# REGIONAL CENTER BUSINESS JOURNAL

March 2017

IIUSA Invest In the USA

## EB-5 REAUTHORIZATION: Keep the Jobs & Grow the American Economy


IN THIS ISSUE:

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# Letter from the Editor

## Dear Readers:

2016 was another hectic and successful year for the EB-5 Regional Center industry. This issue of IIUSA's *Regional Center Business Journal* encapsulates significant accomplishments in the year past and previews what waits ahead for the industry in 2017. With a looming sunset date of April 28, a new Congress and new Administration, 2017 is shaping up to be a pivotal year for the industry.

This edition of the Journal, fittingly, highlights advocacy -- a major component of IIUSA's activities. IIUSA works tirelessly to secure a long-term reauthorization of the Regional Center Program and to promote it as an economic driver for communities across the nation. Other articles in the Journal remind us of the many disciplines that make up the industry, with articles on securities regulation, issuer best practices, EB-5 fund administration, multipliers for job creation, tax compliance, and trusts practice. The international section of the Journal provides the latest on changes affecting the Chinese migration market, the EB-5 market in Nigeria, and investor origin trends in stable and emerging markets overseas.

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

**Lincoln Stone**
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# 2016 IIUSA

2016 was an eventful year for the EB-5 industry, which crucially including two successful short-term reauthorizations of the Program. To put the year in perspective, IIUSA has compiled a "Year in Review" Timeline with important dates, links and happening that shaped industry activities and has led to where we are today.

The first quarter of the year included several House and Senate oversight hearings on the EB-5 Program. IIUSA Executive Director Peter D. Joseph served as a witness in the April 13, 2016 Senate Judiciary Committee hearing. Later in April, IIUSA held another successful EB-5 Advocacy Conference in Washington, D.C. which brought over 400 industry stakeholders together for three days of networking, education and advocacy.

The summer months were focused on building industry consensus on policy issues and bolstering the industry's negotiation capabilities in support of reauthorization of the Program with enhanced program integrity measures and maintaining effectiveness as an economic development tool.

On the investor markets front, IIUSA increased its overseas visibility by participating in international conferences in Geneva, Shanghai, and Hong Kong and also produced its first-ever Investor Markets Report, giving members insight into emerging market trends across the globe.

IIUSA helped garner additional public support for the EB-5 Program, including new and renewed resolutions from outside stakeholder groups like the U.S. Conference of Mayors, National Association of Counties, National Conference of State Legislatures and the Association of University Research Parks, to name a few. Positive media from coast to coast also enhanced our message of American job creation and community development.

This year was one of great progress, setting the EB-5 industry up for a real reform and long-term reauthorization package in 2017.

Without the continued support and engagement by our members, this progress would not be possible. We at IIUSA look forward to continuing to work with you all in 2017!

- **1/5** – FINRA includes general solicitations under Regulation D in the EB-5 Program on its 2016 Regulatory and Examination Priorities Letter.
- **2/2** – Senate Judiciary Committee holds hearing: *The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?*
- **2/11** – House Judiciary Committee holds hearing: *Is the Investor Visa Program an Underperforming Asset?*
- **2/21** – IIUSA Advocacy Coordinator, Nicole Merlene, presents at the National Association of Counties' Community, Economic and Workforce Development Steering Committee: Economic and Workforce Development Joint Subcommittee meeting.
- **4/2** – The Congressional Research Service publishes a report: *EB-5 Immigrant Investor Visa*, which highlights the Program's history, requirements, petition process, admissibility, economic impact, policy issues, and legislation from the 114th Congress.
- **4/13** – Senate Judiciary Committee holds hearing: *The Distortion of EB-5 Targeted Employment Areas: Time to End the Abuse.* IIUSA Executive Director, Peter D. Joseph, serves as a witness.
- **4/20-4/22** – IIUSA successfully hosts the **9th Annual EB-5 Advocacy Conference and 11th Annual Membership Meeting** in Washington, DC. The event brought over 400 attendees, 32 sponsors and 28 exhibitors together for three days of networking, education and advocacy.
- **4/25** – USCIS hosts an EB-5 Stakeholder Listening Session to discuss minimum investment amounts, the TEA designation process, the regional center designation process, and indirect job creation methodologies.
- **5/12** – IIUSA published the first-of-its kind *EB-5 Investor Markets Report*, a quantitative and qualitative analysis of established and emerging EB-5 investor markets. The report will be updated annually going forward.
- **6/1-6/3** – IIUSA hosts Leadership Summit in Washington D.C. with the Board, President's Advisory Council, and committee chairs to find consensus on policy issues and strategic planning.
- **6/8** – IIUSA Executive Director, Peter D. Joseph, presents at the Investment Migration Council (IMC) Investment Migration Forum in Geneva, Switzerland.

# YEAR IN REVIEW

- **6/19-6/21** – IIUSA staff represents the EB-5 industry at the SelectUSA summit for the third year in a row to promote the EB-5 Program to foreign direct investment professionals from around the globe.
- **6/27** – The U.S. Conference of Mayors passes a resolution supporting the reauthorization of the EB-5 Regional Center Program for the 5th year in a row.
- **6/30** – Senate Judiciary Committee holds hearing: *Oversight of the Department of Homeland Security* where Secretary Jeh Johnson reveals plans to publish regulations for public comment.
- **7/5** – IIUSA joins the US Chamber of Commerce, Real Estate Roundtable, American Immigration Lawyers Association, and the EB-5 Investment Coalition in support of reauthorization of the Program with enhanced program integrity measures and maintaining effectiveness as an economic development tool.
- **7/8** – The Association of University Research Parks passes a resolution of support of reauthorization of the EB-5 Regional Center Program.
- **7/22-7/25** – The National Association of Counties passes a resolution of support of permanent authorization of the EB-5 Regional Center Program.
- **8/10** The National Conference of State Legislatures (NCSL) passes a resolution of support of permanent authorization of the EB-5 Regional Center Program.
- **9/12** – Chairman Bob Goodlatte (R-VA-6) introduces H.R. 5992 American Job Creation and Investment Promotion Reform Act of 2016, co-sponsored by Ranking Member John Conyers (D-MI-13).
- **9/13** – IIUSA Joins EB-5 Industry Stakeholder Groups in Sending Letter to Congress Regarding H.R. 5992, the American Job Creation and Investment Promotion Reform Act.
- **9/15** – IIUSA Executive Director, Peter D. Joseph Publishes Op-Ed in the Huffington Post *"EB-5 Reform: Keep The Jobs, Fix The Problems"*.
- **9/29** – A Continuing Resolution (CR) extends the EB-5 Regional Center Program until December 9, 2016.
- **10/10-10/11** – IIUSA Hosts the **6th Annual EB-5 Industry Forum** in Los Angeles, CA. the Forum featured 350 attendees, 38 sponsors and 23 exhibitors and an agenda that included 3 general symposium discussions, breakout sessions covering hot-topics for regional centers and investors, and due diligence and case studies seminars. The conference also featured Guest of Honor speakers from Congress, SEC, USCIS and DOS.
- **10/21** – The Government Accountability Office releases a study examining the use of targeted employment areas in the EB-5 Program.
- **11/7** – IUSA Executive Director, Peter D. Joseph, represents the EB-5 Regional Center industry at the Investment Immigration Summit East Asia series in Hong Kong.
- **11/17** – IIUSA joins the US Chamber of Commerce, Real Estate Roundtable, American Immigration Lawyers Association, and the EB-5 Investment Coalition in support of reauthorization during the lame duck session.
- **11/24** – IIUSA Executive Director, Peter D. Joseph, present at the American Immigration Lawyers Association (AILA). Mr. Joseph presented on program extension and congressional reform, new agency developments and trends and prospects and implications of the potential sunset of the EB-5 Program.
- **11/25** – The Department of Homeland Security updates the unified regulatory agenda to include EB-5 regulation release at the start of 2017.
- **12/3** – A piece of draft legislation to reform and reauthorize the EB-5 Program is circulated around the industry. The bill is never officially introduced or endorsed by any legislative office or stakeholder group, but is the result of hard-fought consensus among a diverse set of stakeholders.
- **12/9** – The EB-5 Regional Center Program gets a clean extension by being included in the continuing resolution (CR) that funds the federal government.
- **1/3/2017** – the 115th session of Congress commences.
- **1/11** – DHS publishes an advanced notice of proposed rule making (ANPRM) in the Federal Register, seeking to update EB-5 regulations to enhance program integrity.
- **1/13/17** – DHS publishes a notice of proposed rule making (NPRM) in the Federal Register that would increase minimum investment amounts and update TEA designations for the EB-5 Regional Center Program.
- **1/20/17** – Donald J. Trump is inaugurated as the 45th President of the United States. ■

