INVEST IN THE USA | EB-5 BUILDS AMERICA

OCTOBER 2019

REGIONAL CENTER BUSINESS JOURNAL

E Pluribus Unum

Years of discord and disagreement among EB-5 stakeholders has stifled the ability to achieve real reform and long-term reauthorization of the EB-5 Regional Center... **until now.**

INSIDE THIS ISSUE

IIUSA Invest In the USA

EB-5, CORPORATE & SECURITIES

Torres Law, P.A. is a South Florida law firm that concentrates on complex corporate transactions, securities offerings and mergers and acquisitions, and has been immersed in the EB-5 industry since 2009.

REGIONAL CENTER REPRESENTATION:

- Structuring NCE's
- Structuring RC Affiliations
- Project Compliance and Diligence

EB-5 OFFERINGS:

- Deal Structuring & Term Sheets
- Reg D & Reg S Offering Documents
- Loan Model Documents

INTEGRITY COMPLIANCE:

- Regional Center Certifications
- Regional Center SEC Compliance
- Regional Center Reporting

SEC REGULATORY:

- Fee Structuring
- Finder's Fees
- Broker Dealer Compliance

2018 TOP 15 CORPORATE ATTORNEYS

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TABLEOFCONTENTS

VOLUME 7, ISSUE #2, OCTOBER 2019

INVEST IN THE USA IIUSA EST. 2005

Letter from the Editor

Dear Readers:

With the EB-5 industry anticipating the implementation of new federal regulations in November, this edition of the Regional Center Business Journal is presented at an anxious time. The entire EB-5 industry -- Regional Centers, investment analysts, brokers, attorneys, business plan writers, economists, and others – is preparing for change and the new risks and uncertainties in the EB-5 Program.

This edition of the Journal and the 9 th Annual IIUSA EB-5 Industry Forum strive for deeper understanding of the main areas of EB-5 Program change – concerning targeted employment areas and minimum investment amounts. Both the Journal and the Industry Forum also cover the industry "hot topics" that EB-5 professionals and practitioners are grappling with in practice.

Current challenges present the opportunity for learning and growth. The IIUSA Editorial Committee will continue to curate articles for the Journal and the IIUSA blog, which features timely commentary on topics of interest to the EB-5 industry. So do not hesitate to submit those article ideas for future publications. We hope you enjoy this edition of the Journal and the Industry Forum.

Lincoln Stone
IIUSA Editorial Committee Chair

IIUSA Editorial Committee

LINCOLN STONE
Stone Grzegorek & Gonzalez LLP
(Committee Chair)

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Barnhart Economic Services

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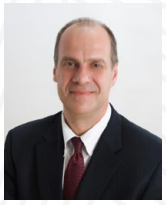

REID THOMAS
NES Financial

MARISA MARCONI
Pinnacle Plan Writing

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EB5DEALS
Empowering Investors

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PENG & WEBER
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SILVER

CMB Regional Centers

eb5 investors Magazine

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Immigration Through Investment

NOTEBOOK

DH DAVID HIRSON & PARTNERS, LLP

axos BANK

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Our Commitment

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CCIM

NGA NATIONAL GOVERNORS ASSOCIATION

cdfa Council of Development Finance Agencies

MEET OUR

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americanlife Real Estate Development

Seattle-based **americanlife** Real Estate Development Company was founded in 1996 by CEO Henry Liebman. Established early as the leader in the EB-5 immigration visa program, it is the longest continuously operating regional center in the United States. Over twenty years later **americanlife** remains the **Most Trusted Name in EB-5**.

americanlife strategically acquires, develops, and renovates urban properties to create critically acclaimed, highly desirable, often iconic hotels, commercial office buildings and business communities. World leading tech companies, international hotel brands like Marriott and Hilton, and some of the best known regional companies occupy americanlife's properties.

americanlife has completed over 45 EB-5 funded projects worth over $1.5 billion in market value. In 2018 **americanlife** projects distributed over $45 million in profit to investors and returned over $189 million in investor capital. Over 3,000 investors have successfully invested with **americanlife**, obtaining more than 8,000 permanent visas and more than 3,000 I-829 approvals.

Your American Life starts here!

PENG & WEBER
U.S. Immigration Lawyers

Peng &Weber is an 8-lawyer Seattle-based immigration law firm led by Elizabeth Peng and Cletus M. Weber. The firm is nationally regarded for excellence in EB-5, including establishing regional centers, setting up projects, and filing high volumes of I-526 and I-829 petitions. Mr. Weber currently serves on the IIUSA Board of Directors, and both Ms. Peng and Mr. Weber previously served on the national EB-5 Committee of the American Immigration Lawyers Association (AILA). Ms. Peng and Mr. Weber have also both been named "Top 25" EB-5 lawyers by EB-5 Investors Magazine and included in Who's Who Legal: Corporate Immigration.

TORRES LAW
EB-5, Corporate, Securities & Media
www.torreslaw.net

Torres Law, P.A., is a South Florida law firm that concentrates on complex corporate and securities law matters. The firm is recognized as one of the leading EB-5 securities law firms. Torres Law represents regional centers and developers with their corporate structuring and securities offerings matters, including those involving hotel development, multi-family residential construction, senior independent living, healthcare, franchises and others.

EB-5 COAST TO COAST

We are a family of EB-5 Regional Centers authorized by USCIS to operate in 39 states. We have sponsored over 250 EB-5 investors since 2011. We identify, analyze and recommend only the best real estate development projects for EB-5 investors. Our real estate development track record extends over 30 years and exceeds $1 billion in aggregate value.

NES Financial℠

NES Financial is a Specialty Financial Administrator which provides purpose-built solutions that streamline the administrative processes by simplifying specialized financial transactions, curtailing fraud and abuse while ensuring the utmost in security, transparency and regulatory compliance through each step of an investment's life cycle.

NES Financial has defined industry best practices in each of the markets it serves — from 1031 exchanges and EB-5 visa funding, to private equity and the landmark Opportunity Zones program. NES Financial services more than 290 funds, administers over $20B annually, and has worked with over 700 EB-5 projects. For more information, visit **nesfinancial.com**.

BREVET

Brevet Capital is a leading credit investment and specialty finance firm with a focus on the government sector. Since our founding over 20 years ago, we have advised and structured more than $20 billion of transactions. The firm's experienced management team has a successful track record of creating exclusive and often proprietary financing solutions for our partners that are sustainable through multiple economic cycles.

CAROLYN LEE PLLC

Carolyn Lee PLLC is an immigration law firm dedicated to EB-5 service. Founder Carolyn Lee is the four-term Chair of AILA's national EB-5 Committee and has advised U.S. projects achieve I-829 approvals representing over US$1.27 billion. Compliant restructuring and change management are key focus areas.

KLINGNER KJ LAW FIRM JAZAYERLI LLP
A Comprehensive Immigration Law Firm
Washington, D.C.

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.

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KURZBAN KURZBAN TETZELI & PRATT P.A.

Kurzban Kurzban Tetzeli and Pratt P.A. is the leading law firm for representation in complex immigration litigation in the United States, including EB-5 litigation. KKTP successfully represents regional centers & investors in federal courts to review denials of 1-526 & 1-829 petitions, including representing individual investors who seek review of their denied 1-829 tpetitions in removal proceedings before the immigration court.

EB5DEALS

Empowering Investors

EB5 Deals has conducted due diligence on over 150 investments. Their proprietary Investment Platform is a fast and simple way for potential investors to review their highest-rated investments, as per the thorough analysis of EB5 Diligence. For immigration lawyers, this can accelerate the petitioning process and help mitigate their liability. Kurt is a registered representative with Dalmore Group, LLC, a broker-dealer.

CMB Regional Centers

CMB Regional Centers is one of the oldest active regional centers within the EB-5 industry with over twenty years 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.

DH DAVID HIRSON & PARTNERS, LLP

David Hirson & Partners, LLP ("DHP") is led by attorneys with more than 70 years of combined experience in corporate immigration law, specializing in business and investment immigration. DHP is internationally recognized for its decades of success in investment and corporate immigration and its experience in advising individuals, start-ups, franchises, corporations, HR departments, and others in navigating complexities of immigration.

ORBIT LAW, PLLC

Orbit Law, PLLC is a law firm based in Seattle, WA, with an office in Dubai, UAE. We are a team of entrepreneurial minded lawyers who believe in helping guide our clients through the constantly changing labyrinth of laws. We practice in the areas of Business Law, Employment Law and Immigration, including Global Mobility.

eb5 investors Magazine

EB5Investors.com and OpportunityZoneExpo.com are devoted to increasing program visibility in the greater arenas of business and politics and accessibility to each respective community, achieving these goals through several avenues which follow trends and issues and up-to-date educational content. We also host several large conferences globally each year, attracting prominent political figures.

FPP First Pathway partners

Immigration Through Investment

Since 2008, FirstPathway Partners (FPP) has assisted hundreds of immigrant investors through the EB-5 program, raising millions in funds for job-creating enterprises. FPP is one of few regional centers to have obtained I-829 approval, and redeemed full investor capital contributions, placing us in the highest category of EB-5 industry achievement.

Seattle Area Regional Center

Daniels Real Estate is a Seattle based organization, with the mission to develop urban real estate projects. Past award-winning projects include Union Station, global headquarters of Starbucks Center, the largest transit-oriented development on West Coast Stadium Place and 43 story hotel/office F5 tower. The 800 Columbia condo in downtown Seattle and The Lodge at Saint Edward park are currently open for EB-5 investors.

axos BANK

Axos Bank is dedicated to delivering a superior banking experience to our clients at home and abroad. As your trusted banking partner, we have the expertise to meet your specific financial needs and resources to help simplify the complexities of the EB-5 program. We offer a full suite of banking options designed specifically for EB-5 project issuers and investors, including: Customized EB-5 Escrow Services, Secure treasury platform to suit your cash management requirements, Flexible commercial lending solutions to support your borrowing needs, Consumer banking and mortgage services for qualified foreign nationals.

SCHEDULE
OF EVENTS

MONDAY OCTOBER 28, 2019

TIME	KING STREET I	KING STREET II
1PM	**IIUSA BOARD OF DIRECTORS MEETING** ***KING STREET IV*** 1:30 PM - 3:00 PM	
2PM		
3PM	**EDITORIAL COMMITTEE** 3:00 PM - 4:15 PM	**MEMBERSHIP & INVESTOR MARKET DEVELOPMENT COMMITTEE** 3:00 PM - 4:15 PM
4PM	**BEST PRACTICES COMMITTEE** 4:15 PM - 5:30 PM	**PUBLIC POLICY COMMITTEE** 4:15 PM - 5:30 PM
5PM	**LEADERSHIP RECEPTION** ***6TH FLOOR SKYPAD*** INVITE ONLY 5:30 PM - 7:30 PM	
6PM		
7PM		

OCTOBER 29-30, 2019 • SEATTLE, WASHINGTON

SCHEDULE OF EVENTS

GENERAL SESSION
BREAKOUT SESSION

TUESDAY OCTOBER 29, 2019

TIME		KING STREET I & III	KING STREET II & IV
7AM	REGISTRATION & EXHIBITS 7:00 AM - 7:30 PM	**BREAKFAST** 7:00 AM - 8:00 AM	
8AM		**WELCOME** 8:00 AM - 8:15 AM	
9AM		**VISA UPDATE WITH CHARLIE OPPENHEIM AND ROUNDTABLE DISCUSSION** 8:15 AM - 9:15 AM	
10AM		**EB-5 LEGISLATIVE & REGULATORY UPDATE: WHAT NOW?** 9:15 AM - 10:15 AM	
		NETWORKING BREAK 10:15 AM - 10:45 AM	
11AM		**SARAH M. KENDALL** CHIEF, IMMIGRANT INVESTOR PROGRAM OFFICE, USCIS 10:45 AM - 11:30 AM	
		I-829 AWARDS & OVERSEAS MEMBER RECOGNITION 11:30 AM - 12:00 PM	
12PM		**LUNCH BREAK** 12:00 PM - 1:00 PM	
1PM		**SEATTLE LOCAL ECONOMIC DEVELOPMENT ROUNDTABLE** 1:00 PM - 2:00 PM	
2PM		**OPPORTUNITY ZONES & EB-5: AN EMERGING OPPORTUNITY?** 2:00 PM - 3:00 PM	**INVESTOR RELATIONS: COMMUNICATION, TRANSPARENCY & RECORD KEEPING** 2:00 PM - 3:00 PM
3PM		**NETWORKING BREAK** 3:00 PM - 3:30 PM	
4PM		**OVERSEAS INTERMEDIARY & AGENT ROUNDTABLE: PERSPECTIVES FROM LEADING INVESTOR MARKETS** 3:30 PM - 4:30 PM	**USCIS POLICY AND ACTIONS: LIVING IN A WORLD OF ADJUDICATION BACKLOGS RFES, AND NOIDS** 3:30 PM - 4:30 PM
5PM		**INDIAN INVESTORS ROUNDTABLE: WHAT THEY LOOK FOR IN A PROJECT & WHY THEY CONTINUE TO SEEK EB-5** 4:30 PM - 5:30 PM	**EB-5 IN THE COURTS: SUING USCIS, REGIONAL CENTERS & OTHER LITIGATION CASES** 4:30 PM - 5:30 PM
6PM		**NETWORKING RECEPTION** *PERCH BAR* 5:30 PM - 7:30 PM	

GENERAL SESSION

BREAKOUT SESSION

SCHEDULE OF EVENTS

WEDNESDAY OCTOBER 30, 2019

TIME		KING STREET I & III	KING STREET II & IV
7AM	REGISTRATION & EXHIBITS 7:00 AM - 12:30 PM	**BREAKFAST** 7:00 AM - 8:00 AM	
8AM		**THE NEW NORMAL OF TEAS:** WHAT ARE THE CHANGES & HOW TO ADAPT 8:00 AM - 9:00 AM	
9AM		**OPTIONS FOR INVESTORS IN "BUSTED" DEALS AND TERMINATED REGIONAL CENTERS** 9:00 AM - 10:00 AM	**CAPITAL STACK:** CREATIVE FINANCING AND LEVERAGING FUNDS FOR THE MOST SUCCESSFUL OUTCOME 9:00 AM - 10:00 AM
10AM		**NETWORKING BREAK** 10:00 AM - 10:30 AM	
11AM		**EB-5 FROM THE FRONT LINES:** HOW TO SURVIVE IN A CHALLENGING MARKET & MAKE PROJECTS MORE COMPETITIVE GLOBALLY 10:30 AM - 11:30 AM	**OVERCOMING OVERSEAS INVESTIGATIONS, ALLEGED DISCREPANCIES BETWEEN I-526 AND DS-160 & OTHER PUSHBACK FROM USCIS ON SOURCE OF FUNDS** 10:30 AM - 11:30 AM
12PM		**REDEPLOYMENT:** STRUCTURING DEALS, INFORMING INVESTORS & CHECKING THE BOXES AMONGST UNCERTAIN GUIDANCE 11:30 AM - 12:30 PM	**EMERGING INVESTOR MARKETS:** KEEPING YOUR PROJECT DREAMS ALIVE 11:30 AM - 12:30 PM

PANEL DESCRIPTIONS

TUESDAY OCTOBER 29, 2019

VISA UPDATE WITH CHARLIE OPPENHEIM & ROUNDTABLE DISCUSSION

8:15AM - 9:15AM - KING STREET I & III

The ever-changing visa update is of critical importance to all aspects and professionals of the EB-5 industry. Hear from the U.S. State Department's Charles Oppenheim, Chief of the Visa Control & Reporting Division, who will provide attendees with the most pertinent visa updates, including information on retrogression, final action dates and predictions for the coming months. IIUSA member panelists will join Mr. Oppenheim to dig deeper and analyze the information in a roundtable discussion from their industry expert perspectives.

Irina Rostova, Rostova Westerman Law Group *(Moderator)*
Charles Oppenheim, U.S. Department of State
Kristal Ozmun, Miller Mayer
David Hirson, David Hirson & Partners

EB-5 LEGISLATIVE & REGULATORY UPDATE: WHAT NOW?

9:15AM - 10:15AM – KING STREET I & III

The Administration has finalized the EB-5 regulations which will go into effect on November 21, 2019. Attendees in this session will learn exactly what changes are set to occur, how IIUSA and the industry is responding and what you can do to prepare. Panelists will also discuss any legislative action that may be applicable and how this effects the pending implementation of the regulations.

Bill Gresser, EB-5 New York State Regional Center, IIUSA Vice President *(Moderator)*
Bob Kraft, FirstPathway Partners, IIUSA President
George McElwee, Commonwealth Strategic Partners
Joe McCarthy, American Dream Fund
Keith Pemrick, Commonwealth Strategic Partners

KEYNOTE ADDRESS - SARAH M. KENDALL CHIEF, IMMIGRANT INVESTOR PROGRAM OFFICE, USCIS

10:45AM - 11:30AM - KING STREET I & III

GENERAL SESSION

BREAKOUT SESSION

PANEL DESCRIPTIONS

TUESDAY OCTOBER 29, 2019

LOCAL PERSPECTIVE: SEATTLE AREA ECONOMIC DEVELOPMENT ROUNDTABLE

1:00PM - 2:00PM - KING STREET I & III

Hear from local economic development professionals about not only how EB-5 has helped shaped downtown Seattle and the surrounding metro area, but also the considerations they encourage businesses to take when planning development projects. Get empirical insight for interacting with local organizations like Chambers of Commerce, EDOs and other community organization to create the best development project not just for your bottom line, but for fostering a community of culture, accessibility and sustainability.

OPPORTUNITY ZONES & EB-5: AN EMERGING OPPORTUNITY?

2:00-3:00PM - KING STREET I & III

EB-5 has been around since 1990; Opportunity Zones only since 2017. OZs are designated census tracts in which federal tax liabilities on real estate gains are deferred or eliminated under certain conditions, such as a holding period of seven to ten years. Even though one is an immigration program and the other a federal tax benefit program, they share many similarities. This panel will explore how the two programs can be combined to improve the viability and profitability of the underlying EB-5 development project.

- How do OZs enhance returns on EB-5 real estate development projects?
- How are the two programs similar and how are they different?
- How much value is added to a project just because it is located in an OZ?
- How do I determine if my project is located in an OZ?

Kyle Walker, Green Card Fund *(Moderator)*
Dave Souders, Todd & Associates, IIUSA Director
Coleen Danaher, NES Financial
Scott Thompson, American Lending Center

INVESTOR RELATIONS: COMMUNICATION, TRANSPARENCY & RECORD KEEPING

2:00-3:00PM - KING STREET II & IV

Taking care of your investors after "the sale". Exceptional Investor communication is essential, for everything from meeting fiduciary responsibilities and SEC regulations, to earning investor trust and referrals. Good communication can also make the difference if things don't go as planned. Panel discussion of tools, techniques, and regulations for achieving exceptional investor relations.

David Enterline, WTW Taipei Commercial Law Firm *(Moderator)*
Matt Brown, EB5 Global
Pat Hogan, CMB Regional Centers, IIUSA Director
Rana Jazayerli, Klingner Jazayerli

OVERSEAS INTERMEDIARY & AGENT ROUNDTABLE: PERSPECTIVES FROM LEADING INVESTOR MARKETS

3:30-4:30PM - KING STREET I & III

Every EB-5 project relies, to some extent, on overseas intermediaries and/or agents to seek out investors. On this panel, attendees will hear from representatives from some of EB-5's most active and mature markets, giving insight into how the market is behaving in these challenging times for the industry and what investors are seeking in their potential investment project.

Darrell Sanders, American Life, Inc *(Moderator)*
Keumhee Hong, Club Emigration
Janek Mahta, FRR Immigration
Jenny Zhan, Good Hope Investment Services

USCIS POLICY & ACTIONS: LIVING IN A WORLD OF ADJUDICATION BACKLOGS, RFES & NOIDS

3:30-4:30PM - KING STREET II & IV

Adjudication backlogs for EB-5 petitions are the longest they have ever been and the frequency of RFEs is rising as well. This panel will analyze current adjudication times for I-526, I-829 and I-924 petitions, explore the reasons behind the backlog and increase in RFEs, and identify issues that project sponsors and investors need to be aware of as they submit new projects and await adjudication to avoid RFEs and further processing delays. This panel will also explore the impact of new OMB regulations on the current backlog and USCIS's policy for grandfathering existing petitions that have not yet been adjudicated.

- Updates on current adjudication backlogs
- Strategies to avoid RFEs
- Best practices in addressing material changes while petitions are awaiting adjudication
- Updates on new OMB regulations and their impact on current processing times

Mona Shah, Mona Shah & Associates Global *(Moderator)*
Joseph Barnett, Wolfsdorf Rosenthal
Marisa Marconi, Pinnacle Plan Writing
John Pratt, Kurzban Kurzban Tetzeli & Pratt

INDIAN INVESTOR ROUNDTABLE: WHAT THEY LOOK FOR IN A PROJECT & WHY THEY CONTINUE TO SEEK EB-5

4:30-5:30PM - KING STREET I & III

As EB-5 markets continue to mature, India has seen a unique situation develop with investors coming in despite a growing backlog. The panelists, 3 of whom are current Indian EB-5 investors, will provide insight on the Indian mindset and give their perspective on why the investment made sense for them and why they chose the EB-5 project they did. The panel will also discuss expectations of investors from Investment Issuers before and after making their investment.

Chad Blocker, Fragomen Worldwide (Moderator)
Ishaan Khanna, CapUnited, EB-5 Investor
Sid Easwar, EB-5 Investor
Manish Jain, EB-5 Investor

EB-5 IN THE COURTS: SUING USCIS, REGIONAL CENTERS & OTHER LITIGATION CASES

4:30-5:30PM - KING STREET II & IV

As the EB-5 industry continues to mature and there are more investors and more projects, the more litigation cases we continue to see around the Program. This panel will explore not only the cases involving alleged fraud and securities violations, but also look into where industry stakeholders are standing up for the rights of investors and the well-being of the industry by taking action in the courts and in some cases, have precedent-setting decisions. Learn about recent EB-5 litigation cases and what they mean for the future of the industry.

