visas.

3. Once the number of "leftover" visas is known or can be predicted, allocate any "leftover" visas on a worldwide FIFO basis until the annual quota of approximately 9,940 EB-5 visas is completely used. Under current realities, this step allows the longest-waiting applicants from China to use several thousand EB-5 visas every year while the 7% Per-Country Limit restricts each other country to only approximately 700 visas per country per year.

4. Stop allocating visas when the annual quota is reached and leave everyone without an immigrant visa standing in line on a worldwide FIFO basis until the next fiscal year arrives.

Relative Lengths of Existing and Potential EB-5 Visa Backlogs

The table below summarizes the currently estimated waiting times, according to Charles Oppenheim, Chief of the Visa Control and Reporting Division of the U.S. Department of State, who publicly provided these numbers at the 2018 AILA & IIUSA EB-5 Industry Forum in Chicago on October 30, 2018. The first two columns are self-explanatory, the third column was calculated by the authors, and the final column provides Mr. Oppenheim's best estimates with respect to essentially the following question:

> *"If an investor from X country invested **today** (most recently as of October 30, 2018), how long would it take for that investor to obtain conditional immigrant status?"*

Visa Allocation Over the Next Decade or So if Laws Do Not Change

Procedurally, if no laws change, EB-5 visas will be allocated as shown below for roughly the next decade or so. Eventually, Vietnam and then India will begin to share "leftovers" with China, but before then all countries other than China will remain limited to approximately 700 EB-5 visas per year.

Potential Impact of H.R. 1044 Becoming Law

On February 7, 2019, Reps. Zoe Lofgren (D-CA-19) and Ken Buck (R-CO-4) introduced H.R. 1044, the "Fairness for High-Skilled Immigrants Act of 2019" in the House of Representatives. With respect to the EB-5 program, the bill proposes to eliminate the per-country numerical limit for employment-based immigrants, effective October 1, 2019. Because approximately 50,000 currently projected Chinese EB-5 visa applicants have older priority dates than those of investors from elsewhere in the world, the enactment of H.R. 1044 would effectively ensure approximately 5 years of nearly exclusively Chinese investors at the front of the EB-5 visa line while investors from the rest of the world wait to get to the front of the line.

Thereafter, visas would be allocated to a mix of investors from China, Vietnam, and India (the top three countries for EB-5 demand presently), followed finally by a mix of investors from other countries based on priority dates. Eventually, a truly diverse worldwide FIFO line would exist consisting of a mix of investors determined primarily by each family's willingness to withstand whatever the worldwide backlog is at any given time. Preliminary analysis of Lee Li of IIUSA is that the initial worldwide backlog for new EB-5 investors upon passage of H.R. 1044 would be about 9 years.

Practically, passage of H.R. 1044 would ensure that regional centers would have substantial difficulty raising new money from countries other than China for several years or more, unless or until something else changes, such as:

- Congress enacts a law specifically increasing the visa numbers available to the EB-5 category.

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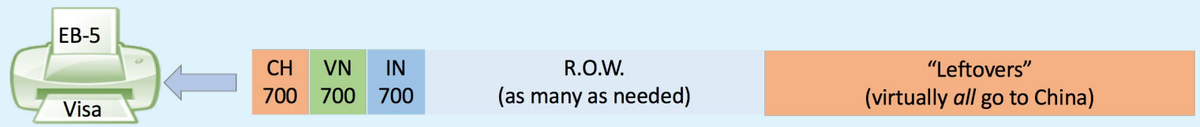
Foreign State of Chargeability	Estimated Grand Total of Immigrant Visas Needed for All Principals and Derivatives Inherent in an I-526 Petition Already Filed	Percentage of Worldwide Total Needed by Each Country (rounded)	Approximate Number of Years Needed for a New Investor to Obtain a Conditional Green Card
China - Mainland born	52,828	76.5%	14 years
Vietnam	5,008	7.3%	7.2 years
India	4,014	5.8%	5.7 years
South Korea	1,513	2.2%	2.2 years
China - Taiwan born	1,162	1.7%	1.7 years
Brazil	1,010	1.5%	1.5 years
Rest of World (R.O.W.)	3,525	5.1%	N/A
Total Worldwide Demand	**69,060**	**100%**	**N/A**

Current EB-5 Visa Allocation During One Fiscal Year



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- A court rules in favor of the plaintiffs in the class action case that Ira Kurzban and his partners have filed in Feng Wang, et al. v. Michael R. Pompeo, Civil Action No. 18-1732 (TSC) (D.C. Cir. filed 07/25/2018), which argues that the U.S. Department of State should have—from day one—been allocating an EB-5 visa only to the principal investor and allowing derivatives to complete their green card process without the need for an EB-5 visa number.

- The worldwide line shortens enough for new investors to want to invest again.

For the three top EB-5 markets of China, Vietnam, and India, passage of H.R. 1044 would likely impact each market differently. With respect to China, passage of H.R. 1044 would create a cascade of benefits. Cutting the wait time for new investors in that market from the currently projected 14 years to the potentially projected 9 years would by itself create hope in that market, according to recent discussions with agents there. Also, increasing the expected worldwide wait times from 0 years to 9 years would dampen worldwide demand, which in turn would increase the number of "leftover" visas available to Chinese investors each year. Finally, additional "leftover" visas would further reduce expected wait times for all Chinese investors and ultimately revive demand in that market. Vietnam going from the currently estimated 7.2 years to the potential 9 years would likely further weaken that already backlogged market.

The likely impact on the Indian market is much more complicated by goose-gander impacts on EB-2/EB-3 and EB-5. That is, by simultaneously lengthening the wait period for Indian nationals in EB-5 from the estimated 5.7 years to the projected 9 years while shortening the wait period for Indian nationals in EB-2 and EB-3, H.R. 1044, if passed, would cause Indian nationals who are already working in the United States to carefully weigh whether pursuing EB-5 remains a reasonable means of bypassing the excruciatingly long EB-2 and EB-3 lines. The overall Indian EB-5 market is quite diverse, though, making predictions of ultimate impact of H.R. 1044 passage more difficult.

Of course, exploding the worldwide wait time from 0 years to 9 years would likely implode the worldwide EB-5 market, which is a serious industry concern.

Potential Impact of USCIS's Proposed Regulations Becoming Law

In January 2017, the Department of Homeland Security (DHS) proposed to amend USCIS's EB-5 regulations, including, among other things, increasing the minimum EB-5 investment from $500,000 to $1.35 million. Most recently, on February 22, 2019, DHS forwarded the proposed regulations to the Office of Management and Budget (OMB), which effectively means that the proposed regulations could become law anywhere from a few weeks to never, depending solely on the desires of the Administration. Like the potential passage of H.R. 1044, the administratively proposed 270% increase in the minimum investment requirement, if enacted, would yield more "leftover" EB-5 visas each year, which could help all existing investors from currently or soon to be backlogged countries, such as China, Vietnam, and India, but would otherwise substantially drive down worldwide interest in EB-5 generally.

Practical Issues for Regional Centers

As with all legislative or regulatory proposals, H.R. 1044 and the currently proposed regulations may or may not become law. Regional centers and affiliated professionals should nonetheless prepare for the possible negative impact such changes could have on their operations and ongoing projects.

Secondarily, with respect to existing EB-5 visa backlogs, the various recent analyses by Charles Oppenheim of the Department of State, Lee Li of IIUSA, and others show that the Visa Bulletin by itself cannot effectively predict future waiting times for families considering a new investment in EB-5. Regional centers and issuers of the underlying securities might therefore want to consider whether disclosures mentioning potential wait times based on what the Visa Bulletin currently shows are sufficiently accurate. Similarly, the mere possibility of H.R. 1044 eventually passing significantly raises the risk of substantial negative future impact on investors from all countries other than China—even if those countries do not currently face a backlog. Technically, the potential regulatory increase of the minimum investment amount from $500,000 to $1.35 million is somewhat different in that it creates primarily a pre-investment/pre-filing risk, whereas the potential passage of H.R. 1044 also creates a potential post-investment/post-filing risk for investors.

Conclusion

Current EB-5 visa backlogs already reduce investment and job creation in the United States. Potential legislative or regulatory changes could drastically affect regional centers, projects, and existing and future investors. The entire industry must therefore continue to advocate for positive change on behalf of EB-5 investors and the U.S. workers who directly benefit from the industry's efforts.

POST OFFERING OBLIGATIONS FOR EB-5 ISSUERS "YOU CLOSED, NOW WHAT?"

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BRACHA POLLACK, ESQ.
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Congratulations! You have subscribed EB-5 investors, closed your offering, and provided the EB-5 funds to the project. Now what? As a general matter, EB-5 investors are either non-managing members of a limited liability company or limited partners of a limited partnership. In either situation, the EB-5 investor has limited managerial and voting rights, yet does have protections under either the Operating Agreement or Limited Partnership Agreement (the "NCE Agreement"), as may be applicable. The rights provided to EB-5 investors under the NCE Agreement must be adhered to as a binding contract between the new commercial enterprise (the "NCE") and the EB-5 investor. Likewise, under state law, the EB-5 investor has rights and protections under the limited liability company act or limited partnership act. Finally, under federal and state law, the NCE will have ongoing securities law obligations, which may require supplements or updates to the offering documents.

The NCE Agreement

The first step in determining your obligations to an EB-5 investor is the examination of the NCE Agreement. The NCE Agreement should clearly state what actions you must take and what information that you must provide to the EB-5 investor. EB-5 transactions generally include similar deal terms. Examples of the obligations of management and the rights of an EB-5 investor pursuant to a generic NCE Agreement are as follows:

- Provision of all relevant documentation for petition to USCIS to EB-5 investors;

- Inspection of books and records of NCE;

- Preparation and mailing of Schedule K-1s no later than 120 days after the end of the NCE's fiscal year;

- Voting rights concerning dissolution; disposal of NCE assets outside the ordinary course of business; amendment to NCE Agreement; redeployment; removal of and appointment of Manager; etc.;

- The ability to provide management with advice concerning the business of the NCE, including the use of the EB-5 funds and other investments.

Depending upon the terms of the NCE Agreement, the EB-5 investors may have additional voting or managerial rights. To the extent an issue arises that is not contemplated by the NCE Agreement, the duty owed to an investor may be contemplated under state or federal law, as discussed below. It is also a good idea to review the offering documents, as many times representations are made to EB-5 investors via the private placement memorandum as to the project, their rights, and the obligations of the NCE manager, which are not included in the scope of the NCE Agreement.

It is important that the NCE manager is involved in the early stages of negotiation and drafting of the NCE Agreement. Early involvement with corporate and securities counsel will focus the NCE Manager on the level of their involvement, their expected obligations, the obligations they wish to undertake, and what commitments the NCE can and will honor. Frankly, this is not a task that should be left to typical cookie-cutter Operating Agreements as such will surely fail to take into account the specific obligations that the NCE will be required to comply with or abide by in connection with performing and maintaining its EB-5 obligations as well as adhering to applicable law.

The State Law Implied Covenant of Good Faith

State law maintains rights for the protection of investors. Most states tend to have similar statutory constructs relating to investor rights, and the formation and operation of limited liability companies and limited partnerships. For the sake of convenience, we will focus our discussion to Delaware law relating to alternative entities, as many entities form in Delaware and many states follow Delaware's lead.

Delaware's Limited Liability Company Act (the "**Act**") provides for the "**Implied Covenant**" of good faith and fair dealing: "the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the **limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing…**"[1] The Delaware Revised Limited Partnership Act ("DRUPLA") provides an almost identical concept.[2]

The legislative intent underlying the Implied Covenant was that "in some circumstances fiduciary duties not explicitly provided for in the limited liability company agreement apply. For example, a manager of a manager-managed limited liability company would ordinarily have fiduciary duties even in the absence of a provision in the limited liability company agreement establishing such duties".[3] This covenant of good faith and fair dealing may not be removed by contract. The Delaware courts, however, have narrowed the application of the Implied Covenant, particularly in situations where the investors are sophisticated and have waived certain fiduciary protections.[4]The Delaware courts use the Implied Covenant to see if there is a gap that needs to be filled in the contract. Thus, if an operating agreement or a

1 Del. Laws, c. 332, §18-1101(c).
2 Del. Laws, c. 332, §17-1101(d).
3 https://legis.delaware.gov/BillDetail/23082
4 Allen v. El Paso Pipeline GP Company, L.L.C., 2014 BL 173739 (Del. Ch. June 20, 2014), aff'd Del. Feb 25, 2015

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limited partnership agreement expressly cover a particular topic, then the court will not apply the Implied Covenant. If, however, the underlying agreements are lacking or silent on the issue, then the court will examine the documentation to see if the Implied Covenant will fill the gap.[5]

What does this mean, particularly, to an EB-5 investor? As the Delaware Chancery Court noted, "[d]espite the appearance in its name of the terms "good faith" and "fair dealing," the covenant does not establish a free-floating requirement that a party act in some morally commendable sense.[6]" Thus, while there is no moral or equitable requirement under the law that the Delaware courts would examine, they would, however, look to the contract itself and what the parties would have agreed upon if the issue had arisen upon execution of such agreement. Therefore, in the event that the NCE Agreement is silent as to a particular issue (we have found that this comes up fairly often concerning redeployment), its best practices to put yourself in the shoes of the EB-5 investor, to determine what rights they would have wanted as to such issue had it arose upon execution of the NCE Agreement.

It is important to realize that there can be other obligations and duties for the NCE and its management, such as the duty of care and/or the duty of loyalty, if formed in other states. For example, in Florida, each manager of a manager-managed limited liability company, and each member of a member-managed limited liability company owes fiduciary duties of care and loyalty to the members.[7] Florida also maintains a conditional duty to disclose in a manager-managed limited liability company whether a member has a right to vote or consent.[8] The specific duties and obligations vary state by state, with differing obligations and levels of protection. Thus, at the initial formation process, NCE management should consult with corporate counsel as to the advantages and disadvantages of forming the NCE in a particular state.

Given the importance of an EB-5 investor's petition(s) with USCIS, acting in good faith and fair dealing not only relates to complying with terms of the NCE Agreement, compliance with state statutes, providing inspection rights, tax reporting, other reporting obligations and the like, but has a particular emphasis upon and sensitivity to immigration related issues. For example, project updates, updates regarding changes to immigration law, and changes to the regional center should all be communicated to the EB-5 investor on a regular basis. In addition, any other information that could impact an EB-5 investor's immigration petition or communication with USCIS should be promptly provided.

Securities Law

In the event of a material change in the terms of the investment made by the EB-5 investors that was not disclosed as a possible risk in the offering memorandum, the EB-5 investors may have a right to rescind their investment or make a new investment decision to retain their investment despite the material change. In that case, the NCE would be required to provide written disclosure of the change in terms of the investment and request the EB-5 investors to confirm or rescind their investment. In general, the following, to the extent that they trigger an investment decision by the EB-5 investor, would require a supplement to the EB-5 investors:

- Material change of the scope and nature of project;
- Material change to project ownership structure; or
- Use of EB-5 investor funds differing than as represented in offering documents.

However, if a project experiences a delay, or an increase in costs, or a change in financing, if the offering memorandum discloses that such delays, cost increases, or changes in financing could occur, and these changes did not jeopardize the immigration status of investors, then this would not be considered a material change in the terms of the offering, and there would be no need to offer a right of rescission to investors. In that case, the NCE manager might send a progress report explaining the change to existing investors, but there would be no need to provide a supplement to the offering memorandum (assuming that the offering had been completed), because the investors would not have a right to make a new investment decision.

Even if a change of circumstances does not rise to the level of a material change requiring the offering of a right to rescission to investors, there could be many other reasons that necessitate a notice to EB-5 investor. The EB-5 investor is different from a typical investor in an alternative vehicle, given the significance of their (and their family's) immigration petitions. Therefore, its best practices to inform the EB-5 investor of any change that could impact their petitions.

Of particular importance is the sale or refinancing of the project. As a general matter, the EB-5 investor may have a voting right upon such occasion. If so, then the manager or general partner ensure that the proper voting procedures are followed. Upon a sale, refinancing, or redeployment of EB-5 funds, the manager or general partner must first look to the organizational and funding documents to ensure that such sale, refinancing, or redeployment is contemplated and the borrower/developer has complied with representations, covenants, and warranties, and if they have not been complied with, act to preserve its legal rights and remedies.

Concerning redeployment of EB-5 funds into a different project following the sale or refinancing of the project, or upon the maturity of the EB-5 financing, it is possible that the organizational documents are silent as to the issue, or they may reflect that a particular project, purpose, or qualifying investment that is contrary to or dissimilar from the original project, purpose or qualifying expenditure. In such situation, amendments to the documents, and possibly a vote of the EB-5 investors, is necessary to validly authorize the redeployment.

Conclusion

Every EB-5 project is a living, fluid, and ever-changing organism. There are events and contingencies that you cannot control or contemplate. If you ignore these facts, and believe that merely because the offering is complete, then you do so at your own risk and can substantially increase your liability exposure. At the initial drafting stage, building both flexibility and project specificity into each NCE Agreement is key, so that NCE management has the ability and understanding to deal with changing circumstances through the life of the investment and the EB-5 project. As noted above, the EB-5 investors need, at a minimum, to be treated in good faith, and in accordance with the provisions of the documents, as well as complying with any obligations under federal securities laws and state statutes. Someone in your organization must be given authority and responsibility, along with outside counsel, to review, monitor and report to EB-5 investors on a regular basis, to ensure compliance with the governing documents, as well as state law, and potential ongoing securities, immigration, and tax issues.