## A NEW HORIZON:

# What the 115th Congress and Trump Administration Means for EB-5 and Why We Must Act Now

**BY PETER D. JOSEPH**
EXECUTIVE DIRECTOR, IIUSA

A new year, a new Congress and a new administration bring a new set of opportunities and challenges for the EB-5 industry. The end of 2016 left the industry with hope that a legislative deal could be possible. Bipartisan, bicameral negotiations last November and December brought all sides close to a deal. Even though we fell short, the draft language provided a much-needed foundation for future negotiations.

Since then, IIUSA and other industry stakeholder groups have been building on ideas from 2016 negotiations, including the draft legislation, which was never formally introduced, in an effort to bring stakeholder-approved considerations to legislators on Capitol Hill to help reinvigorate and find a solution to a long-term deal and program reforms. A new Congress means all legislation introduced in the 114th Congress (2015-2016) is no longer active and we have a clean slate from which to work. As of this writing, the only EB-5 legislation formally introduced is Senate Judiciary Chairman Grassley (R-IA) and Ranking Member Feinstein's (D-CA) legislation (S. 232) to terminate the EB-5 Program. We are working to help forge a credible stakeholder compromise as balance against terminating the Program.

However, the dynamics of EB-5 advocacy efforts in 2017 are different for a variety of reasons. Just one week before President Trump was inaugurated, the Department of Homeland Security (DHS) published two separate proposed regulations specific to EB-5, an Advanced Notices of Proposed Rulemaking (ANPRM) and a Notice of Proposed Rules (NPRM) . They address several important issues of the program, not the least of which are investment amounts and targeted employment area (TEA) designations. As we all know by now, the overwhelming response from the industry was that these regulations, particularly the investment amount increases, would make the program unsustainable.

Fortunately, the new administration has put a hold on all last-minute Obama regulations. On the day he took office, President Trump issued a memorandum to all agency and department heads, declaring a 60-day regulatory freeze on all regulations that have been published in the Federal Register, but had not yet taken effect. This freeze included the EB-5 regulations published in mid-January. To date, we are unsure what the regulations will mean once this 60-day freeze expires, which is why we need to prepare as if they would proceed as normal.

As of the date of writing this, there are 51 days until the April 28 sunset date of the Program and 34 days until the deadline to submit comments on the regulations, based on the original deadline published in the Federal Register. With the usual disarray that occurs in Washington when a new administration takes office and the start of a new Congress, legislators are pressed for time to consider smaller issues like EB-5 amongst much bigger agenda items like cabinet and Supreme Court confirmations and funding the federal government. Because of that, we as an industry must be proactive.

Our responsibilities to ensure continued life and vitality of the Program are two-fold: 1.) We need to prepare substantive comments on the proposed regulations, demonstrating their debilitating effects to the Program and the American economy if enacted; and 2.) Present a reasonable legislative compromise on Capitol Hill. With so many other issues capturing the attention of legislators, it is imperative for us to produce a thoughtful, well-reasoned consensus package for reform and reauthorization. This compromise package must allow all sides to make progress and should include: TEA reform, provisions to address fraud and abuse, and investment amount changes that keep the Program competitive internationally.

IIUSA, with input from the full membership and the Public Policy Committee, has been working on this legislative compromise since the first of the year, using the discussion draft from late last year as a starting point. We believe that we are closing in on a final draft and hope to be able to share that with you, our members, soon so that we can join forces and take our case to Capitol Hill well ahead of the April 28 sunset date.

Additionally, while the President instated a regulatory freeze on the EB-5 proposed regulations, we are still uncertain what that ultimately means once the 60-day freeze runs out. We cannot assume they will altogether be eliminated and the industry should use the prospect of a legislative solution as the driving force to both avoid the encumbering regulations and to find compromise for reasonable and responsible reform that appeases both the industry and legislators. Being proactive on advocacy is the only way to keep deliberative reauthorization talks alive and show Congress that the EB-5 industry is serious about reforming the Program so it can continue on its course as a successful and fulfilling economic development tool for communities all across the nation.

The idea of "survive and advance" can no longer be the mindset. With so much uncertainty about what the regulations could mean for the Program along with the immigration agenda of the new Administration, the industry needs to take advantage of this opportunity to solidify a future for the EB-5 Regional Center Program. Failure to take the lead at this pivotal time could be at the detriment of hundreds of projects, thousands of investors seeking a new life for their families, hundreds of thousands of American jobs and the countless communities that reap the benefits of the EB-5 Program which breathes new life and opportunity into them, all at no cost to the taxpayer. ■

**The trucking industry** is critical to the health of the U.S. economy, moving roughly **67% of the nation's freight.**

New emissions regulations continue to be implemented, restricting older polluting trucks.

To meet the growing need for environmentally compliant trucks, David Andersson, founder of WORC, established Pacific Northwest EB-5 Regional Center (PNWERC) which, through Green Truck, works to **reduce emissions, create jobs, and stimulate the local economy** while providing opportunities for immigration through investment.