Ira Kurzban, Kurzban Kurzban Tetzeli & Pratt *(Moderator)*
David Andersson, WORC Regional Center, IIUSA President Emeritus
Vicki Buter, Kutak Rock
Dan Lundy, Klasko Immigration Law Partners

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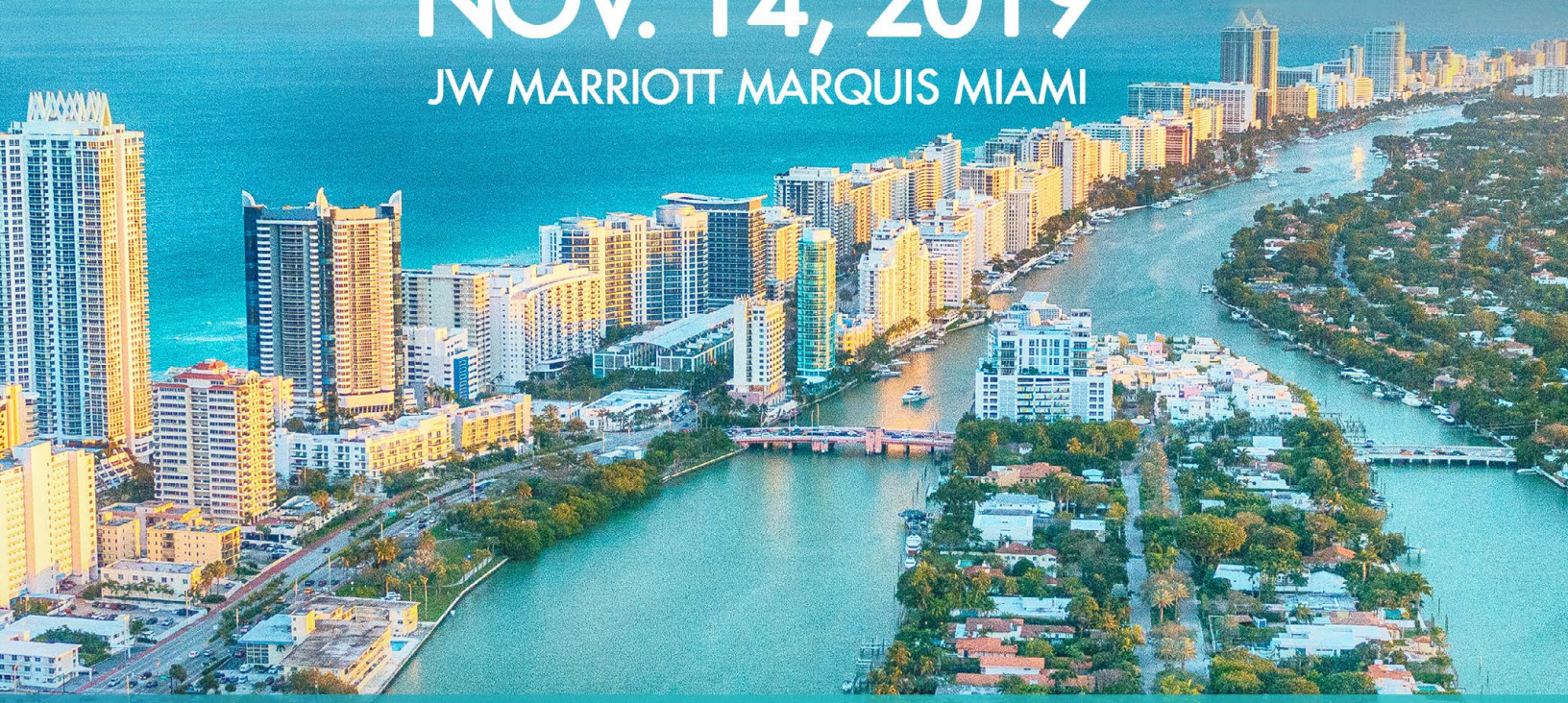

OZ OPPORTUNITY ZONE EXPO.COM

Learn about Opportunity Zones, a beneficial tax incentive established under the Tax Cuts and Jobs Act, which allows investors to create social impact in distressed communities while making their investments pay dividends. **The new incentive is sweeping through the country** providing unprecedented economic development. Learn what it takes **to strategically and successfully invest in any of the country's** 8,700 Opportunity Zones.

For more information about attending or sponsoring,
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GENERAL SESSION

BREAKOUT SESSION

PANEL DESCRIPTIONS

WEDNESDAY OCTOBER 30, 2019

THE NEW NORMAL FOR TEAS: WHAT ARE THE CHANGES & HOW TO ADAPT

8:00-9:00AM – KING STREET I & III

With new EB-5 regulations set to go into effect November 21, 2019, the industry is looking at new qualification guidelines for Targeted Employment Areas (TEA). In order for investors to invest at the lower threshold ($900,000), Regional Centers will need to take into account the new criteria for TEAs for future offerings. Learn on this panel what exactly the changes to TEA criteria are and how you or your client can adapt to keep you on the path to success.

Jeff Carr, Economic & Policy Resources, Inc. *(Moderator)*
Michele Franchett, Stone Grzegorek & Gonzalez
Alex Brown, Impact DataSource
Daniel Healy, Civitas Capital, IIUSA Director
Steve Strnisha, Cleveland International Fund, IIUSA Secretary-Treasurer

OPTIONS FOR INVESTORS IN "BUSTED" DEALS & TERMINATED REGIONAL CENTERS

9:00-10:00AM – KING STREET I & III

When a project falters or USCIS terminates a regional center (or when both things happen), investors can lose their investment, their immigration path, or both. But sometimes creativity and persistence can help to salvage at least some of each investor's EB-5 dream. Also learn how the new EB-5 regulations would affect an investor's priority date in these circumstances.

Robert Divine, Baker Donelson Bearman Caldwell & Berkowitz, IIUSA Vice President Emeritus *(Moderator)*
Angelo Paparelli, Seyfarth Shaw
Christian Triantaphyllis, Jackson Walker
David Van Vooren, David Hirson & Partners

CAPITAL STACK: CREATIVE FINANCING & LEVERAGING FUNDS FOR THE MOST SUCCESSFUL OUTCOME

9:00-10:00AM – KING STREET II & IV

Rarely is EB-5 the only funding source for a project. Regional Centers and developers often use EB-5 to help leverage other funds for a complex and creative capital stack to make project goals a reality. Learn how EB-5 interacts with other traditional and non-traditional funding sources and what considerations you should take when creating your capital stack from real-world success stories.

Rush Deacon, Pine State Regional Center, IIUSA Director *(Moderator)*
Al Rattan, Continental Regional Center, IIUSA Director
Robert Roskind, Live in America Financial
Brennan Sim, CapUnited
Abteen Vaziri, Brevet Capital, IIUSA Director

EB-5 FROM THE FRONT LINES: HOW TO SURVIVE IN A CHALLENGING MARKET & MAKE PROJECTS MORE COMPETITIVE GLOBALLY

10:30-11:30AM – KING STREET I & III

The days of operating and prospering in a single EB-5 market are over. Today's EB-5 offerings must be tailored to a global market, and to fit different cultures with very different needs and concerns. What makes one project more attractive than another? What is working, and what is not. Also learn about adapting to the new EB-5 regulations, particularly increased investment amounts.

Eren Cicekdagi, Golden Gate Global, IIUSA Director *(Moderator)*
Ed Beshara, Beshara PA
Christine Chen, CanAm Enterprises
Steve Smith, EB5 Coast to Coast

OVERCOMING OVERSEAS INVESTIGATIONS, ALLEGED DISCREPANCIES BETWEEN I-526 AND DS-160 & OTHER PUSHBACK FROM USCIS ON SOURCE OF FUNDS

10:30-11:30AM – KING STREET II & IV

I-526 caseloads are going down, but USCIS scrutiny continues to climb. Investors face increasing USCIS pushback on sanctions, imposition of higher and higher levels of proof, the use of prior visa applications to cross-examine I-526 evidence, and more frequent overseas investigation of investor source of funds. Learn about suggested steps to prepare for and overcome these investor-related issues.

Cletus Weber, Peng & Weber, IIUSA Director *(Moderator)*
Erin Corber, Trow & Rahal
Tim Knowles, T.D. Knowles
Alexei Kondenkov, Axos Bank

REDEPLOYMENT: STRUCTURING DEALS, INFORMING INVESTORS & CHECKING THE BOXES AMONGST UNCERTAIN GUIDANCE

11:30AM-12:30PM – KING STREET I & III

Redeployment of investor funds must deliver both immigration and financial Security. In an environment where clear policy guidance from USCIS is lacking, panelists will discuss suggested best practices for redeployment, including offering document structuring and disclosures, informing investors and attaining consent, and what USCIS will look for when they begin reviewing I-829 petitions.

Mariza McKee, Kutak Rock, IIUSA Director *(Moderator)*
David Appel, Marcum LLP
Michael Homeier, Law Office of Michael G. Homeier
Ozzie Torres, Torres PA

EMERGING INVESTOR MARKETS: KEEPING YOUR PROJECT DREAMS ALIVE

11:30AM-12:30PM – KING STREET II & IV

The landscape of emerging EB-5 investor markets like the UAE, Japan, Brazil, South Africa and others are different than the well-established ones we all know. Learn what investors in those markets value most in the projects they consider and the EB-5 professionals they interact with as well as tips for interacting with consultants and agents in these emerging markets.

Kripa Upadhyay, Orbit Law *(Moderator)*
Stuart Ferguson, Gold Coast Florida Regional Center
Hiroshi Ichihashi, AER World
Marco Moreno, Moreno & Villarrubia

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Bob Kraft
President, Chairman & CEO
FirstPathway Partners
IIUSA President

E PLURIBUS UNUM

AARON GRAU
EXECUTIVE DIRECTOR, IIUSA

The United States' motto is a Latin phrase meaning "out of many, one." What could be more appropriate for a nation of immigrants? The concept is as old as humanity. Families became tribes. Tribes became communities. Communities became nations and out of many, became one; singular entities more capable of defending themselves, feeding themselves, and ultimately surviving.

This survival protocol is repeated over and over again throughout our culture; in sports, in the arts, in our collective response to tragedy, and especially in politics. Coalitions are always stronger and more effective than the lone voice. In the wilderness, there is safety in numbers. In Washington, DC there is power.

Over the course of our years-long effort to secure a long-term and reformed reauthorization of the EB-5 Regional Center statute, the EB-5 community's Achilles Heel has been "e pluribus – pluribus." Differing opinions and policy positions made it easy for EB-5's political critics to drive us apart; away from each other and our common cause and ultimately disallow a meaningful reauthorization.

Today, however, out of many EB-5 interests, opinions, and priorities there is one united community. It is a political advantage we should have known, strived for and secured, but the past is the past and the stakeholders can finally leverage their unity.

It was not an easy path and there are likely still those second guessing the decisions and compromises made. The layers and layers of interests and differing perspectives demanded and continue to require decorum and coming to terms that all your interests will simply not be met. It has been an emotional exercise as well as and academic and political trial. But, here we are, undivided and on the brink of finally bringing stability to EB-5, its Regional Centers, and the countless other stakeholders whose livelihoods depend on this more stable future.

So, who are "we?" Who are the pluribus and how can our perspectives on the same program really be that different? We are:

The Rural Alliance;

The US Chamber of Commerce;

The EB-5 Investment Coalition;

The Real Estate Round Table; and

Invest in the USA.

Collectively, we represent large and small regional centers and rural and urban interests. But that is not all. As part of both the immigration community and the business community, we also represent real estate developers, banks, technology interests, medical interests, and energy interests to name a few. Is it any wonder that there may be discord and how was it avoided this time around?

Bluntly, after years of debate a realization set in; that the EB-5 Regional Center program's protocols may be dictated by those without an appreciation of the program's true value or worse, the program may simply dissolve.

It is said that politics make for strange bedfellows. It is also said that necessity is the mother of invention. What is rarely mentioned is the effort it takes to stay in bed together let alone come to terms and create a common and plausible solution. That effort can be Herculean and credit must be given where credit is due.

Over a year ago, IIUSA's officers, Bob Kraft, Bill Gresser, and Steve Strnisha, began meetings with the other EB-5 stakeholders mentioned above. They met first in Geneva, Switzerland then in Milwaukee, WI, New York City, and finally in Washington, DC. They and their counterparts from the other stakeholder groups cleared a path and provided their staff with direction to "stay in bed" and solve the problem. Create a compromise bill to reauthorize the Regional Center program that meets rural and urban demands.

And we did.

E pluribus unum.

Here are the salient positions.

- **Duration of Reauthorization**

▹ The program's authorization should be extended for six years.

- **Integrity Measures to Bolster National Security and Fraud Deterrence**

▹ The Department of Homeland Security (DHS) should be provided with the authority to conduct criminal background checks and obtain biometric information from individuals involved in the Regional Center Program.

▹ Establish new authority for DHS to debar individuals, and suspend or terminate regional centers, based on program non-compliance.

▹ Clarify the authority of DHS to deny or revoke immigrant investor petitions for reasons including fraud, misrepresentation, or national security concerns.

▹ Establish an EB-5 Integrity Fund to provide rigorous program oversight, which would be funded by regional center program participants.

Continued On Page 19

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▹ Create thorough annual reporting and accounting requirements for regional center operators.

▹ Enforce strict new requirements for third-party promoters marketing or promoting regional center investment projects.

▹ Provide DHS with improved investigative tools to ensure that an investor's funds are derived from legitimate and lawful sources.

▹ Provisions to ensure that USCIS engages in a proper and non-preferential way with any person or entity involved in the EB-5 program.

▹ Clarify that, in the context of EB-5 offerings, any person who qualifies as a "broker" or "dealer" in the purchase or sale of securities must comply with all registration and other requirements of the Securities Exchange Act of 1934, and meet appropriate Financial Industry Regulatory Authority (FINRA) requirements.

• Targeted Employment Area (TEA) Definitions

▹ Rural Area definition: we support the current statutory definition and the inclusion of low-population, low density census tracts into the "rural" definition. We do not support allowing the "outlying counties" of a Metropolitan Statistical Area to qualify as "rural," which was suggested in prior reform proposals.

▹ Urban Distressed Area definition: To address concerns with regard to "TEA gerrymandering," we suggest limiting these TEAs to a single-census tract that is designated by U.S. Treasury Department as a "Qualified Opportunity Zone," as per the Tax Cuts and Jobs Act.

• Investment Amounts

▹ Establish and maintain a $100,000 differential between the two investment levels.

▹ Our recommended new minimum investment level for TEAs is $800,000.

▹ Our recommended new non-TEA amount is $900,000.

▹ These levels should be indexed to inflation going forward.

• TEA Set-Asides

▹ 15% of visas for Rural

▹ 15% of visas for Urban Distressed

▹ Unused visas roll-over annually at the end of each year to general EB-5 visa pool for access by all projects in the immediately following year

▹ The set asides apply immediately to new I-526 petitions filed after enactment, but they cannot be applied retroactively towards petitions that were pending as of the date of enactment.

• Transition Rules to New Program Requirements

▹ For one year after enactment, there will be a single investment level for all projects at $650,000 to provide stakeholders with the ability to wind down their existing operations and adjust to the program's reforms.

▹ In the 13th month after enactment, the two-tiered investment amounts would take effect.

▹ Individual I-526 petitions that were pending up to the date of enactment should be grand-fathered and not subject to new investment amounts. Pending petitions rejected after enactment and re-filed would be subject to new investment amounts.

• Automatic Expedited Processing for Investors in TEAs

▹ Moving forward, Rural and Priority Urban TEA investor petitions would receive expedited processing for all I-526 petitions filed post-enactment.

▹ Non-TEA investors must still meet current criteria to qualify for expedited processing.

• Backlog Relief and Suggested Additional Revenue Source

▹ All pending applicants in queue (approximately 30,000) have the option to pay a one-time "backlog reduction fee" to re-set the program.

▹ We recommend that this fee be $50,000 and to ensure the opportunity for backlog relief is exercised in an orderly manner, investors would only be able to pay this supplemental fee during the one-year period following the enactment of these reforms.

▹ The revenues raised by the EB-5 backlog fee should be maintained separately for use by Congress for programs deemed in the national interest.

• Exempting Derivative Family Members

▹ The visas provided for the spouses and children of EB-5 investors should no longer count against the annual EB-5 visa cap.

▹ According to USCIS, limiting the visa count to only investor petitions would substantially increase the amount of foreign direct investment coming to the U.S. through the program and create many more jobs for American workers.

• Sovereign Wealth Funds (SWF)

▹ There should be no bar on SWF capital in projects also funded by EB-5 capital (as suggested in prior reform proposals).

Now, as the united EB-5 community dialogues in earnest with policy makers on Capitol Hill, everyone knows we cannot be driven apart, let alone against one another. We created a bill that meets most of everyone's expectations not the least of which is stability through a long-term reauthorization. Critics' concerns have been appeased and there is no where to go but forward on behalf of immigrants and the economy they want to join. Out of many, one. What could be more fruitful for a nation of immigrants.

FOIA...

The Never Ending Story

ASHLEY SANISLO CASEY
DIRECTOR OF EDUCATION &
PROFESSIONAL DEVELOPMENT, IIUSA

In Spring of 2018, I wrote an article about IIUSA's "FOIA woes" – the increasingly frustrating and lengthy process by which IIUSA collects most of its data on the EB-5 program. FOIA, short for Freedom of Information Act, is the basis from which most of IIUSA's data reports are born. We request information from U.S. Citizenship & Immigration Services (USCIS) on almost everything you can think of relating to the EB-5 Program in order to analyze it and turn it into digestible reports which inform our members about trends in the industry.

When I published my last article on IIUSA's FOIA requests, it included the Table 1 which were statistics on our FOIA requests as of March 2018.

As you can see, IIUSA makes several requests, most of which are recurring for which we request data on a quarterly, semi-annual, or annual basis. Depending on unique developments of the industry, we will request one-off requests as needed as well.

Table 2 is an updated chart of IIUSA's FOIA requests which again demonstrates the volume of requests we make, but also the increasingly slow rate of responses we are experiencing.

In the 17 months between my last FOIA article, we have made an additional 66 requests and our pending cases have increased from 42 to 70, though we only received an additional 4 denials in that time span. It is perhaps most important to note that in those 17 months, we only received 33 responses, many of which were requests from 2017 and 2018. Since 2011, IIUSA made a total of 248 FOIA requests, only 36% of which have been fulfilled by USCIS, while there are 158 requests fulfilled, 70 requests are pending as of August 2019.

Not a single FOIA request made in 2019 has been fulfilled and 36 of the 44 requests (or 73%) made in 2018 are still pending. This poses a critical obstacle in the ability for IIUSA to provide timely and necessary intelligence to its members through the knowledge and analysis of the data we so keenly rely on from USCIS.

Why is all of this important to note? First, the exceedingly slow turnaround time to get the information which we are legally allowed to request from the government makes most of the data we do receive irrelevant or at the very least unhelpful

Continued On Page 21

TABLE 1: IIUSA FOIA Requests as of March 2018

TOTAL REQUESTS	PENDING	DENIED	IN APPEAL	FULFILLED
191	42	16	8	125

TABLE 2: IIUSA FOIA Requests as of August 2019

TOTAL REQUESTS	PENDING	DENIED	IN APPEAL	FULFILLED
248	70	20	0	158

FIGURE 1: IIUSA FOIA Requests Since 2011

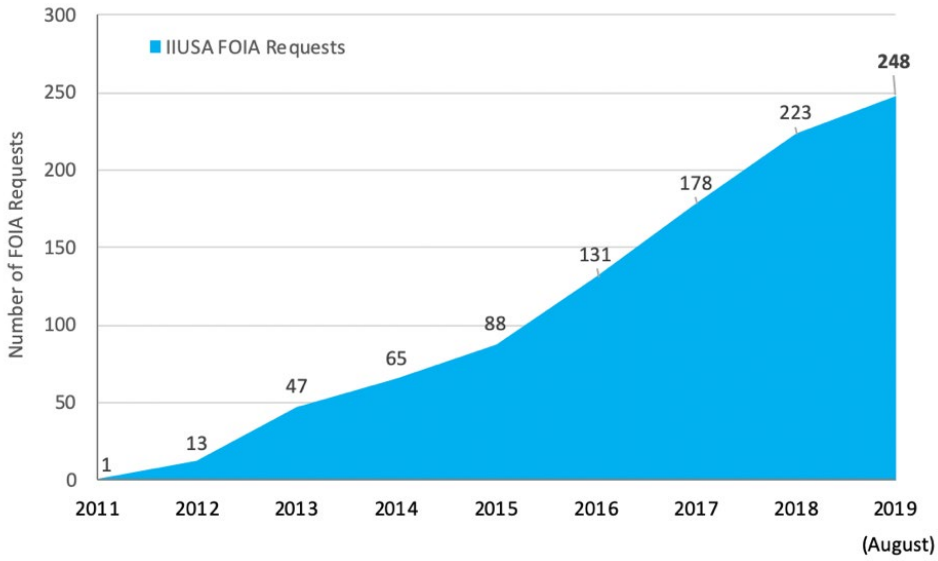


FIGURE 2: IIUSA FOIA Requests Fulfilled vs Pending by Year of Submission

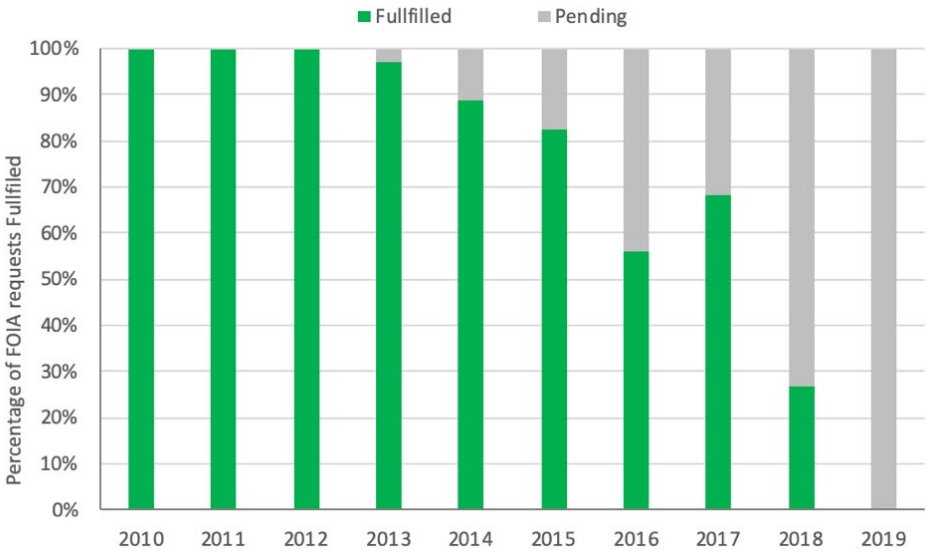
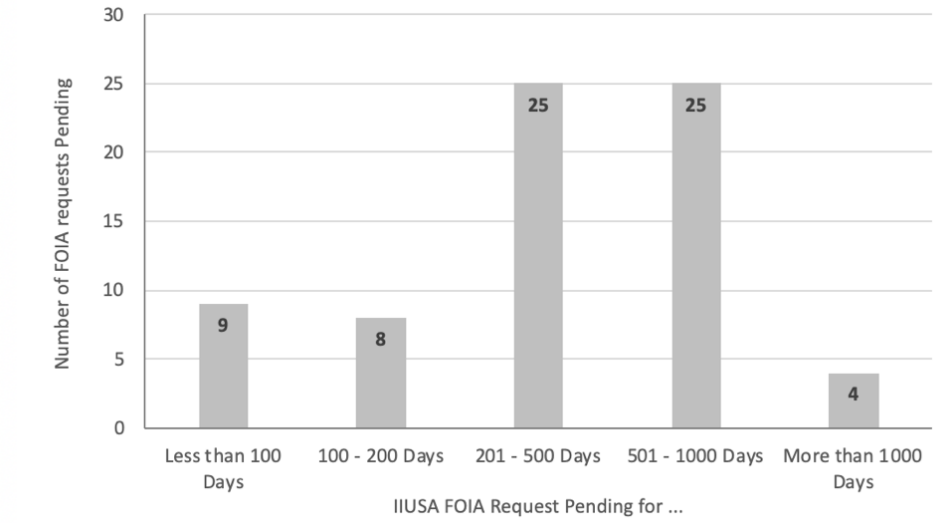


FIGURE 3: IIUSA FOIA Requests Pending



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by the time it is in our hands. Second, this is not just a blip in time where responses have slowed, but rather a trend that only continues to get worse as time goes on. Without the ability to know, for instance, the approval and denial statistics for immigrant investors by country of origin or reasons for Requests for Evidence (RFEs) and denials for the various EB-5-related forms, we are unable to arm our members with information that allows them to adapt their businesses to succeed in the every-changing landscape of EB-5. We are so reliant on this process as your EB-5 information and education source and without it working even quasi-smoothly, we are paralyzed in our ability to deliver the resources our members have come to rely upon.