5 Express Contract Terms and the Implied Contractual Covenant of Delaware Law, 38 Del. J. Corp. L. 1, 19 (2013); see also, Oxbow Carbon & Minerals Holdings, Inc. v. Crestview-Oxbow Acquisition, LLC, Del. Supr. No. 536, 2018 (Jan. 17, 2019), see footnotes 110 to 113 and accompanying text.
6 See, Allen at 22, referring to Gerber v. Enter. Prods. Hldgs., LLC, 67 A.3d 400, 422 (Del. 2013), overruled in part on other grounds by Winshall v. Viacom Int'l, Inc., 76 A.3d 808 (Del. 2013), at 418.
7 Fla. Stat. §605.04091.
8 Fla. Stat. § 605.0410(3)(d).

Regional Center Compliance Obligations: *A Closer Look*

DAVID MORRIS
MANAGING DIRECTOR, DC REGIONAL CENTER

The opportunity to operate an EB-5 regional center ("RC") is a privilege. Status as a designated RC is granted by the U.S. Citizenship and Immigration Services (USCIS) only after approval of a comprehensive operations proposal. Designation also imposes significant operational compliance obligations, including the duty to engage in sufficient monitoring and oversight of EB-5 capital investments. A RC's failure to meet those duties serves as a legal basis for USCIS to terminate the designation – in other words, withdrawing the RC's privilege to continue operations. The consequences of a termination decision can be earthshattering. First and foremost, it means the RC cannot sponsor any new EB-5 capital investment projects. Second, and more importantly, it may trigger the automatic denial of all pending petitions, and possibly the revocation of already approved petitions, submitted by RC-affiliated foreign investors.

Stepped up enforcement should naturally result in all RCs launching remedial measures to ensure continued compliance. But, that may not be as easy as it sounds for the simple reason that USCIS has failed to provide clear guidance defining RC compliance requirements.

For example, there is no clear definition of RC "oversight" duties or the associated standard of care required for such obligations. There are no published protocols or parameters defining minimum required "monitoring" actions. Similarly, there is no published checklist of standard RC operational documentation to be collected and maintained, nor any published list of RC records that must be presented to USCIS in an audit. There is no guidance on how an RC can conduct a voluntary self-audit to conform compliance practices and operations.

This article provides an overview of legal context and practical recommendations regarding RC compliance, in two parts: Part I examines the primary legal theories advanced by USCIS in RC termination proceedings based upon the failure to meet compliance standards, or the failure to maintain sufficient oversight and monitoring. Part II shifts the focus to RC self-governance by examining compliance risks of a RC that fails to follow its own self-established monitoring and oversight standards as promised in its USCIS approved I-924 Application for Regional Center Designation, and by proposing a RC engage in a voluntary audit of its existing compliance protocols and to modify practices to match prior commitments made to USCIS. This article represents a condensed version of the author's significantly more in-depth treatment of RC compliance in a forthcoming book (publication anticipated 2019).[1]

1 David M. Morris, Exploring Regional Center Compliance Obligations, Immigration Options for Investors & Entrepreneurs (AILA 2019) (forthcoming). The article includes substantially more detailed material on each of the themes discussed here, and it additionally traces the evolution of RC compliance from its origins in 2005, long prior to the creation of Forms I-924 and I-924A in 2010.

I. Legal Theories Advanced by USCIS In Termination Proceedings Asserting RC Failure To Meet Compliance Requirements, Or To Maintain Sufficient Oversight And Monitoring

USCIS legal theories advanced in termination proceedings on the grounds the RC failed to meet compliance requirements can be divided into two distinct areas: RC failure to comply with I-924A annual reporting, and RC failure to maintain sufficient monitoring and oversight of all EB-5 capital investment activities. In considering these legal theories, it is important to recognize that USCIS views its forms and their instructions as having the force of law and regulation.[2]

• Compliance Arising from the Form I-924A Supplement

Once a RC is designated, the regulation at 8 C.F.R. § 204.6(m)(6) requires it to "provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area ...." This required annual compliance reporting is executed through the timely submission of the Form I-924A, Annual Certification of Regional Center, with a filing fee. To be clear, however,

2 See 8 C.F.R. § 103.2(a)(1); see also D.M. Morris, Exploring Regional Center Compliance Obligations, supra note 1, at text accompanying note 37 et seq.

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a RC does not achieve compliance by merely filing the I-924A report. A RC must file timely and accurate I-924A compliance packages.

For example, USCIS issued a Notice of Intent to Terminate (NOIT) to the South Dakota Regional Center claiming the submission of "inaccurate or incomplete information to USCIS on its annual Form I-924A filings" occurring over a five-year period.[3] Among many claimed reporting failures, USCIS noted the following:

- Not only are the I-924As incorrect in reporting the EB-5 capital invested into each NCE, the amounts reported on the I-924As are inconsistent with the total amount of EB-5 funds loaned for these projects according to the I-526 and I-829 petitions.
- Information provided in the I-924A filings has discrepancies both within the same filings and between the filings and information provided to USCIS in other filings such as the related I-526 and I-829 petitions.
- In its I-924A filing for the fiscal year ending September 30, 2011, the RC incorrectly identified JCEs as NCEs.
- The RC has not accounted for $5 million in EB-5 capital investment in its filings with USCIS and, therefore, has not provided required information to USCIS.

Even more interesting, USCIS took the position in this NOIT that honest error may not be a forgivable excuse. USCIS asserted that "regardless whether the Regional Center has intentionally provided conflicting or incorrect information to USCIS, the magnitude of these discrepancies casts doubts on the credibility of the Regional Center's filings and management."

• Compliance arising from Duty to Monitor all EB-5 capital investment activities

USCIS also imposes upon a RC a duty to monitor and oversee all EB5 capital investment activities. However, USCIS has not issued any regulations, nor has it issued any policy statements, memoranda or even FAQs, establishing articulable standards for "sufficient" oversight and monitoring. From a basic due process perspective, that reality cast reasonable doubts as to legitimacy of USCIS enforcement sanctions on those grounds.

3 South Dakota Regional Center, NOIT (10/31/2015)

To be sure, USCIS has developed a significant body of actions asserting a RC duty to engage in monitoring and oversight - but without ever have defined the conduct or standard of care. First, the duty appeared in RC designation approval letters as a condition of continued operation. USCIS then embedded this monitoring compliance obligation into the updated AFM[4] in 2009 and into the new Form I-924 in 2010. On December 23, 2016, USCIS updated the I-924 and yet again affirmed this monitoring and oversight duty.[5]

RCs have generally acceded to USCIS claims that they owe a duty to engage in management, oversight and administration of EB-5 capital investment activities. Notably, at least one RC rejected this USCIS position. In response to a NOIT, the State of Vermont's regional center (VRC) challenged USCIS assertions of any such duty, writing:

> A regional center's responsibilities for the oversight of day-to-day operations of the separate and unaffiliated sponsored NCEs are not established in any law, regulation, or published policy, and are not defined anywhere. It would be unreasonable to terminate the VRC for a perceived failure to comply with requirements that are not sufficiently enunciated or supported in the law, as due process prohibits arbitrary action by government bodies.[6]

VRC's unique history may support its legal claims. But to the credit of all RCs, VRC refuted USCIS claims of owner oversight duties by invoking the June 19, 2018 congressional testimony of USCIS Director L. Francis Cissna which stated:

> *Enhancing Reporting and Auditing - USCIS is not currently authorized to enhance the regional center annual reporting process, including requiring, as appropriate, certification of the regional center's continued compliance with U.S. Securities laws; disclosure of any pending litigation; details of how investor funds were utilized in a project; an accounting of jobs created; and the progress toward completion of the investment project.*[7]

4 https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static%20Files%20Memoranda/Adjudicating_of_EB-5_121109.pdf
5 www.uscis.gov/i-924 But without explanation, USCIS added the word "sufficient" as a modifier of the duty; the impacts, if any, of this change are unclear at this time.
6 Vermont Regional Center NOIT Response (September 14, 2017) at page 5.

Asserted by VRC in its appeal brief, Director Cissna's testimony stands in stark contrast to the bases for the notice issued just two weeks later, which terminated the VRC based on its alleged past failure to do those very things.[8]

Notwithstanding Director Cissna's testimony, VRC's other legal arguments may not help RCs formed after November 23, 2010. After that date, all applicants seeking RC designation were required to file the I-924, which mandated oversight and compliance. Moreover, proposals were required to include plans and methodologies to execute these mandated oversight and compliance obligations.

Accepting for discussion purposes only that a RC established upon USCIS approval of an I-924 petition has a duty to engage in the monitoring and oversight of all EB-5 capital investment activities, monitoring and oversight duties "are not defined anywhere."[9] There is no public articulation of standards defining the scope of "oversight." No published protocols or parameters defining minimum allowable "monitoring" requirements. No published checklists of standard compliance documentation that must be collected and maintained.

In the absence of published policy, a RC must attempt to comply with this undefined duty by means of educated guessing. That is certainly not an ideal situation for a regulated entity. It also seems to run afoul of basic principles of due process.

This issue too will surely make its way to the federal courts in the future. In the meantime, a RC must continue to operate and to undertake reasonable compliance measures to protect the immigration interests of all affiliated EB-5 investors.

What little is known about the duty to monitor comes from the small library of USCIS termination decisions involving inaction, mismanagement, theft, or fraud by RCs and their sponsored affiliates. For simplicity, let's call these "Bad Actor" terminations.

These Bad Actor cases typically follow a familiar pattern. First, there is discovery of major fraud or malfeasance by law enforcement

7 Written Testimony of L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, "Citizenship for Sale: Oversight of the EB-5 Investor Visa Program," before the S. Comm. On the Judiciary, at 6 (June 19, 2018).
8 VRC Appeal Brief at p. 6.
9 Id.

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(such as by the SEC). This is followed by USCIS efforts to shut down RC operations by means of a NOIT followed by a Termination Decision.

A primary legal theory advanced by USCIS in RC termination action is the assertion that the RC failed to sufficiently perform its required oversight and monitoring duties. And "but for" the RC's failed oversight actions, the malfeasance or fraud would not have occurred. Supporting that assertion, the termination notices contain USCIS efforts to match specific RC actions (or inactions) against specific failed oversight duties.

This would make perfect sense, except for one big issue - USCIS has never defined these alleged oversight and monitoring duties. This creates the opportunity to challenge the central legal basis of such enforcement actions. It also establishes reasonable justifications for RCs to not blindly adopt compliance practices set forth by USCIS in these specific termination actions.

- **CASE STUDY: State of Vermont Regional Center**

This is best exemplified in the Bad Actor termination action brought by USCIS against of the State of Vermont's regional center (VRC).

In 1997, USCIS designated VRC as a RC and authorized its participation in the Program. Owned and managed by the State of Vermont, VRC did not directly raise or invest EB-5 capital. Rather, VRC operated more like the current "Rent-A-Center" model. Privately owned businesses would apply to VRC seeking immigration sponsorship of their new commercial enterprises (NCE) and EB-5 capital investment projects. If accepted by VRC, the parties would execute a Memorandum of Understanding (MOU) establishing reporting and inspection duties among other

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VRC Noncompliant Actions Claimed by USCIS	Resulting RC Monitoring and Oversight Compliance Duty Claimed by USCIS
VRC became aware of the likelihood that EB-5 funds raised for some Jay Peak projects were diverted, and yet VRC allowed the Jay Peak projects to continue to collect funds that they knew, suspected, or should have known were in jeopardy of not being used in compliance with EB-5 Program requirements.	RC has a monitoring duty to investigate upon receipt of constructive knowledge or reasonable suspicion of possible malfeasance or non-compliant actions by NCE or JCE entity.
VRC failed to collect and investigate quarterly status reports as mandated under its own MOU with the projects, and VRC thereby failed in fulfilling its monitoring and oversight responsibilities.	RC has a duty to follow its own self-established monitoring and oversight standards.
VRC relied excessively, if not primarily, on the Jay Peak project managers to perform oversight functions rather than taking on those responsibilities itself. Where a regional center has an outside party providing management services the ultimate responsibility for compliance with the relevant statues and regulations, remains with the regional center itself.	RC has a monitoring duty and cannot outsource ultimate compliance obligations owed to USCIS.
Multiple Form I-526 petitions were filed in the months after the SEC and Vermont complaints alleging EB-5 funds diversion were made public. USCIS found that VRC failed to take corrective actions to stop subsequent immigration filings containing misrepresentations, false or misleading information about the planned capital investment activity.	RC has a duty to monitor substance of immigration filings of affiliated EB-5 investors. RC has a duty to monitor against submission of false or misleading information to USCIS.
Some Jay Peak projects made material misrepresentations and that court records indicate that several securities offering documents were allegedly contravened, and the resulting fraud could have been avoided "with more and better oversight" from VRC.	RC has a duty to monitor securities offerings conducted by NCEs.
USCIS discovered significant discrepancies between what VRC represented in its I-924A filings and documents provided to individual Form I-526 petitioners, and what USCIS was able to determine independently. VRC began having concerns about whether all material information about certain Jay Peak projects was being disclosed to investors. Yet these concerns were not shared with USCIS, rather VRC remained silent in its concerns and took no action as over 83 petitions for this NCE were approved in 2014 and 2015. There were misrepresentations consisting of false or misleading information about VRC sponsored projects in materials submitted to USCIS and that when VRC became aware of these misrepresentations, it took no corrective action.	RC has an oversight duty to take corrective actions related to any EB-5 related immigration filings.
Form I-924A instructions clearly indicate the requirement to "Answer all questions fully and accurately." As well as a notification that "By signing this form, you have stated under penalty of perjury that all information and documentation submitted with this form is complete, true, and correct." Therefore, it is not sufficient to timely file the I-924A, but the information contained in that filing must be complete, true and correct. The NOIT Response seems to argue that VRC's only oversight responsibility was reporting its activities to USCIS. VRC reporting must be accurate and without effectively monitoring its projects, VRC cannot accurately carry out its reporting requirements and responsibilities to USCIS.	RC has an oversight duty to authenticate the supporting data relied upon to prepare the submitted Form I-924A.

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conditions. Thereafter, the NCE would solicit EB-5 investors, aggregate the foreign capital and deploy those funds into VRC approved job creating enterprises. VRC would remain a passive sponsorship entity throughout the process.

Between 1997 and 2017, VRC sponsored an estimated 20 ventures, which resulted in the filing of nearly 1,100 I-526 petitions, of which nearly 750 were approved by USCIS.[10] On April 12, 2016, the SEC brought a civil action against seven VRC sponsored ventures (collectively hereinafter "Jay Peak") "to stop an ongoing, massive eight-year fraudulent scheme" targeting foreign investors participating in the Program. On April 14, 2016, the State of Vermont filed a civil complaint against the same parties alleging similar claims. On June 12, 2017, EB-5 investors in Jay Peak brought a class action lawsuit against VRC and the State alleging VRC failed to exercise oversight, engaged in misrepresentations to investors, conspired to conceal fraudulent activity in the ventures, and bears responsibility for misappropriation of funds.

On August 14, 2017, USCIS issued a NOIT seeking to terminate VRC on several grounds including VRC's failure to provide adequate and proper oversight, monitoring, and management of Jay Peak.[11] In the NOIT and subsequent termination notice USCIS deconstructs VRC's failing actions and thereby creates a list of very specific compliance duties owed by VRC. What remains unclear, however, is if these alleged duties are legally valid or if they are ultra vires and lack legal authority.

The below chart captures analysis from the Termination Notice and matches compliance duties against USCIS claims of how VRC actions failed to satisfy those duties.

The VRC decision is not the only instance of this type of USCIS action. For example, USCIS issued a NOIT to the South Dakota Regional Center claiming multiple breaches of the monitoring and oversight duties in another Bad Actor situation.[12]

10 NOIT at page 6, https://assets.documentcloud.org/documents/3936313/Review-of-EB5-Program-in-Vermont-Addendum-and.pdf.

11 Id at 13-15.

12 South Dakota Regional Center NOIT (10/31/2015) https://rapidcityjournal.com/blog/on-background/south-dakotas-eb--termination-notice-read-it-for/article_ce446a42-7804-11e5-bc29-035adb762fee.html See also, https://d2xxqpo46qfujt.cloudfront.net/downloads/matterofs-d-r-c-id13768aaomar-170322020923.pdf

13 https://definitions.uslegal.com/s/standard-of-care/

Important Open Issue – What "Standard of Care"

Assuming for argument's sake that USCIS's claims regarding specific oversight duties are valid, the agency has not specified any legal standard, or "Standard of Care," to measure adequacy of a conduct. According to a leading online dictionary, the term "standard of care" is generally defined as follows:

> *the degree of attentiveness, caution and prudence that a reasonable person in the circumstances would exercise. Failure to meet the standard is negligence, and the person who fails to meet the standard is liable for any damages caused by such negligence.*[13]

Are RCs held to a strict liability standard? For example, does a RC breach its compliance obligations even if it was genuinely deceived by malfeasance of affiliated NCEs or JCEs? Or, are regional centers held to a gross negligence standard? Perhaps defined as "a lack of care

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that demonstrates reckless disregard" for the reasonable execution of duties which is so great it appears to be a conscious violation.[14] Perhaps the standard lies somewhere between these two extremes? As applied to the EB-5 program, a negligence or "reasonable person" standard would require a regional center to engage in compliance duties of monitoring and oversight in a manner consistent with accepted EB-5 industry standards and practices.