Green Truck has already injected **millions of dollars in much-needed capital** into the US trucking industry, **deploying trucks throughout the Pacific Northwest** region of Washington, Oregon, Idaho, and Montana.

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# Telling the Stories of Local Community Impact

## OF THE EB-5 REGIONAL CENTER PROGRAM

**BY ASHLEY SANISLO CASEY**
IIUSA ASSOCIATE DIRECTOR OF ADVOCACY

One of IIUSA's primary goals as the EB-5 industry trade association is to increase positive news stories about EB-5 Regional Center Program to counteract the many negative ones. As practitioners and stakeholders of the EB-5 Program, IIUSA members – and those who follow the Program closely - are well aware of the positive impact EB-5 has on communities all across the country. The U.S. Department of Commerce released an economic impact report in January 2017 which demonstrated this impact. According to the report, in FY2012 and FY2013 alone, the EB-5 Program accounted for nearly 170,000 American jobs through $16.4 billion in investments. Yet, stories about bad actors who have been caught manipulating the EB-5 Program for personal gain have overwhelmed the headlines even when stories of job creation and economic development are the majority of stories being told by the EB-5 Program.

In an effort to shine a light on the positive stories that have resulted from EB-5 investment, IIUSA secured the services of Public Relations (PR) consultants John Ashbrook and Josh Holmes, partners and founders of Cavalry, LLC, a Washington, DC-based PR firm with specialization and expertise in political issue management. In January 2017, Politico ranked Cavalry second on its list of Washington, DC power players, an elite designation reserved only for the most strategic and effective in the business. Since joining IIUSA's public affairs team in September 2016, Cavalry has worked closely with the IIUSA advocacy team to promote positive stories about EB-5 in the media, including the strategic placement of articles and op-eds in both national and local outlets and the crafting of disciplined and effective statements in response to media inquiries and political developments.

Furthermore, Cavalry has spent the past several months getting to know IIUSA's 250+ member Regional Centers, including the drive behind their projects and the meaningful impact they have on regional economic development. These conversations are being converted into narratives that tell the story of local community development and job creation that would not otherwise be possible without the investment of EB-5. For example, Cavalry helped to draw up interest in and place an article in a local publication highlighting the grand opening of a substance abuse and psychiatric treatment hospital in a small New England town that was partially funded by EB-5 investment. The construction of the hospital, which specializes in opioid abuse treatment, would not have otherwise been possible if not for the EB-5 funds which would have left a void in the community which desperately needed this facility. Although EB-5 itself was not the main focus of the article, it gave real life context to the potential EB-5 investments can realize for communities.

Another example of Cavalry's effectiveness was the placement of a September 2016 op-ed in *The Hill* written by IIUSA Executive Director Peter D. Joseph that demonstrated the wide-ranging EB-5 impact on the cities of Cleveland and Philadelphia, the sites of this past summer's Republican and Democratic National Conventions.

There is no such thing as too much positive press. If you have a project that is expecting a milestone event in the next few months, such as a groundbreaking or grand opening, please reach out to IIUSA staff so we can help craft a narrative for your local media. Contact me directly at ashley.casey@iiusa.org to get the ball rolling and help your trade association elevate the amazing economic development EB-5 is creating all around the country. ■

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San Jose, CA

**Kensington Place of Redwood City**
Redwood City, CA

**Riverfront at the Navy Yard**
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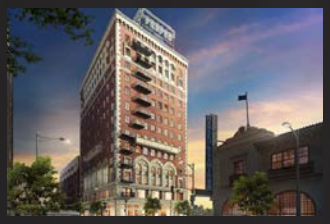

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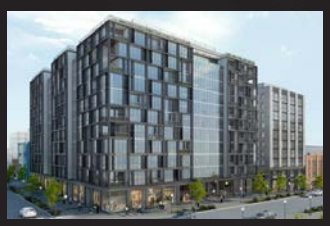

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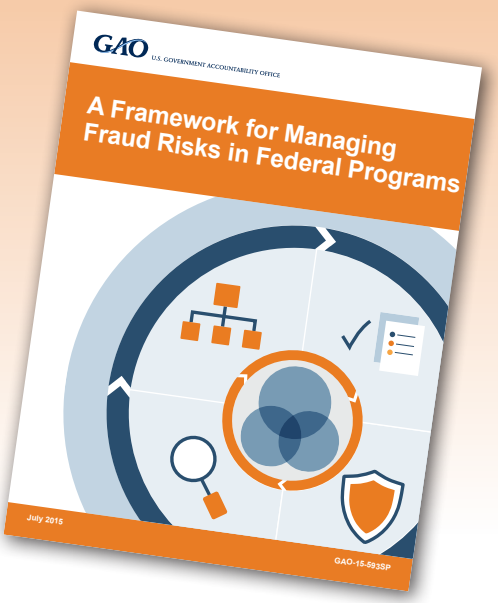
# GAO 2016 REPORT:
## A summary and look forward




**BY SPENCER MCGRATH-AGG**
ATTORNEY, BOUNDARY BAY LAW, PLLC

On June 30, 2016 Congress passed the Fraud Reduction and Data Analytics Act of 2015 ("FRADA") (Pub. L. No. 114-186). Under FRADA, the Director of the Office of Management and Budget in consultation with the Comptroller General must "establish guidelines for agencies to establish financial and administrative controls to identify and assess fraud risks and design and implement control activities in order to prevent, detect, and respond to fraud." The "financial and administrative controls" under FRADA are "required to be established by agencies" including USCIS.

The guidelines for establishing financial and administrative controls must incorporate the "leading practices" of the Framework for Managing Fraud Risks in Federal Programs ("Fraud Risk Framework") published by the GAO on July 28, 2015. This provision of FRADA effectively incorporates over 40 pages of highly technical requirements into a law that is just over two pages of text.

In the Fraud Risk Framework, each leading practice is discussed as a means of carrying out an "overarching concept" of fraud risk management. Each overarching concept comprises one of four components of the Fraud Risk Framework:

1. **Commit** to combating fraud by creating an organizational culture and structure conducive to fraud risk management.
2. **Plan** regular fraud risk assessments and **assess** risks to determine a Fraud Risk Profile.
3. **Design** and **implement** a strategy with specific control activities to mitigate assessed fraud risks and **collaborate** to help ensure effective implementation.
4. **Evaluate** outcomes using a risk-based approach and **adapt** activities to improve fraud risk management.

The GAO's 2016 Report to Congress on the Immigrant Investor Program (the "GAO Report") evaluates USCIS's progress towards implementing the leading practices in the regional center program (the "Program"). This agency's findings are organized under the same overarching concepts used in the Fraud Risk Framework. Although the GAO Report found that USCIS is committed to combating fraud, it noted that implementation of the leading practices under the second component (planning and assessing) was incomplete. Since these leading practices have not yet been implemented, the GAO Report did not evaluate whether USCIS had implemented the leading practices under the third and fourth components.