In my previous article, I explained that processing of FOIA requests depends on the type and volume of information being requested. For the type of information IIUSA requests (non-A-file, or non-Alien-file, information), there are two tracks and most of IIUSA's requests fall into Track Two. Currently, according to first.uscis.gov, Track Two requests are taking, on average, 295 days to process. In March 2018, Track Two requests were averaging 121 days.

IIUSA's oldest pending request is now 1,056 days old. In fact, we have yet to receive a control number (indicating receipt by USCIS) for this request. The next oldest pending request is 827 days. This request, for FY2016 I-924As, was made on May 15, 2017. Although we received a receipt with control number just three days later, that request has been pending for more than 800 days. Without this vital information, IIUSA is unable to create accurate economic impact reports that not only inform the industry, but also the public and elected officials about the very real and tangible benefits and impact of the EB-5 industry.

As part of my ongoing commitment to our FOIA process, I regularly audit our requests and follow up with contacts at the National Records Center. From time to time, this has proven to be a useful exercise when we find out that a response was somehow lost in the mail or it was sent to the wrong address. But more and more, my contacts

Continued On Page 22

Continued From Page 21

are less responsive and my polite badgering is not resulting in securing information. It is important, nonetheless, the continue the exercise to demonstrate diligence and monitoring.

A quick Google search shows that IIUSA is not alone in experiencing delays. An ongoing analysis by the Project On Government Oversight (POGO) and Politico revealed in February 2018 that the Environmental Protection Agency (EPA) had fulfilled less than 17% of its pending FOIA requests[1] and was under fire through several lawsuits for slow response times. The Department of Homeland Security (DHS) and two of its sub-agencies, Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) were sued in 2018 for failure to respond to requests[2] and the New York Times reported in 2012 of receiving a response to a request made in 1997[3].

By law, the government is supposed to respond to FOIA requests within 20 business days of receipt, but obviously with the volume and complexity of requests, this is seldom reality. Nevertheless, waiting 1,056 days and counting is frustrating, to say the least, and debilitating to aspects of our business to say the most.

With all that said, what really are our options? Of course, taking cues from other organizations, we could sue USCIS for failure to respond in a timely fashion and/or failure to divulge information. That, however, would be timely, costly and ultimately, I would venture to guess, a not very fruitful exercise. With 70 requests from IIUSA in the queue and more added every month, I have doubts that a lawsuit would in fact result in our mailbox being suddenly stuffed to the brim with FOIA data.

While I hope that FOIA processing times pick up and we once again can enjoy the responsiveness and the quality data acquisitions we did a few years ago, I am not entirely optimistic. We will continue to send in our monthly, quarterly, semi-annual and annual requests as it is important to continue to seek the information from our government and to inform the industry.

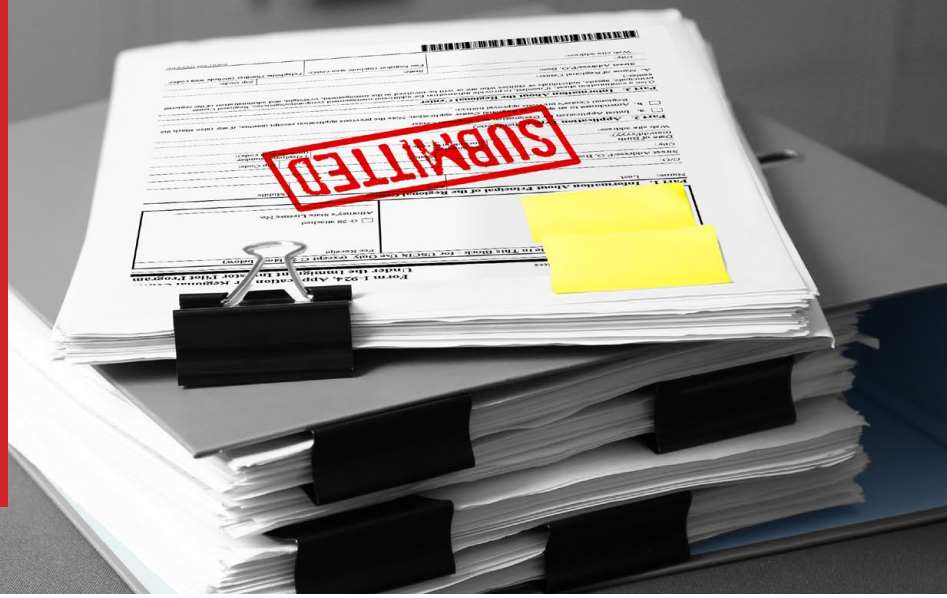
A special thank you is owed to my colleague, Lee Li, for providing the graphs for this article.

1 https://www.pogo.org/analysis/2018/02/epa-drags-its-feet-with-records-requests-aimed-at-scott-pruitts-office/

2 https://jsis.washington.edu/humanrights/2018/09/21/uwchr-sues-dhs-ice-cbp/

3 https://www.nytimes.com/2012/01/29/us/slow-freedom-of-information-responses-cloud-a-window-into-washington.html

Roundtable on I-924A and Regional Center Oversight Obligations



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MARISA MARCONI
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Once designated, EB-5 regional centers have an affirmative obligation to provide USCIS with updated information to demonstrate continued eligibility by submitting an Annual Certification of Regional Center (Form I–924A) or as otherwise requested by USCIS. See 8 C.F.R. § 204.6(m)(6)(i)(B). USCIS will issue a Notice of Intent to Terminate ("NOIT") if a regional center fails to submit a Form I-924A on or before December 29 each year.

The purpose of this article is to highlight some of the administrative, oversight, and management practices used by established regional centers to effectively prepare Form I-924A in order to demonstrate that they are "continuing to promote economic growth ... in the approved geographic area." Id. We thank CMB Regional Centers, American Dream Fund, and others for their contributions and assistance in preparing this article.

1. Preparing to File the I-924A. It's advisable to begin preparing a Form I-924A in early September each year, right before the federal fiscal year is ending. Form I-924A requires regional centers to compile information based on each federal fiscal year (October 1 through September 30), so alerting regional center licensees and job creating entities about the information and documents required for the December filing in September will alert all parties involved about the coming records and documents needed to file the I-924A by December 29. One regional center indicated that preparing for an I-924A should be an ongoing obligation parallel to actual job creation activity within a regional center's designation. Regional centers should maintain practices for proper oversight and documentation throughout the development and construction activities of each EB-5 project. Following October 1st of each year, the regional center (and its economist(s)) can then work to complete an accounting of the information required for the I-924A.

2. Common Areas of Struggle. Established regional centers agree that completing the I-924A gets easier the more often it is done but it can still be a challenge to get information from third parties. Documents that act as verification for inputs into economic models (such as construction expenditures, income statement and revenue reports, government payroll records, and annual tax returns) may be missing or delayed. The I-924A requires regional centers to identify the amount of investment (both EB-5

Continued On Page 24

Continued From Page 23

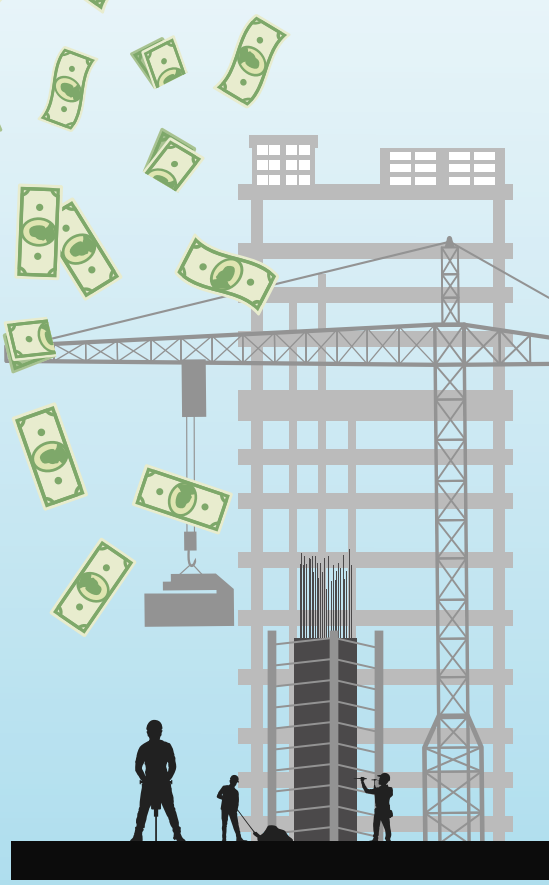
and otherwise) in each industrial category (NAICS code) as well as the resulting job creation from the EB-5 capital investments sponsored through the regional center. Regional centers that consistently track and account for the spending by a job creating entity during the construction process are well-primed to provide the information USCIS requires in the form. When EB-5 capital is loaned in a subordinated debt position or is provided in the form of equity, it may be important to receive certain reporting information from the senior lender as well. The ability to receive copies of the draw requests and approvals are essential, and it may be important for the NCE to negotiate an intercreditor agreement with a senior lender to allow the NCE to receive certain reporting materials, notices, and requests of the borrower.

3. Recordkeeping Management Programs. For proper oversight and administration, it is vital for regional centers to maintain organized files. Every regional center should initiate a recordkeeping management program when associating with a new EB-5 offering. This is important not only for I-924A filings, but also for potential USCIS compliance audits, construction lenders, and Form I-829 petitions. There should be well-organized investor subscription records; EB-5 project landmark documents; construction draw requests and supporting documentation records from each financial source; and corporate, financial, tax, and employment records.

Regional centers that handle an onerous number of inquiries would be advised to establish a database or customer relationship management (CRM) tool for properly tracking an investor's progress, from prospect to unconditional permanent residency, including distributions of return on investment and proper tax documentation.

4. Regional Center Licensing/Services/Affiliation/Sponsorship Agreement. Most regional centers that work with independent developers or third-party licensees agree that it is critical to have a regional center licensing agreement in place that enables the regional center to obtain any necessary information any time it is needed. It could be beneficial to impose semi-annual requirements or compel copies of documents for certain reporting and filing obligations under state or federal law. At minimum, licensing agreements should include a mechanism for ensuring that answers and documents will be timely provided in response to regional center questions or in the event it needs to respond to USCIS. If it is only the new commercial enterprise (or its general partner or manager) that is signing the regional center licensing agreement, then similar provisions should be included in the loan document or other agreements between the new commercial enterprise and the job creating entity. If these requirements are not included, no guarantees can be made that the job creating entity will agree to provide certain types of documentation in the future. Agreements should be designed so that failure to provide this information is met with consequences no different than those imposed after the failure to make an interest payment or after the misappropriation of funds. Additionally, a regional center can record all loan requirements or project performance benchmarks, or at the very least, establish and maintain a process for recording and managing construction progress and tracking progress of job creation. The health of each EB-5 project can also be monitored through the receipt and analysis of ongoing financial reporting, or through site visits to the EB-5 projects.

EB-5 Capital Redeployment: Investors First!



WALTER S. GINDIN
IN-HOUSE IMMIGRATION COUNSEL, CANAM ENTERPRISES

Capital redeployment is one of the most important issues concerning EB-5 investors today. It impacts both existing investors, particularly those subject to EB-5 visa backlogs, and prospective investors, who in addition to evaluating the merits and suitability of an EB-5 investment must now consider the potential reinvestment of their capital following repayment of the original EB-5 investment. This article provides helpful background information regarding current USCIS policy on redeployment and discusses what redeployment options are suitable for investors.

Redeployment in a Nutshell

Redeployment involves the reinvestment by the qualifying new commercial enterprise ("NCE") of all or a portion of capital *following* the repayment or disposition of the original EB-5 investment. The requirement that immigrant investors maintain their capital investment "at-risk" over the two years of conditional lawful permanent residence (LPR) has always been an essential requirement of the EB-5 Program. The concept of redeployment has now been incorporated into the USCIS Policy Manual to address immigrant investors who have not completed their two-year conditional residence period before the original EB-5 investment is repaid to the NCE.

Why Is There a Need to Redeploy EB-5 Capital?

The Immigration and Nationality Act sets an annual limit on the number of EB-5 visas that may be issued at 10,000. Notably, this number includes both the principal investor and his or her spouse as well as unmarried children under the age of 21. Thus, if every EB-5 petition includes three family members, all 10,000 EB-5 visas would be used up by some 3,300 EB-5 petitions each year. In addition to the overall annual limit of 10,000 EB-5 visas, there is also a per-country cap of 7%, or 700 EB-5 visas. When it appears that the 10,000 EB-5-visa limit will be met in a given fiscal year, and also that a country will use up its individual 700 EB-5 visa allocation, the U.S. Department of State will impose a "cut-off" date for the issuance of EB-5 visas to immigrants from that country. Retrogression, or backward movement of visa cut-off dates, also could occur.

Historically, the overwhelming majority of the 10,000 annual EB-5 visas (likely over 90%) were allocated to immigrants from mainland China notwithstanding the 7% per country cap. This was possible because global demand for EB-5 visas outside of China was relatively minor, so any "unused" or "leftover" visas from other countries were allocated to Chinese immigrants. As the popularity of the EB-5 Program skyrocketed within China over the last five years, and also grew significantly in other countries such as Vietnam, Korea, and India, the global demand for EB-5 visas has far exceeded the 10,000 annual limit, leading to visa cut-off dates being announced for mainland China starting in May 2015, Vietnam in May 2018, and India in August 2019.

When there were no EB-5 visa backlogs and I-829 Petition adjudication times were relatively short, it was reasonable to expect that the

Continued On Page 26

Continued From Page 25

EB-5 capital would still be in use in the job-creating enterprise ("JCE") at the time that an EB-5 investor completed his or her two-year conditional residence period and/or received an I-829 Petition approval.

However, as I-526 Petition adjudication times have increased (now 21-27 months or longer in some cases) and with EB-5 visa backlogs in major markets such as China, Vietnam and India, and projected for other countries in the coming year, the original EB-5 investments will be repaid to NCEs before some immigrant investors have completed or even begun their two years of conditional residency. These immigrant investors, according to the USCIS Policy Manual, must continue to keep their capital "at risk," and where the original loan has been repaid the NCE must then reinvest the investor's capital into another investment that meets certain criteria described below.

Overview of USCIS Policy Guidelines on EB-5 Redeployment

In June 2017, the USCIS updated the Policy Manual to clarify that even after the required number of jobs have been created by the original EB-5 investment, an investor must sustain the investment at-risk throughout his or her two-year conditional LPR period. In this regard, redeployment, or "further deployment" in another investment as it is called in the Policy Manual, must satisfy the capital-at-risk requirement, must be within the scope of the ongoing business of the NCE, and must occur within a commercially reasonable time.

The Policy Manual further states that any redeployment of capital after satisfaction of the job-creation requirement must have the following three "at-risk" components:

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

While it may be clear that a number of investments may meet these three "at risk" requirements, it is not clear what USCIS would consider compliant with the "scope" of the ongoing business of the NCE. The Policy Manual provides only two examples – namely, (i) where the initial investment was related to construction, then a redeployment into another construction project would comply, and (ii) new issue municipal bonds, such as for infrastructure spending. But USCIS has yet to provide additional guidance or further clarification on its redeployment requirements. While the EB-5 stakeholder community is presently advocating for USCIS to confirm that the scope of permissible redeployment vehicles (for example, to include any investments in marketable securities) is broader than these two examples, the USCIS has yet to do so. It is clear, however, that while USCIS maintains its position that funds must be "at-risk" throughout the initial two-year period of the investor's conditional residency, the NCE may not simply invest the funds in an interest-bearing account (i.e., money-market account) or similar financial options upon liquidation of the JCE's interest.

Until USCIS provides additional guidance upon the issue, NCEs contemplating redeployment investments should consider whether such investments fall within the "scope of [their] ongoing business" by examining the stated purpose of the NCE and the full range of activities it is required and/or authorized to undertake. For example, where an NCE's organizational documents authorize it to engage in a wide range of activities, such as acquiring securities, equity interests, loans, notes, bonds, etc., then the NCE may be able to select from a fairly broad range of redeployment investment options. Alternatively, if the NCE's organizational documents provide for a narrower focus, such as investing solely in real estate projects, then the range of possible redeployment investments may be more limited.

With any redeployment investment, the NCE must be able to redeploy within a "commercially reasonable period of time." The American Immigration Lawyers Association has noted and objected to the vagueness of this requirement, and requested further guidance.

What Redeployment Options Are Currently Available in the EB-5 Marketplace?

Given the absence of additional clarification from USCIS on its redeployment policy, it is not surprising that most of the current EB-5 redeployment platforms mirror the two examples that are explicitly mentioned in the USCIS Policy Manual – namely, investments into real estate assets and/or investments in municipal bonds.

Redeployments into real estate assets can take several forms – for example, as short-term bridge loans; as longer-term debt arrangements; or as equity investments. Because each of these options entail capital lockout periods, investors should take into consideration the timeframe of their respective redeployment periods when evaluating a particular real estate reinvestment.

Continued On Page 27

Continued From Page 26

Real estate investments can also offer higher yields (which some investors may prefer), however they can also carry the same, if not greater, amount of risk as the original EB-5 investment. As such, it is important that EB-5 investors closely evaluate and perform due diligence on any real estate-based redeployment vehicle to understand its terms and assess its financial viability. It may be lucrative for EB-5 regional center operators to redeploy investors' capital into another EB-5 project for 5-7 years at the expense of investors' interests; however, this practice is not required by the USCIS guidelines.

Certain new-issue municipal bonds are another example of a permissible redeployment vehicle according to the USCIS Policy guidelines, provided that they are within the scope of the NCE's ongoing business at the time of the investor's original investment. Municipal bonds are issued by local governments, territories, or their agencies. They are generally used to finance public projects, including schools, airports, roads, utilities, and other infrastructure-related repairs. While municipal bonds may offer lower yields as compared to a traditional real estate investment, municipal bonds nevertheless tend to entail less economic risk and are usually more liquid. Municipal bonds are therefore one of the suitable options for investors seeking capital preservation and repayments shortly following their satisfaction of EB-5 Program requirements.

It is also important to note that because many NCEs were formed prior to the issuance of the USCIS's policy guidance on further deployment in June 2017, it is very likely that any redeployment contemplated under the NCEs organizational documents is either not described with the requisite specificity and/or not entirely reflective of the specific guidance and examples in the Policy Manual. Therefore, it is very likely that NCEs will need to properly describe the redeployment investments and seek investor approval in order to redeploy their repaid capital. In these instances, EB-5 investors should always compare the pros and cons of any proposed redeployment vehicle to evaluate whether it suits their specific immigration and financial goals, and regional centers should be prepared to explain and thoroughly document each proposed reinvestment. The main priority for both investors and regional centers should always be securing immigration benefits and preserving redeployed capital in accordance with EB-5 Program requirements.

The Investor-focused Approach to Redeployment

Ultimately, the goal of practitioners and regional centers in the EB-5 industry is to ensure that investors complete their immigration goals and preserve their capital investments. This "investor-first" mindset should guide any approach to developing redeployment strategies. A conservative redeployment platform should provide different investment options intended to suit the needs of its specific investors but still meet USCIS requirements.