PART III Self-Regulation: Compliance Practices Vs. I-924 Promises

In the face of USCIS's refusal to publish compliance guidance defining oversight and monitoring duties, a RC cannot and should not simply waive the white flag of surrender and justify abandonment of its compliance efforts. The reason is simple – the RC almost certainly owes a duty to perform its own self-established monitoring and oversight obligations as promised in the USCIS approved I-924 Application for Regional Center Designation. This is a matter exclusively within the control of the RC and execution is not contingent upon any USCIS action.

Accordingly, a RC should look back to its original I-924 application package and scrutinize all promises establishing compliance obligations. Then the RC should conduct a voluntary self-audit to investigate if they are, in practice, adhering to those promises. If the audit reveals the RC's operations surpass promised monitoring and oversight standards, then compliance is achieved. But if the audit reveals deficiencies then the RC has constructive knowledge of noncompliance, and therefore must take appropriate remedial actions.

The compliance plans composed by a RC and inserted in its I-924 proposal represent its own set of unique promises and methods; there is no "one size fits all" or industry-standard boilerplate language. But an unscientific sampling of several members of AILA's EB-5 Committee suggests there may be some general commonality among plans across many RCs. Perhaps this is a result of a relatively small number of law firms that helped a majority of +900 approved RCs prepare and file their I-924 applications.

From this unscientific survey, we can attempt to construct a composite compliance plan that tracks perceived industry norms, as follows:

> Administration, management, and oversight of the regional center will be handled by [RC] in compliance with 8 CFR § 204.6(m)(6), including:
>
> - [RC] will be responsible for overseeing and monitoring all investment activities under its authority.
> - [RC] will follow the oversight and reporting requirements outlined in the approval letter for the regional center upon regional center designation by USCIS.
> - [RC] will identify and evaluate proposed projects, monitor project progress, and maintain records on projects, investors, and business activities.
> - [RC] will provide reports on its operations to USCIS each federal fiscal year by filing a Form I-924A.
> - [RC] will keep detailed records of all projects that have received alien investor capital and in what amounts.
> - [RC] will keep records, data, and information related to all investors as well as the investments, the projects involved and the movement of funds to and from each new commercial enterprise established within [RC].

In the absence of USCIS establishing minimum standards, the RC seemingly has the right to interpret the meaning and scope of its own promises. And if the RC subsequently executed its self-defined operational compliance procedures and protocols thereby fulfilling its I-924 promises, then USCIS would be deprived of a primary legal theory asserted in some termination actions.

- **Four Steps to Develop Compliance Policy?**

There are myriad ways a RC could develop its own compliance polices and protocols. One possible method that may make sense to some RCs involves the execution of a simple (and hopefully intuitive) four-step process outlined below. While space limitations preclude providing sample policies here, a more comprehensive version of this article published elsewhere offers illustrative examples.[15]

Step #1: Identify Operations That Merit A Compliance Policy

The first step in developing a compliance program is to identify operational activities that need to be tracked, monitored or supervised within the RC's definition of "all investment activities." Assuming for purposes of discussion the NCE is making a loan to a third-party JCE, these may include, but are not limited to, the following:

1. Investor Intake: Initial Screening & Eligibility Compliance
2. Subscription of Investor & Agreement Execution
3. Escrow and management of Administrative Fees
4. Escrow and management of EB-5 Investment Funds
5. Management of Capital Funds Upon Release of Subscription Escrow
6. NCE-JCE Loan Transaction & Recordkeeping
7. Processing JCE Loan Draw Request
8. Investor Relations & Reporting
9. Tax & Accounting: Financial Statements, Procedures & Recordkeeping
10. Immigration Compliance
11. Securities Compliance: Offering Documents, Marketing, Updates
12. Project Due Diligence: Procedures, Reports & Recordkeeping
13. RC-NCE Sponsorship and Compliance Agreement

Step #2: Develop SOPs for Every Identified Operation

From the final list, the RC would develop a compliance policy for each operation supported by specific compliance objectives. As a condition of sponsorship, each NCE would be required to develop its own compliance plan and Standard Operating Procedures (SOPs) to meet the RC's stated objectives, and these standards would thereby establish governance rules.

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14 See for example https://www.law.cornell.edu/wex/gross_negligence

15 See D.M. Morris, supra note 1, at Appendices 1 & 2.

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For both the RC and the NCE, developing an effective compliance policy requires careful consideration as well as advice from various professionals, including immigration lawyers, securities lawyers, finance professionals, and often, construction inspection experts.

Step #3: Time for Testing

As an ongoing condition of RC sponsorship, the NCE must commit to periodic compliance audits. Testing is one of the most critical elements of an effective compliance program. Without testing, it is difficult or impossible to understand what is working and what needs enhancement. Likewise, audits serve as an early warning to the RC to identify - sooner rather than later - potential NCE compliance issues.

The RC, or third-party contractor reporting to the RC, should undertake periodic testing of all mandated NCE compliance policies. The assessment of factors may include the following:

- NCE's level of awareness of compliance related laws and regulations;
- NCE's compliance with applicable federal regulations related to Eligibility;
- Compliance with the terms of NCE's own Offering Documents governing Eligibility;
- Adequacy of NCE's own internal policies, procedures and controls related to Eligibility;
- Compliance with NCE's own internal policies and controls related to Eligibility.

Step #4: Update The RC-NCE Sponsorship & Compliance Agreement

As a final step in the compliance process, the RC should review and update its legal relationship with the NCE it is sponsoring to ensure the integration of all compliance policy mandates.

While not a USCIS requirement, every RC should have a defined set of rules mandating operational duties and obligations as an ongoing condition to its agreement to NCE sponsorship. Some RCs memorialize these sponsorship rules in a Memorandum of Understanding, others call it a license, but for simplicity let's call it the NCE Sponsorship and Compliance Agreement ("Agreement").

Unlike the RC, however, the NCE has no legal relationship with USCIS – no duty to issue reports, no duty to follow any immigration compliance rules. And yet, most of the RC's compliance promises to USCIS hinge on underlying actions executed by the NCE. Thus, the Agreement plays a critical role in RC compliance because it requires the NCE to conform its practices to approved standards.

The NCE's failure to operate within those standards should be defined in the Agreement as an event of default giving the RC a right to terminate its sponsorship – the lifeblood of the NCE. The Agreement could also include an additional remedy upon default that gives the RC the right to replace the NCE's managers for the protection of affiliated EB-5 investors, as well as monetary damages.

The Agreement should obligate the NCE to submit to audits and compliance testing, and to establish a schedule of fees and the RC's right to reimbursement for costs related to compliance monitoring.

Lastly, the Agreement may also serve another valuable purpose: to help protect the RC against non-compliance claims from USCIS. At minimum, an Agreement that incorporates the RC's efforts to develop and implement a compliance policy and monitoring activities serves as a demonstration of its commitment to ethics and compliance.

- **Risks In Creating Compliance Plan?**

Some RCs have resisted developing a compliance plan in the absence of USCIS policy defining such obligations. There appear to be two primary reservations raised by this group.

Let's assume the RC developed its own robust compliance policies and protocols. The first expressed worry relates to risk of "over self-regulation" - what if the RC obligates itself to standards that are more rigorous and more burdensome then those ultimately imposed by USCIS? Efforts to be proactive, the claim would be made, penalizes this RC and makes its operations more onerous then fellow RCs that pursued no compliance efforts.

The second worry relates to execution risk - what if the RC fails to fully implement and execute its own compliance plan? Critics fear that the RC is making promises to engage in specified conduct and there may be consequences for failing to live up to these promises. The worry is that the RC could be opening itself to greater liability in this case by failing to pursue its own standards of care.

There may be some merit to these concerns, but do they outweigh the risks of inaction? In the end, each RC will need to weigh all the factors, both positive and negative, to reach a final decision about establishing a self-defined compliance plan in advance of long overdue USCIS policy guidance.

Conclusion

Right or wrong, USCIS is convinced that every RC owes broad compliance duties as a condition of continued designation, and these duties include the obligation to engage in sufficient monitoring and oversight of all EB-5 capital investments. Until a federal court dissuades USCIS of that notion, every RC should presume to follow those mandates to avoid termination.

Exactly how to comply is a harder question. In the absence of published policy defining these compliance duties and standards, RCs are relying on educated guesses. Some insights can be extracted from published termination decisions, but this does not create the robust body of knowledge the weighty subject deserves. That same lack of official guidance does create opportunity by empowering the RC to develop its own compliance policies and methodologies as needed to fulfill promises made in the I-924 application.

Diligent RCs should not miss that opportunity. Given stepped up enforcement efforts by USCIS, RCs should take proactive measures to review and update their compliance policies and procedures. Voluntary audits and testing of SOPs will help RCs and NCEs to understand internal controls, assess risk, and test compliance controls. Operational procedures should then be updated to correct deficiencies and bring the NCE back into compliance as required by the RC's sponsorship agreement.

Of course, the RC and NCE should not devote scarce resources to compliance for the sake of simply meeting USCIS demands. Monitoring and oversight practices should be sharpened because these serve as a key mechanism to deter or catch fraud. If left unchecked, instances of fraud will grow and hasten USCIS efforts to terminate RCs. Most importantly, fraud left unchecked will result in the loss of investment capital and the loss of immigration benefits for all affiliated EB-5 applicants and their family members. Those last two consequences should be motivation enough for RCs to strive for effective compliance and oversight.

OFAC, Escrow Agreements and the Value of Patience:
A Look at Investments from Iran

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The exponential increase in the number of investors seeking green cards through use of the EB-5 investment program over the last decade has created thousands of jobs for U.S. workers, injected billions of dollars into the U.S. economy, and led to the construction of key commercial enterprises that provide valuable services and accommodations all over the United States. The increased impact of the EB-5 program on the U.S. economy, however, has also led to rising scrutiny of the program by the U.S. government. The rising popularity of EB-5 investment has also seen increasing numbers of reports of fraud and other abuses of the program resulting in numerous enforcement actions by the SEC and other government bodies across the United States.

In navigating the increasingly complex regulatory environment of the EB-5 Regional Center program, attorneys, investors and regional centers must all be vigilant in ensuring their compliance with all statutes, regulations and rules that impact EB-5 investment at the federal and state level. EB-5 investment that is sourced from countries and individuals subject to sanctions by the U.S. Department of Treasury Office of Foreign Asset Control (OFAC) face additional obstacles. And while investors from these nations are not precluded from seeking U.S. immigration via EB-5 investment, the parties to these transactions must take additional steps to ensure that the transfer of funds and the investment itself is and remains authorized by OFAC. Any failure to comply with OFAC's rules and regulations can result in the denial of an investor's petition, claims of attorney malpractice, and fines or other penalties to the Regional Center, escrow agent, and the new commercial enterprise. Investors and regional centers must therefore ensure that the initial transfer of EB-5 investment funds does not run afoul of OFAC sanctions. But the parties' compliance obligations do not end with the transfer of the investor's funds. Questions remain as to what the parties' obligations are with regards to funds originating from a sanctioned nation if a green card no longer becomes an option for the investor. A close examination of the opportunities and potential pitfalls that arise with investments sourced from Iran provides insight into best practices for all parties to an EB-5 transaction when funds are sourced from a country that is subject to sanctions.

OFAC Licensing Requirements

Investors seeking a green card through the EB-5 program must demonstrate the lawful source of the funds for their investment, which means that for immigration eligibility nationals from certain countries that are subject to U.S. sanctions may require a license from OFAC in order to transfer funds to a U.S. business. OFAC administers comprehensive sanctions, which are imposed on a country as a whole, as well as targeted sanctions against specific entities or individuals. These sanctions target specific economic activities and sectors, and it is important at the outset to determine if a given transaction is sanctionable under OFAC rules and regulations.

Before funds are transferred from a sanctioned country, the parties to the transfer must first determine whether the transaction requires authorization from OFAC, and if so, what type of authorization is required. In some cases, OFAC's regulations include a general license which authorizes the transfer of funds. If the country's OFAC program does not include a general license, it may be necessary to apply for a specific license to permit the transaction. Where a specific license is required, a written request must be filed with OFAC to permit a person or entity to engage in the transaction identifying the applicant, the relevant

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sanction program, the proposed transaction and regulation under which it is prohibited, all parties involved in the transaction, and all proposed movement of funds that will occur with the transaction. Because it can take several months to receive a decision on a request for a specific license, practitioners should conduct a thorough analysis as to the necessity of such a license as soon as possible when communicating with a potential EB-5 investor from a sanctioned country.

OFAC General Licenses and Additional Due Diligence

When a transaction is authorized under a general license, additional steps must still be taken to ensure the transaction does not violate OFAC sanctions. Both Regional Centers and attorneys must ensure that no party in the transaction is on the Specially Designated Nationals ("SDN") List, which includes the names of individuals and companies that are owned, controlled by, or are acting for or on behalf of targeted countries. This list is regularly updated by OFAC, and can be searched via a tool on the OFAC website.[1] In addition, EB-5 applicants should be advised that their personal funds and investments must be transferred out of the sanctioned country before they become a U.S. person. Once investors have secured conditional permanent residency, they are deemed to be U.S. persons, and business or other financial ties to their country of origin may subject them to OFAC sanctions. In most cases, these investors will require a license in order to transfer their personal funds as well.

OFAC's General License for Iranian Investors and Ensuring the Lawful Source of Funds

On October 22, 2012, OFAC issued a General License which authorizes U.S. persons and businesses to engage in providing financial services to Iran in connection with individual EB-5 petitions. This general license significantly reduces processing times for Iranian investors who no longer must wait for a specific license from OFAC in order to proceed. However, Iranian investors still face substantial hurdles as well as additional uncertainties arising from OFAC's regulations. The brief lifting of certain sanctions on Iran following the U.S. entry in the Iranian Nuclear Deal, followed by the subsequent withdrawal from the deal by President Trump brings to light additional challenges that Iranian Investors and other investors touched by sanctions may face going forward. Investors and Regional Centers alike must not only take additional steps at the outset of the EB-5 process, but must make every effort to maintain compliance with OFAC regulations throughout the process.

1 Significantly, while OFAC takes the position that funds are not considered to be associated with a bank on the SDN list for purposes of EB-5 investment once the funds have been transferred to a non-SDN bank, however, USCIS has taken the position through Requests for Evidence (RFE) and Notices of Intent to Deny (NOID) that such funds may not have come from a "lawful source."

Transferring the Funds

From inception, transactions involving the movement of money from Iran to the United States face complications, which arise due to the fact that no banking relationship exists between the United States and Iran. Many investors may wish to use the Hawala or sarrafi system, which is a remittance system in Iran that facilitates funds transfers outside of the standard banking system. In general, these transactions involve the Iranian investor transferring funds to a hawaladar (hawala dealer) in Iran, who then arranges with a third party for the transfer of unrelated funds to the desired destination in the United States. The funds in Iran are then disposed of according to the third party's preference. Such transactions are problematic both for demonstrating a lawful source of funds and for reasons related to OFAC regulation. First, hawala transfers are seldom documented sufficiently to trace a path of funds, and there can be questions regarding the source of the third-party funds. Second, and more significantly, depending upon the parties involved, these transactions may be deemed illegal as money laundering. Furthermore, the convoluted path of funds may result in funds having contact with institutions or persons who are on the SDN list, and therefore outside the scope of the general license. Investors and attorneys must be diligent in ensuring that funds are transferred by a reputable sarrafi, and that funds are transferred through a third country financial institution as the intermediary.

Monitoring Against Non-compliance and the Why Funds Should Remain in Escrow

Upon the OFAC compliant transfer of EB-5 investment funds to the United States, it becomes simple for the parties to these transactions to assume that they have successfully complied with OFAC regulations, and move on through the EB-5 investment and application process without worry. But practitioners, regional centers and investors must all be aware that the obligation to maintain compliance with OFAC remains throughout the life cycle of an EB-5 transaction. With increasing processing times, investors' funds remain committed for years before they may become a U.S. person—if indeed their applications are successful and they ever become a U.S. person at all. Parties must continue to evaluate their compliance with OFAC policies and regulations in a constantly shifting climate.

On May 8, 2018, President Trump announced that the United States would withdraw from the Iran Joint Comprehensive Plan of Action (JCPOA), which had been signed on July 14, 2015. Following this withdrawal, the U.S. sanctions against Iran that had been lifted or waived under the agreement have gone back into effect, or what is referred to as "snapback." In the wake of this withdrawal, hundreds of individuals and entities who were removed from the SDN list were placed back on it, and numerous additions have been made to the list in the intervening months.

The impact of snapback is most keenly felt by U.S. owned businesses and subsidiaries abroad. While the U.S. was party to the agreement, OFAC issued General License H, which authorized most financial and other activities that related to Iran for non-U.S. entities owned or controlled by U.S. persons, as well as some limited actions on the part of U.S. parent companies to facilitate these transactions. Following the U.S. withdrawal from the agreement, OFAC revoked General License H, and authorized a 180-day wind down period for activities lawfully undertaken under General License H, which ended on November 4, 2018. OFAC has explicitly stated that, regardless of whether activity is undertaken pursuant to a contract entered into before General License H was revoked, such activity became sanctionable on or after November 5, 2018.[2]

While the re-imposition of sanctions and the subsequent revocation of General License H may not impact the EB-5 industry directly, it should serve as an example and a reminder to regional centers and U.S. attorneys of how changes to existing OFAC regulations and policies as well as the imposition of new ones can cause U.S. persons and entities to run afoul of OFAC at any stage in the lifecycle of a transaction. As the snapback of Iranian

2 See "Frequently Asked Questions Related to the "Snap-back" of Iranian sanctions in November, 2018," https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#630 (Accessed March 16, 2019).