### COMPONENT #1: USCIS IS COMMITTED TO COMBATING FRAUD

Unsurprisingly, the GAO Report found that USCIS was already committed to combating fraud. Under this component, the overarching concepts are:

1. Create an organizational culture to combat fraud at all levels of the agency,
2. Create a structure with a dedicated entity to lead fraud risk management activities.

### OVERARCHING CONCEPT: CREATE AN ORGANIZATIONAL CULTURE TO COMBAT FRAUD

To carry out the first overarching concept, USCIS must demonstrate a senior level commitment to integrity and combating fraud, and involve all levels of the agency in setting an antifraud tone that permeates the organizational culture. The GAO Report finds that these leading practices have been implemented. USCIS officials have stated their commitment to combatting fraud at all agency levels, and adjudicators have been provided training on specific fraud-related topics relevant to the adjudication of EB-5 Program petitions and applications.

### OVERARCHING CONCEPT: CREATE A DESIGNATED ENTITY TO LEAD FRAUD RISK MANAGEMENT ACTIVITIES

The leading practices under the second overarching concept of this component are as follows:

**1. Designate an entity to design and oversee fraud risk management activities that:**

- Understands the program and its operations, as well as the fraud risks and controls throughout the program;
- Has defined responsibilities and the necessary authority across the program;
- Has a direct reporting line to senior-level managers within the agency; and
- Is located within the agency and not the Office of Inspector General (OIG), so the latter can retain its independence to serve its oversight role.

**2. In carrying out its role, the antifraud entity, among other things:**

- Serves as the repository of knowledge on fraud risks and controls;
- Manages the fraud risk assessment process;
- Leads or assists with trainings and other fraud-awareness activities; and
- Coordinates antifraud initiatives across the program.

The GAO Report identifies the Fraud De-

CONTINUED ON NEXT PAGE >>

tection and National Security ("FDNS") unit as the designated entity for designing and overseeing fraud risk management activities. The FDNS has already developed and provided training on specific fraud-related topics relevant to the Program, and is charged with preventing, detecting, and responding to fraud risks. The GAO report found that the required leading practices were implemented, and that USCIS has thus completed the first component of the Fraud Risk Framework.

## COMPONENT #2: USCIS HAS PLANNED SOME FRAUD RISK ASSESSMENTS BUT NOT YET DETERMINED A FRAUD RISK PROFILE

Under the second component of the Fraud Risk Framework the overarching concepts are:

1. Plan regular fraud risk assessments that are tailored to the program

2. Identify and assess risks to determine the program's fraud risk profile

The GAO Report found that USCIS had "taken some actions that closely align with" the second component of the Fraud Risk Framework, and generally "followed or partially followed selected leading practices."

### OVERARCHING CONCEPT: PLAN REGULAR FRAUD RISK ASSESSMENTS TAILORED TO THE PROGRAM

USCIS has implemented the following leading practices to carry out the first overarching concept under this component:

- Tailor the fraud risk assessment to the program.
- Plan to conduct fraud risk assessments at regular intervals and when there are changes to the program or operating environment, as assessing fraud risks is an iterative process.
- Identify specific tools, methods, and sources for gathering information about fraud risks, including data on fraud schemes and trends from monitoring and detection activities.
- Involve relevant stakeholders in the assessment process, including individuals responsible for the design and implementation of fraud controls.
- The GAO Report implicitly acknowledges that USCIS's fraud risk is "tailored" to the Program. It also notes the following activities related to planned fraud risk assessments:
  - A current study of potential fraud associated with certain immigrant investors' source of funds. FDNS will use overseas staff to identify possible fraud stemming from false statements by an investor.
  - A random site visit pilot planned for completion before the end of 2016. Site visits will be "random, in-person, and unannounced." A total of 50 site visits in four different states are planned. An agency official stated that the first visit was scheduled to take place in August 2016.
  - A planned study of all national-security concerns associated with the program. FDNS did not have details at the time the GAO conducted its review.

Tools and sources of information about fraud risks include revised Forms I-526, I-829 and I-924. Additionally, USCIS plans to implement increased use of Financial Crimes Enforcement Network (FinCEN) checks to identify possible fraudulent actors, and interview I-829 applicants to remove conditions. According to some USCIS officials, some pilot I-829 interviews have already taken place and as a result the agency will refine and develop a comprehensive interview strategy. USCIS will also begin tracking job creation data through

**TABLE 1:** ELEMENTS OF A FRAUD RISK PROFILE FOR ONE HYPOTHETICAL FRAUD RISK

| ELEMENT | HYPOTHETICAL EXAMPLE |
|---|---|
| **Identified fraud risk** | • Applicants applying for benefits using false identities. |
| **Fraud risk factors** | • Insufficient automatic checks of databases and overreliance on manual checks that could introduce human error.<br>• Volume of applications causes excessive pressure to expedite approvals and results in less attention paid to verifying identities.<br>• Management override of control activities.<br>• Poor fraud awareness among supervisors and application reviewers. |
| **Fraud risk owner** | • Supervisors and application reviewers. |
| **Inherent risk likelihood and impact** | • Examples include a five-point scale showing a range for likelihood, such as "rare" to "almost certain," as well as a range for impact, such as "immaterial" to "extreme." |
| **Inherent risk significance** | • Examples include a five-point scale, such as "very low, low, medium, high, and very high," based on the product of the likelihood and impact of the inherent risk. |
| **Existing antifraud controls** | • Manual checks against databases with some automatic checks.<br>• Quarterly newsletters with fraud indicators related to identity theft.<br>• Supervisor approval required for suspicious applications. |
| **Residual risk likelihood and impact** | • Examples include a five-point scale showing a range for likelihood, such as "rare" to "almost certain," as well as a range for impact, such as "immaterial" to "extreme." |
| **Residual risk significance** | • Examples include a five-point scale, such as "very low, low, medium, high, and very high," based on the product of the likelihood and impact of the residual risk. |
| **Fraud risk response** | • Develop additional controls to increase automatic checks against databases.<br>• Invest in additional fraud-awareness training. |

developing a case management system sometime in 2017.

Both the IPO and FDNS will be expanding their capacity to gather information about fraud risks. The FDNS staff has increased from 21 to 25, and added interns as well as administrative support. The IPO has created a specialized group dedicated to regulatory compliance by regional centers to help ensure that each regional center continues to promote economic growth. The GAO Report also notes that the increased filing fees for Program participants will cover the costs of these agency activities.

The GAO Report does not directly address USCIS's progress towards the leading practice of involving relevant stakeholders in the assessment process. The Report does acknowledge stakeholder involvement in at least one area: USCIS has engaged with stakeholders regarding a study on the use of a software system for text analysis to detect plagiarism. Although not mentioned in the GAO Report, USCIS regularly conducts calls with stakeholders and on recent calls has solicited input regarding fraud risk.