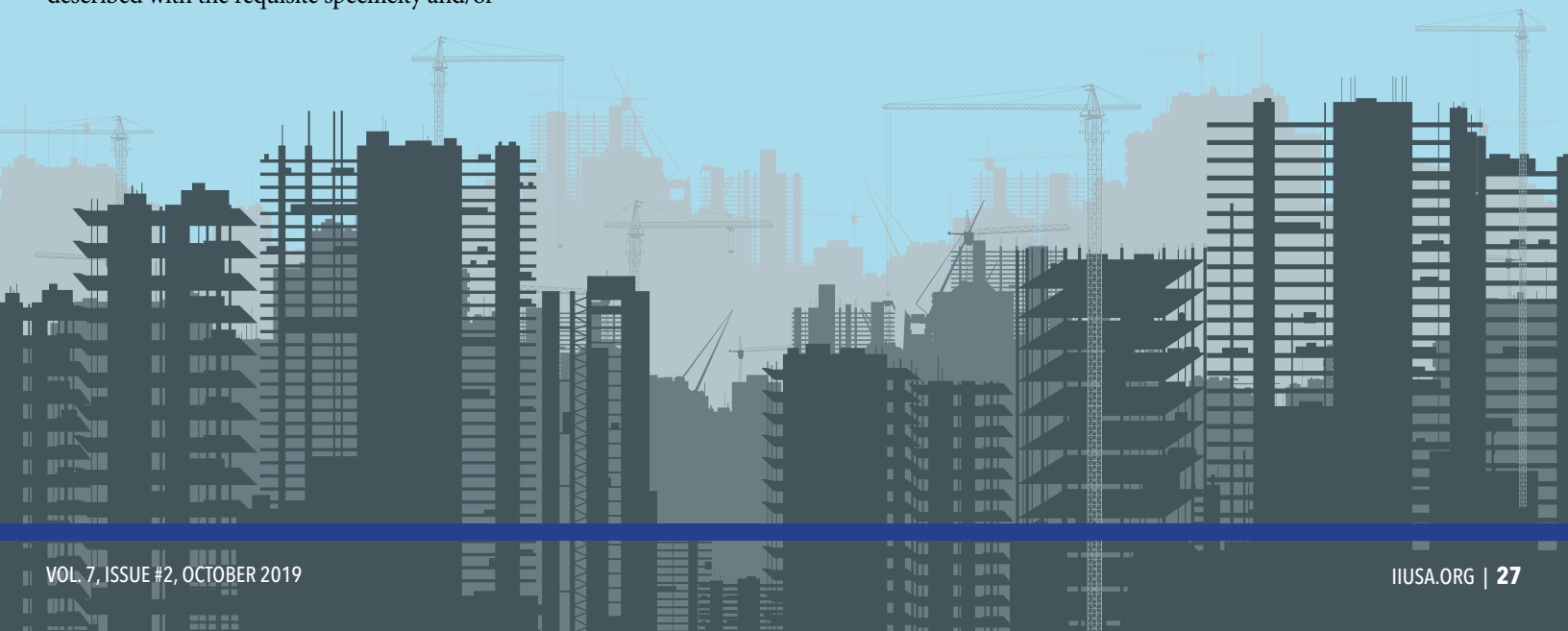
Optionality is important to investors and their families, each of whom have different immigration and investment preferences and risk tolerance. Therefore, recognizing that some investors simply may not wish to pursue redeployment following the disposition of the original EB-5 investment, regional centers may wish to offer such investors the opportunity to withdraw and receive a capital repayment. However, these investors must understand the immigration consequences of this decision, which can result in the possible denial of the I-829 petition.

Alternatively, for investors who elect to redeploy and for whom liquidity is the most important criteria, a redeployment platform which offers new issue municipal bonds that mirror key characteristics of the original EB-5 investment is an excellent option. When choosing this approach, NCEs must navigate the variety of municipal bonds in the marketplace, across numerous sectors such as health care, housing, industrial development, higher education, etc.

Finally, for redeploying investors who prefer higher returns, some regional centers may offer redeployment platforms that offer the opportunity to invest in conservatively structured mezzanine loans to qualifying real estate developers or longer-term preferred equity real estate investment offerings, depending on an individual investor's redeployment period. The goal should be to seek out conservatively structured investments that will best protect investors' capital. Offering other EB-5 projects as redeployment investments to investors may create an unnecessarily high risk to investors, and is simply not required by the regulations.

Once USCIS provides more policy guidance regarding what is permissible to meet the redeployment requirements, other methods of redeployment may provide more and better options to investors, and practitioners should continue to closely monitor all legislative and policy changes/updates, in order to best inform redeployment strategies in the future.

A special thank you to Erin Corber for her assistance in writing this article.



The Case for Legislative Reform of the EB-5 Program:

Proposed Securities Integrity Provisions to Protect Investors and Strengthen the EB-5 Investment Market

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IIUSA and its members strongly support legislative reform of the EB-5 Program that includes securities integrity provisions designed to: protect investors, provide certainty of legal requirements to EB-5 stakeholders and participants, and strengthen the EB-5 investment market.

IIUSA and other EB-5 Program supporters have drafted proposed legislation that would include the following securities integrity measures (collectively referred to in this article as the "Integrity Measures"):

1. prohibit persons that directly or indirectly own ten percent (10%) or more of the voting or ownership interests in a regional center or that otherwise directly or indirectly control the management or administration of a regional center from having any involvement in any regional center, new commercial enterprise ("NCE," the EB-5 securities issuer), or affiliated job-creating entity ("JCE") after any such person has been found by a court of competent jurisdiction or any final order of the Securities and Exchange Commission ("SEC") or a state securities regulator to have committed either: (a) a criminal violation involving fraud or deceit within the previous 5 years; or (b) a crime for which the person was convicted involving fraud or deceit and was sentenced to a term of imprisonment of more than one year;

2. permanently or temporarily bar any person associated with a regional center or impose other sanctions against the regional center if the regional center, or any parties so associated with the regional center that the regional center knew or reasonably should have known—

   a) are permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the offer, purchase, or sale of a security or the provision of investment advice;

   b) are subject to any final order of the SEC or a State securities regulator that—

      (i) bars such person from association with an entity regulated by the Securities and Exchange Commission (such as a securities broker-dealer or investment adviser) or a State securities regulator (unless otherwise later waived by the Securities and Exchange Commission); or

      (ii) constitutes a final order based on a finding of an intentional violation related to fraud or deceit in connection with the

Continued On Page 29

Continued From Page 28

offer, purchase, or sale of, or investment advice relating to, a security; or

(iii) were found by a court of competent jurisdiction or any final order of the Securities and Exchange Commission or a State securities regulator to have submitted or caused to be submitted statements or materials that contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

3. Require regional centers, new commercial enterprises (NCEs), and job creating entities that are issuers of securities to adhere to and comply with all relevant securities laws in connection with the issuance of EB-5 investments, and acknowledge that EB-5 investments may be exempt from the registration requirements of the Securities Act of 1933 under Rule 903 of Regulation S, or Regulation D, or any other available registration exemption.

4. Recognize the authority of the SEC to enforce securities law matters rather than the Secretary of the Department of Homeland Security.

Similarity with SEC Regulation D "Bad Actor" Rule.

The proposed Integrity Measures are in large part taken from the "bad actor" restrictions adopted by the SEC in July 2013 and codified in SEC Rule 506(d) of SEC Regulation D. Regulation D exempts US issuers of securities (both in EB-5, and otherwise) from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and also preempts state securities registration requirements for offerings made under Regulation D. The SEC adopted Rule 506(d) to implement the requirements of Section 926 of the Dodd-Frank Act ("Dodd-Frank"), relating to the disqualification of "felons and other 'bad actors'" from participation in Regulation D offerings made under SEC Rule 506. These "bad actor" rules adopted by the SEC in Rule 506(d) were required by Dodd-Frank to be "substantially similar" to the disqualification rules in SEC Rule 262 (which apply to SEC Regulation A offerings as well as to offerings under SEC Rule 505 of Regulation D). Rule 506(d) includes some additional categories of disqualifying events (such as final orders issued by insurance, banking, savings associations or credit unions; federal banking agencies; the Commodity Futures Trading Commission; and the National Credit Union Administration), as required by Dodd-Frank, but these additional categories are believed to be not as relevant to the type of disqualifying events that are more relevant to EB-5 securities offerings.

Familiarity of EB-5 Issuers with SEC Regulation D.

EB-5 issuers typically rely upon SEC Regulation D (and SEC Regulation S, applicable to securities offerings to non-US Persons) to exempt their offerings from registration under the Securities Act with respect to any investors who are in the US at the time they subscribe for investment in EB-5 securities. Therefore, most EB-5 issuers (NCEs) are already familiar with the requirements of the "bad actor" rules under SEC Regulation D, because they are already required to comply with these requirements in order to claim the Regulation D exemption. The Integrity Measures would include within the scope of the "bad actor" rules persons in the EB-5 industry associated with regional centers and affiliated JCEs (meaning JCEs affiliated with the NCE), thereby applying the same standards to persons who participate in any of these three levels of EB-5 offerings – regional centers, NCEs, and affiliated JCEs.

Certainty of Enforcement Standards.

By virtue of the similarity of the Integrity Measures to SEC Rule 506(d), EB-5 regional centers, NCEs, and JCEs are able to rely upon a substantial existing body of SEC regulation and interpretations under Rule 506(d). This allows all EB-5 stakeholders, as well as the SEC, to apply most of the same standards of enforcement with respect to EB-5 offerings as are applied to other non-EB-5 securities offerings made under SEC Regulation D. Certainty of legal standards is an important benefit to the EB-5 industry in general, because it facilitates a "level playing field" in which all participants are familiar with and subject to the same rules as all other participants. We believe that increasing the familiarity of these rules will result in greater compliance with existing securities law requirements, and thereby enhance the integrity of the EB-5 securities markets as a whole.

Reliance upon SEC Experience in Securities Law Enforcement.

The Integrity Measures also recognize the authority of the SEC to enforce securities law compliance, which provides an additional level of certainty regarding the enforcement policies that will be followed in the EB-5 securities markets. The SEC has had many years of enforcement experience with respect to "bad actors" in the securities industry in general, and by drawing on this experience to enforce compliance in the EB-5 securities markets, EB-5 stakeholders, including EB-5 investors, are able to benefit from this experience. The SEC has already made significant efforts to bring enforcement actions against EB-5 issuers and sponsors who have violated the anti-fraud provisions of the federal securities laws, and the proposed Integrity Measures would further enhance the ability of the SEC to act as the primary securities law regulator in the EB-5 securities markets. In turn, this would further allow the USCIS to rely upon enforcement actions taken by the SEC in making decisions to bar "bad actors" from the EB-5 Program.

Benefits of Integrity Measures as Part of EB-5 Reform Legislation.

We believe that the Integrity Measures, along with the proposed EB-5 reform legislation, may revitalize the EB-5 Program, which would benefit all EB-5 investors, regional centers, NCEs, and JCEs. The EB-5 Program is a proven job creation program that enhances development opportunities without government subsidies. However, as with many investment programs, the EB-5 Program has suffered due to some "bad actors" who have tarnished the reputation of the EB-5 Program and created fear and uncertainty on the part of prospective investors. It is crucial to the future of the EB-5 Program that all regional centers, NCEs, and JCEs recognize and support the need for reform that will strengthen the integrity of the EB-5 securities markets and better protect investors. We therefore urge that the EB-5 reform legislation including the Integrity Measures be wholeheartedly supported by EB-5 stakeholders and supporters of the EB-5 Program.

Subscription Escrow Accounts in EB-5 – A Story of Evolution

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The use of a subscription escrow account to accept capital contributions from EB-5 investors seeking permanent residency in the United States through the EB-5 Immigrant Investor Program has been widely accepted by industry participants. While not required by any securities or immigration law or regulation, a properly structured escrow arrangement is an integral part of an EB-5 project's overall success. If implemented properly, the terms of the escrow agreement can offer the EB-5 investors assurance (i) that their funds can only be released to the appropriate party(ies), and (ii) that a refund could be facilitated in the event of an I-526 Immigrant Petition by Alien Entrepreneur (I-526 Petition) denial. The EB-5 regulations were not designed to impede private enterprise, thus there are minimum government mandates related to the structure or operation of the subscription escrow accounts. Issuers who can offer their investors protections through their escrow structures have a competitive advantage in a market saturated with projects seeking EB-5 investment as part of their capital stacks. That said, EB-5 escrows have been forced to evolve and adapt to market challenges over the years. Here is a look at where we've been and what we are to expect in the future.

Post Financial Crisis Era of Conservative Escrow Accounts

EB-5 as a mainstream source of financing skyrocketed in popularity following the financial crisis in 2008 and 2009. At that time, one could expect an I-526 Petition to be adjudicated by United States Citizenship and Immigration Services (USCIS) in four to six months. Issuers could raise the capital they sought from EB-5 investors, primarily in Mainland China where the demand was great and the familiarity with the program widespread, have their EB-5 investors file I-526 Petitions with USCIS, obtain adjudications on those Petitions and deploy the capital into the job creating enterprise (JCE) in a very short period of time. The EB-5 investors took comfort in the fact that their funds would be held safely in an escrow account under the control of an independent escrow agent until they knew that their immigration petitions had been approved. In the event there was something wrong with their petitions, or the projects for that matter, they could quickly and easily get their money back. They would be free to reinvest in a different project or return to the status quo and consider another path to permanent residency. Unfortunately, the good ole days had to come to an end.

2013 to 2018 - The Age of Creativity

As the popularity of the EB-5 Program continued to grow, so too did the number of petitions filed with USCIS and the length of time it was taking to adjudicate them. Gone were the days of a four to six-month processing time, and the industry found itself facing petitions left pending for over a year, and then more than two years. Despite commitments made by USCIS to increase staffing and implement efficiency measures, the waits continued to grow and the ripple effect wreaked havoc. Projects could no longer wait years to have access to the EB-5 funds. Developers, contractors, vendors, and networks of parties involved in designing, constructing and operating these EB-5 projects needed to get paid or else a series of defaults, bankruptcies, and foreclosures would be soon to follow. So, the industry pivoted.

The EB-5 investors still sought security and promises of refunds should their I-526 Petitions be denied, but they had to broaden their focus and consider seeking arrangements that also provided the ability for the projects to get funded timely. A failure to fund timely would increase the risk that the EB-5 investors could lose their investments altogether when the projects were forced to file for bankruptcy or lose

Continued On Page 31

Continued From Page 30

the property in a foreclosure. This led to the introduction of the more aggressive escrow structures commonly known as "early release" escrows.

Through the careful collaboration of industry experts specializing in immigration law, securities law, and banking, a number of early release structures were developed to help meet the developers' funding needs while still providing protections for the EB-5 investors. These structures were meant to address two main risks: project failure risk and individual EB-5 investor denial risk. The early release escrows would incorporate release triggers and refund mechanisms designed to maximize the likelihood that sufficient funds would be available to refund any EB-5 investor whose I-526 Petition were to be denied by USCIS while also allowing the developers to access the funds when necessary. Often times, a project would not begin to release funds until either (i) an exemplar petition or at least one EB-5 investor's I-526 Petition were approved such that deference would be established, or(ii) the full capital stack was in place such that development could proceed with or without the EB-5 funds. Following project approval, a portion of the EB-5 investors' funds would be released to the New Commercial Enterprise at the time of I-526 Petition filing and a portion would be held in escrow until I-526 Petition adjudication to help facilitate refunds should any individual EB-5 investor's I-526 Petitions be denied. But even this methodology couldn't stand the test of time.

2018 to Present – The Modification Period

According to the USCIS website, processing times for I-526 Petitions are currently ranging between 29 and 45.4 months. Translation – we are approaching four years from the time an EB-5 investor's I-526 Petition is filed and the time when USCIS adjudicates it. This creates significant issues for EB-5 stakeholders including investors, regional centers, financial services providers and developers. If we look at the massive influx of I-526 Petitions that were filed shortly before the September 30, 2015 Regional Center Program Sunset Date and the steady flow of I-526 Petitions filed since then, we will see that the majority of those projects were structured with early release escrow accounts where a portion of the EB-5 investors' funds was expected to remain in the escrow account until such time as the EB-5 investors' I-526 Petitions were finally adjudicated. The protracted I-526 Petition processing times are causing that portion of the funds to be locked in the escrow account at a time when the developers either need capital to complete the development or where the project is completed and the developers are seeking to refinance or even sell the property. As part of the EB-5 immigration process, it is essential to be able to show not only that the EB-5 Funds have been fully invested into a new commercial Enterprise (NCE), but that there is a nexus between the capital contribution and the requisite job creation. When any portion of the EB-5 investors' funds remains in escrow pending adjudication of the I-526 Petitions (Holdback Structure) a disconnect is created between the capital contribution and the job creating activity. This disconnect, in turn, means that the USCIS may deny the EB-5 investors' I-526 Petitions preventing them from achieving conditional residency status, or deny their I-829 Petitions by Entrepreneur to Remove Conditions on Permanent Resident Status, preventing them from achieving permanent residency status and possibly causing them to be deported. So, the industry pivots again. But this time, the pivot is far more complex.

Contrary to what is thought by many, the solution to this problem is not nearly as simple as having the NCE and/or Regional Center contact the bank and amend the escrow agreement to remove the holdback provisions. The provisions controlling the mechanism for release, including conditions relating to the time and manner of such release, are typically described in the Private Placement Memorandum (PPM), LP Agreement or Operating Agreement of the NCE, as applicable (LPA), Subscription Agreement and Escrow Agreement (collectively, Offering Documents). Any change to those terms will impact each of those documents. And to make matters more complicated, amending some of those documents may require consent from some, if not all, of the EB-5 investors before such changes can be implemented. And because the EB-5 investors subscribed with the promise of certain security, like the availability of funds to facilitate refunds following I-526 Petition denial, they may not eagerly offer the requisite consent. Even worse, the EB-5 investors may get spooked and seek to withdraw from the offering altogether. So how can an issuer navigate this dilemma successfully?

Unfortunately, there is no one-size-fits-all approach in this context. As such, it is important to analyze how Holdback Structures are incorporated into the various Offering Documents in order to determine what consent, if any, is needed from EB-5 investors to eliminate an existing Holdback Structure (since the provisions of such documents likely dictate mechanics for amendments, including the requisite percentage required to effect such amendment and who has the necessary authority to enter into such amendments). For example, the provisions of the LPA may require that a majority of EB-5 investors consent to an amendment to the LPA. If the LPA is silent on mechanics for amendments, the statutory provisions of the NCE's state of organization would govern (which often requires a majority). By contrast, the NCE might, though it would seem unusual, have the authority to amend its Escrow Agreement without the express consent of EB-5 investors (though the NCE would still need the escrow bank, agent and/or administrator to enter into such amendment as well). Nevertheless, prudence would still dictate that an NCE seek consent from all of its current EB-5 investors before amending the Escrow Agreement for the purposes of eliminating a Holdback Structure.

The best (and most conservative) practice of effecting these changes is to prepare an amendment and/or supplement to the PPM and other Offering Documents (Supplement). The purpose of the Supplement is to notify EB-5 investors of the NCE's intent to access funds prior to adjudication of the I-526 Petition and to disclose the risks presented by removing such provisions. A properly drafted Supplement would modify the operative

Continued On Page 32

Continued From Page 31

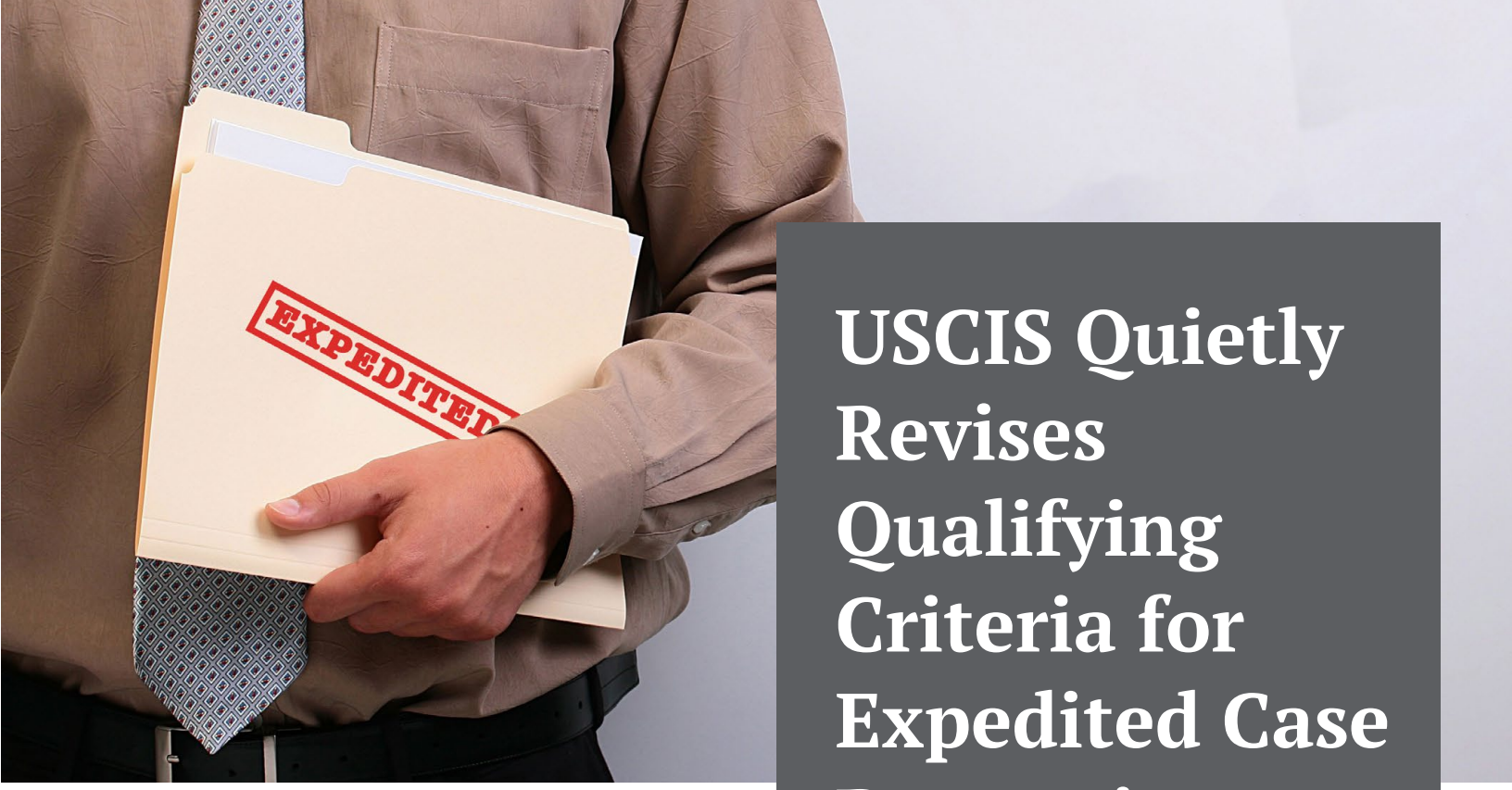
provisions of the Offering Documents and then disclose any material information relating thereto, including without limitation: (i) any conditions required to release proceeds; (ii) the name of the bank where EB-5 investor funds will be held pending release and the identity of the party that controls funds prior to release (such as an escrow agent or administrator); and (iii) how the NCE would return EB-5 investor funds following the denial of an I-526 Petition once the holdback funds have been deployed. In order to properly insulate the NCE from potential securities laws liability, any Supplement should include copies of the material agreements being described in the Supplement (such as the amended Escrow Agreement that authorizes the early release mechanism or a copy of any proposed amendment to the LPA). As detailed above, the NCE should require all EB-5 investors to sign a copy of the Supplement to acknowledge and consent to the changes being effected therein. Going forward, each prospective EB-5 investor should also receive a copy of the Supplement (along with the other Offering Documents) so the prospective EB-5 investor is also made aware of the changes effected by the Supplement. To the extent that an EB-5 investor does not consent to the changes presented in the Supplement, the NCE may offer the EB-5 investor the right to rescind his or her investment in the NCE (though any such rescission rights may jeopardize an EB-5 investor's ability to receive conditional permanent residency under the EB-5 Program). Additionally, if the information contained in the Supplement is deemed material from a securities laws perspective, the NCE would be well advised to offer all of the EB-5 investors a similar right to rescind their investments in the NCE (especially since the failure to disclose material information to EB-5 investors could be deemed a violation of the anti-fraud provisions of applicable securities laws). However, if an EB-5 investor consents to the changes disclosed in the Supplement and remains invested in the NCE (even after full disclosure of potentially material changes contained in the Supplement), such consent may prevent the EB-5 investor from prevailing on a later rescission claim. Similarly, offering rescission rights following disclosure of a material change provides a helpful defense should an EB-5 investor later make a claim against the NCE or its principals for failure to disclose material information.