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sanctions and the revocation of General License H reveal, the legality of a transaction at its inception does not shield U.S. persons from sanctions in the future should that activity become sanctionable in the future. Just as due diligence requires that practitioners, legal representatives and financial institutions must determine that no party to the EB-5 transaction is on the SDN list at the time that the funds are transferred, so too they must continue to ensure that all parties with an interest in the investment do not land on the SDN list in the future.

One can see numerous eventualities that could ultimately subject U.S. parties to an EB-5 transaction to sanctions or lead to other OFAC-related problems in the EB-5 lifecycle, however well-intentioned at the outset. The investor's Iranian financial institution that transferred the initial investment, or the investors themselves, could be added to the SDN list. Worsening relations between the U.S. and Iranian government could lead OFAC to revoke the general license that permits transactions facilitating EB-5 investment. Furthermore, parties must seriously question what their individual obligations are in the event that the investor is ultimately unable to secure a green card, whether by choice or due to other factors. In evaluating these risks, it is clear that the safest means to avoid running afoul of OFAC regulations when accepting EB-5 investment from Iranian nationals, or from other nationals of nations subject to sanctions, is to hold these funds in escrow until the investor has received his or her green card.

The Importance of Long-Term Escrow Agreements

Escrow agreements have become a standard feature of nearly every regional center EB-5 investment. For most investors, there is an obvious preference for escrow agreements which condition the release of funds on approval of the investor's Form I-526. However, as processing times have increased over the last decade, such arrangements present obvious problems for regional center projects seeking to raise capital for large-scale projects in a hurry. Thus escrow agreements have evolved to take into account both the investors' interests as well as the business necessities involved in the projects themselves. The three most common arrangements include conditioning the release of funds :(1) on the I-526 filing; (2) on the I-526 approval; or (3) on both the filing and the approval in stages. When dealing with investments from Iranian investors, or funds originating from other sanctioned nations, however, the EB-5 escrow agreement should condition release of the funds strictly on approval of the I-526, or even on the investor securing the green card, in order to ensure all parties' ability to consistently maintain compliance with OFAC regulations.

By holding Iranian investments in escrow until the investor has secured his or her green card, the parties to the transaction are able to fully trace and monitor the funds throughout the period when the risk of non-compliance with OFAC regulations remains. If, for example, the investor or the financial institution were to be suddenly listed on the SDN list, the financial institution holding the funds could take immediate steps to secure the funds in compliance with OFAC, and the regional center project would not be in the position of having accepted funds from an individual or entity on the SDN list.

In setting up an EB-5 transaction with nationals from Iran, the parties must also consider the obligations of U.S. persons and entities with regards to the funds in the event that the investor does not receive a green card. Much has been said about the ability of U.S. persons to **accept** these funds as part of the EB-5 application process, but the obligations of the parties to the transaction in the event that the application is denied or withdrawn should also be carefully considered.

31 C.F.R. § 560.505(c)(1) authorizes U.S. citizens to export financial services to citizens of Iran "in connection with an individual's application for…an immigrant visa under category EB-5." However, the regulation expressly states that paragraph (c)(1) "does not authorize [t]he exportation of financial services by U.S. persons other than in connection with funds used in pursuit of an E-2 or EB-5 visa." This language, when read together with the subsequent paragraph (c)(2), would seem to prohibit further transactions by U.S. persons with the investor's funds where the investor's visa has been denied or the application has been withdrawn, with one exception. Paragraph (c)(2) of the regulation authorizes U.S. persons to transfer the investor's funds back to Iran or a third country in **lump sum**, and provided that the funds **were held in escrow** while the application was pending.

Financial institutions and regional centers then have compelling reasons to ensure that funds are held in escrow during the pendency of an Iranian investor's green card application. As highlighted above, the language of the regulation appears on its face to prohibit any transactions involving the investor's funds once those transactions are no longer in pursuit of an EB-5 green card. Regional Centers may be prohibited from engaging in activities required by their contract with the investor, such as providing any return on the investment. As we have seen from the snapback of sanctions on Iran in recent months, a contract that was lawfully entered into is no protection against OFAC sanctions if the activity undertaken pursuant to that contract is sanctionable at the time that it occurs. This can expose U.S. persons not only to OFAC sanctions, but to legal liability for breach of contract. Even avoiding this outcome becomes difficult if funds are not held in escrow, because regional centers and financial institutions are unable to take advantage of paragraph (c)(2) and return the investors' funds if they have not been held in escrow. Parties to the transaction will find themselves in the position of having to apply for specific licenses in order to return invested funds. If even a portion of the funds have been released upon the filing of Form I-526, the funds still cannot be returned pursuant to the general license because they will not be in a "lump sum." By holding the investor's funds in escrow for the duration of the pendency of his or her green card applications, all parties to an EB-5 transaction involving invested funds from sanctioned nations can ensure their ability to comply with OFAC regulations at every stage in the transaction.

Conclusion

With the imposition of President Trump's travel ban, EB-5 applicants from Iran, Iraq, Libya, Somalia, Sudan, and Syria now face increased processing times as well as additional scrutiny of both USCIS and the Department of State during the consular process. As a result, these investors are confronted with numerous risks that may impact their petitions including developer default or other problems with the project. Changing circumstances in their own lives may also induce investors to withdraw their petitions prior to securing a green card. When EB-5 investment is sourced from nations subject to sanctions, all parties must take additional steps to ensure compliance with OFAC, and maintain constant vigilance in order to ensure that compliance continues. By holding funds in escrow until investors receive their green cards, U.S. parties to the EB-5 transaction may find their patience is well rewarded.

Understanding the Significant and Geographically Diverse Impacts of Capital Investment and Job Creation by EB-5 Projects in Federal Fiscal Years 2014 and 2015

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The U.S. Congress created the EB-5 Regional Center Program in 1992 with the goal of encouraging new U.S. economic growth and job creation through increased capital investment leveraged by immigrant investors. Recently, the EB-5 Regional Center Program has been contending with a period of program instability, including a series of temporary, short-term re-authorizations, and inadequate visa numbers. This is in stark contrast to a long period dating back to 1992 when the program enjoyed a period of relative stability including multiple three year Congressional authorizations/re-authorizations and a sufficient number of visas.

Over the years, various EB-5 stakeholders groups, including Invest in the USA (IIUSA) and at least two federal government agencies,[1] have published estimates of the economic benefits or value[2] (including job creation impacts) of the EB-5 Program's economic contributions to the U.S. economy. These past analyses used a variety of direct and indirect methods to estimate the economic contribution/impacts of the economic activities under the Regional Center program. While all of these studies made significant contributions in helping to describe the Regional Center program's value to the U.S. economy in general, each had limitations of one kind or another in the way they were completed.

The limitations of past studies almost always resulted in a significant under-counting of project-induced job creation or the under-valuing of the Regional Center program's true contributions to output and income of the U.S. economy. This study was conducted by Economic & Policy Resources ("EPR"), Inc. at the request of the EB-5 Investment Coalition and with the support of IIUSA, to address those limitations. Previous economic impact or contribution studies focused on developing impact estimates on the national level, without accounting for the dynamic economic

1 Including the Department of Homeland Security and the U.S. Department of Commerce.
2 This study uses the term "economic value" according to the definition employed in the U.S. Department of Commerce's recent review of the EB-5 Program; See: Estimating the Investment and Job Creation Impact of the EB-5 Program; U.S. Department of Commerce Economics and Statistics Administration-Office of the Chief Economist; 27 pp.; January 2017.

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connections between the state in which an EB-5 project is located and other states. Since the U.S. economic impacts-contributions of EB-5 projects within a state do not stop at the state border because labor markets and supply chains are more geographically diverse and robust than that, EPR worked with IIUSA and the technical staff at REDYN[3] to develop an approach to estimate the national economic impact-contribution estimate of project capital investment activity under the EB-5 Program using the four sub-national regions as delineated by the U.S. Bureau of the Census. The estimates as developed in this study are therefore more comprehensive and geographically robust to properly capture the robust supply-chains and labor markets that have historically served Regional Center projects. In this way, this study addressed the under-counting biases in past studies with the objective of presenting a more accurate picture of the economic value of the Regional Center program's most important capital investment activity component.[4]

Using a comprehensive EB-5 Regional Center project activity data set supplied by IIUSA as obtained from the U.S. Citizenship and Immigration Services (USCIS) through a series of "Freedom of Information Act" requests,[5] we developed a method to estimate the economic benefits and job creation contributions of all EB-5 Regional Center projects that were active in federal fiscal years (FY) 2014 and 2015. EPR and IIUSA worked together to develop this economic contribution estimate using the four economic regions as delineated by the U.S. Bureau of the Census using the CGGE-based[6] REDYN input-output tool in order to fully-recognize the geographical differences between regional economies (versus using national average impact multipliers or coefficients) and producing an integrated, robust national estimate of economic and job creation contributions of the Regional Center program's capital investment activities for FY2014 and FY2015.

3 REDYN is one of the input-output tools comprising one of a number of "reasonable methodologies" for measuring job impacts that has been accepted by the USCIS to satisfy the job creation requirement of 10 jobs per investor.
4 Which coincidentally is also the most robust economic activity data set of the three principal economic activities of the Regional Center program (versus the project operations economic activity category and the economic activities of EB-5 investor house-holds).
5 The data that IIUSA obtained via Freedom of Information Act (FOIA) consists of annual, required Form I-924A filings by Regional Centers to USCIS.
6 CGGE means Computable Geographic General Equilibrium Model.

National Impacts

The study found that, using IIUSA's EB-5 Regional Center project data, a total of $10.98 billion[7] in capital investment was made through the Regional Center program during FY2014 and FY2015 (see Figure 1 and Figure 2). That total represented approximately 2 percent of all foreign direct investment (FDI) net flows to U.S. economy over the two-year period. A total of $7.07 billion, or nearly two-thirds, of the projects' capital investment made through regional centers during FY2014 and FY2015 was in the construction sector. Among the other sectors with significant EB-5 Regional Center project capital investment activity over the two federal fiscal year period were: Hotels and Motels (at an estimated $1.05 billion), Real Estate (at an estimated $0.53 billion), Wholesale Trade (at an estimated $0.5 billion), Architecture, Engineering and Related Services (at an estimated $0.41 billion), and health care (at an estimated $0.35 billion).

The study found that this level of capital investment by projects in the Regional Center program supported more than 355,200 total jobs for U.S. workers during the study period (see Table 1), with roughly 100,000 new job opportunities falling into the "economically direct" category, and another 250,000 net new jobs falling into the economically indirect (including induced) category (see Figure 3). In total, those new U.S. job opportunities accounted for roughly six percent of the all

7 All monetary values in this report are in constant 2015 dollars.

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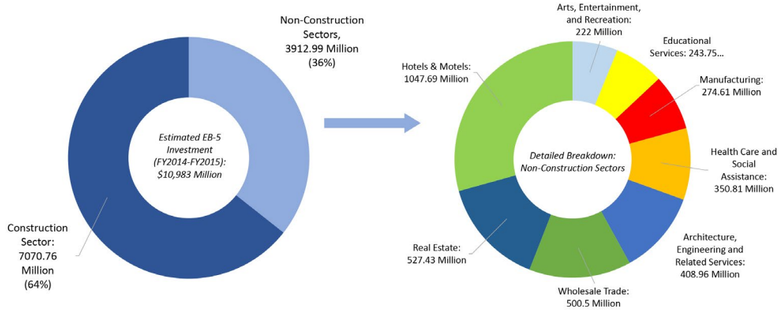
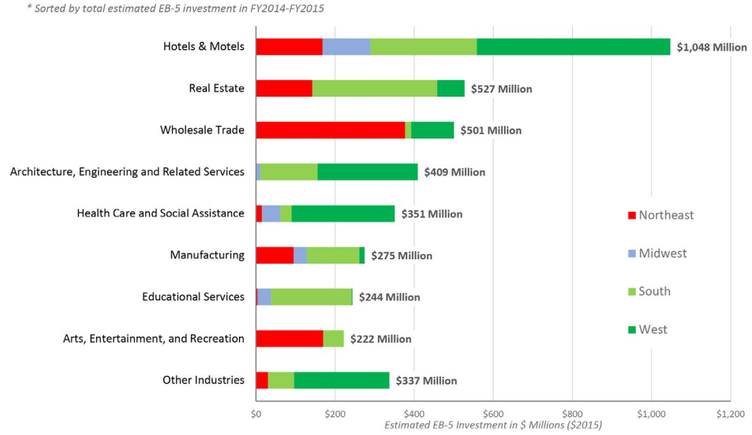
FIGURE 1: Estimated EB-5 Investment by Industry Sector, FY2014-FY2015



Source: IIUSA
Prepared by: EPR, IIUSA

FIGURE 2: Estimated EB-5 Investment in Non-Construction Sectors, FY2014-FY2015



Source: IIUSA
Prepared by: EPR, IIUSA

Understanding the Significant and Geographically Diverse Impacts of Capital Investment and Job Creation by EB-5 Projects in Federal Fiscal Years 2014 and 2015

TABLE 1: Estimated EB-5 Economic Impacts in U.S., FY2014-FY2015

	Northeast Region	Midwest Region	South Region	West Region	United States Total
EB-5 Investment ($ Millions)	$3,820	$380	$2,613	$4,171	**$10,984**
Economic Impacts					
Job Creation	90,474	47,564	102,456	114,714	**355,208**
Economic Output ($ Millions)	$14,455	$7,790	$14,922	$18,324	**$55,490**
Labor Income ($ Millions)	$6,547	$2,851	$5,989	$7,636	**$23,022**

Souce: IIUSA *Prepared by Economic & Policy Resources, Inc.*

FIGURE 3: Estimated Jobs Generated in FY2014-FY2015

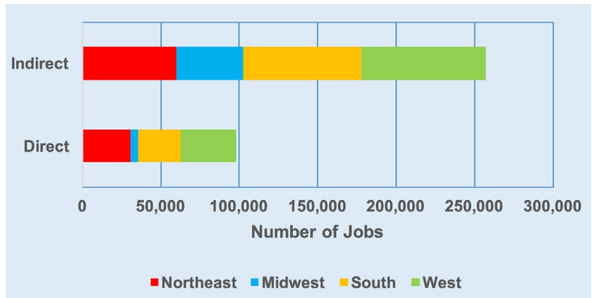
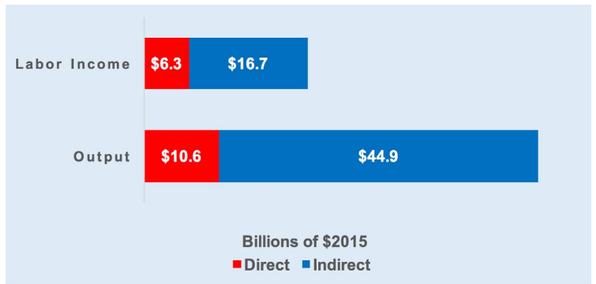


FIGURE 4: Estimated Labor Income & Output Generated in FY2014-FY2015



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private sector job growth in U.S. over the two-year period—**underscoring that the EB-5 Program is a national jobs development program**. Further, jobs were created by Regional Center project capital investment activity in all of the broad industry sectors[8] of the U.S. economy across each of the four subnational Census regions during FY2014 and FY2015. Even jobs created in the government category—including net job increases in the Federal Government, and in the State and Local Government categories all experienced positive economic gains associated with EB-5 Regional Center project capital investment activity, supporting about four percent of all net public sector job growth during the two-year period.

Overall, capital investment expenditures associated with EB-5 Regional Center project activity in FY2014 and FY2015 was estimated to have contributed nearly $55 billion (or about three percent) to U.S. output growth during the study period and more than $23 billion in additional labor income for the U.S. economy associated with this Regional Center program capital investment activity (See Table 1 and Figure 4).

In addition, combining the results of the past economic impact or contribution studies by IIUSA and the U.S. Department of Commerce, the study found that the estimated capital investments made through the EB-5 Regional Center program during FY2014 and FY2015 increased by more than 100 percent from FY2012 and FY2013 (See Figure 5).

Regional Impacts--Four Subnational Census Regions

Among the four subnational Census regions, the estimated EB-5 Regional Center program capital investments made during FY2014 and FY2015 were as follows: Northeast Region ($3.82 billion), Midwest Region ($0.38 billion), South region ($2.61 billion), and West Region ($4.17 billion). The West Region accounted for a total of approximately 38 percent of total estimated EB-5 capital investment activity over the two-year period. The Northeast Region was next in descending order at approximately 34.8% of the total. The South Region at 23.8% and Midwest Region at 3.5% round out the new capital investment activity percentages of the total. Given the distribution of the EB-5 Regional Center projects' capital investment activity that was made during FY2014 and FY2015, the estimated number of new job opportunities created by the EB-5 Regional Center program's capital investment activity was an estimated 114,700 jobs in the West Region, followed by an estimated 102,500 new jobs in the South Region, an estimated 90,500 new jobs in the Northeast Region, and an estimated 47,600 new jobs in the Midwest Region. The West Region alone accounted for nearlyone-third of the total net U.S. job creation due to the Regional Center projects' capital investment activities.