## OVERARCHING CONCEPT: IDENTIFY AND ASSESS RISKS TO DETERMINE A FRAUD RISK PROFILE

The GAO Report found that USCIS had made incomplete progress toward determining a Fraud Risk Profile for the Program. A Fraud Risk Profile is "an overarching document that guides an organization's fraud-management efforts." The steps towards creating a Fraud Risk Profile appear to be the sequential implementation of the leading practices under this overarching concept. Specifically, a fraud risk profile involves:

1. **Identifying inherent fraud risks affecting a program;**
2. **Assessing the likelihood and impact of these risks;**
3. **Determining the fraud risk tolerance;**
4. **Examining the suitability of existing fraud controls and prioritizing residual fraud risks; and**
5. **Documenting the Program's fraud risk profile.**

Included at Table 1 of the GAO Report (and re-produced below) is a hypothetical fraud risk profile from the Australian National Audit Office.

The GAO Report does not give examples of how a Fraud Risk Profile might look for the EB-5 Program. However, the Report does discuss existing actions and analysis that address several key elements in the Fraud Risk Profile: identified fraud risk, fraud risk factors, fraud risk owner, existing anti-fraud controls, and fraud risk response. Table 2 and Table 3 below provide hypothetical EB-5 risk profiles that reflect this existing USCIS analysis and activity. USCIS's actual, completed risk profiles for the Program may become publicly available once finished.

**TABLE 2:** HYPOTHETICAL FRAUD RISK PROFILE #1 – IMMIGRANT INVESTOR

| ELEMENT | HYPOTHETICAL EXAMPLE |
|---|---|
| **Identified fraud risk** | • False or fraudulent source of funds in I-526 Petition. |
| **Fraud risk factors** | • Insufficient automatic checks of databases and overreliance on manual checks that could introduce human error.<br>• Paper applications average 1,000 pages making it difficult to identify fraud indicators and patterns within large amounts of data.<br>• Volume of applications causes excessive pressure to expedite approvals and results in less attention paid to verifying source of funds.<br>• Insufficient language capabilities to verify certified translations related to source of funds. |
| **Fraud risk owner** | • Supervisors and application reviewers |
| **Inherent risk likelihood and impact** | • Examples include a five-point scale showing a range for likelihood, such as "rare" to "almost certain," as well as a range for impact, such as "immaterial" to "extreme." |
| **Inherent risk significance** | • Examples include a five-point scale, such as "very low, low, medium, high, and very high," based on the product of the likelihood and impact of the inherent risk. |
| **Existing antifraud controls** | • Biometric checks used to screen for referrals to FDNS<br>• Investigations by FDNS<br>• Fraud Tracking System |
| **Residual risk likelihood and impact** | • Examples include a five-point scale showing a range for likelihood, such as "rare" to "almost certain," as well as a range for impact, such as "rare" to "extreme." |
| **Residual risk significance** | • Examples include a five-point scale, such as "very low, Low, medium, high, and very high," based on the product of the likelihood and impact of the residual risk. |
| **Fraud risk response** | • New Form I-526 with more extensive and detailed information about the investor and source of funds.<br>• Use of interviews in adjudicating I-526 petitions.<br>• Increased inter-agency cooperation and information sharing.<br>• Increased investigations by FDNS overseas staff to identify fraud in investors' source of funds based on the current study. |

CONTINUED ON NEXT PAGE >>

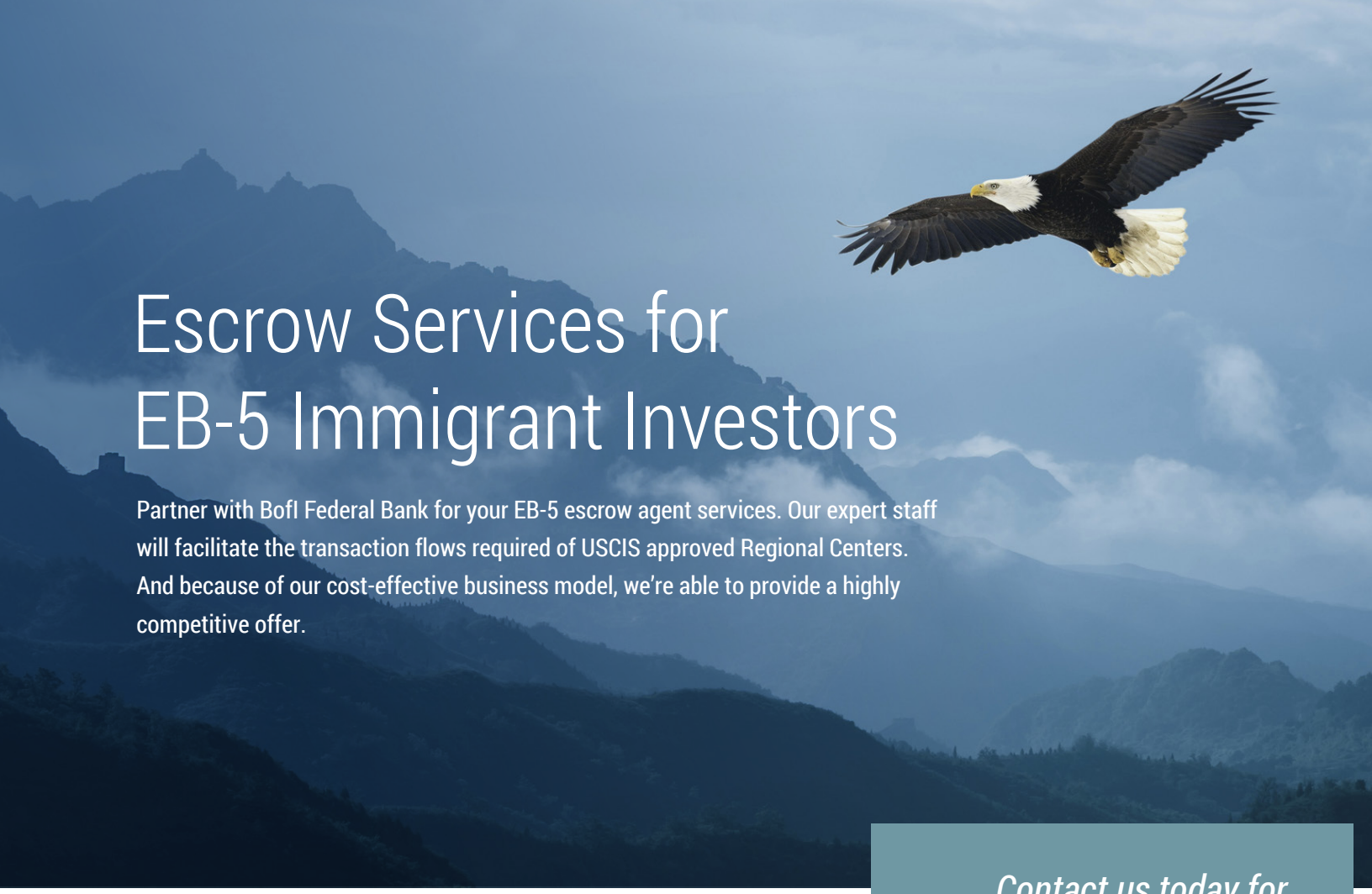
**TABLE 3:** HYPOTHETICAL FRAUD RISK PROFILE #2 – REGIONAL CENTER SECURITIES FRAUD