If an NCE elects to eliminate a Holdback Structure and allows for the EB-5 investors' entire capital contributions to be released prior to adjudication of the I-526 Petitions, the EB-5 investors lose one essential protection afforded by the Holdback Structure – the NCE's availability of funds to return capital to an EB-5 investor following a denial of his or her I-526 Petition. Unfortunately, there is no "standard" practice with respect to when and how funds will be returned following an I-526 Petition denial. While these provisions can range in application – from imposing a hard obligation to return capital immediately to returns of capital being required only if the denial is project-related, the best-case scenario is that the provisions of the Offering Documents provide a clear mechanism to return funds such as an I-526 Petition Denial Refund Guaranty from an entity with a balance sheet healthy enough to support the refund obligation, or clearly articulate that there is no commitment to refund a denied EB-5 investor at all. In such event, the EB-5 investor would be bound by the provisions of the Offering Documents. If, however, the Offering Documents are also silent on the issue of denials, the NCE and individual EB-5 investor may be free to negotiate how such funds would be returned. The NCE could also proactively seek to supplement the Offering Documents in order to establish clear mechanisms for future returns of capital related to I-526 Petition denials but would be well-advised to handle those changes in the same Supplement that serves to modify the existing release mechanics. One popular mechanism would allow the NCE to procure a substitute EB-5 investor, whose capital contribution, once invested into the NCE could provide the liquidity necessary to return funds to the denied EB-5 investor. The substitute EB-5 investor option, however, would only be available if the offering period has not expired. Another common alternative is where the NCE requires the JCE to repay a portion of the EB-5 loan (or preferred equity investment) as soon as proceeds become available. Of course, this may not necessarily allow for an immediate return and there is always the possibility that funds are not available until the occurrence of a liquidation event or the exit strategy contemplated in the Offering Documents (e.g., a sale or refinancing).

The Future – A New Face of Escrow

It may seem to some that the need for subscription escrow accounts in EB-5 has gone by the wayside. In fact, there still remains a need and a purpose. Lest we forget that the vast majority of banks in the United States have zero appetite for accepting and holding funds from EB-5 investors who have no continuing relationship with those banks. And country by country there are currency export restrictions that are best managed by having a subscription escrow account to receive the deposits. And most importantly, the utilizing a subscription escrow structure provides an escrow agent who acts as an independent third party and who is responsible for ensuring that the funds leave escrow at the appropriate intervals and for the benefit of the appropriate beneficiaries. The sad reality is that the escrow structure itself can no longer, by itself, be the mechanism to facilitate refunds to EB-5 investors whose I-526 Petitions may be denied because such adjudication will occur long after the funds are released from the escrow agent's control. It would be safe to expect that any new escrow agreements and the corresponding provisions found in the Offering Documents will either provide an I-526 Petition denial refund guaranty, or more likely, will offer no promise of refunds at all. In this respect, the EB-5 offerings will become more inline with traditional private equity offerings.

At the end of the day, the subscription escrow structure has been a staple component in EB-5 offerings. It has weathered many changes in the market (some more gracefully than others) and the industry has adapted accordingly. What will the next era hold in store? Only time will tell.



USCIS Quietly Revises Qualifying Criteria for Expedited Case Processing

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In these days of increasingly extended processing times and visa backlogs, any opportunity to achieve expedited processing of an application or petition by USCIS would be highly attractive to regional centers, projects, and investors alike. Creatures of policy rather than regulation, the agency's standards guiding action for expedited processing requests are not unique to the Immigrant Investor Program; instead, they are national standards applicable to every type of application or petition seeking an immigration benefit. The process and qualifying criteria for an expedite request have been of particular interest to the EB-5 community over the last couple of years, as word of a few successful expedite requests have circulated. The Regional Center Business Journal has previously published a thorough treatment of how and why to seek expedited processing as it relates to EB-5[1] and, as it remains accurate in many respects and provides helpful guidance, I will not repeat that material here. This article is intended to alert the IIUSA membership to substantive changes to the qualifying criteria for expedite requests.

On May 10, 2019, USCIS quietly revised its expedite criteria by issuing updated policy guidance, amending the USCIS Policy Manual as it relates to "services USCIS provides to the public, including general administration of certain immigration benefits, online tools, and up-to-date information."[2] The updated policy guidance, now published in the USCIS Policy Manual[3] and on the USCIS website,[4] significantly narrows the criteria USCIS uses to determine whether an expedite request is warranted. Additionally, this new section of the USCIS Policy Manual offers some interpretive policy guidance that further

1 See Joseph Barnett, Analyzing the Recent Trend of EB-5 Expedited Processing, Regional Center Business Journal (Vol. 6, no. 2, October 2018) at 41-42, available at https://issuu.com/iiusa/docs/iiusa-rcbj_oct2018-digital (last visited September 12, 2019). This 2018 article includes discussion of both substance and procedure, and it remains accurate in all respects other than the changes to expedite criteria discussed here.

2 See Policy Alert – USCIS Public Services (May 10, 2019).
3 USCIS Policy Manual, Vol. 1, Part A, Chapter 5, available at https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-5 (last visited September 12, 2019) ("Expedite PM").
4 See https://www.uscis.gov/forms/how-make-expedite-request (last visited September 12, 2019).

Continued On Page 35

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Continued From Page 33

limits how the specified criteria are applied and may eliminate a number of potential arguments that might be advanced in connection with EB-5-related petitions and applications.

The new, revised expedite criteria are as follows:

1. Severe financial loss to a company or person, provided that the need for urgent action is not the result of the petitioner's or applicant's failure: (1) to file the benefit request or the request to expedite in a reasonable time frame; or (2) to respond to any requests for additional evidence in a reasonably timely manner;
2. Urgent humanitarian reasons;
3. Compelling U.S. Government interests (such as urgent cases for the Department of Defense or DHS, or other public safety or national security interests); or
4. Clear USCIS error.[5]

Comparing the new criteria to the longstanding prior expedite criteria, it is clear the new criteria are intended to reduce the universe of cases in which USCIS would adjudicate a matter out of the usual order. A brief overview of the primary differences is offered below:

Severe Financial Loss. A realistic prospect of severe financial loss that would be suffered by a company or individual has long been considered good cause for expedited processing, and the policy updates maintain this criterion. However, the criterion is modified to make it unavailable where the application or petition (or the expedite request) was not filed within a reasonable time, or where an RFE response was not filed in a "reasonably timely" manner. It is unclear under what circumstances a timely filed RFE response could be found not to have been filed in a reasonably timely manner (particularly in the EB-5 context where the development of responsive documentation is often complex). USCIS has long taken the position that expedited treatment is not warranted where the claimed urgency has been created or exacerbated an applicant's own actions or inaction.

Most significantly for the EB-5 community, however, the Policy Manual now defines "severe financial loss" as follows: "Severe financial loss to a company means the company would be at risk of failing."[6] Thus, the sheer magnitude of a financial loss no longer has persuasive value apart from its potential impact on the overall viability of the company.

Urgent humanitarian reasons. This criterion is a replacement for both "extreme emergent situation," which has been eliminated altogether, and "humanitarian situation," which is restricted to only those humanitarian situations that can be characterized as "urgent."

Compelling U.S. Government interests. Prior expedite criteria relating to government interests included "furtherance of the cultural and social interests of the United States" (when requested by a non-profit organization) or a "Department of Defense or national interest situation" (when requested by a federal agency and stating delay would be detrimental to the government). Within the EB-5 community, "the national interest" and "cultural and social interests" have frequently been explored as bases for potentially fruitful arguments for expedited processing, depending on the characteristics of a particular project or location. Both of these somewhat malleable categories have been eliminated from the new guidance. Instead, the criterion is limited to "public safety or national security interests," including specifically the "urgent" interests of DOD or DHS, that can be characterized as interests of the "U.S. Government" (as opposed to interests of the "nation"). The new focus on public safety and national security greatly narrows the range of arguments that might be presented in support of an expedite request.

Clear USCIS error. This criterion replaces what was previously two distinct criteria relating to USCIS itself: "USCIS error" and "compelling interest of USCIS." With respect to USCIS errors, only those that are "clear" are now deemed worthy of prompt correction through expedited processing.[7] And arguments relating to the interests of USCIS, such as program integrity, consistency in adjudication, efficiency, etc., can no longer qualify, however compelling they may be, unless they fit within the category describing public safety or national security interests, above.

The revised Policy Manual also offers some general guidance as to its handling of expedite requests and what requestors may expect in the way of a response:

> "The decision to grant or deny an expedite request is within the sole discretion of USCIS";
>
> "Not every circumstance that fits under one of these categories will result in expedited treatment"; and
>
> "USCIS is not required to provide justification and is not required to respond regarding decisions on expedite requests."[8]

Clearly, the overall potential for expedited handling and the range of arguments that may be advanced have been greatly reduced as a result of these amendments to the Policy Manual. Consistent with the current administration's narrowing of immigration benefits in general, these policy revisions significantly curtail opportunities for flexibility and the amelioration of harm in the adjudication process.

5 Expedite PM, supra note 3.

6 Expedite PM, supra note 3, at note 1.

7 Note, there may be other procedures through which corrections of USCIS error may be sought.

8 Expedite PM, supra note 3.

Know Your Customers Regulations: What EB-5 Participants Should Know

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Any new commercial enterprise **(NCE)** that is an issuer of EB-5 securities **(EB-5 Issuer)** should understand and comply, as applicable, with the so-called "know your customer" **(KYC)** rules. Although the KYC rules principally apply to banks and other financial institutions, Issuers should not be surprised if their escrow bank imposes some of their obligations on them.

Under the KYC rules, banks and other financial institutions are subject to certain regulations promulgated by the Financial Crimes Enforcement Network **(FinCEN)**, a bureau of the Department of Treasury. One primary law that governs these banks is the Currency and Foreign Transactions Reporting Act of 1970 as amended by the PATRIOT Act of 2001.[1] This law, along with a set of affiliated laws, became known collectively as the Bank Secrecy Act **(BSA)**.[2] The BSA places several obligations on the part of financial institutions to ensure that its customers are not committing fraud, terrorism, or other similar crimes through their bank accounts.

Financial institutions' obligation to comply with FinCEN regulations may be categorized into two main components: Customer Identity Protection **(CIP)** and Customer Due Diligence **(CDD)**.

CIP is the "fact-checking" prong of the obligation.[3] Under CIP, financial institutions must essentially run a background check on potential new account holders.[4] They generally will collect information from the customer's driver's license or passport to ensure the identity of the individual.[5]

CDD concerns itself with monitoring customer account behavior. It deals more with tracking the customer's account use once the account is opened.[6] As part of CDD protocol, the financial institution must create a customer risk profile when the customer opens an account.[7] The factors that go into the profile are institution-specific; the institution may choose to include categories such as location of customer, type of business or employment of customer, and type of account.[8] The institution would also take into account new circumstantial information, as appropriate, that reflects on the customer's risk profile. For example, the institution would note if it saw that the customer was suspiciously sending wire transfers for no apparent reason, or rapidly changing its volume of transactions.[9]

Certain kinds of customers and customer circumstances may trigger enhanced due diligence standards, while others always do. According to the Federal Financial Institutions Examination Council **(FFIEC)**,[10] entities including nonresident aliens and foreign individuals, politically exposed persons, embassy, foreign consulate, and foreign mission accounts, and money services businesses may trigger higher standards based on how high they rate on the financial institution's customer risk profile.[11] On the other hand, customers such as individuals with high risk profiles and correspondent accounts of foreign banks that have been designated as non-cooperative with international anti-money laundering principles or procedures always trigger enhanced due diligence standards.[12] In any case where enhanced due diligence is necessary, the financial institution should impose stricter customer monitoring standards. For example, the institution should obtain more information when the customer opens their account, and then it should monitor the customer's activity more closely throughout its relationship with the institution.[13] Additional information that the institution should obtain includes source of funds and wealth, occupation or type of business (of customer or other individuals with ownership or control over the account), and location where the business customer is organized and where they maintain their principal place of business.[14]

1 Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016), https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf.
2 Id.
3 What is KYC and Why Does it Matter?, FIN, March 1, 2019, https://fin.plaid.com/articles/kyc-basics/.
4 Id.
5 Id.
6 Id.
7 Customer Due Diligence – Overview, FFIEC, pg. 1, https://www.ffiec.gov/press/pdf/Customer%20Due%20Diligence%20-%20Overview%20and%20Exam%20Procedures-FINAL.pdf.
8 See What is KYC and Why Does it Matter?, FIN, March 1, 2019, https://fin.plaid.com/articles/kyc-basics/ and Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016), https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf.
9 Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016), https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf.
10 FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the examination of financial institutions by various federal agencies, and to make recommendations to promote uniformity in the supervision of such institutions. In 2006, the State Liaison Committee (SLC) was added to the Council as a voting member. About the FFIEC: Mission, State Liaison Committee, FFIEC, https://www.ffiec.gov/about.htm.
11 See Customer Due Diligence – Overview, FFIEC, pg. 5, https://www.ffiec.gov/press/pdf/Customer%20Due%20Diligence%20-%20Overview%20and%20Exam%20Procedures-FINAL.pdf and BSA/AML Manual: Persons and Entities, FFIEC, https://bsaaml.ffiec.gov/manual/PersonsAndEntities/01.
12 Global Financial Crimes Full Report Country Guide: United States, PWC, pg. 13, https://citt.pwc.de/tools/; CFR § 1010.610(c)(2) (2018).
13 Customer Due Diligence – Overview, FFIEC, pg. 5, https://www.ffiec.gov/press/pdf/Customer%20Due%20Diligence%20-%20Overview%20and%20Exam%20Procedures-FINAL.pdf
14 Id.

Continued On Page 37

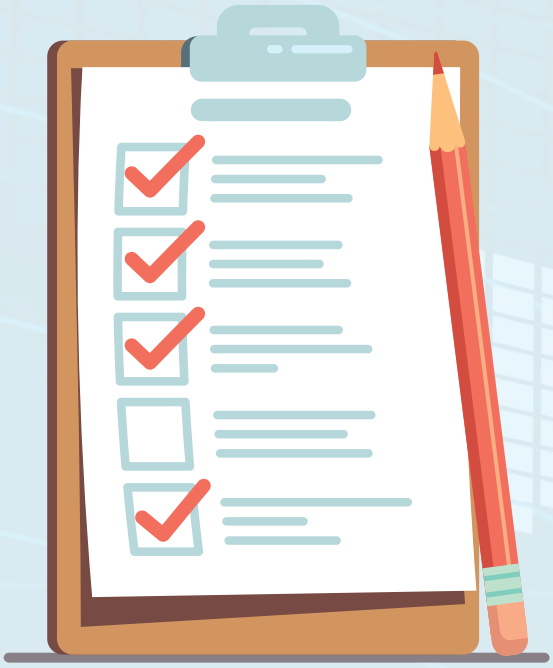
Continued From Page 36

If a financial institution does not perform adequate FinCEN due diligence, penalties can be severe. FinCEN regulations provide for civil penalties of up to $1,000 for recordkeeping violations, and for reporting violations, regulations provide for up to the greater of the amount involved in the transaction (up to $100,000) or $25,000.[15] As for criminal penalties, FinCEN regulations provide for fines of up to $250,000 or imprisonment of up to 5 years or both for willful violations of KYC requirements, and the penalties are twice as severe if the violation was committed while violating another US law or if it was committed as part of a pattern of criminal activity.[16]

Financial institutions are also subject to regulations set by the Office of Foreign Asset Control **(OFAC)**, a bureau of the Department of Treasury. OFAC and its attendant regulations make sure that US businesses, including financial institutions, comply with international economic sanctions. OFAC places compliance requirements similar to FinCEN's obligations on financial institutions. When a financial institution runs its CIP and CDD checks on new customers, it should simultaneously check each customer's risk with respect to OFAC.[17] The institution should compare new customer accounts with OFAC lists to make sure that the customer is not, and is not related to, a sanctioned individual, entity, or country.[18] Factors that would increase a customer's risk with respect to OFAC include the customer's involvement with international funds transfers, nonresident alien accounts, and foreign correspondent bank accounts.[19]

EB-5 Issuers are clearly impacted by the FinCEN and OFAC regulations because by necessity they have foreign investors as members or limited partners. An EB-5 Issuer that opens a bank account would need to supply contact, business, and transactional information to their financial institution as part of compliance with such regulations. However, those new to EB-5 often find out that the number of financial institutions willing to hold EB-5 deposits is extremely limited. Of the over 6,000 banks in the United States, less than ten will accommodate EB-5 deposits consistently. Perhaps for many familiar with EB-5 this process does not appear significant since the banks willing to work with EB-5 have already agreed to run the KYC process. Certainly this is a service that NES Financial, as escrow administrator in such deals, seamlessly works behind the scenes to ensure that the escrow agent and bank are able to support the unique nature of EB-5 escrow deposits. If, however, there is no financial institution serving as escrow agent or escrow bank, then the KYC obligations will squarely impact the NCE or its law firm if it serves as escrow agent. Given the current regulatory environment and the concerns that many financial institutions have with serving as the escrow bank, NCE's and their law firms may have to take a more active role in their financial institutions' compliance with FinCEN regulations. In recent years, FinCEN regulations have become ever more expansive and comprehensive.[20] Given the heavy burden on financial institutions, such institutions may pass down compliance requirements onto their customers.[21] For example, banks may charge law firms with vetting those sending money into the firms' escrow accounts instead of the bank itself. Law firms, regardless of whether they are in the EB-5 space, should be prepared to take on these responsibilities and must understand the attendant risks.

15 31 CFR § 1010.820(c), (f) (2018).
16 31 CFR § 1010.840(b), (c) (2018).
17 Office of Foreign Assets Control – Overview, FFIEC, pg. 138, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ofac_sec_frb_080106.pdf.
18 Id.
19 Id. at 139.
20 What is KYC and Why Does it Matter?, FIN, March 1, 2019, https://fin.plaid.com/articles/kyc-basics/.
21 Id.



TEA Designations:

Final Rule Leaves Many Questions and Risks

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The final rule for The EB-5 Immigrant Investor Program Modernization regulation was published by Department of Homeland Security (DHS) in the Federal Register on July 24, 2019 ("Final Rule"),[1] and will go into effect on November 21, 2019. Besides a few minor clarifications, The Final Rule language related to TEAs does not differ much from the Notice of Proposed Rulemaking ("Proposed Rule") that DHS released more than two years ago in January 2017. So, by now most EB-5 industry stakeholders are familiar with the following main TEA-related changes in the Final Rule:

(1) Drastically limits census tract combination for high-unemployment TEAs: census tract aggregation will be limited to the project tract(s) plus some or all of the tracts that are "directly adjacent" to the project tract (i.e. a TEA can only consist of the tracts that touch the project tract for aggregation purposes). While this article will not go into great detail on this topic of the new census tract aggregation restrictions, please see the prior Regional Center Business Journal article "TEA Designations – Proposed DHS Rule Would Significantly Alter the Process" which covers the topic in-depth (and is still relevant as the Final Rule does not differ from the Proposed Rule, besides a few minor language clarifications). DHS also will no longer allow census block groups to be used (only census tracts), which also significantly reduces the amount of possible TEAs.

(2) Significant increase in investment levels: Minimum investment in a TEA will be $900,000 while minimum investment outside of a TEA will be $1,800,000.

(3) DHS eliminates the ability of states to designate high-unemployment areas, and instead, DHS will make such designations. Investors will be required to provide sufficient evidence demonstrating the location would qualify for the reduced investment threshold.

While the main takeaways above have understandably garnered most of the attention of the industry, a deeper look at the TEA-related language in the Final Rule reveals many unresolved questions and the need for further clarity from DHS on the following topics:

(1) now that the onus is on the investor to prove the location is a TEA (instead of just providing a state issued letter as under current TEA standards), what data/methodologies must be used for unemployment rate calculations at the census tract level?

(2) how and when do you know if your TEA has been approved?

This article will discuss these topics along with a few other takeaways of interest to stakeholders related to the Final Rule.

What data must be used for unemployment rate calculations under the new standards?

As mentioned previously, it will be the responsibility of the investor to provide sufficient evidence demonstrating the project location qualifies as a TEA (under the restrictions of only using any combination of tracts "Directly Adjacent" to the project). Unfortunately, DHS states it **will not** provide one specific set of data that petitioners can use to demonstrate TEA eligibility. The petitioner must provide evidence that the area qualifies as a high unemployment TEA. First, we will discuss what DHS does state about accepted data, and then discuss what it does not clarify and the resulting questions left unanswered.