Even though the level of direct capital investment activity varied widely by region, each region benefited from Regional Center project capital investment activity thanks to EB-5 projects' capital investment activity's robust supply chains and labor markets which results in the creation of new jobs and economic impacts, irrespective of where the initial, direct capital investment occurred. Given the national scope of supply-chains and the broad impacts of workers' consumer spending, the indirect effects can often be greater than the initial direct stimuli tied to the location of the capital investment. For example, although the Midwest Region had the fewest number of Regional Center projects (24) and the lowest dollar amount of direct EB-5 project capital investment (at $380 million) during FY2014 and FY2015, companies

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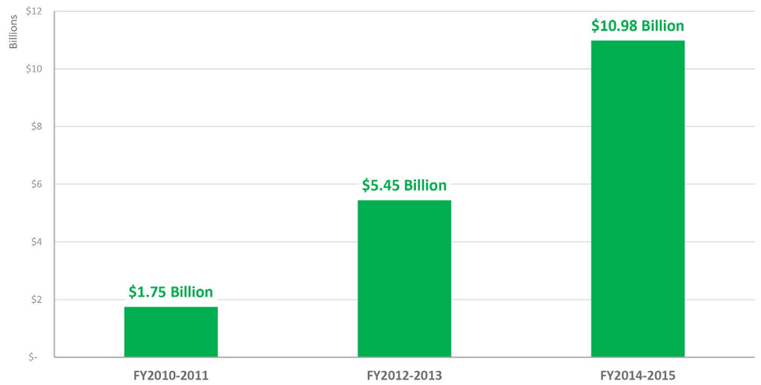
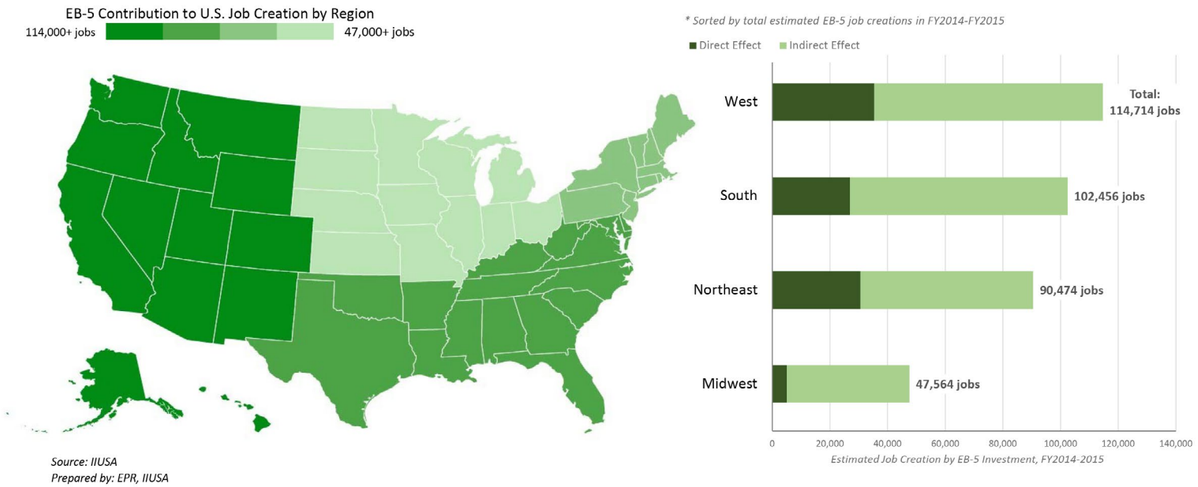
8 All economic activity are grouped into various categories according to the North American Industrial Classification System (NAICS). Broad industry sectors for instance are also termed 2-digit NAICS sectors, such as construction (NAICS 23); manufacturing (NAICS 31-33); and professional, scientific and technical services (NAICS 54).

FIGURE 5: Estimated Capital Investments Impacts of the EB-5 Regional Center Program, FY2010-FY2015



Source: IIUSA, EPR, U.S. Department of Commerce
Prepared by: EPR, IIUSA

FIGURE 6: Job Creation by Region from EB-5 Projects Located in the Northeast, Midwest, South, and West Regions



Source: IIUSA
Prepared by: EPR, IIUSA

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and organizations throughout the Midwest experienced significant indirect impacts from projects located elsewhere in the other three subnational Census regions. Nearly nine out of every ten indirect jobs created in the Midwest Region were due to capital investment expenditure activity from Regional Center projects located elsewhere in the Northwest, South and/or West Regions.

Businesses and organizations across all U.S. industry sectors participating also experienced positive impacts as a result of capital investments by EB-5 projects during the study period. This study found that construction contractors, manufacturers, utilities, businesses in the professional services category, retailers, and even governments benefited from Regional Center program capital investment activity through increased output, added hires (including increased payrolls), and higher incomes from that labor effect (See Figure 8). For program-induced output gains associated with the estimated project capital investment under the Regional Center program during FY2014 and FY2015, this study found that the estimated increase in the value of economic output associated with EB-5 Regional Center program capital investment spending was in the West Region (at $18.32 billion), followed by the South Region (at $14.92 billion), the Northeast Region (at $14.45 billion), and the Midwest Region (at $7.79 billion)—see Figure 7. As with the contribution to U.S. job creation, the West Region's contribution to increased output represented 3.4 percent of the total U.S. output increased during the two year period associated with the Regional Center projects' capital investment activities.

Figure 7.For the program-induced labor income gains associated with the estimated project capital investment under the Regional Center program during FY2014 and FY2015, this study found that the estimated increases in labor income at $7.64 billion in the West Region, at $6.55 billion in the Northeast Region, at $5.99 billion the South Region, and at $2.85 billion in the Midwest Region (see Figure 8). As with the contribution to U.S. job creation and output, the West Region's contribution to labor income represented 1.8 percent of the total U.S. labor income increase during the two year period associated with the Regional Center projects' capital investment activities.

As noted above, this economic benefits and job creation contribution study for the EB-5 Regional Center program includes only one of the three principal areas of economic activity

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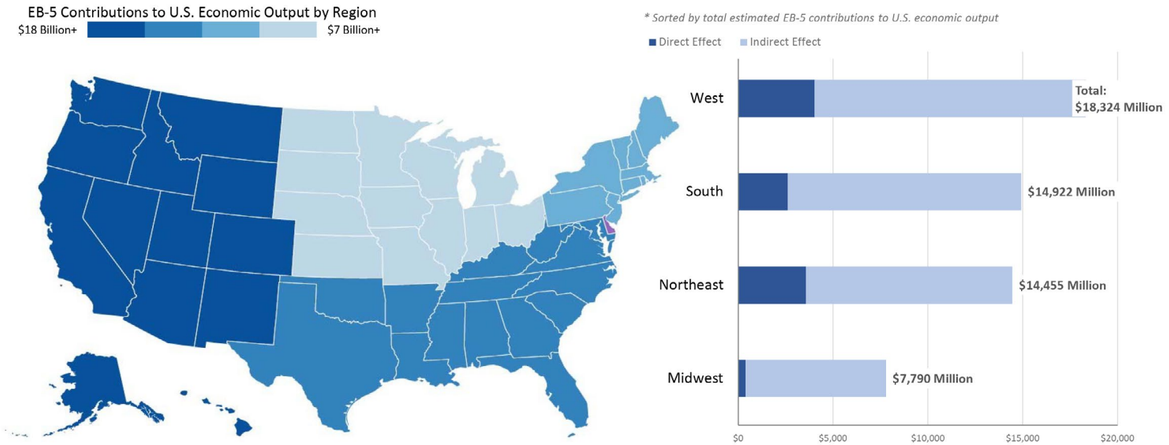
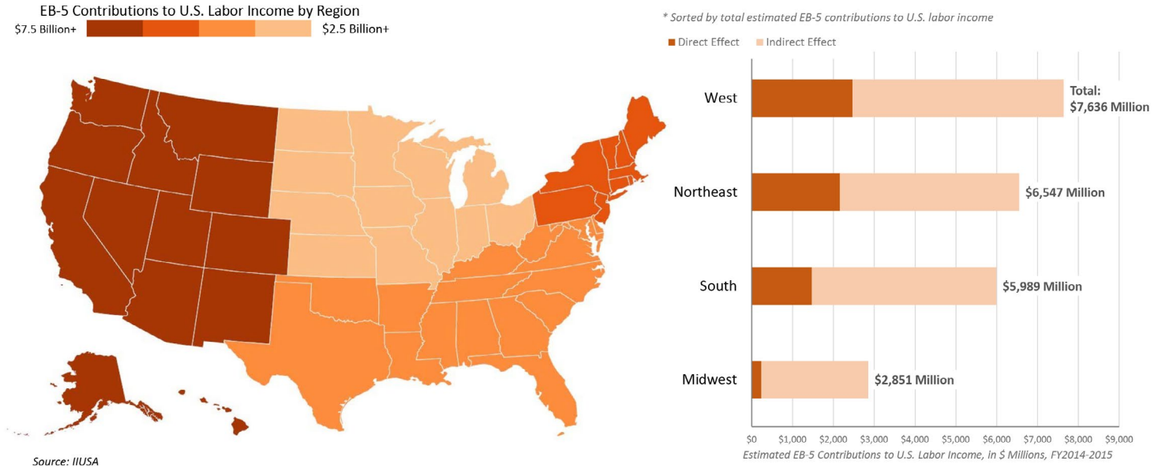
Understanding the Significant and Geographically Diverse Impacts of Capital Investment and Job Creation by EB-5 Projects in Federal Fiscal Years 2014 and 2015

FIGURE 7: Contribution to the U.S. Economic Output by EB-5 Projects Located in the Northeast, Midwest, South, and West Regions, FY2014-FY2015



Source: IIUSA
Prepared by: EPR, IIUSA

FIGURE 8: Contribution to the U.S. Labor Income by EB-5 Projects Located in the Northeast, Midwest, South, and West Regions, FY2014-FY2015



Source: IIUSA
Prepared by: EPR, IIUSA

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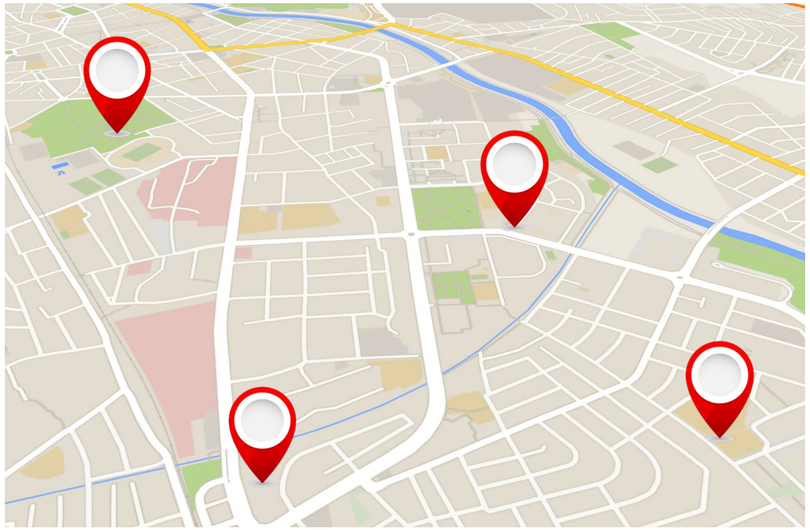
under the program corresponding to project capital investment activities. As a result, these effects represent a conservative estimate of the Regional Center program's economic benefits and job creation contribution to the U.S. economy overall. The two excluded areas—the effects of projects' operations and the economic activities of EB-5 investor households who establish residency in the U.S.—remain a work-in-progress as we undertake to develop more reliable data for impact estimating purposes. Just because the economic contributions of these two program activity areas are hard to quantify does not mean the associated economic benefits and job creation effects are not significant. **As such, the estimates of the economic benefits and job creation effects presented in this study are significantly under-stated in comparison to the actual economic benefits and job creation contributions of all three economic activity areas associated with the Regional Center program if they were to be included.**

Economic contributions and job creation effects of this scale represent a call to the EB-5 industry and legislative policymakers to action—to make the compromises necessary to reach consensus on the type of credible and workable EB-5 reforms that would be an important first step to solving the program's visa numbers shortage that is currently limiting program activity. Without action to unleash an unconstrained EB-5 program's impacts on U.S. job creation and U.S. capital investment, the economic contributions quantified in this study will merely represent "lost opportunities" for the U.S. economy—with literally, tens of billions of future foreign investment dollars and hundreds of thousands of new U.S. job opportunities over the coming years hanging in the balance.



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Opportunity Zones – Pending IRS Regulations Poised to Facilitate Investments

Introduction: The Tax Cuts and Jobs Act signed into law on December 22, 2017 created a new capital gains deferral and exemption for taxpayers who make long-term investments in low-income rural and urban communities that have been designated by the Treasury Department as "opportunity zones."

In the fall of 2018, this magazine reported on the decline in the amounts of EB-5 capital raised due to visa backlogs and noted how opportunity zones may provide a new source of capital for new and existing EB-5 projects. *October 2018 RCBJ, Vol. 6, Issue #2*. In the meantime, on October 19, 2018, the Internal Revenue Service (IRS) released proposed regulations (Proposed Regulations) concerning the qualified opportunity zone program (QOZ Program). Contemporaneously with the issuance of the Proposed Regulations, the IRS released a Revenue Ruling (Revenue Ruling 2018-29) addressing the application of the "original use" requirement and the "substantial improvement" requirement – two fundamental tests for real property in the QOZ Program. As discussed below, on February 14, 2019, the IRS held a public hearing on the Proposed Regulations. It is anticipated that additional proposed regulations, as well as final regulations, will be issued in relatively short order.

This article provides an overview of the Proposed Regulations and highlights the impact of certain Proposed Regulations, if adopted in their current proposed form, on opportunity zone fund investments in EB-5 projects.

This article also addresses how investments from qualified opportunity zone funds can be made into new EB-5 projects and how investments from EB-5 new commercial enterprises can be made into qualified opportunity zones provided certain conditions are satisfied. Those conditions include that the qualified opportunity zone fund contributes cash into the newly formed entity such as a limited liability company (LLC) and the LLC qualifies as a qualified opportunity zone business, as discussed below.

The Slowdown of EB-5 Capital Investments

As the chart below reflects, there has been a steady decline in EB-5 capital investments (calculated based on the number of I-526 Petitions filed with USCIS) from its high in 2015, including an estimated 65% year–to–year reduction from $5.5 billion in 2017 to $2.9 billion in 2018.

The Rise of Opportunity Zone Funds

Since the QOZ Program was created on December 22, 2017, a growing number of opportunity zone funds have been created. According to available public reports, including from the Costar Group and the National

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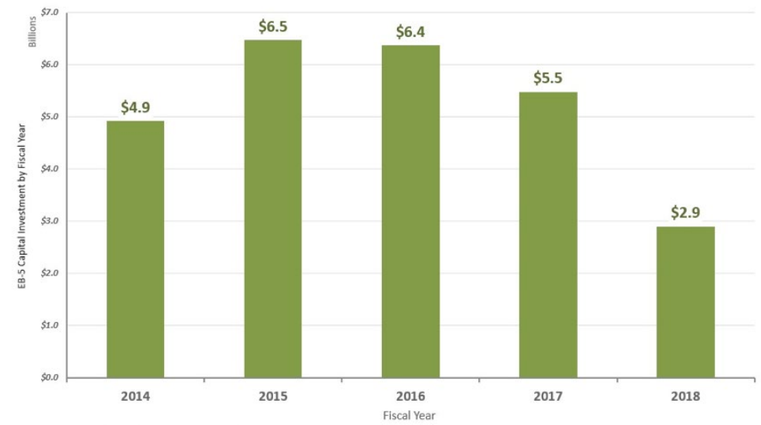
Estimated New EB-5 Capital Investment Inflow by Fiscal Year (in $Billions, FY2014 - FY2018)

Note: EB-5 capital investment inflow is estimated by $500,000 per I-526 petition filed with 90% approval rate.



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

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Council of State Housing Agencies, there are approximately 236 funds established to invest in opportunity zones as of March 8, 2019 that represent roughly $27.1 billion in investment capacity. A public opportunity zone REIT by Belpointe Capital has also been filed with the U.S. Securities and Exchange Commission. These newly raised funds are able to invest in any of the 8,700+ certified opportunity zones, and Yardi Systems reports that the range of commercial real estate investments in the opportunity zones is possibly between $30 -$100 billion. Once the Proposed Regulations are finalized, we anticipate that the existing opportunity zone funds will become more active and additional opportunity zone funds will be created.

The certified opportunity zones are different from the empowerment zones created in 1993. While empowerment zones provide some similar tax exclusions for capital gains, they also provide wage credits for employers, tax deductions for expenses to train employees, tax-exempt bond financing and block grants, among other benefits. The limited number of empowerment zones and related enterprise communities, along with the fairly complex and varied types of benefits, has limited the success of the empowerment zones program.