| ELEMENT | HYPOTHETICAL EXAMPLE |
|---|---|
| **Identified fraud risk** | • Misuse or fraudulent use of investor funds. |
| **Fraud risk factors** | • Insufficient automatic checks of databases and overreliance on manual checks that could introduce human error.<br>• Volume of applications causes excessive pressure to expedite approvals and results in less attention paid to verifying source of funds.<br>• Limited legal authority to investigate and punish fraud. |
| **Fraud risk owner** | • On-site inspectors<br>• Supervisors and application reviewers. |
| **Inherent risk likelihood and impact** | • Examples include a five-point scale showing a range for likelihood, such as "rare" to "almost certain," as well as a range for impact, such as "immaterial" to "extreme." |
| **Inherent risk significance** | • Examples include a five-point scale, such as "very low, low, medium, high, and very high," based on the product of the likelihood and impact of the inherent risk. |
| **Existing antifraud controls** | • New Form I-924A with more extensive and detailed information about the regional center.<br>• Collaboration with SEC and FINRA.<br>• Investigations by FDNS.<br>• Fraud Tracking System. |
| **Residual risk likelihood and impact** | • Examples include a five-point scale showing a range for likelihood, such as "rare" to "almost certain," as well as a range for impact, such as "rare" to "extreme." |
| **Residual risk significance** | • Examples include a five-point scale, such as "very low, Low, medium, high, and very high," based on the product of the likelihood and impact of the residual risk. |
| **Fraud risk response** | • Increased site visits to inspect regional centers.<br>• Increased use of background checks in I-924 applications.<br>• Increased collaboration with FinCEN to identify fraudulent actors.<br>• Tracking job creation data more closely. |

## CONCLUSION

FRADA requires USCIS to implement the leading practices in the Fraud Risk Framework. Thus, the Fraud Risk Framework was transformed from a GAO study into law. USCIS has already implemented some of the leading practices, but has not yet completed the steps required to create a Fraud Risk Profile for the Program. USCIS's estimated completion date for its Fraud Risk Profile is September 30, 2017.

By observing USCIS's actions as they relate to the Fraud Risk Profile, Program participants and stakeholders may be better able to maintain statutory and regulatory compliance and plan for increased scrutiny in the future. For example, the GAO Report explicitly acknowledges USCIS's plans to digitize its files, "including the supporting evidence submitted by applicants and petitioners." In connection with these plans, the GAO report suggests the use of "text analytics" to identify fraud. Interviews, site visits, and overseas investigations are also on the horizon. These activities are only half of the Fraud Risk Framework. Once the Fraud Risk Profile is complete, USCIS will begin designing and implementing strategies to mitigate assessed fraud risks, and evaluate and adapt these activities to improve fraud risk management. Thus, USCIS's fraud risk management activities will be continually changing, and closely observing these activities would be a prudent move, if not a due diligence requirement. ■



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# NEW RIMS II MULTIPLIERS RELEASED

**MICHAEL KESTER**
PARTNER, ECONOMIST, IMPACT DATASOURCE

**MAGGIE MULLANE**
ECONOMIST, IMPACT DATASOURCE

Updated RIMS II multipliers were released by the Bureau of Economic Analysis ("BEA") in December 2016. The new multipliers replace the prior multipliers released in September 2015 – which, as we discussed early last year, introduced several important revisions to the model that impacted EB-5 job creation estimation (see RIMS II Multipliers Updated for First Time Since 2012: January 2016 Edition of IIUSA's Regional Center Business Journal). While the December 2016 revision is less substantial, it will again impact job creation in EB-5 economic impact reports.

Below, we first briefly review the RIMS II model, and then we discuss the following questions:

(1) how job creation for an EB-5 project might be impacted based on this new release, and

(2) depending on where an EB-5 application or petition stands in the EB-5 adjudication spectrum, whether the economic study (using now-outdated multipliers) should be updated.

## RIMS II & EB-5: WHY ARE THE MULTIPLIERS CHANGING?

The BEA's Regional Input-Output Modeling System, known as "RIMS II", continues to be most used model utilized in the EB-5 industry to estimate job creation. In short, an Input-Output ("IO") model like RIMS II depicts inter-industry relationships (i.e., one industry's output is another's input) and shows how an impact to one industry affects all the others associated with it. Projects under the EB-5 Regional Center program utilize IO models, such as RIMS II, to estimate the indirect job creation that is projected to result from construction/development and operational activity. Besides job creation, the model may also be used to estimate other economic impacts (such as household earnings and output) a project will have on its surrounding area.

The BEA generates the multipliers using two sources: (1) national IO data, which is produced by the BEA for every benchmark year (those ending in -2 and -7) and demonstrates the interindustry relationships of nearly 500 US industries, and (2) regional data, which comes from the BEA's regional economic accounts and is used to adjust the national IO data to illustrate region- and industry-specific industrial structures and trading patterns. The national data is further "localized" through the use of location quotients with regional wages and earnings data (Bureau of Economic Analysis, Regional Multipliers from the Regional Input-Output Modeling System (RIMS II): A Brief Description).

According to press releases, the BEA will update the regional data underlying the multipliers every year – meaning that we should expect new multipliers every year. As discussed in our previous article, the BEA had been providing regular updates to the RIMS II multipliers for decades until 2012, at which time reduced funding due to sequestration prevented any updates for several years. The BEA revised the model and in 2015 began releasing updated multipliers again according to a slightly revised schedule. The BEA has indicated that they will update the multipliers with new national IO data for every benchmark year but the exact timeline of those releases is unclear.

The latest release, in December 2016, introduces multipliers based on 2015 regional data (updated from 2013) and 2007 national data (unchanged). While this release updates the regional data by two full years, it seems reasonable to expect that future releases will only represent a one-year increase.

If this newest release is a proper indicator, the BEA should continue to release updated multipliers every year to reflect the newest annual regional data. Substantial updates to the underlying national IO data, currently based on 2007 data, will supposedly be updated only for benchmark years; however, it is unclear when the BEA will actually release new national data, as it was not until 2015 that the 2007 national data was introduced. If the BEA were to continue the same trend, the multipliers would be updated for 2012 national data in 2020 – but it is difficult to speculate exactly when this will actually occur.

## WILL THE NEW MULTIPLIERS ADD OR TAKE AWAY JOB CREATION?

Of course, the main question that EB-5 stakeholders will have is whether the new multipliers will help or hurt job count estimations. After the September 2015 release, we compared old and new multipliers for similar areas and industries commonly used in EB-5 jobs studies and found that they typically demonstrated an overall decrease – hence, decreased job counts (often up to 20%). The substantial decrease was a result of both accounts (national and regional) being updated by several years (i.e., BEA had a good amount of catching up to do).