DHS does state that unemployment data provided by the U.S. Census Bureau's American Community Survey (ACS) and the Bureau of Labor (BLS) Statistics qualify as reliable and verifiable data for petitioners to use. BLS publishes more recent data than ACS, but only collects data down to a city/town level (including the county-level data which is part of the census-share calculation currently used

Continued On Page 39

1 https://www.federalregister.gov/d/2019-15000/p-8

Continued From Page 38

in most TEA calculations). ACS publishes more outdated data than BLS, but collects data for smaller geographic units than BLS (such as at the census tract level which are utilized in most TEA designations). The language from the preamble in the Final Rule related to accepting BLS and ACS data is as follows:

DHS believes that the unemployment data provided to the public by both ACS and BLS qualify as reliable and verifiable data for petitioners to reference in order to carry their evidentiary burden.

DHS does not provide much detail or clarifications beyond that. The potentially positive takeaway is that this lack of clarity may provide for some flexibility on the methodology that can be used to satisfy the new TEA standards. Most states under the current standards utilize "census-share methodology" (which utilizes a combination of ACS and BLS data) for TEA calculations at the census tract level, so it was not unreasonable to think that DHS might specifically state that census-share must be used. Instead, DHS states the following:

Although DHS recognizes that there are benefits to limiting the unemployment statistics to a single dataset, the final rule does not provide one specific set of data from which petitioners can draw to demonstrate their investment is being made into a TEA because currently no one dataset is perfect for every scenario. Thus, the burden is on the petitioner to provide DHS with evidence documenting that the area in which the petitioner has invested is a high unemployment area, and such evidence should be reliable and verifiable.

So, while census-share should be perfectly acceptable to DHS, as it uses a combination of both datasets mentioned above (ACS and BLS), and that is what almost all states use to satisfy the current standards, what other potential methodologies could be utilized? It appears that DHS will also accept an "ACS-only" analysis, as the following language in the preamble of the Final Rule appears to specifically refer to an ACS data only scenario:

If petitioners rely on ACS data to determine the unemployment rate for the requested TEA, they should also rely on ACS data to determine the national unemployment rate [sic] to which the TEA is compared.

The language above would leave the reader to believe DHS will accept different methodologies that would utilize different national unemployment rates for comparison. Accordingly, a census-share calculation does need to be compared to a national unemployment standard that is different from an ACS-only calculation.

Census-share versus ACS-only

What is the difference between "census-share" and "ACS-only" methodologies? Census-share utilizes ACS data at the tract level (the most current ACS data available utilizes a five-year average of 2013-2017), and then "trends" the slightly outdated ACS data at the tract level forward by using more recent BLS data to arrive at a more current estimate of census tract unemployment. An ACS-only approach does not take this extra step to "trend" the data forward. As such, an ACS-only approach would compare to a different 150% national threshold than if census-share was used (as DHS alludes to above). Depending on the project location, it might be more beneficial to utilize census-share, or it might be beneficial to use ACS-only (or it might not matter as both methodologies might work).

An ACS-only approach would have a different 150% national threshold for comparison as an ACS-only approach results in a more outdated result than census-share (which takes the extra "trending" step). As national unemployment rates have been steadily dropping over the last several years, census-share methodology based on the most recent data currently needs to meet a lower national unemployment rate threshold than ACS-only.

How does an ACS-only approach compare to census-share when looking at the data? Is one obviously more beneficial than the other for EB-5 purposes? The table below provides information on how many census tracts qualify as a single tract under each methodology. As a disclaimer, the results below do not take into the account the "directly adjacent" possibilities and so the information below does not encompass all the possibilities of how a census tract can qualify under the Final Rule. However, analyzing the single tracts that qualify on their own will give us insight to see if one methodology is clearly better than the other for finding TEA-eligible areas.

As the table demonstrates, the results are similar under each approach with approximately 21% of census tracts in Metropolitan Statistical Areas (MSAs) qualifying as a single tract (without needing any aggregation) using census-share methodology and 22% qualifying using an ACS-only approach. While the overall percentages are very close, the two methodologies do not completely overlap – which is potentially positive news for EB-5 stakeholders. Approximately 2,300 census tracts in MSAs (out of approximately 62,000) qualify under an ACS-only approach that do not qualify under census-share, and similarly approximately 1,900 census tracts that qualify under census-share do not qualify under an ACS-only approach. This lack of overlap leads to more potential qualifying TEAs under the Final Rule than if DHS had specifically mandated that just one method be used. As such, approximately 25% of all MSA census tracts qualify as a single tract under either census-share or ACS-only.

Methodology	150% Threshold	% of Census Tracts Qualifying as a Single Tract
Census-Share - (CY18)	5.9%	20.8%
ACS - Only (2013-17)	9.8%	21.5%
Qualifying under Census-Share or ACS-Only		24.5%

While this potential flexibility is a positive, the general lack of clarity in the Final Rule is problematic, especially because petitioners will not receive a firm DHS "answer" on the question of the TEA compliance until the I-526 is adjudicated (as discussed in more detail later). Some questions and issues due to this lack of clarity are discussed below (several of which were brought up by EB-5 practitioners on the *EB-5 Stakeholder Listening Session regarding the Final Rule* that was held by USCIS on September 9, 2019).

Will DHS actually accept either ACS-only or Census-Share methodologies? While our best interpretation of the Final Rule is that DHS will accept census-share or ACS-only, the Final Rule does not specifically state that.

How long is a TEA approval valid? (i.e. as the federal government releases new ACS and BLS data, when must the petitioner start using the newly released data?) Under the current standards, TEA letters are generally considered to be valid until the respective state starts using more recent data. Almost all states update TEA

Continued on Page 40

Continued From Page 39

data once a year (typically around April/May when the calendar year BLS data is finalized). However, new ACS data at the census tract level is typically released in December (although the most recent release was delayed a few months due to the government shutdown). While suggested best practices would be to always use the most recent data available, it can be difficult to keep up with the schedule of the release of multiple datasets by the government. This can be especially problematic if a project has a "borderline" TEA that is just barely meeting the threshold based on the new requirements. Hopefully DHS will provide guidance related to this very important issue.

Are there other methodologies that can be considered besides ACS-only and census-share? If so, what are those methodologies? DHS states in the final rule that they have left things open-ended here in part because "states will utilize different methodologies than ACS and BLS". Almost all states utilize the same census-share methodology, so it is unclear what other methodologies the Final Rule is referring to.

If using census-share, does the analysis have to use a calendar year (CY) basis (as almost all states currently use), or would a rolling 12-month period be allowed? For some borderline TEAs, looking at different rolling 12-month periods might be more beneficial than utilizing a calendar year basis only, however the Final Rule provides no specifics on this topic.

Do vertex connections (i.e. census tracts that only touch "at a point") meet the "Directly Adjacent" requirement? While it seems likely that DHS would allow vertex connections (based on the vertex definition and since almost all states currently allow them), but it would be reassuring if they would explicitly state that they are accepted.

The ambiguity in the Final Rule regarding accepted data and methodologies has potentially huge implications, as petitioners will not receive a quick answer on whether the TEA has been accepted by DHS. This is discussed in further detail next.

The Final Rule DOES NOT establish a separate application or process for obtaining TEA designation from USCIS prior to filing the EB-5 immigrant petition and USCIS will not issue separate TEA designation letters for areas of high unemployment.

Due to adjudication processing times for EB-5 related petitions that are already exceedingly long, the possibility of DHS taking over TEA designation requests has long been of great concern for EB-5 stakeholders. Unfortunately, under the Final Rule, petitioners will have to wait until the I-526 is adjudicated to have a confirmation on if the TEA has been accepted by USCIS, as there will be no separate designation process for TEAs. The current posted I-526 processing times as of the date of this article are a lengthy 27.5 months to 46.5 months. As discussed previously, with so much ambiguity regarding the data and methodologies that can be accepted to meet the evidentiary burden for TEAs under the Final Rule, this could be a very nervous two years (or more) for project stakeholders as DHS reviews the TEA designation evidence with the I-526 to determine eligibility. Until DHS provides further clarity (assuming that happens), or the first I-526s under the Final Rule start being adjudicated (likely two years or more from now) the ambiguity will certainly cause marketing and other issues as investors decide whether or not to invest $900,000 in a project that might have some TEA uncertainty. Investors will no longer have the comfort of having a state-designated TEA letter before investing/filing, but will have to rely on a third-party report that attempts to meet the evidentiary burden. While this adds an additional risk factor for investors, it will also need to be addressed by attorneys in their EB-5 related documentation and communications. Investing $900,000 in a project without a good level of certainty that the project is TEA-qualifying is a legitimate risk for all EB-5 stakeholders to be concerned about. Due to the above it will be exceedingly crucial that supporting documentation included with each I-526 petition be done correctly by a practitioner experienced with TEA calculations.

How many current projects will be affected?

The Final Rule makes it much more difficult to obtain a TEA designation. From a sampling of TEA certifications from actual EB-5 projects, DHS estimates that only 54% of regional center projects in the sample would have been affected by the new TEA standards. Based on experience, this estimate appears low on the surface. For comparison, an IIUSA Policy Research Report prepared by Policy Analyst Lee Li estimated that approximately two-thirds of current projects would be affected and would have seen their minimum investment level jump significantly from $500,000 currently to $1,800,000 after November 21, 2019.

Best Practices and Summary

The DHS Final Rule will significantly alter the way high-unemployment TEAs are both calculated and designated. While the transferring of authority to designate high unemployment area TEAs from the states to DHS and the very restrictive limiting of the aggregation of census tracts are of great concern to EB-5 stakeholders, the industry must also be mindful of the lack of clarity and outstanding questions that remain.

As the industry adjusts, below are some potential Best Practices to consider:

(1) As independent evidence for a high unemployment TEA based on census tracts, provide a clearly detailed formal analysis demonstrating the data utilized to determine that the TEA qualifies based on the Final Rule (including direct citations from the Final Rule). Again, as the states will no longer be providing certification letters, it will be crucial that the analysis be clearly laid out and done correctly so a USCIS adjudicator has nothing to (reasonably) question.

(2) If the TEA qualifies under both census-share and ACS-only methodologies (if it qualifies under one methodology it is likely to qualify under the other as well), provide an analysis of both methodologies as independent evidence to USCIS. While it appears that utilizing only one of the methodologies above should be sufficient, providing DHS with both might provide an extra level of comfort.

(3) Utilize the latest and greatest data from ACS and/or BLS in the analysis. Be diligent in keeping up-to-date on when the government releases new data.

EB-5 stakeholders will have to make many adjustments based on the Final Rule. Adjusting to new market-based realities due to the increased minimum investment levels combined with other changes resulting from the Final rule will take time. Decreasing the number of unknowns will help everyone with this transition and so hopefully DHS will listen to the comments from the industry and will provide additional clarification to some or all of the questions raised in this article.

JAPAN:

CULTIVATING A NEW SOURCE OF EB-5 INVESTORS

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The United States historically has maintained friendly relations with Japan, and it is no doubt that the symbiotic relationship between the two countries is important both economically and socially. Currently there are roughly 426,000 Japanese citizens residing in the United States which is the highest number in the world outside Japan.[1] With a strong presence of Japanese multi-national companies with offices in the United States, it is unsurprising that E-1/E-2 visas are popular. In fact, the number of E category treat visas issued to Japanese citizens is the highest in the world.[2] However, while immigration to the United States is as popular as ever, interest in and use of the EB-5 program remains low. In 2018, Japan ranked as just the 18th largest investor markets with 66 investors. While small, it is interesting to note that that number increased by 29 from 2017; perhaps a reason for optimism in Japan's emergence as a growing investor market.

Japan is a homogenous country with a very strong economy with a gross domestic product (GDP) that trails only the United States and China according to the International Monetary Fund (IMF). On top of that, the country is very safe; therefore, people who consider migration are still in the minority as there is no political, financial or human rights issues that cause citizens to want to emigrate. However, in recent years, Japanese high net worth individuals (HNWI) have become active in migration for several reasons which will be detailed below. Japanese people tend to choose the neighboring countries as migration destinations, with Singapore, Hong Kong, Australia, and New Zealand being popular options. In the case of options for investor visas, though, very few people choose the U.S. Migration to foreign countries can be very challenging for Japanese people due to big cultural differences and language barriers. Japan has a close relationship with the U.S., but EB-5 is seldom used by Japanese citizens as a path for migration as they tend to utilize other visas categories. This is perhaps due to a lack of knowledge of the existence of EB-5 as a path to U.S. citizenship.

I hope this article will be helpful in understanding Japan and its potential as an EB-5 investor market.

1. Concerns of Japanese High Net Worth Individuals

Japan was the second largest economy in the world behind the United States for many years before the rise of China, and it is still holds an important position in international economic activities as the third largest economy in the world. In fact, Japan has the second highest population of HNWI in the world, runner up to only the United States beating out Germany, China and France in the top five.[3]

It is true that Japanese people are not so keen to migrate to other countries as the domestic economy is very strong and safe. However, considering asset protection and planning for their families' future, HNWI have been actively leaving the country in recent years. This recent flight can be attributed to recent Japanese tax reform. Specifically, many wealthy people relocated to Singapore and other countries before the Japanese government introduced an exit tax in 2015.

The following is data from the Japanese Ministry of Finance, which compares the Japanese inheritance tax rate with other countries.[4]

Japan has the highest inheritance tax of any country and the reality is that many wealthy people have migrated because of this fact.

1 https://www.mofa.go.jp/mofaj/files/000368753.pdf pg. 28
2 https://travel.state.gov/content/dam/visas/Statistics/Annual-Reports/FY2018AnnualReport/FY18AnnualReport%20-%20TableXVII.pdf
3 https://worldwealthreport.com/wp-content/uploads/sites/7/2019/07/World-Wealth-Report-2019-1.pdf
4 https://www.mof.go.jp/tax_policy/summary/itn_comparison/j05.htm

Continued On Page 42

Continued From Page 41

On the other hand, the United States has the lowest inheritance tax among other advanced countries. In addition, under Japanese law, even if you migrate to another country, the inheritance tax and gift tax are still applicable unless you have been a non-resident of Japan for 10 years. In other words, even if you become a tax resident of another country after you migrate, you are still responsible to pay the Japanese inheritance/gift tax for 10 years.

2. Image of the United States

Even though not many Japanese people consider migrating, the ones that do often desire to migrate to the United States. The presence of Japanese Americans and Japanese communities in large cities makes the U.S. a more comfortable place to land for those looking to migrate. While population and investment statistics are not necessarily a reliable barometer for interest in EB-5, it is interesting to note that Japan is responsible for 11% of the U.S.'s foreign direct investment (the third largest of any nation) and the U.S. is home to over 420,000 Japanese citizens (over 190,000 of whom are permanent registrants). Those numbers make it clear that Japan is not only one of the United States largest trading partners, but it is also home to the largest number of Japanese expatriates in the world.

The interest in residing in the U.S. is often driven by business considerations for many Japanese migrants. It is perhaps not surprising then that more than half of all Japanese citizens residing in the U.S. do so on a temporary basis. Again, strong business relations between the two countries and a large Japanese population already in the United States is not necessarily a recipe for EB-5 success, but it shows the interest in the United States is there, which is a great start.

3. Hawaii – A Special Place for the Japanese

Perhaps nowhere is the unique relationship between the United States and Japan on better display than Hawaii. According to the Hawaii Tourism Authority, the number of Japanese visitors in 2017 was 1.58 million, which was the most of any country not including the U.S.[5] For the most part, the purpose of their visit is sightseeing, though, many come to buy real estate. In 2016 and 2017, Japan ranked in the top 2 of foreign real estate buyers, but both years bought more properties at higher price points than any other country.[6] For this reason, the real estate market for Japanese people in Hawaii is always booming.

It is perhaps not surprising that Hawaii is popular with Japanese tourists and investors as there is a strong Japanese population on the islands, often mitigating some of the factors deterring migration (language being first and foremost). There is also an abundance of Japanese cuisine and shopping akin to that of Japan and many HNW Japanese tend to visit and stay in Hawaii longer and seek to purchase holiday houses on the islands as a home away from home. .

Based on the above reasons, many Japanese HNWI are investing in Hawaii and living as E-2 visa holders, and most prospective investors are keen to acquire an E-2 visa. But why is E-2 so much more popular than EB-5 (other than the obvious visa allocation difference between the two visa categories)? This is because most people operate businesses in Japan and wish to maintain a dual lifestyle between the two countries and the E-2 visa gives them that flexibility. However, there are many people who wish to stay in Hawaii long-term, including retirees, and EB-5 has the potential to give these individuals the retirement and long-term lifestyle they desire.

With that said, the information available about EB-5 to potential Japanese EB-5 investors in Hawaii and beyond, particularly transitioning a visa from E-2 to EB-5, is very limited and further education for Japanese business stakeholders should be a key focus of seeking to grow this market of EB-5 investors.

4. Quality Education and a Future for Their Children

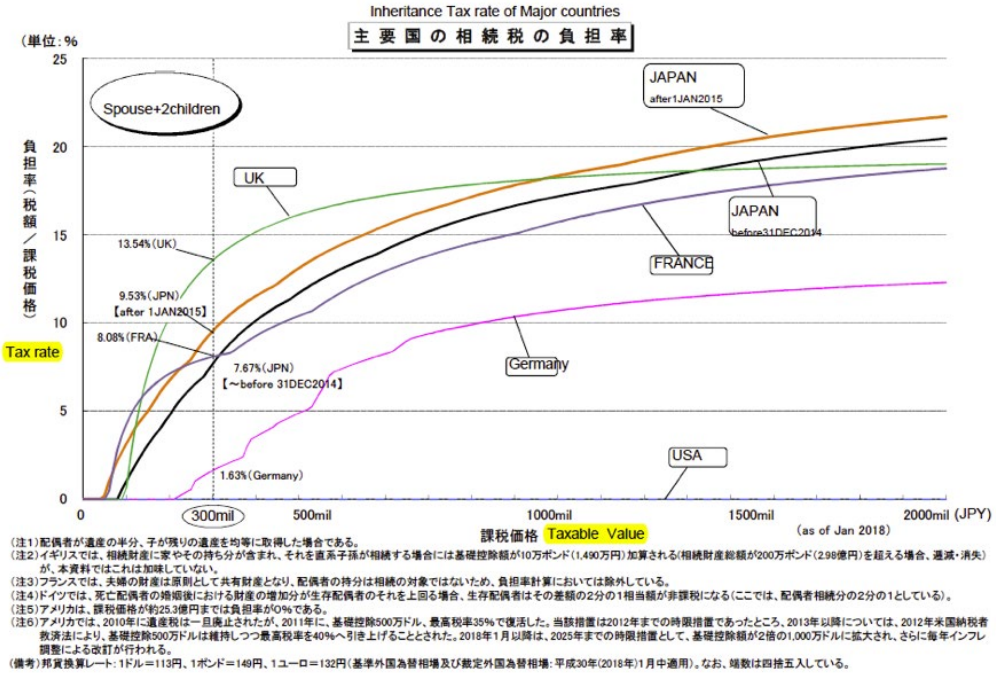
In general, the HNWI tend to spend money for their children's education in most countries, which is the same as in Japan. Tokyo is the most sophisticated city in Japan and many people have a global mentality - they are familiar with foreign countries and have a commitment to providing a high quality education for their children. However, there are a limited number of high quality schools in the area so parents sometimes choose to send their kids to international schools to study abroad in order to obtain the best education possible.

Many Japanese families choose Singapore as a first destination because there are over 30 international schools and parents can guarantee a high quality education there. For these options in the U.S., most families understand that an F1 visa ("student visa") is required to send their children to school in the U.S.; however, they are not aware of the

Continued On Page 43

5 https://www.hawaiitourismauthority.org/media/2766/2017-annual-visitor-research-report.pdf
6 https://hawaiiluxuryresortproperties.com/top-u-s-and-foreign-buyers-of-hawaii-island-and-statewide-property-statistics-2016/ and https://www.hawaiipublicradio.org/post/japan-s-new-hawaii-investments#stream/0

FIGURE 1: Inheritance Tax Rate by Major Countries



(注1)配偶者が遺産の半分、子が残りの遺産を均等に取得した場合である。
(注2)イギリスでは、相続財産に家やその持ち分が含まれ、それを直系子孫が相続する場合には基礎控除額が10万ポンド(1,490万円)加算される(相続財産総額が200万ポンド(2.98億円)を超える場合、逓減・消失)が、本資料ではこれは加味していない。
(注3)フランスでは、夫婦の財産は原則として共有財産となり、配偶者の持分は相続の対象ではないため、負担率計算においては除外している。
(注4)ドイツでは、死亡配偶者の婚姻後における財産の増加分が生存配偶者のそれを上回る場合、生存配偶者はその差額の2分の1相当額が非課税になる(ここでは、配偶者相続分の2分の1としている)。
(注5)アメリカは、課税価格が約25.3億円までは負担率が0%である。
(注6)アメリカでは、2010年に遺産税は一旦廃止されたが、2011年に、基礎控除500万ドル、最高税率35%で復活した。当該措置は2012年までの時限措置であったところ、2013年以降については、2012年米国納税者救済法により、基礎控除500万ドルは維持しつつ最高税率を40%へ引き上げることとされた。2018年1月以降は、2025年までの時限措置として、基礎控除額が2倍の1,000万ドルに拡大され、さらに毎年インフレ調整による改訂が行われる。
(備考)邦貨換算レート:1ドル=113円、1ポンド=149円、1ユーロ=132円(基準外国為替相場及び裁定外国為替相場:平成30年(2018年)1月中適用)。なお、端数は四捨五入している。

Continued From Page 42

difficulty of obtaining an H1B after their F1 expires, which would allow them to stay in the U.S. to work after school. Because they are not thinking long-term (post-university), EB-5 stakeholders looking to acquire Japanese investors would be wise to promote to potential investors, or parents of potential investors, the effective option that EB-5 would give them or their children to work, live and thrive in the U.S. long-term.

5. How We Can Develop and EB-5 Market in Japan

Characteristically, Japan has a very strong economy and is a safe country to live in. For this, many Japanese citizens see no reason to leave, unlike in many other popular investor markets for EB-5. Additionally, they have a conservative investment mentality (i.e. more than 50% of assets are held by cash)[7], so that they are widely unfamiliar with investment migration.

Japanese people have almost no issue with applying for a visitor visa in any country, so that very few people think about usage of visas as part of long-term life planning. Realistically, Japanese HNWIs are very far from the typical image of migration, even if they travel abroad frequently. Therefore, it is very important to provide Japanese HNWI the idea and education of long-term life planning through EB-5.