Proposed Regulations

The Proposed Regulations provided much-needed clarity about how the QOZ Program works. While the regulations are still "proposed", they clarified the following issues (among others):

- **A qualified opportunity fund (QOF)** must be an entity classified as a corporation or partnership for federal tax purposes, and must be organized in one of the 50 states, the District of Columbia, or a U.S. possession. Accordingly, a limited liability company (LLC) classified as a partnership or corporation for federal tax purposes can qualify as a QOF. The treatment of LLCs was an open issue prior to the release of the Proposed Regulations.

- A **QOF self-certifies** as such on IRS Form 8996. This form must be filed annually by the QOF and must include other pertinent information confirming the QOF's status.

- A QOF must invest in projects that satisfy the **"original use" test** (original use of the property in the opportunity zone must commence with the QOF) or the **"substantial improvement" test** (the QOF must invest within 30 months after acquisition an amount more than the QOF's basis in the property on the date of acquisition). Land and preexisting buildings situated thereon (which are located within a qualified opportunity zone) cannot satisfy the "original use" test, but with respect to the "substantial improvement" test, when land and preexisting buildings thereon are purchased together, the QOF is only required to substantially improve the buildings (not the land) in order to meet the requirement of holding "qualified opportunity zone business property." Revenue Ruling 2018-29 also addressed these issues. While these clarifications are useful, unanswered questions still remain, especially concerning the treatment of land.

- The rules about how qualified opportunity zone projects need to be structured were clarified by the Proposed Regulations. There are **two main types of structures that investors can use under the QOZ Program:**

  - The first option is to have a QOF own qualifying property and operate a business directly.

  - The second option is for the QOF to own qualifying property and operate a business indirectly through a subsidiary that is classified as a partnership or corporation. Under this structure, the subsidiary will need to meet the requirements for a "qualified opportunity zone business" (QOZB).

The Proposed Regulations outlined the requirements that apply under each structure. Notably, very different rules apply to each structure, and due to the flexibility granted to the QOZB structures, it is anticipated that **most structures will be created as QOZB structures.**

- For example, the Proposed Regulations provide that one of the main benefits to a QOZB structure is that a QOZB is permitted to hold a reasonable amount of working capital (such as cash and cash equivalents). A safe harbor provides that amounts shall be considered reasonable if the amounts are designated in writing for use in the acquisition, construction or improvement of tangible property, a written schedule provides for the

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deployment of such working capital under which the working capital must be spent within 31 months, and the working capital is actually used consistently with the foregoing. This safe harbor will enable QOZBs to better manage their cash. By contrast, a direct QOF structure currently cannot benefit from these rules.

- In addition, the Proposed Regulations provide that at least 70% of the tangible property (owned or leased) of a QOZB must be qualified opportunity zone business property. By contrast, under the direct QOF structure, the threshold is generally 90%.

The February 14, 2019, public hearing on the Proposed Regulations was held at the IRS in Washington, D.C. The IRS actually originally scheduled the hearing for January 10, 2019, but due to the partial federal government shutdown, the hearing was postponed by more than a month. Scores of comment letters were sent to the IRS in advance of the hearing. By all accounts, the hearing was well attended by industry and tax professionals and other stakeholders, and overall the IRS seemed receptive to the concerns raised in the comment letters and at the hearing.

Some of the salient open questions to which stakeholders are eagerly awaiting answers include the following:

- What is the **definition of an "active trade or business?"** One of the requirements applicable to a QOZB is that there must be an active trade or business. The Proposed Regulations did not provide a definition of this term, but "reserved" on the issue, so the IRS will be providing a definition soon. This forthcoming definition is important because it will dictate what types of projects can qualify as a QOZB.

- How will the **50 percent gross income requirement** be interpreted? Another requirement for a QOZB is that at least 50% of the total gross income of a QOZB be derived from the active conduct of a trade or business. The Proposed Regulations added to this requirement the words "in the qualified opportunity zone." In this respect, a bipartisan group of House and Senate legislators wrote a letter to the Treasury Department in late January requesting that the rule simply require that 50% or more of the gross income of a qualifying business come from the active conduct of a trade or business, without reference to a source within a qualified opportunity zone.

- Will a QOF be able to s**ell underlying property on a tax-free or tax-deferred basis?** This is one of the most pressing questions. The prevailing interpretation under the QOZ Program is that in order for an investor to benefit from the 10-year basis step-up provision (which may result in the elimination of most, if not all, gain), the QOF equity must be sold, as opposed to the underlying property or business. The IRS and Treasury Department should be providing guidance about what happens when a QOF sells underlying property and how that impacts the QOF itself as well as the QOF investors.

- Can a QOF r**efinance its property and distribute the proceeds to its partners on a tax-free basis?** Refinancing has been a routine way for investors to monetize investments in funds for quite some time. Typically, in a fund treated as a partnership for tax purposes, partners are able to receive cash proceeds of a refinancing without incurring income tax. Unfortunately, based on the nature of the rules under the QOZ Program, there is some uncertainty about whether this same rule applies in the case of a QOF.

- Will **"carried interests" be able to qualify for any tax benefits?** There is no explicit guidance on whether a carried interest (sometimes technically referred to as a profits interest) entitles the holder to any benefits under the QOZ Program. In this respect, the Proposed Regulations merely state that a qualifying QOF interest may include a "partnership interest with special allocations." While we await further guidance on this issue, the prevailing thought process is to ensure that the holder of such a partnership interest with special allocations has invested capital gain within the appropriate 180-day window.

The Interplay of Opportunity Zones and EB-5 Projects

General QOF Investment Requirements

Suppose a new project entity, such as an entity that would borrow funds from an EB-5 new commercial enterprise (NCE), was established in 2018 or later as an LLC using the QOZB structure (summarized above). The LLC can receive capital from both the NCE and from QOFs. This structure should enable the investors in the QOFs to obtain the opportunity zone tax benefits provided the following requirements are met:

A. The QOF contributes cash into the LLC in exchange for its equity interest.

B. The LLC qualifies as a QOZB. A QOZB is defined as a trade or business:

(a) in which substantially all (defined as at least 70%) of the tangible property owned or leased by the QOZB is qualified opportunity zone business property (defined below);

(b) in which at least 50 percent of the total gross income is derived from, and a substantial portion of the intangible property is used in, the active conduct of the business, and less than 5 percent of the average

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Opportunity Zones – Pending IRS Regulations Poised to Facilitate Investments

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of the aggregate unadjusted bases of the property is attributable to nonqualified financial property (generally meaning debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property, but excluding reasonable working capital); and

(c) that is not a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

Assuming these QOZ Program requirements can be satisfied, the many similarities between the QOZ Program and the EB-5 program should enable investments between the programs. Some of the program similarities include that (1) there is there is no limitation on the amount than can be invested into an opportunity zone project, (2) investments in opportunity zones are long-term with tax benefits at 5, 7 and 10 years (which would help job creation for EB-5) and (3) like the EB-5 program, the QOZ Program applies to both investments in real estate and operating businesses.

QOF Investments > EB-5 Projects - Given the number of tests that must be satisfied for QOF investments, new EB-5 projects, rather than older EB-5 projects, will be more attractive to QOF investments.

QOF investments must be made in property acquired by purchase from an unrelated party in 2018 or later and must meet either the "original use" requirement or the "substantial improvement" requirement, among other requirements. Thus, pre-2018 projects may not be able to meet the applicable opportunity zone tests, at least not without significant restructuring. On the other hand, new projects started in 2018 or later which allow QOF investments and EB-5 capital to be invested simultaneously in a project will likely involve the purchase of property in 2018 or later and can more easily satisfy the QOF investment requirements.

EB-5 Capital > QOF Investments – Invested as either new EB-5 capital or redeployed capital.

Assuming the QOF investment satisfies the requirements listed above, newly raised EB-5 capital can be invested along side the QOF investment (understanding that the QOF investment must be in the form of equity).

To the extent that existing EB-5 projects are permitted by law and their governing documents to redeploy their EB-5 capital pending resolution of the at-risk period, then the rise of projects in opportunity zones will create new options for such redeployed funds to be invested in.

Conclusion

Once the Proposed Regulations are finalized and the anticipated additional proposed regulations are published, EB-5 capital and QOF investments will be further integrated as part of capital financing for new projects.

A Broker-Dealer Perspective On How EB-5 Issuers Can Safely And Effectively Work With Sales Intermediaries

KURT REUSS
CEO, EB5 DEALS

There are hundreds of active EB-5 offerings in the market today and nearly all of them are working or planning to work directly with sales intermediaries — both foreign and domestic — to help sell their offerings.

As someone who is associated with one of just a few registered U.S. broker-dealers who specialize in the sale of EB-5 investments, I take particular care in working with foreign migration agents.

Working in a firm and selling securities under broker-dealer supervision, I am held to an exacting standard of compliance with U.S. securities laws and regulations, as well as the regulations of the Financial Industry Regulatory Authority ("FINRA"), the self-regulatory organization of registered U.S. securities broker-dealers, and by state securities regulators.

Because of periodic audits by both the SEC and FINRA, U.S. registered broker-dealers must carefully manage the offerings they sell, their solicitation practices, and their relationships with all intermediaries.

In working with foreign migration agents (intermediaries), a U.S. registered broker-dealer is required to engage in one of two categories of relationships: working with a Foreign Associate or working with a Foreign Finder.

Foreign Associates

A Foreign Associate must not be a US person and is required to be registered as an associated person with a U.S. registered broker-dealer; however, a Foreign Associate is exempt from the FINRA requirement to pass qualification exams. All the securities activities conducted by a Foreign Associate must be conducted outside the U.S. and may not engage any US person as a customer.

A Foreign Associate can solicit an investor and make representations about an investment (as opposed to a Foreign Finder, who can do neither.) A Foreign Associate is required to be supervised by the U.S. broker-dealer with whom he or she is associated.

Bill Davis, principal of the broker-dealer Pinnacle Equity Group, says this about Foreign Associates:

"Supervision is key in sales practices. A Foreign Associate just can't be properly supervised unless you have an office overseas with a supervisory principal in that jurisdiction. This level of supervision of Foreign Associates has such difficult requirements and standards that our broker-dealer simply does not engage in working with this type of foreign migration agent and in our opinion could only be satisfied by one of the large broker dealer firms."

Foreign Finders

In my firm, our broker-dealer will only work with foreign migration agents in the role of Foreign Finders, who function simply to introduce potential EB-5 investor clients to our firm.

A Foreign Finder is restricted from making any representations or solicitations of an investment — which significantly curtails their ability to make any untrue statements about a project, or omit material facts and disclosures. A Foreign Finder is therefore a more limited relationship, while still enabling the foreign person or entity to receive transaction-based compensation for any resulting sale of the security.

Why Work with U.S. Broker-Dealers

When an issuer works with a U.S. broker-dealer, the issuer has a licensed and experienced partner in selling securities, who is independently required to comply with the regulations enforced by the SEC, FINRA, state securities regulators, and the securities laws of the country where the sale is being conducted. Truth and transparency are core mandates of a broker-dealer and are at the forefront of the firm's deliverables.

Additionally, issuers and their securities counsel benefit from securities-specific expertise. The broker-dealer should be advising on an offering's marketability,

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and may offer independent advice on disclosures — whether any are lacking or if any need to be more prominent.

By including the supervision of a broker-dealer, mistakes are less likely to happen.

A single investor complaint can cause reputational damage, SEC enforcement action, or a class action complaint — any one of which can potentially ruin the issuer and its principals and put them out of business.

General Guidelines

When issuers are selecting sales intermediaries for their EB-5 offerings, whether those intermediaries are U.S. registered broker-dealers or foreign agents, issuers should follow the IIUSA Best Practices for Sales Intermediaries, which include the following:

When selecting sales agents, conduct proper diligence on key principals (including third-party verification of competence and integrity); meet them in person where possible, and tour their office. Seek proof of qualifications and required licenses. Be sure to document all such investigations and retain records, and reduce all agreements to writing. When English is not an intermediary's primary language, use a qualified interpreter.

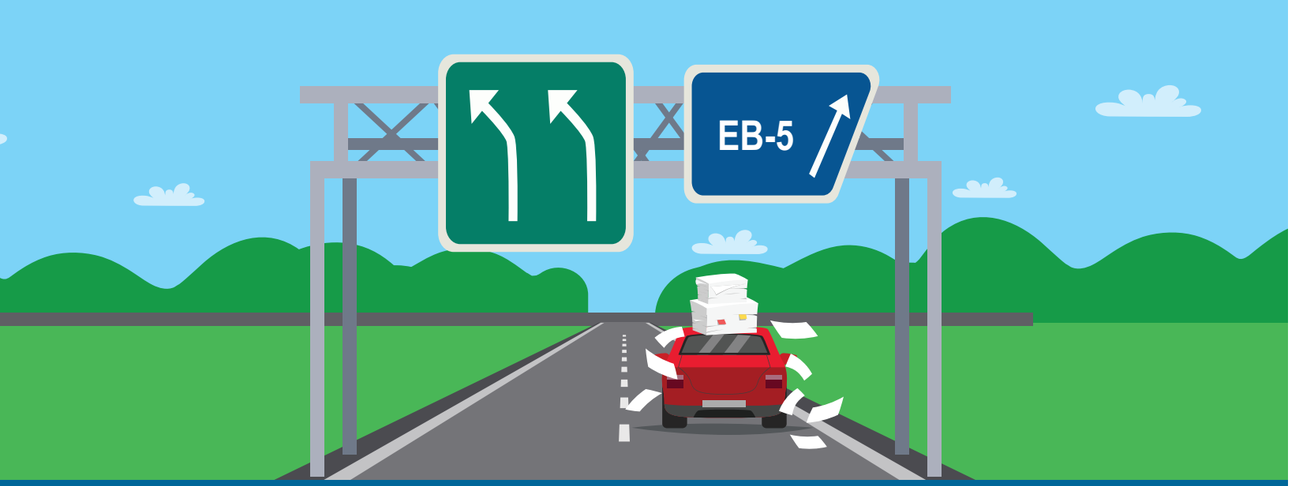
Always be sure to have independent legal advice to ensure compliance with both the U.S. as well as the country the intermediary is working in. Obtain necessary insurance — and fully understand what that policy covers with respect to the acts and omissions of intermediaries.

Enter into a written agreement with every sales intermediary that includes the following requirements: (i) a strong statement that agents are not authorized to make any claims about the offering that are inconsistent with the written offering materials approved by the issuer; (ii) a requirement that no offering materials be used without prior approval of the issuer; (iii) a requirement that the intermediary retain all required licenses under the jurisdiction in which the intermediary conducts business; (iv) if the intermediary is not a registered U.S. broker-dealer or Foreign Associate or Foreign Finder of a U.S. broker-dealer, a requirement that the intermediary does no business in the U.S., has no U.S. offices, and will not solicit any persons in the U.S.; and (v) a right to terminate the agreement immediately if any of these requirements are violated.

In Conclusion

Selection and supervision of sales intermediaries is one of the most important tasks of any EB-5 offering. I believe that working with a U.S. broker-dealer is one of best means of assuring compliance with U.S. securities broker-dealer laws, because of the additional supervisory requirements imposed on securities broker-dealers. But above all, issuers should observe best practices in selecting and engaging all sales intermediaries for their EB-5 offerings.

Kurt Reuss is a registered representative with Pinnacle Capital Management, LLC, a broker-dealer.



The **REGS** are Coming!
The **REGS** are Coming!

JOSEPH BARNETT
PARTNER, WOLFSDORF ROSENTHAL LLP

But for the shouts of Paul Revere from a galloping horse through the streets of Concord and Lexington, Massachusetts, unsuspecting colonists may never have been warned of the British army's imminent attack in April of 1775, so the story goes. Advance notice allowed the colonial militia to be prepared when the British showed up soon thereafter, with the "shot heard round the world" starting the American Revolution.

Well, just like Paul Revere's famous tale, the EB-5 industry has been given forewarning that the "EB-5 Immigrant Investor Program Modernization" regulation, first proposed in January 2017, has advanced to "pending review" by the Office of Information and Regulatory Affairs ("OIRA") within the Office of Management and Budget ("OMB") on February 22, 2019. This is the final step of the federal rulemaking process to ensure that, to the extent permitted by law, the Executive Branch's policies and priorities are reflected in new regulations and to coordinate with other federal agencies to avoid inconsistent, incompatible, or duplicative policies.

Ever since the June 2018 Senate Judiciary Committee hearing, during which Senator Grassley urged the U.S. Department of Homeland Security ("DHS") and U.S. Citizenship and Immigration Services ("USCIS") to finalize the rules, the EB-5 industry has questioned the status and impact of the "EB-5 Immigrant Investor Program Modernization" regulation, which would significantly increase the minimum EB-5 investment amount and restrict eligibility criteria for "Targeted Employment Area" designations. The recent update on February 22, 2019 provides the EB-5 industry another opportunity to lobby with government officials – either for or against the proposed regulation – prior to its finalization and implementation. From a practical point of view, this notice is critical news to potential, but reluctant, immigrant investors who would otherwise be "priced out" of eligibility based on the proposed higher investment threshold.

Pursuant to Executive Order 12866, the OIRA review is limited to 90 days, though the OMB Director may extend the review period on a one-time basis for no more than 30 days at the request of the rulemaking agency. During the course of this review, the OMB may decide to send a letter to DHS that returns the rule for reconsideration, in the event the rule is not compatible with the law, if the quality of the agency's analysis is inadequate, if the rule is not justified by the analysis, if the rule is not consistent with the regulatory principles or with the President's policies and priorities, or if the rule unnecessarily conflicts with other Executive Branch agency rules or efforts.