What about now? The newest release only updates the regional data (from 2013 to 2015), with the national IO account remaining unchanged. While it is not immediately obvious what the impacts from this update will be, it seems likely that the difference in the multipliers would not be in the magnitude of those observed last year, as (a) the national IO data is unchanged (compared to a five-year update in the prior revision), and (b) the regional data was updated only by two years (instead of three years in the prior revision).

As of the date of this article, we have compared the multipliers from this latest release to the prior release for several identical geographic areas and industries. As expected, the difference in multipliers is less substantial than that found last year (typically less than a 5% difference). Of course, as the multipliers are geographically specific, results could vary by location.

## I-924S, I-526S, I-829S: WHEN SHOULD THE NEW MULTIPLIERS BE UTILIZED?

As there are multiple stages and filings along the EB-5 timeline, we are often asked questions about how USCIS views the use and timeliness of RIMS II multipliers (or other IO models such as IMPLAN). As with many aspects of the EB-5 program, USCIS does not provide concrete guidance on this issue. While the short answer is no, most likely you do not need to get a new economic impact report that updates one already submitted with an I-924 or I-526, the following discusses several EB-5 timing scenarios.

First filing for an EB-5 project (I-924 or I-526): To reduce the risk of a Request for Evidence ("RFE"), it is recommended that the economic study utilize the most recent multipliers that are available at the time of the first filing for a project.

New multipliers are released while I-924 or first I-526 is pending: While it is suggested that the most recent multipliers be utilized for the initial filing, based on historical USCIS adjudication processes, it would not be necessary to interfile with an updated economic study if new multipliers are released while an I-924 or I-526 is pending. A general rule-of-thumb with USCIS is to keep things as simple as possible - and submitting an interfiling just for updated multipliers may create unnecessary confusion for adjudicators, possibly leading to delays. Furthermore, in the unlikely event that USCIS did happen to question the timeliness of the multipliers, it should be relatively straightforward to answer successfully in the RFE response.

New RIMS II multipliers are released between I-526 petitions: For many EB-5 projects, I-526 filings will occur over an extended period of time, and hence new multipliers may be released in between multiple investor petitions. Since USCIS has not historically requested that different multipliers be utilized for different I-526 petitions within the same offering, it seems unnecessary, when filing the later petitions, to update the economic report associated with the offering with the new multipliers. Furthermore, if one is trying to stick to the "keep it simple" approach with USCIS, updating with the newer multipliers for I-526 petitions might create unnecessary confusion with USCIS, as they would be reviewing different economic study results for different investors within the same offering.

The I-829 stage: As several years will pass between I-526s and I-829s, it is likely that one or more updates to the multipliers will be released during that time. USCIS has not historically required the I-829 petition to utilize updated multipliers. If the I-526s for the project have been approved, the economic study utilized for the I-526 petition is essentially considered "blessed". In short, based on historical guidance, the multipliers used in the I-829 can be the same as those used in the I-526 petition.

Even if I don't have to update, what if the more recent multipliers are beneficial to job creation? At the I-829 stage, the petitioner could attempt to use the newer multipliers, if needed for job creation. Or, similarly, if there are marketing considerations during fundraising after the I-924 exemplar or first I-526 has been filed, where using the updated multipliers might lead to the possibility of more investors (or increased job cushion) the petitioner could also use the newer multipliers. It seems unlikely that USCIS would question this approach, since the petitioner would be using more up-to-date (and theoretically more accurate) multipliers. However, unless utilizing the more recent multipliers is necessary to achieve the necessary job creation for the removal of conditions, or is worth it for marketing considerations, the path of least resistance with USCIS would be to stick with the original multipliers.

## UTILIZING THE NEW RIMS II MULTIPLIERS

Even as the question remains whether the new release will hurt or help job creation estimates for a specific area, the process of creating an EB-5 economic impact report remains fundamentally unaltered as the number of industries and industry-naming conventions remain unchanged. In short, the RIMS II data will look identical to the prior release, just with the actual multipliers being different.

The main change to keep in mind is in regards to deflation, which is typically found in EB-5 economic studies to adjust a project's expenditure and revenue estimates to match the RIMS II multipliers' regional data year. Expenditures and revenues will require two fewer years of deflation as the new multipliers are based on more recent regional data (2015 versus 2013).

RIMS II continues to be the most popular input-output model utilized in the EB-5 industry. As discussed last year, with certain aspects of the EB-5 program continuing to be under increased scrutiny – including job creation methodologies – and possible changes on the horizon, EB-5 economic studies should continue to follow best practices. One best practice for EB-5 practitioners using RIMS II to follow is to properly utilize the newly released multipliers. ■


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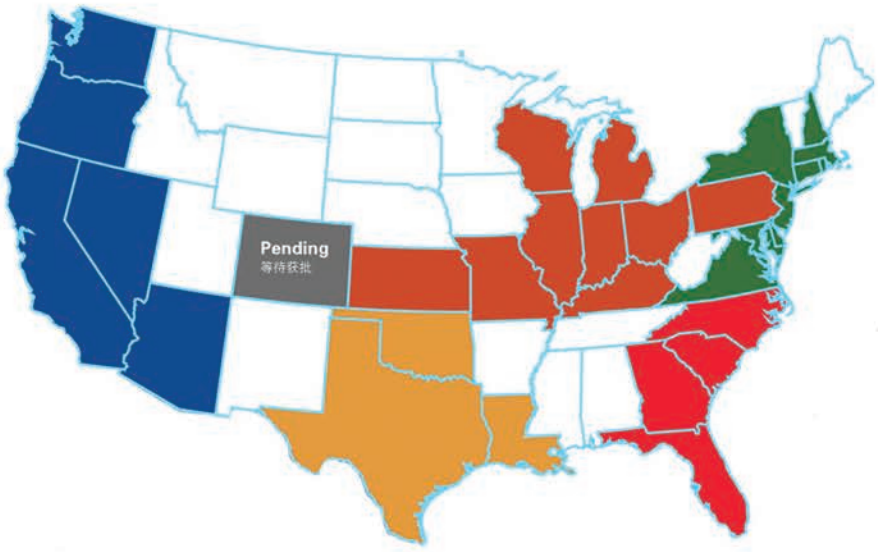


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# THE EFFECT OF REDEFINING ACCREDITED INVESTORS IN EB-5

**BY JOR LAW, ESQ.**
CORPORATE/SECURITIES ATTORNEY, HOMEIER LAW PC; CO-FOUNDER, VERIFYINVESTOR.COM

The "accredited investor" is central to Rule 506 of Regulation D, one of the commonly relied upon exemptions in securities laws. In the EB-5 industry, Rule 506 is one of the primary exemptions (along with Reg S) used by issuers of securities to avoid having to register their securities offering with the SEC, an expensive and lengthy process.