Currently, the biggest challenge in the Japanese market is to raise the education and awareness of EB-5. As you can see, there are very few EB-5 visas utilized by Japanese investors so the success stories of Japanese investors getting their U.S. green cards are low. Investors need to better understand the full life cycle of an EB-5 visa – from investment to conditional green card to green card and hopefully return of investment - along with the general investment process.

Compared to other country's investment visa programs, the U.S. program is much more complex and not as easy to understand for a foreign investor, particularly in undeveloped markets. In fact, there are very few immigration agents in Japan who assist with overseas investment visa programs including EB-5 and very few people know about existence of investment migration industry internationally. There are also very few regional centers present in the Japanese market. It may take time to raise awareness in Japan, but it may be well worth the work.

That is where organizations like IIUSA come in. As the only not-for-profit membership association for the EB-5 industry, it is well positioned to provide valuable education and business development opportunities both for regional centers looking to explore the market and investment migration consultants look to provide their investors with sound industry data. While there is not yet an event in Japan on IIUSA's calendar, I certainly hope to see the association there sometime soon to raise awareness of EB-5, educate stakeholders and provide its members with access to a potentially strong source of EB-5 investment.

Based on the above information, we hope to grow the Japan market together with IIUSA and its members.

7 https://www.boj.or.jp/en/statistics/sj/sjhiq.pdf

IIUSA MEMBERSHIP COMMITTEE CORNER

IIUSA Member Spotlight

AMY ERICSON
ANALYST, GREYSTONE EB-5

1. If you could sit down with any EB-5 advocate or government official, who would it be and why? What would you discuss?

If I could sit down with anyone, it would be the author(s) of the original EB-5 visa program as written in the Immigration Act of 1990. I would ask if they intended to have derivatives count against the 10,000 visa allotment.

2. What do you think is the biggest misconception in the EB-5 industry?

I think the biggest misconception would be that green cards are for sale. Anyone who has explored obtaining a green card through the EB-5 program knows that the purpose of the program is to create jobs.

3. What led you to the EB-5 industry? How has IIUSA membership helped you grow professionally in EB-5?

I first became aware of EB-5 in 2014, when I was working at a commercial real estate news and events startup called Bisnow. My role at Bisnow was to generate revenue through event sponsorships and create content for events. I was fascinated with the concept of EB-5 and produced EB-5 focused events around the country. Through these events, I met the folks at Wright Johnson (now Baker Tilly), a business plan and economic analysis consulting firm, and fortuitously started working on their team soon after. We would sponsor IIUSA conferences, through which I met many industry veterans and newcomers alike. I joined Greystone almost three years ago, during which time I have been able to take part in all aspects of the EB-5 process.

IIUSA has provided a platform for me to grow professionally through developing a network and utilizing the data provided in the member portal for advocacy purposes. I continue to find value in being a member of IIUSA.

4. Where was your most memorable EB-5 related trip?

I've been fortunate enough to travel to some far-flung places for EB-5 business, including China, Vietnam and Brazil. I would have to say my most memorable EB-5-related travel was my initial visit to China in March of 2017. This was my first opportunity to attend an EB-5 seminar and come face to face with potential investors. I remember seeing families with young children and I developed a new appreciation for the real impact of our offering. I also remember feeling proud of our project, a ground-up multifamily development in Harlem with an affordable housing component, because I felt it had strong fundamentals and would be a good option for any potential investor.

5. What is something about you the membership may not know?

Although I have lived in New York City for eight years, I grew up in the country, on a dirt road in a small town in Massachusetts. My first job, at age 13, was at a horse barn behind my house.

Recapping IIUSA's First-Ever Event in Taiwan

ABTEEN VAZIRI
MANAGING DIRECTOR, BREVET CAPITAL MANAGEMENT;
DIRECTOR, IIUSA

Last month marked the first time Invest in the USA (IIUSA) held a Global Banquet Series event in Taipei, Taiwan and as both a sponsor and a member of the IIUSA Board of Directors, I was pleased to be able to participate in this precedent-setting event.

Although Taiwan was one of the early market adapters of EB-5 and other investment immigration programs globally, this was the first time IIUSA and its members held an event in the city of Taipei. Historically, Taiwan has consistently been a top 5 contributor of EB-5 investors into the United States; however, due to the large number of EB-5 investors from Mainland China, many regional centers have yet to enter the Taiwan market. Since 2018, as a result of the increase in long wait lines in Mainland China caused by retrogression, Taiwan has gained more traction in EB-5 and has reintroduced itself as one of the key EB-5 markets. Before the Mainland Chinese flocked in droves to the EB-5 program in the early 2000s, Taiwan's EB-5 market produced a steady volume of investors. In 2017 and 2018 though, Taiwan experienced a 27% and 48% growth in the number of investors from 143 in 2016 to 182 and 269, respectively. We suspect that the number of investors for 2019 will end up even larger, which is why IIUSA was eager to participate in this year's event!

The IIUSA Global Banquet Series is now in its third year of connecting IIUSA members and international stakeholders through events held in EB-5 investor markets around the globe. The events are great networking and business development opportunities and additionally are a testament to the significant value that IIUSA brings on the education and data analysis front.

Continued On Page 46

RECAPPING IIUSA'S FIRST-EVER EVENT IN TAIWAN

Continued From Page 45

For last month's event, IIUSA formalized a partnership with the Taiwan Immigration Consultants Association (TICA) to ensure that the leading migration agencies participated in the event. The event certainly resonated with the members of TICA with representatives of over 40 migration agencies in attendance to hear both the sponsors presentations as well as critical updates from IIUSA, the industry's only trade-association. IIUSA was also honored to welcome representatives from the Chinese Immigration Quality Assurance Association (CIQAA) with event attendees hearing presentations by TICA and CIQAA during the evening. IIUSA staff and members of the association's Board of Directors (Cletus Weber, Rush Deacon and myself) were honored to meet with representatives from TICA and recognize the important collaboration between the two organizations.

A core component of every IIUSA event is education and the event in Taiwan was no different. Lee Li, IIUSA's Policy Analyst, conducted an important data presentation during the event highlighting local market trends in EB-5. The report was well received and served to highlight the potential for growth in the Taiwanese market in the year ahead. In addition, the featured event of the night was a panel moderated by Bruce Thompson of American Lending Center who was joined by other panelists that included Gonzalo Lopez Jordan (American Regional Center Group), Rush Deacon (Pine State Regional Center), Jenny Nguyen (FirstPathway Partners) and myself. The panelists gave their accounts of the latest from the United States, including their views of the future of the EB-5 industry, the new regulations, as well as any hopes for new legislation from Congress to provide long-term certainty and reform to the Program.

Many of the local attendees appreciated IIUSA hosting an event in Taiwan and had many questions for the panelists. The most important takeaway from the event and the questions during the panel was the importance of organizations such as IIUSA hosting events in local markets as well as having the tools and resources to help explain the nuances of the American legal system. Many participants explained how important it was that they could access IIUSA resources on its website and learn about the differences between the legal ramifications of the EB-5 regulations versus any proposed legislation.

From my perspective as a sponsor, we found that the event was an excellent way in which to enter a new market as it provided valuable local market education and connected us with the leading local organizations. From the perspective of an IIUSA Board member, I found the partnership between IIUSA and TICA as well as the large agent turnout to be reflective of the importance of these events as well as of international partnerships which IIUSA is uniquely positioned to formalize.

We look forward to continuing to be active participants in the IIUSA Global Banquet Series in the year ahead as we find the events to be critically important to our organization's business development goals and we recognize the importance of IIUSA's efforts to ensure overseas markets are well informed.

IIUSA Investor Market Development Efforts are Full Steam Ahead

IIUSA Drives Critical Business Development & Education in Key EB-5 Investor Markets

MCKENZIE PENTON
DIRECTOR OF EVENTS AND BUSINESS DEVELOPMENT, IIUSA

As the EB-5 industry's only non-profit membership-based trade association and its strongest voice in advocacy, research and education, IIUSA believes it is our responsibility to ensure that the industry is well-informed and empowered with the information it needs to succeed.

In 2017, we identified a lack of educational opportunities and a dearth of authoritative information in many of the EB-5 investor markets around the globe. Thus, the IIUSA Global Banquet Series (GBS) was born to deliver education, business development and networking opportunities to members and international stakeholders alike. To date, the GBS has connected over 1,500 professionals at 12 events in 7 countries in the last 2 ½ years (China, Vietnam, India, South Korea, Taiwan, the UAE and Switzerland).

To those organizations and guests who have helped make the GBS successful, we thank you for your continued support of IIUSA and recognize you as champions of education and investor market development. To those who have yet to attend, we hope that the below information will provide you a reason to join IIUSA overseas in 2020!

Here's what the Global Banquet Series is all about!

Educating Overseas Markets

There seems to be no shortage of investment migration events taking place every month around the world. However, while many of these events provide marketing value, we found that they are often lacking in education and quality and reliable information. This becomes particularly apparent when EB-5 is often relegated to a single panel or presentation with other investment programs from Cyprus, Grenada, Australia and everywhere in between taking much of the limelight and diminishing the ability to provide in-depth education on EB-5 alone.

IIUSA Policy Analyst, Lee Li, conducts and in-depth data presentation for attendees at the IIUSA Global Banquet Series in HCMC. Data analysis and education are key components of IIUSA's mission and focus of its international events.

As the EB-5 industry's only source for unbiased education, we feel that it is our responsibility to ensure that all of our members, international stakeholders and the general public have access to critical IIUSA and EB-5 Program information.

A key component of each and every Global Banquet Series is an in-depth data presentation conducted by IIUSA's very own Policy Analyst Lee Li. The presentations take a deep dive into EB-5 program trends and highlight investor market-specific data, including I-526 processing times, petition filing growth (or decline) and filings by investor market. The presentations are important for international stakeholders as well as our regional centers in attendance as it enables both to assess the strength of the given investor market and determine future growth potential. The information presented by IIUSA during these events is not available publicly anywhere else and is only made possible through the data we receive via Freedom of Information Act (FOIA) requests and IIUSA's close working relationship with government administrations namely the Visa Controls Office at the U.S. Department of State.

Each international event also features an "EB-5 Experts" panel comprised of professionals from across the spectrum of EB-5, often including members of the IIUSA Board of Directors and Leadership Circle. These panels provide much-needed updates on EB-5 advocacy efforts, in-market insights and other hot topics and importantly they also provide a great Q&A opportunity for gathered attendees.

We know that hearing about the latest

Continued on Page 48

Above: Attendees at IIUSA's First Ever Event in Dubai, UAE enjoy a cocktail and networking reception.

Left: Panelists discuss EB-5 regulations, legislation and other industry hot topics as part of the EB-5 Experts panel at the IIUSA Global Banquet Series event in Mumbai, India.

Continued From Page 47

industry advocacy updates or investor market trends is not for everyone, but we are confident that the industry leaders in investor markets around the world not only appreciate the timely and valuable information IIUSA provides, but also understand the value of continuing education opportunities to ensure that they are best equipped to advise their clients.

IIUSA Policy Analyst, Lee Li, conducts and in-depth data presentation for attendees at the IIUSA Global Banquet Series in HCMC. Data analysis and education are key components of IIUSA's mission and focus of its international events

Championing EB-5 Industry Best Practices & Transparency

Equally important as our education efforts, IIUSA is committed to promoting our industry best practices, including our Code of Conduct (iiusa.org/code-of-conduct). These documents, authored and curated by IIUSA members, give IIUSA members (and the larger industry) a guidepost from which to conduct their EB-5 business with a high level of ethical standards and transparency.

Transparency and best practices are both extremely important in overseas markets and we aim to ensure that all foreign service providers are well versed in the importance of transparency as well as the Code of Conduct that all IIUSA members have agreed to abide by.

Opening New Investor Markets

Started as a way to connect IIUSA members with the leading EB-5 investor market in China, the Global Banquet Series has since evolved, along with the rest of the industry. To date, we have connected our members and leading stakeholders in the industry's largest markets, including India, Vietnam and South Korea. This year we were also proud to expand this important event series to the United Arab Emirates (UAE) and most recently Taiwan.

Attendees at IIUSA's First Ever Event in Dubai, UAE enjoy a cocktail and networking reception

In the new era of EB-5, it is becoming increasingly important for regional centers (and other service providers alike) to expand their operations into new markets. While some are already well established in what may be termed as an "emerging market," others are just looking to expand and that's where IIUSA comes in.

The GBS provides sponsors of the events a great opportunity to explore new investor markets and we pride ourselves on ensuring that all of our event sponsors receive significant business development and marketing return for their investments.

The IIUSA Membership & Investor Market Committee has taken an active role in helping the association expand this event series and is already hard at work to help IIUSA enter new investor markets in the year(s) ahead with plans forming for events in Africa, South America, Europe and the Middle East.

Panelists discuss EB-5 regulations, legislation and other industry hot topics as part of the EB-5 Experts panel at the IIUSA Global Banquet Series event in Mumbai, India.

Growing IIUSA's International Membership

As a membership association, it is only natural that membership growth is a key component of IIUSA's overseas initiatives. With a majority of our members located in the United States, it is easy for the association to stay connected and we pride ourselves in providing regional centers, attorneys developers and the like with representation on Capitol Hill and valuable membership resources that they utilize each and every day.

However, there is a whole other side of the EB-5 industry being conducted by stakeholders in investor markets around the globe. While these agents, financial service providers and attorneys are equally important to the success of the EB-5 program, we found that they had less of a voice within the association over the past years.

Continued on Page 49

IIUSA Investor Market Development Efforts are Full Steam Ahead

IIUSA Drives Critical Business Development & Education in Key EB-5 Investor Markets

Top Left: IIUSA staff presentations FRR Shares & Securities Ltd. with their International Membership Certificate during a IIUSA Global Banquet Series event in Mumbai, India.

Top Right: IIUSA representatives participate on Keynote Panel highlighting EB-5 legislative reform and reauthorization efforts during the 2019 Global Investment Immigration Summit in Guangzhou, China.

Left: IIUSA Staff Meets with Representatives from the Taiwan Immigration Consultants Association (TICA) to discuss 2019-2020 collaboration prior to IIUSA's ever event in Taipei, Taiwan!

Continued From Page 48

Our international events we have set about to change that. Specifically, we have focused on driving membership growth in these overseas markets to make sure as many organizations as possible are well-informed and engaged with the industry's trade association. In the past year of events alone, IIUSA has grown its internati membership with new members from India, Vietnam, South Korea, Taiwan, the UAE and Japan!

IIUSA staff presentations FRR Shares & Securities Ltd. with their International Membership Certificate during a IIUSA Global Banquet Series event in Mumbai, India.

Establishing and Reinforcing Partnerships

Critical to the success of many of IIUSA's international events and activities are partnerships with other like-minded organizations. As a non-profit organization that is representative of the collective EB-5 industry, IIUSA is uniquely positioned to formalize partnerships with other associations actively involved in the investment migration space.

Over the past year alone, IIUSA formalized and reinforced partnerships with the Taiwan Immigration Consultants Association, Korean Emigration Association, Investment Migration Council and the Guangdong Entry & Exit Immigration Association.

IIUSA representatives participate on Keynote Panel highlighting EB-5 legislative reform and reauthorization efforts during the 2019 Global Investment Immigration Summit in Guangzhou, China.

These partnerships have enabled our event series to succeed and more importantly provide our members access to critical contacts in overseas markets and given IIUSA a pipeline through which to ensure our information is shared with the worldwide EB-5 community.

IIUSA Staff Meets with Representatives from the Taiwan Immigration Consultants Association (TICA) to discuss 2019-2020 collaboration prior to IIUSA's ever event in Taipei, Taiwan!

Haven't Joined Us Yet? What are You Waiting For!

We get it. There are a lot of EB-5 events and it can be hard to determine where to commit your marketing budget and time. However, how many of those events are hosted by the only non-profit membership-based trade association for the EB-5 industry? How many of these events feature in-depth data analytics? How many of these events feature important advocacy updates from the association on the front lines of the legislative and regulatory discussion?

The answer is simple. Only the IIUSA Global Banquet Series. If you want to present your organization as a leader in EB-5 business development, education, best practices and investor market development, you need to join IIUSA's Global Banquet Series.

IIUSA staff is already hard at work developing the schedule for its 2020 events. Key target markets include Russia, South Africa, Turkey, and Brazil. Have an idea for the next IIUSA Global Banquet Series event? Let us know by emailing info@iiusa.org or giving us a call (202) 795-9667.

Want to hear what members are saying about the Global Banquet Series? Check the recap of our Taiwan event on page 45-46.

A Deep Dive into the Data Lake of EB-5 Regional Centers Statistics

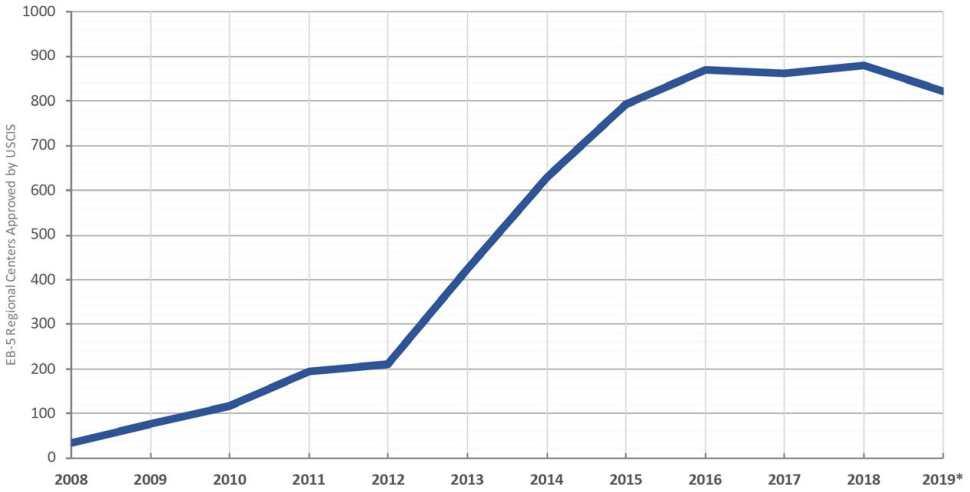
LEE Y. LI
IIUSA POLICY ANALYST

Congress created the EB-5 Regional Center Program in 1992 with the goal of promoting regional economic growth through foreign direct investment from qualified EB-5 investors. After 28 yeas, EB-5 Regional Centers across the country have facilitated over $33 billion capital investments from foreign investors, supported hundreds of thousands of American jobs, and created a robust and positive impact on the U.S. economy. After the 28-year-long development, what does the EB-5 Regional Center industry look like in 2019? What are the biggest trends of the Regional Center industry that the stakeholders should be aware of? We prepared this in-depth analysis on the Regional Center statistics that IIUSA has collected in the last few years to shed light on these important questions.

The Growth of EB-5 Regional Centers Between 2008 and 2019

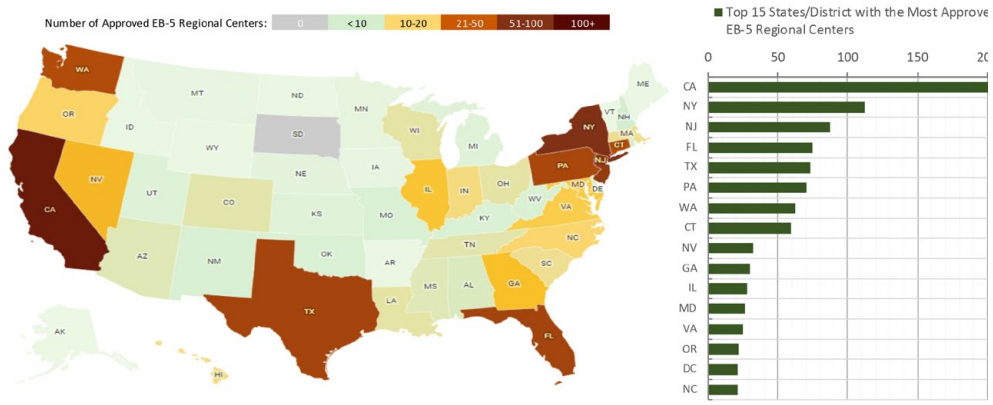
As of September 16, 2019, there were 822 EB-5 Regional Center listed on U.S Citizenship & Immigration Services' (USCIS) website. Although the number of approved Regional Centers was down from 880 in December 2018, the EB-5 Regional Center industry has demonstrated tremendous growth in the last 12 years. In fact, as illustrated by Figure 1, there were less than 50 EB-5 Regional Centers in 2008; while the number of approved Regional Centers reached its all-time high in 2018 with an outstanding growth of 2,490% in ten years. Particularly, the industry experienced the biggest growth between 2012 and 2016 with nearly 750 new Regional Centers approved within that 5-year period.

FIGURE 1: Number of Approved EB-5 Regional Centers by Year (2008 - 2009)*
**As of September 16, 2019*



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

MAP 1: USCIS Approved EB-5 Regional Centers by States Served*



As of September 16, 2019
** 11 EB-5 Regional Centers are serving in the U.S. territories (Commonwealth of Northern Marianas Islands, Guam, Puerto Rico, and U.S. Virgin Islands)*
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

Approved EB-5 Regional Centers by State Served

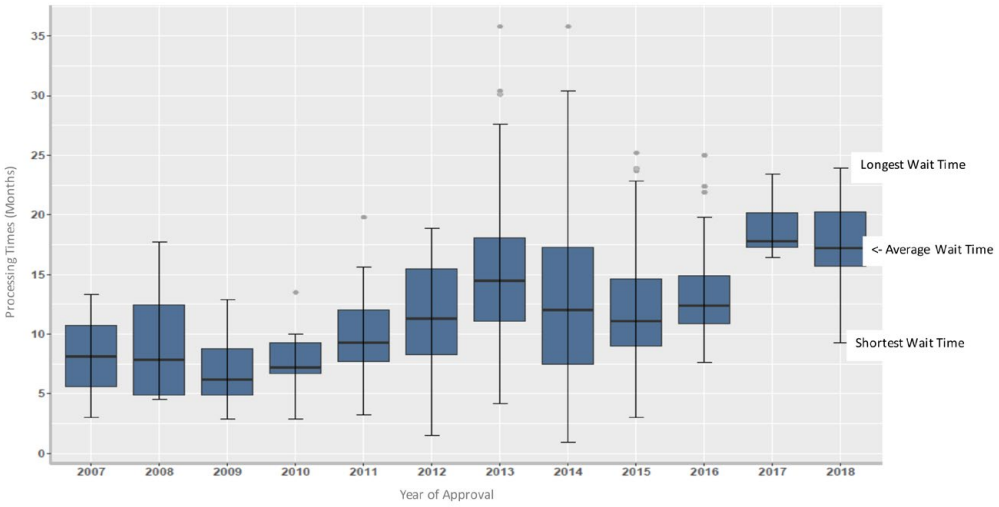
The 822 approved Regional Centers serve 49 states in the U.S. plus the District of Columbia and four U.S. territories (Commonwealth of Northern Marianas, Guam, Puerto Rico, and U.S. Virgin Islands). In particular, the 10 states with the largest number of EB-5 Regional Centers include California (203 Regional Centers), New York (112), New Jersey (87), Florida (75), Texas (73), Pennsylvania (70), Washington (62), Connecticut (59), Nevada (32), and Georgia (30). As Map 1 visualizes, states on the east coast and the west coast have the most EB-5 Regional Centers.