Such a return does not necessarily imply that either OIRA or OMB is opposed to the draft rule. The return letter merely explains why OIRA believes that the rule would benefit from further consideration and review by the agency. On the other hand, if OMB review is completed and the rulemaking has been approved, it will be sent to the Office of the Federal Register for publication. In reality, though, it appears that regulations can remain at OMB for a longer period of time based on goals and principals of those in charge of the Executive Branch. In general, a final rule can only become effective no less than 30 days after the date of its publication in the Federal Register. If DHS wants to make the regulation's effective date sooner, it must cite "good cause" as to why the earlier effective date is in the public interest.

According to OIRA's website, a regulatory action is determined to be "economically significant" if it is likely to have an annual effect on the economy of $100 million or

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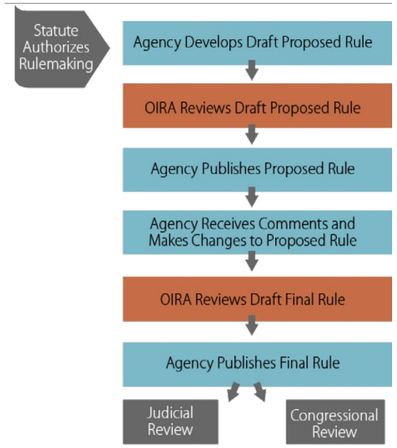
more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Strangely, despite its impact on foreign direct investment and the create of jobs for U.S. workers, the "EB-5 Immigrant Investor Program Modernization" regulation is not considered an "economically significant" rule that would require OIRA to more provide a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of potentially effective and reasonably feasible alternatives.

It is also unclear whether OMB's review will include reference to President Trump's "Buy American and Hire American" executive order ("BAHA"), which mandates that laws are written and administered to create higher wages and employment rates for U.S. workers, but it is difficult to see how reducing the amount of low-cost capital to create jobs for qualifying U.S. workers at no expense to U.S. taxpayers aligns with BAHA's objectives.

As of March 12, 2019, there are seven regulatory actions currently under "pending review" by OMB. Four of these seven remain pending beyond 90 days, with three beginning review in the summer of 2018. Since the beginning of President Trump's presidency, the OMB has concluded fifteen rules of DHS, most of which related to the termination or extension of "Temporary Protected Status" designations or the H-1B and H-2B visa programs. DHS is the second highest federal agency with published rules, trailing only the U.S. Department of Health and Human Services ("HHS"). Additionally, based on this author's review of the OMB's online dashboard statistics, the average review time for OMB on proposed rules from DHS since his presidency began is only 41 days. This is not to say that the "EB-5 Immigrant Investor Program Modernization" regulation will be finalized by April 2019, but, it certainly adds fuel to the fire for potential immigrant investors to file Form I-526s before any price increase kicks in.

If interested in requesting a meeting with OIRA about the "EB-5 Immigrant Investor Program Modernization" regulation, stakeholders may email Lisa_M._Jones@omb.eop.gov or call 202-395-5897.



Zhang v. USCIS: What It Is and What It Means for EB-5 Petitioners

RANA JAZAYERLI
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On November 30, 2018, the U.S. District Court for the District of Columbia issued a decision in *Zhang, et al. v. United States Citizenship and Immigration Services, et al.*, No. 15-cv-995 (D.C. Nov. 30, 2018) (hereinafter "*Zhang*") finding that the U.S. Citizenship & Immigration Services' (USCIS) policy of treating loan proceeds invested in an EB-5 qualifying entity as "indebtedness" that must be secured with an investor's personally-owned capital was arbitrary and capricious, and further, constituted unlawful rulemaking by USCIS without notice and comment, in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706, and the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(b)(5). The Court granted class certification to all investors who had received a denial of their I-526 petition based on USCIS' application of this policy and remanded all such I-526 petitions denied on that basis for re-adjudication.

Zhang involved a case brought by two EB-5 investors whose I-526 petitions were denied because their EB-5 investment funds were sourced from uncollateralized loans. The *Zhang* Plaintiffs challenged USCIS' denial of their I-526 petitions based on a policy first introduced and articulated by USCIS' Immigrant Program Office in remarks released in April 22, 2015 requiring that if EB-5 investors use third-party loan proceeds as EB-5 capital, then such EB-5 investors must demonstrate that they are personally and primarily liable for the indebtedness and that the indebtedness is secured by assets petitioners own sufficient to secure the amount of the debt. USCIS' policy relied on its interpretation of the EB-5 regulation's definition of "capital" as set forth in 8 C.F.R. section 204.6(f), whereby it concluded that investment of funds obtained from a third-party loan constituted investment of "indebtedness" and not "cash" into an EB-5 enterprise.[1]

The Court in *Zhang*, however, concluded that USCIS' interpretation of loan proceeds invested as cash constitute indebtedness to be (1) erroneous because it was not consistent with the "ordinary and natural meaning" of "cash" and (2) "capricious and arbitrary" as it was at odds with the congressional intent behind EB-5. In so finding, the Court distinguished USCIS' interpretation that cash obtained from a third-party loan and then invested into an EB-5 enterprise constituted "indebtedness," from a situation where the where the alien "investor's 'state of being indebted' is to the enterprise itself." i.e. the definition of "capital" in the EB-5 regulations defined the asset actually being contributed to an EB-5 enterprise, and not the means in which that asset was obtained.

The Court further found that USCIS engaged in improper rulemaking in violation of the Administrative Procedures Act (APA) when USCIS interpreted the plaintiffs' investments from loan proceeds as "indebtedness," because in so doing, USCIS impermissibly added another requirement (that investors personally collateralize loan proceeds invested as cash) to the regulatory definition of "capital" not found within the original regulation. Such additional requirement to a regulation can only be implemented following proper notice and comment procedure. Therefore, the court in Zhang concluded that USCIS violated APA's notice and comments requirement, as it created an additional requirement to the regulation that was legislative.

Conclusion

The D.C. District Court's decision in *Zhang* represents a clear victory not only for the two named plaintiffs in the case, but also to all EB-5 investor's whose I-526 petitions were denied solely because the capital they invested into the EB-5 new commercial enterprise was obtained from an unsecured third-party loan - a policy that USCIS only began implementing in 2015. Such a sudden change in policy or interpretation of regulatory requirements by USCIS in the EB-5 context has not been unique to this single issue. Thus, the *Zhang* decision also serves as a clear reminder that the federal courts can and will serve as a check on USCIS when the agency goes beyond the plain language of the EB-5 regulations and attempts to impose requirements not stated in the regulations.

1 See USCIS, Immigrant Investor Program Office, EB-5 Telephonic Stakeholder Engagement: IPO Deputy Chief's Remarks (April 22, 2015), available at https://www.uscis.gov/sites/default/files/USCIS/Outreach?PED_IPO_Deputy_Chief_Julia_Harrisons_Remarks.pdf).

Business Development, Education and Membership Growth:

What IIUSA is Doing Overseas for Its Members

MCKENZIE PENTON
IIUSA DIRECTOR OF EVENTS AND BUSINESS DEVELOPMENT

IIUSA's core focus is to be a champion for the EB-5 industry. We accomplish that through our tireless work on Capitol Hill and regular communications to all relevant entities both inside and outside of the government. However, we are much more than an advocacy organization. Over the past several years, we have worked collaboratively with our members to ensure that they also receive world-class educational, business development and networking opportunities. Just in the past year, the association launched an EB-5 education module, published multiple editions of its Regional Center Business Journal, rolled out a new Allied Partnership for economic development organizations, published an economic impact study and countless EB-5 data reports. We also convened industry stakeholders at the first-of-its-kind industry achievement banquet and held two top-notch conferences in Washington, DC and Chicago.

However, perhaps nowhere else has the association's commitment to education, business development and networking been more apparent than in its Global Banquet Series. Launched in 2017, the series has traveled the globe connecting our members to the markets and international stakeholders that matter most. To date, the events have reached audiences in India, Vietnam, China, South Korea and the UAE. In the near future, we will also add Turkey and Taiwan to this growing list of destinations. The Global Banquet Series is just a small fraction of what the association is doing each and every day on the industry's behalf, but it is of critical importance as we look to grow our membership base, diversify marketing and business development opportunities and provide education to the industry stakeholders around the world.

The events have been a testament to IIUSA's data quality and convening power as the only international, non-profit EB-5 industry membership association and a testament to the dedication and commitment of the association's members and partners. Perhaps more importantly, the events are positive reflections of the incredible potential for economic development and job creation that the EB-5 Program represents – it has become increasingly clear that the strength of international investor markets around the globe and the dedication of our members has only just begun to show the true potential for the industry.

As the only non-for-profit trade association for regional center professionals, it is IIUSA's responsibility to provide our members and the industry as a whole the critical program updates and market intelligence they need to succeed. To that end, we are honored to provide our banquet attendees with in-depth investor market data presentations as well as industry-leading panels. Since 2017, our international events have provided well over 600 industry stakeholders with expert analysis on some of the industry's hottest

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topics, including legislation, Program reform, retrogression, source of funds and more.

As we look to grow our presence internationally, the association has formed partnerships with some of the leading investment immigration organizations both to enhance the quality of our events, but also to provide meaningful connections to international stakeholders for our members.

These organizations include the Korean Emigration Association, the Investment Migration Council and most recently the Taiwan Immigration Consultants Association (TICA).

On the membership front, we have been honored to welcome new members to the association in each and every international market to which the banquet series has traveled. Not only is international membership growth a critical component of the association's overall health, but more importantly it is a reflection on the truly global nature of the EB-5 program.

Check out some of the highlights from out two most recent events!

Key Highlights of Our Most Recent Events in Mumbai and Dubai

Earlier this year, we were excited to kick off the banquet series with two great events in Mumbai, India and Dubai, UAE. Both events attracted many of the leading immigration professionals from throughout India and the UAE (as well as attendees from some of the regions' other large EB-5 investors markets including Iran, Egypt, Turkey, Pakistan and Bangladesh to name a few).

The Mumbai banquet marked the association's third event in India since 2017 and we were pleased to see many returning guests as well as new faces. The India market is increasingly important for industry stakeholders and IIUSA was honored to connect our members with stakeholders from throughout India once again.

The Dubai event was the associations first-ever banquet in the Middle East and we were pleased to host our members in the dynamic investment capital of the region. While the UAE remains a relatively small investor market by comparison to others, it is also home to expatriots from around the world who are looking at EB-5 as a viable investment and immigration option. In fact, according to a recent United Nations report, 88% of the UAE population was comprised of international migrants in 2017, allowing IIUSA to connect our members with investment immigration professionals not only from the UAE, but also from markets throughout the region, most notably India, Egypt and Bangladesh.

As always, we were honored to recognize the support of our international members during the events including FRR Shares and Shanghai Can-Achieve Exit-Entry Services. The support of our international membership is critical to the association's success and we were pleased to present both of these organizations with their 2019 Membership Certificates. We look forward to welcoming more members to our growing network of international organizations as it is through these organizations' support that IIUSA is able to have a strong on-the-ground presence in the largest EB-5 investor markets around the world.

Of course no IIUSA event is possible without the generous support of our sponsors. Their financial support and empirical expertise ensures the association is able to host these important events each year. To that end, we would like to extend a special thank you to the sponsors of the banquets without whom such successful events would not have been possible. Our sponsors included: American Regional Center Group, AscendAmerica, Atlantic American Partners, Cleveland International Fund, FirstPathway Partners, Global Capital Market Advisors, NRIA EB-5 and Orbit Law.

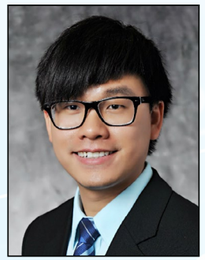
As we look ahead to the remainder of 2019 and beyond, the future is certainly bright for the association and its members. We look forward to continuing to be your advocate in Washington, DC but also to working with you to ensure your business is well equipped to succeed in an ever-changing marketplace. The IIUSA Global Banquet Series will continue to play a leading role in this regard and we hope you will be able to join us at the next Global Banquet Series event.

See You at the Next IIUSA Global Banquet:

- Ho Chi Minh City| Vietnam (Fall 2019)
- Seoul | South Korea (Fall 2019)
- Taipei | Taiwan (Fall 2019)
- Istanbul | Turkey (TBD)

What the FY2018 I-526 & I-829 Processing Data is Showing Us:

8 Trends in the EB-5 Industry You Should Know



LEE LI
IIUSA POLICY ANALYST

Fiscal year (FY) 2018 presented both opportunities and challenges to all stakeholders in the EB-5 industry. While historically high numbers of qualified EB-5 investors received their I-526 or I-829 approvals thanks to the enhanced productivity at U.S. Citizenship and Immigration Services (USCIS), the estimated new EB-5 investments made in FY2018 fell more than 47% year-over-year, hitting its lowest level since FY2014. This was largely due to the uncertainty of the EB-5 Regional Center Program as well as the long wait of EB-5 visa allocation caused by the current visa backlog. In short, there is a lot that the processing data of I-526 and I-829 petitions can tell us about the biggest trends in the EB-5 industry in FY2018. Let's cover it lightning-round style:

Uscis Boosted Its Productivity On Processing I-526 Petitions By 20% Year-Over-Year

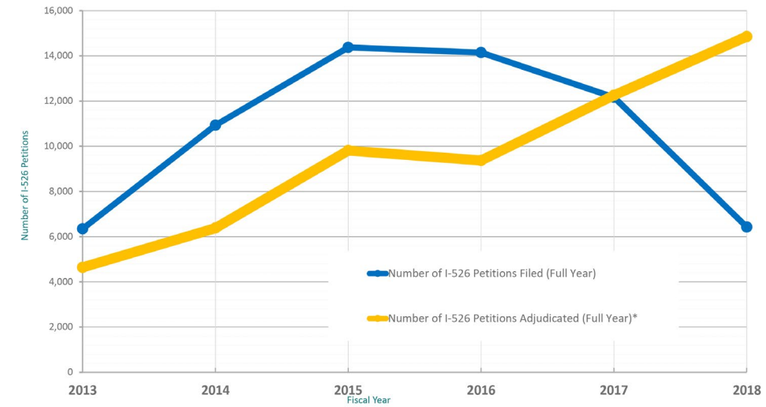
In FY2018, USCIS adjudicated approximately 14,852 I-526 petitions, up from 12,234 cases one year ago, representing an improvement of its productivity by more than 20% year-over-year. According to Ms. Sarah M. Kendall, Chief of the Immigrant Investor Program Office (IPO) at USCIS, the I-526 adjudication team was "fully staffed" in 2018, and IPO anticipates continuing to be "as productive and (is) aiming to be more productive" in processing I-526 cases moving forward.[1]

In fact, the data on I-526 adjudications year-over-year illustrates the continued growth of IPO's productivity on processing I-526 petitions. As Figure 1 shows, the number of annual I-526 adjudications is up from 4,642 in FY2013 to 14,852 in FY2018, a growth of 220% over the last six fiscal years. Given the decline of I-526 filings in FY2018, IPO processed nearly 8,430 more I-526 cases than it received in FY2018, the biggest gap between I-526 filings and I-526

Continued On Page 52

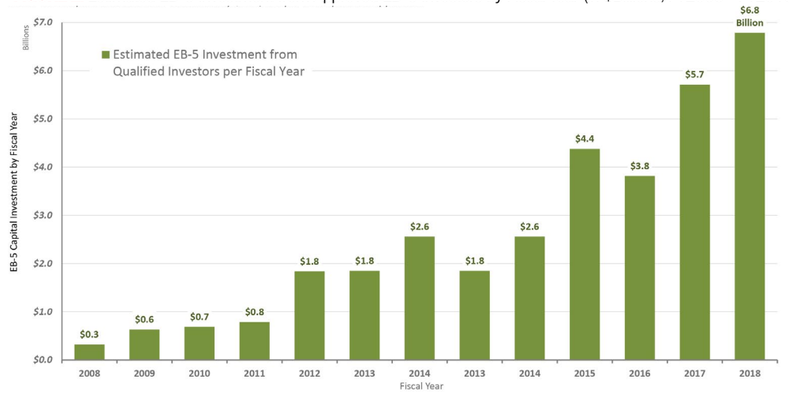
1 Script of USCIS Meeting with IIUSA, October 5, 2018, 19pp, See: https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Cissna_IIUSA_Meeting_and_Statistical_Analysis_Charts.pdf

FIGURE 1: Number of I-526 Petitions Filed Versus Adjudicated by Fiscal Year (FY2013 - FY2018)



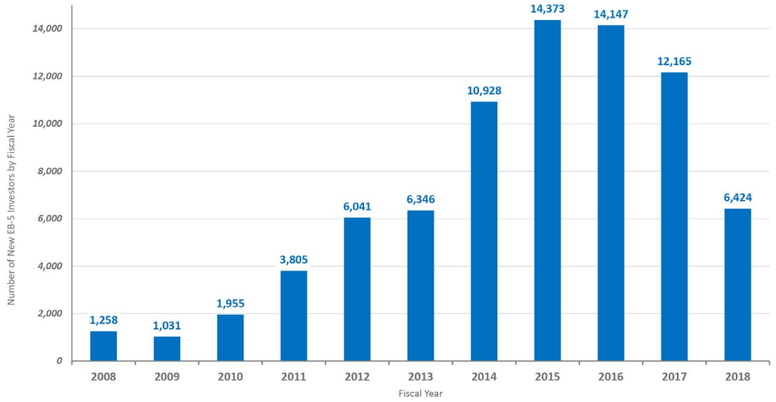
** The number of I-526 petitions adjudicated refers to the total amount of I-526 petition either approved or denied by USCIS in that quarter.*
Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

FIGURE 2: Estimated EB-5 Investment from Approved EB-5 Investors by Fiscal Year (in $Billions, FY2008 - FY2018)



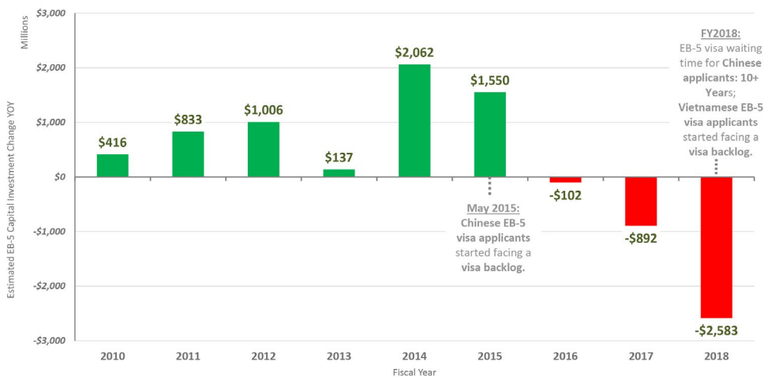
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

FIGURE 3: Annual Filings of New EB-5 Investors in I-526 Petitions by Fiscal Year (FY2008 - FY2018)



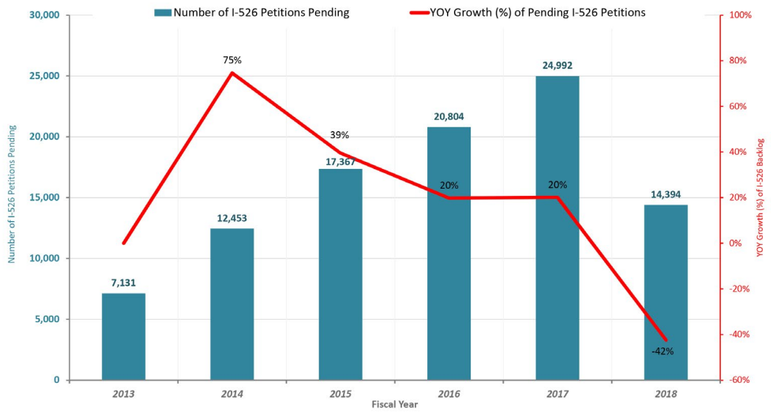
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

FIGURE 4: Year-Over-Year Growth/Decline in Estimated New EB-5 Investment Inflows by Fiscal Year (in $Millions, FY2014 - FY2018)



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

FIGURE 5: Number of I-526 Petitions Pending at USCIS and Year-Over-Year Growth of I-526 Backlog by Fiscal Year (FY2013 - FY2018)



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

Continued From Page 51

completions in the EB-5 history.

13,570 Qualified EB-5 Investors Received Their I-526 Approval In FY2018, Accounting For Over $6.8 Billion In Capital Investment

Thanks to IPO's improved productivity in processing I-526 petitions, more than 13,570 EB-5 investors received their I-526 approval in FY2018, a growth of 19% from FY2017 (See Figure 2). These qualified investors accounted for over $6.78 billion in capital investment to promote economic growth in the U.S.

In addition, according to the U.S. Economic Development Administration (EDA), approximately $290 million in federal funding was distributed to "locally-driven economic development projects nationwide" by the EDA in FY2017.[2] The amount of qualified EB-5 investment in FY2018 is equivalent to over 23 times the federal appropriations in FY2017 that served the same purpose - promoting regional economic development across the country - but all with zero cost to U.S. tax payers.

Moreover, since FY2008, qualified EB-5 investors who received their I-526 approvals contributed a total of $29.3 billion in capital investment to stimulate the U.S. economic growth and support job creations in the past decade.

New I-526 Filings In FY2018 Dropped To Its Lowest Level Since FY2013

Only 6,424 EB-5 investors filed I-526 petitions in FY2018, down from 12,165 in FY2017, a drop of 47% year-over-year. Moreover, as Figure 3 illustrates, the number of annual I-526 filings declined for three consecutive years, down by more than 55% from its peak in FY2015 when the EB-5 Regional Center Program was still within its then 3-year authorization from 2012 and EB-5 visa retrogression just started affecting investors from China and the estimated wait time for EB-5 visa allocation was still less than 5 years.

New EB-5 Investment Contracted $2.58 Billion In Fy2018 Largely Due To The

2 EDA FY2017 Annual Report; June 27, 2018; U.S. Department of Commerce: https://www.eda.gov/files/annual-reports/fy2017/EDA-FY2017-Annual-Report-full.pdf

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What the FY2018 I-526 & I-829 Processing Data is Showing Us:
8 Trends in the EB-5 Industry You Should Know

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Uncertainty Of The Eb-5 Program And The Visa Backlog Issue

Based on the number of I-526 petitions filed in FY2018 and the average approval rates of I-526 petitions, we estimate that new EB-5 investments made in FY2018 declined by $2.58 billion from the previous fiscal year, down from $5.62 billion in FY2017 to $2.93 billion in FY2018. Figure 4 illustrates the changes of new EB-5 investments year-over-year between FY2010 and FY2018. We suspect the growth and decline in new EB-5 investment are correlated with the long-term uncertainty of the EB-5 Regional Center Program as well as the EB-5 visa capacity issue.

Specifically, Figure 4 shows that the growth of new EB-5 capital investment per year between FY2010 and FY2015 when the EB-5 Regional Center Program still enjoyed a relatively long-term reauthorization and there was no visa backlog for Chinese applicants (before FY2015). In FY2015, the estimated waiting time of an EB-5 visa for Chinese investors was less than five (5) years.

However, the growth of new EB-5 investment year-over-year became negative starting in FY2016 when the EB-5 Regional Center Program constantly faced short-term reauthorizations and the visa backlog issue became increasingly severe. In particular, in FY2018, when EB-5 investors from China were expected to wait 15 years or longer for their visa allocation and investors from Vietnam started facing a visa backlog issue and the EB-5 Regional Center Program still faced a "sunset date" by the end of FY2018, there was a significant decline of $2.58 billion in new EB-5 investment in the last fiscal year. According to the U.S. Department of Commerce, the reduction of $2.58 billion in new EB-5 investment (or the drop of 5,741 new EB-5 investors) between FY2017 and FY2018 could cause 82,560 less job opportunities for U.S. workers.[3]

The Backlog Of I-526 Petitions Shrank By

3 The U.S. Department of Commerce concluded each EB-5 investor is expected to create 16 U.S. jobs at its study. See: Estimating the Investment and Job Creation Impact of the EB-5 Program; U.S. Department of Commerce Economics and Statistics Administration-Office of the Chief Economist.; January 2017.

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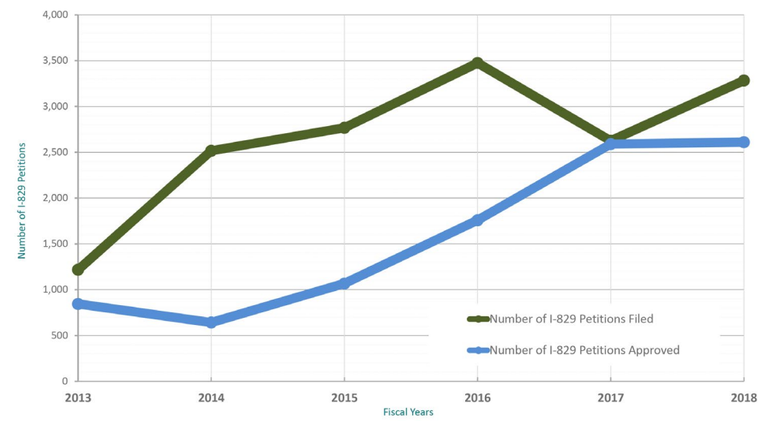
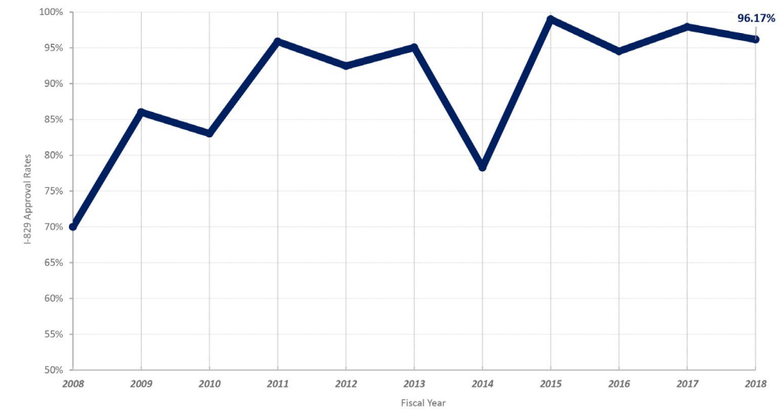
FIGURE 6: Number of I-829 Petitions Filed Versus Approved by Fiscal Year (FY2013 - FY2018)



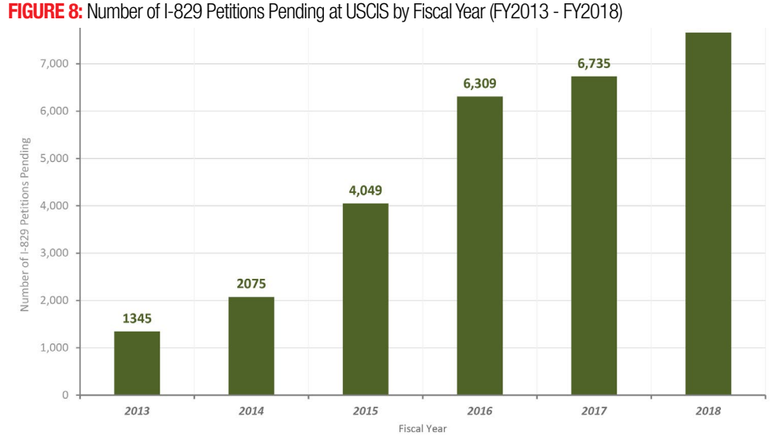
Source: U.S. Citizenship and Immigration Services (USCIS).

FIGURE 7: I-829 Petition Average Approval Rates by Fiscal Year (FY2008 - FY2018)



*** The number of I-829 denial of the 2nd quarter and 4th quarter in FY2013 and the 4th quarter in FY2016 were withhold by USCIS, , citing protection of privacy.*
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

FIGURE 8: Number of I-829 Petitions Pending at USCIS by Fiscal Year (FY2013 - FY2018)



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

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42% In FY2018

With a combination of a 47% decline in I-526 filings and a 20% increase in I-526 adjudications, the number of I-526 petitions pending at USCIS at of the end of FY2018 was 14,394, down from 24,994 a year ago, representing a backlog reduction of 42% in I-526 petitions.

In addition, FY2018 was the first time when USCIS managed to reduce the backlog of I-526 petitions since FY2013. (See Figure 5)

3,283 EB-5 Investors Filed Their I-829 Petitions In FY2018; While 2,610 Investors Received Their I-829 Approvals In FY2018

The number of I-829 petition filings jumped 25% year-over-year to nearly 3,300 in FY2018. In addition, approximately 2,610 EB-5 investors received their I-829 approval in the last fiscal year, the highest level in the EB-5 Program's history (see Figure 6). It represents that over 2,600 investors have met the job creation requirement thanks to their investment through the EB-5 Program and hence were able to receive their permanent residency in the U.S.

The Average Approval Rate Of I-829 Petitions Remained Above 95% In FY2018

With 2,610 I-829 approvals and only 104 I-829 denials, the average approval rate of I-829 petitions in FY2018 was 96.17%. Although it was slightly lower than the average approval rate in FY2017 (97.92%), it still remained above the five-year average (95.06%) since FY2014.

The Backlog Of I-829 Petitions Continued To Grow By 14% Year-Over-Year

Although IPO was able to process more I-829 petitions in FY2018 than in FY2017, the number of pending I-829 petitions in the end of FY2018 still grew by 14% year-over-year to 7,660, as of September 30, 2018, largely due to the increase in the number of I-829 filings. As a result, the average processing time of I-829 petitions remained in the range of 29 months to 37.5 months as of March 2019.[4]

Overall, although the EB-5 processing statistics in FY2018 confirmed the improvements of USCIS's productivity in adjudicating I-526 and I-829 cases, the EB-5 trends in FY2018 also showed a quantitative impact on the decline in new capital investment caused by a combination of the uncertainty of the EB-5 Regional Center Program and the increasing EB-5 visa backlog and capacity problem. While it was encouraging that more and more qualified investors received their approvals from USCIS, our analysis above also presents the urgency in resolving the EB-5 visa capacity issue and the imperative need for a long-term reauthorization of the EB-5 Regional Center Program.

IIUSA members can view the full quarterly data reports and download the statistics for I-526 and I-829 statistics from IIUSA Member Portal: member.iiusa.org.

4 See USCIS website for I-829 case processing times: https://egov.uscis.gov/processing-times/

EB-5 HISTORY

October - December

The feature This Date in EB-5 History serves to highlight EB-5 Program milestones and changes, key pieces of legislation, publishing dates of U.S. Citizenship and Immigration Services (USCIS) memos, IIUSA achievements 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 5, 2005: Invest in the USA (IIUSA) was founded as the industry trade association.

JUNE

- June 1, 2014: Institute for a Competitive Inner City Publishes "Increasing Economic Opportunity in Distressed Urban Communities with EB-5"
- June 10, 2003: Yates Memo on Amendments Affecting Adjudication of Petitions for Alien Entrepreneurs
- June 13, 2013: IIUSA Publishes Recommended Best Practices for EB-5 Regional Centers

JULY

- July 11, 2015: National Association of Counties (NACo) passes permanent resolution in support of the EB-5 Regional Center Program
- July 22, 2009: Senate Judiciary Committee Hearing on EB-5 "Promoting Job Creation and Foreign Investment in the United States: An Assessment of the EB-5 Regional Center Program"

AUGUST

- August 10, 2010: IIUSA Membership Committee formed and tasked with growing the IIUSA membership an enhance membership benefits.

INDUSTRY EVENTS

2019

- **May 5-7:** IIUSA EB-5 Advocacy Conference & Industry Awards Banquet (Washington, DC)
- **May 16-17:** Guangdong Exit & Entry Immigration Association: Global Immigration Summit (Guangzhou, China)
- **June 1:** 2019 EB-5 Expo Mumbai (Mumbai, India)
- **June 3-6:** Investment Migration Forum (Geneva, Switzerland)
- **June 10-12:** 2019 SelectUSA Investment Summit (Washington, DC)
- **June 11-13:** Global Migration & Overseas Wealth Management (Singapore)
- **June 19-22:** American Immigration Lawyers Association Annual Conference on Immigration Law (Orlando, FL)
- **July 12-15:** National Association of Counties (NACo) 84th Annual Conference & Exposition (Las Vegas, NV)
- **Jul 18-19:** 2019 EB-5 Expo Los Angeles (Los Angeles, CA)
- **August 5-9:** National Council of State Legislatures Legislative Summit (Nashville, TN)

EB-5 INDUSTRY BY THE NUMBERS

$6,800,000,000 in EB-5 investment that was contributed by qualified investors who received the approval of their I-526 petition in fiscal year 2018.

355,200 total jobs for U.S. workers were created thanks to EB-5 investments in FY2014 and FY2015, as concluded by the latest economic impact study of the EB-5 Regional Center Program that was jointly published by IIUSA and EB-5 Investment Coalition (EB5IC).

42% reduction in the backlog of I-526 petitions pending at USCIS as of the end of FY2018, due to a combination of the enhanced productivity in I-526 adjudications at USCIS and the decline in filings of new I-526 petitions.

-$2,580,000,000: the year-over-year change in new capital investment made through the EB-5 Program from FY2017 to FY2018. The significant drop in new EB-5 investors in the last fiscal year was likely largely due to the uncertainty of the EB-5 Regional Center Program as well as the visa capacity issue.

2,610 EB-5 investors received approval of their I-829 petitions in FY2018, the highest level in the EB-5 history.

8 EB-5 investor markets will have IIUSA's footprint in 2019, including the destinations of our EB-5 Global Banquet Series (India, the UAE, Turkey, Vietnam, South Korea, Taiwan) and our engagement with partner organizations' events in Switzerland and China.

The **15th** IIUSA Annual Membership Meeting will be held in Washington, DC on May 6, 2019, marking a milestone of IIUSA serving the EB-5 Regional Center industry for 15 years.

SAVE THE DATE

9th Annual IIUSA EB-5 Industry Forum

October 28-29, 2019

Seattle, WA

Embassy Suites Seattle Downtown Pioneer Square

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 more than 300 EB-5 industry stakeholders to forge our future during this pivotal time for the EB-5 industry.

Join us as we share the latest industry insights; provide educational opportunities and resources; and network and conduct business development, including with new Allied Partners and economic development professionals!

IIUSA Invest In the USA

OCTOBER 28-29, 2019 • SEATTLE, WASHINGTON

Early Bird Rate: $850

Sign up before Sept. 15 and receive an additional 10% off!

Visit **iiusa.org/seattle2019** for more info.