Processing Times of Initial Regional Center Designation Approval

After analyzing 394 Regional Center initial designation letters that IIUSA obtained via

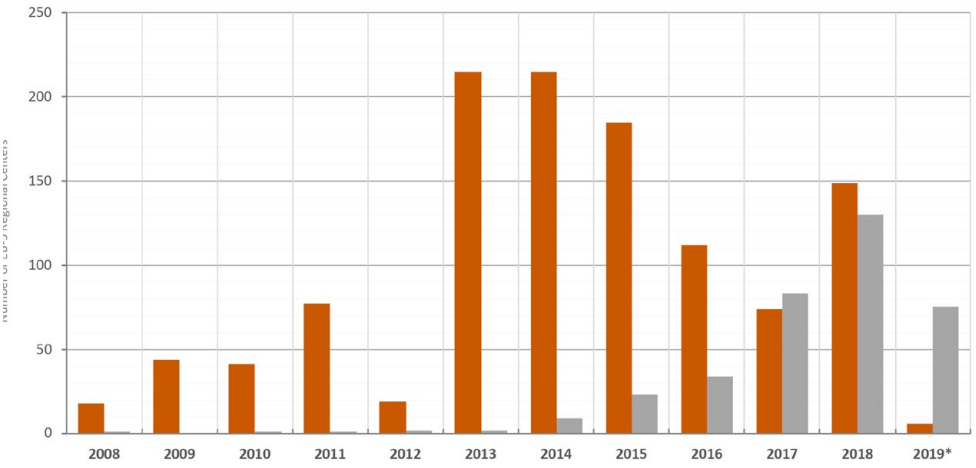
Continued On Page 51

FIGURE 2: Processing Times Trends on EB-5 Regional Center Designations



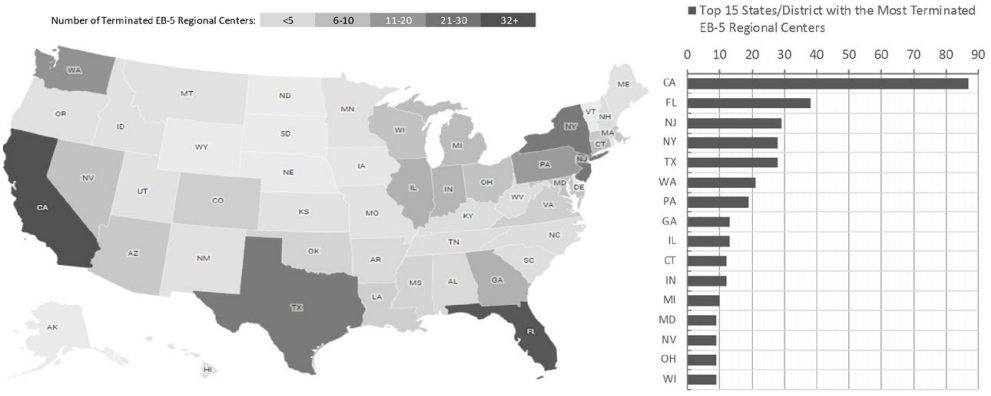
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

FIGURE 3: EB-5 Regional Centers Approvals vs. Terminations by Year
**As of September 16, 2019*



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

MAP 2: USCIS Terminated EB-5 Regional Centers by State Served



As of September 16, 2019
13 EB-5 Regional Centers that were serving in the U.S. territories (Commonwealth of Northern Marianas Islands, Guam, Puerto Rico, and U.S. Virgin Islands) were terminated by USCIS
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

Continued From Page 50

Freedom of Information Act (FOIA), we found that the average processing time of the initial designation of an EB-5 Regional Center increased from approximately 12 months in 2016 to over 17 months in 2017 and 2018, a growth of 41%.

In addition, not only does Figure 2 show the average processing times of Regional Center designation approval from 2007 to 2018, but it also illustrates the spread between the longest and the shortest wait times for USCIS to approve an I-924 (initial designation of a Regional Center) over the last 12 years. Overall, between 2007 and 2015, the shortest wait time for the initial designation of a Regional Center could be as low as 4 months.[1] While the average wait time of a Regional Center designation approval became longer in 2017 and 2018, the processing time spread (the difference between the longest and the shortest wait times) actually became smaller since 2014. Specifically, we found that in the last two years, an increasingly larger number of Regional Centers received their designation approval within 10 to 23 months. However, according to USCIS, the current average wait times of adjudicating a Form I-924 is between an astonishing 54 months to 90 months.[2] The processing time data for 2019 is expected to have a dramatic change.

EB-5 Regional Center Approvals vs Terminations

Between January and September 2019, USCIS terminated 75 EB-5 Regional Centers while only approving 6 new Regional Centers, the largest deficit on net Regional Center growth in the EB-5 Program's history. In addition, a total of 130 EB-5 Regional Centers were terminated in 2018 – a record high for Regional Center terminations in one year. However, with 149 new Regional Centers approved in 2018, the number still increased by 2% year-over-year.

As demonstrated by Figure 3, EB-5 Regional Centers exhibited the biggest growth in 2013 with 215 new Regional Center approved and only 2 terminated. Since the 2008, USCIS terminated a total of 361 Regional Centers, with 80% of the terminations occurring from 2017 to 2019. The agency approved 1,155 Regional Centers between 2008 and 2019 with only 20% of the new Regional Center approvals taking

1 The data indicated some Regional Centers were approved by USCIS as short as less than one month.
2 USCIS Website: https://egov.uscis.gov/processing-times/, Assessed September 26, 2019.

Continued On Page 53

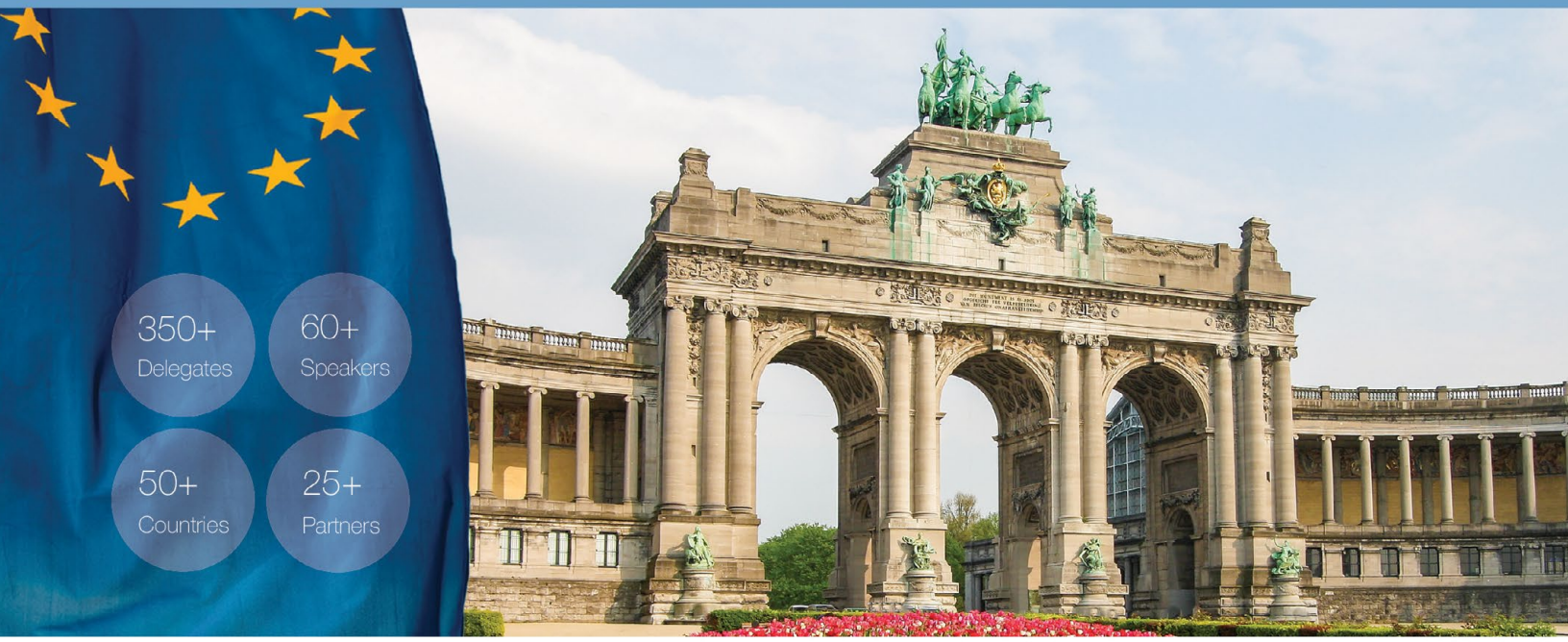
INVESTMENT MIGRATION FORUM

CPD MEMBER The CPD Certification Service

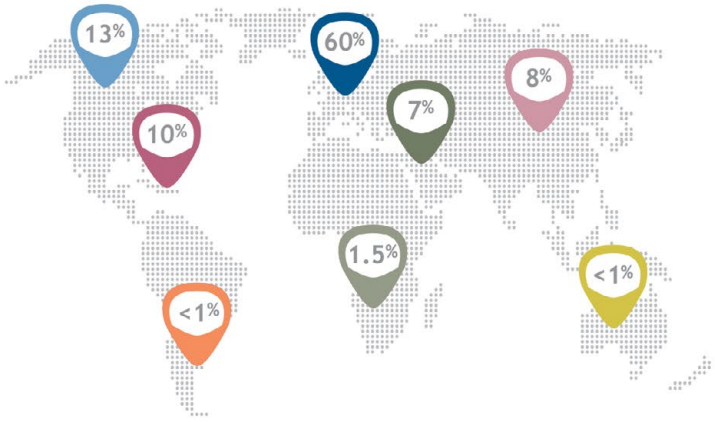
The Investment Migration Forum

Advancing Residence and Citizenship by Investment

1st - 4th June 2020, Wiltcher's Steigenberger Hotel, Brussels, Belgium



The Investment Migration Forum will be hosting its 5th edition in Brussels! Renowned academics, government officials and representatives of international organisations - as well as the world's leading professionals dealing with investor migration and citizenship by investment - now have the Brussels gathering entrenched on their annual calendar.



- Europe
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- South America
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Breakdown of regional representation based on statistics from 2019 Forum

Registration will open soon

investmentmigrationforum.org

Investment Migration Council, 16 rue Maunoir, 1211 Geneva, Switzerland +41 22 533 1333 events@investmentmigration.org

Organisation in special consultative status with the Economic and Social Council of the United Nations since 2019
European Commission Joint Transparency Register Secretariat ID: 337639131420-09

Continued From Page 51

place in the last three years.

Terminated EB-5 Regional Centers by State Served

As visualized by the heat map below (Map 2), the states with the highest number of terminated Regional Centers include: California (87), Florida (38), New Jersey (29), New York (28), Texas (28), Washington (21), Pennsylvania (19), Georgia (13), Illinois (13), Connecticut (12) and Indiana (12).

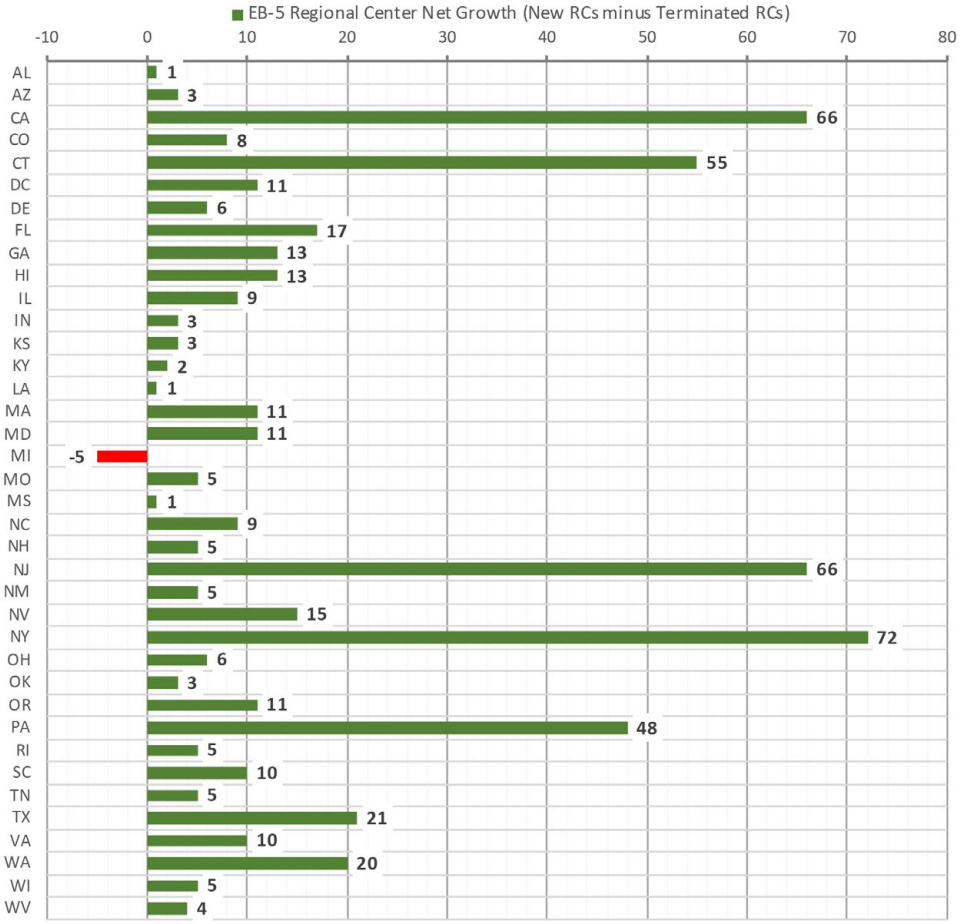
State Snap Shots of EB-5 Regional Centers: Net Growth & Termination Rates

Statistics can be tricky. As Map 2 and Map 1 indicated, the states with a larger number of approved Regional Centers also tend to have a larger number of terminated Regional Centers. In order to better understand the performance of the Regional Center industry by state, we also the calculate net growth of EB-5 Regional Centers for each state as well as the percentages of EB-5 Regional Centers terminated by state.

Figure 4 presents the net growth[3] of EB-5 Regional Centers by state served from 2014 to 2018. New York has the highest net growth of Regional Centers (82 new Regional Centers were added to serve New York State between 2014 and 2018, while only 10 Regional Centers in New York were terminated). The other states with a high net growth of EB-5 Regional Centers include New Jersey, California,

3 The net growth of Regional Centers equals to the number of new Regional Centers approved minus the number of existing Regional Centers terminated during a specific time period.

FIGURE 4: EB-5 Regional Center Net Growth by State Served: Approved minus Terminated (2014 - 2018)

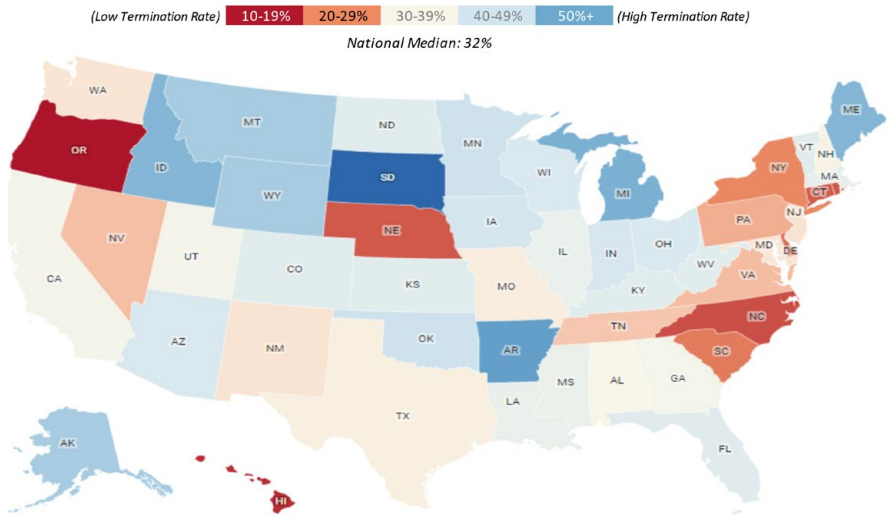


** The data chart only shows the states with more than five Regional Centers approved or terminated between 2014 and 2018*

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

Prepared by: IIUSA

MAP 3: Percentages of EB-5 Regional Centers Terminated by USCIS in Each State (1992 - 2019)



As of September 16, 2019

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

Prepared by: IIUSA

Connecticut, and Pennsylvania. Although California has the largest number of terminated Regional Centers since 2018, it is actually one of the five states that experienced the highest growth of Regional Centers between 2014 and 2018. While Michigan is the only state that had a negative growth of EB-5 Regional Centers from 2014 to 2018 -- 4 new Regional Centers were approved to serve Michigan while 9 Regional Centers were terminated during that time period.

Another way to analyze the Regional Center trends in each state is to look at the percentages of the Regional Centers serving each state that were terminated by USCIS (the "termination rate"). As Map 3 illustrates, Oregon has the lowest Regional Center termination rate among all 50 states plus District of Columbia. Specifically, only 12% (or three) of the Regional Centers serving Oregon were terminated

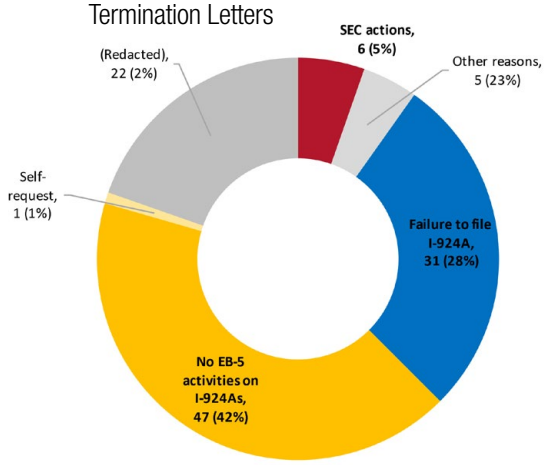
Continued On Page 54

Continued From Page 51

by USCIS. In addition, Regional Centers serving North Carolina and/or South Carolina also have less than a 20% termination rate. Moreover, 140 EB-5 Regional Centers were approved to serve New York since the inception of the EB-5 Program but only 20% of them were terminated, marking New York as the state with the lowest termination rate among the top five states with the most Regional Centers.

In contrast, South Dakota, Arkansas, Michigan, Idaho, and Maine are the states with more than 50% of the Regional Centers that were serving in those states but ended up being terminated by USCIA because of a variety of reasons (more in the next section).

FIGURE 5: Reason(s) Cited on Regional Center Termination Letters



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

Reasons for Regional Center Terminations

Lastly, we analyzed the 111 Regional Center termination letters that IIUSA received from a combination of our FOIA effort and USCIS's website in order to investigate the reason(s) that caused the final termination of a Regional Center. The result of our analysis is summarized in Figure 5. According to the termination letters, 42% of the Regional Centers in our analysis were terminated because there was no EB-5 activity reported on their I-924As (Regional Center annual report to USCIS), the most common reason that leads USCIS to terminate an EB-5 Regional Center. In addition, 28% of the Regional Centers were terminated because they failed to file a I-924A. The terminations of 5% (or 6) of the Regional Centers were due to enforcement actions by Securities and Exchange Commissions (SEC).

Here is a list of a few fun data points about EB-5 Regional Centers in case you have not been overwhelmed by all the numbers above (Happy Data Mining!):

- The oldest EB-5 Regional Centers that remains active was approved in 1994 (Thank you for being around!);
- 93% of the approved Regional Centers serve three U.S. states (or District or territories) or less; while there are three Regional Centers with a designation of serving 11 U.S. states;
- The Regional Center with the shortest life span was terminated by USCIS after 8.2 months from its initial approval.

INDUSTRY EVENTS

2019

- **Nov 4-5:** Investment Immigration Summit East Asia (Hong Kong)
- **Nov 8-9:** International Emigration and Luxury Property Expo (Cannes, France)
- **Nov 14:** Opportunity Zone Expo (Miami, FL)
- **Dec 3-4:** P3 Government Conference (Washington, DC)

2020

- **Jan 15-16:** International Emigration & Luxury Property Expo (Mumbai, India)
- **Feb:** Investment Immigration Summit (Mumbai, India)
- **June 1-3:** SelectUSA Investment Summit (Washington, DC)

Now Accepting Member Suggestions for 2020-2021 EB-5 Industry Forum & Global Banquet Series Destinations

IIUSA is pleased to announce that for the first time ever it is accepting requests for proposals (RFPs) from member organizations for the fall 2020 and 2021 ***EB-5 Industry Forum.*** The RFP process is intended to ensure that all members have a chance to contribute to the industry's annual conference plans.

As the EB-5 Industry trade association, we know that EB-5 is a valuable economic development catalyst being utilized all across the country. The goal of our Forum is to connect members from throughout the country (and the world) in investment markets that have enjoyed EB-5 investment. However, we know that we have only just begun to scratch the surface. That is why we need you, our members, to tell us of all of the positive economic development taking place in your cities and more importantly why your city would be a great next destination for the EB-5 Industry Forum in 2020.

In addition, in an effort to expand and enhance the associations ***Global Banquet Series*** we are also accepting member recommendations on where the series should head to next!

To learn more about the RFP or discuss IIUSA overseas events process please contact IIUSA Director of Events and Business Development, **McKenzie.Penton@iiusa.org** or give us a call at **(202) 795-9667**.

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