## CURRENT DEFINITION

Accredited investors are investors who can supposedly fend for themselves due to their ability to sustain losses. Accredited investors may be entities or natural persons, but since the only investors in EB-5 are natural persons, this article will focus on the natural person accredited investor. Under current law, a natural person may qualify as an accredited investor by falling into one of the following three categories:

- Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; or
- Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000, excluding the value of the primary residence.

Most EB-5 investors qualify under the income test or the net worth test.

## PROPOSED CHANGES

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") directs the SEC to review the accredited investor definition every four years. The last review culminated in the SEC Staff releasing a December 18, 2015 Report on the Review of the Definition of "Accredited Investor", where SEC staff made the following recommendations to the SEC Commission:

- Revise the financial thresholds requirements for natural persons to qualify as accredited investors by considering the following:
  - Leave the current income and net worth thresholds in place, subject to investment limitations;
  - Create new, additional inflation-adjusted income and net worth thresholds not subject to investment limitations;
  - Index all financial thresholds for inflation on a going-forward basis; and
  - Permit spousal equivalents to pool their finances for purposes of qualifying as accredited investors.
- Revise the accredited investor definition to allow individuals to qualify as accredited investors based on other measures of sophistication by considering the following:
  - Permit individuals with a minimum amount of investments to qualify as accredited investors;
  - Permit individuals with certain professional credentials to qualify as accredited investors;
  - Permit individuals with experience investing in exempt offerings to qualify as accredited investors;
  - Permit knowledgeable employees of private funds to qualify as accredited investors for investments in their employer's funds; and
  - Permit individuals who pass an accredited investor examination to qualify as accredited investors.

## HOW IT AFFECTS EB-5

Many EB-5 securities offerings rely upon Rule 506 of Regulation D as an exemption. There are two types of Rule 506 exemptions. Rule 506(b) disallows general solicitation and advertising, but issuers may rely on investors to self-certify that they are accredited investors. They may even accept up to 35 non-accredited, but sophisticated investors, although in practice most issuers avoid accepting any non-accredited investor due to heighten compliance burdens. Rule 506(c), in contrast, allows general solicitation and advertising, but the issuer must take SEC-prescribed reasonable steps to verify that the investors are accredited investors. In both types of Rule 506, the definition of accredited investor directly impacts who may invest. In Rule 506(c), any change to the definition may have a greater impact as issuers must prove that their investors are accredited.

# THE EFFECT OF REDEFINING ACCREDITED INVESTORS IN EB-5

## KEEPING THRESHOLDS SAME, BUT IMPOSING INVESTMENT LIMITS

If the current thresholds are kept, but investment limits are imposed, the investment limits may be lower than the minimum amount that must be invested in EB-5. This would mean that unless an investor was significantly above the threshold, they may not be eligible to invest enough money to qualify for EB-5.

## RAISING THRESHOLDS

If the thresholds are raised, fewer foreign investors will qualify as accredited investors, especially with a surging US Dollar. Per the SEC's Report, the current standards adjusted for inflation would be:

| | Current Standard | Adjusted for Inflation (CPI) | Adjusted for Inflation (PCE) |
|---|---|---|---|
| Individual Income | $200,000 | $490,819 | $432,265 |
| Joint Income | $300,000 | $600,558 | $528,906 |
| Net Worth | $1,000,000 | $2,454,093 | $2,161,326 |

Adjusting the current thresholds would more than double the current thresholds, which would dramatically diminish the number of eligible investors.

## ADDING SOPHISTICATION

It's important to note that the proposed modification is to add a new category by which investors who did not qualify under other categories could qualify and not to impose sophistication standards on investors who could already qualify under other categories. This modification can only enlarge the pool of eligible investors. The primary argument in support of adding a new sophistication category is that the current definition of accredit investor focuses too heavily on financial thresholds. If the accredited investor definition is supposed to identify those who can sustain losses or fend for themselves, then the current definitions which largely ignore sophistication are lacking. A wealthy investor may be able to take on risks even if they lacked financial sophistication, but a sophisticated investor may be able to take on risks even if they lacked wealth.

## VERIFICATION

As mentioned above, the proposed changes would have a greater impact on Rule 506(c) deals where issuers must take extra steps to verify that their investor qualifies as an accredited investor. Within the EB-5 industry, Rule 506(c) has been increasingly used because it allows for US Persons to invest (Reg S does not allow this) and because it allows for general solicitation and advertising (Rule 506(b) does not). Depending on what changes are ultimately adopted, this could significantly impact whether issuers choose to rely on Rule 506(b) or Rule 506(c). ■

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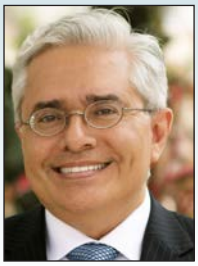
# Materiality in Securities and Immigration Contexts



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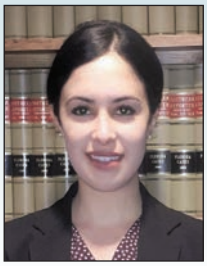

**BARBARA RASSI**
ASSOCIATE ATTORNEY, TORRES LAW

Federal securities laws are based on the notion that investment and voting decisions should be predicated based on full disclosure of the information necessary "to bring into full glare of publicity those elements of real and unreal values which lie behind a security." Specifically, these laws focus on mandating the disclosure of material information. For example, Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act") prohibits disclosing any untrue statement of material fact or the omission of a material fact that is necessary to prevent statements already made from becoming misleading, in connection with the purchase or sale of securities. Moreover, Rule 14a-9, promulgated under Section 14(a) of the Exchange Act, provides that no proxy solicitation shall be made "which . . . is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." Accordingly, the standard for materiality has played a central role in the jurisprudence of federal securities laws. Although this article does not thoroughly analyze what constitutes a material change in the context of the Employment Based Fifth Preference Program ("EB-5 Program"), it is enough to conclude for now that the securities laws generally would cast a wider net in terms of "materiality" than would the United States Citizenship and Immigration Services ("USCIS") in the adjudication of individual EB-5 investor petitions.

In the context of federal securities laws, the standard for materiality is whether there is a substantial likelihood that a reasonable investor would consider the misstatement or omission important in deciding whether to purchase or sell a security. Accordingly, this "reasonable investor" standard is an objective determination and courts have generally held that vague statements expressing optimism, belief or puffery may be "such obvious hyperbole that no reasonable investor would rely upon them."

The determination of materiality is a mixed question of law and fact, and the Securities and Exchange Commission ("SEC") has made clear that there is no bright-line quantitative test for materiality. The Supreme Court has likewise noted that having absolute certainty in the application of materiality is an "illusory" and "unrealistic" goal. Despite not articulating a bright-line rule, the Supreme Court has held that a misstated or omitted fact is material if a reasonable investor would have viewed it as significantly altering the "total mix of information made available." The Supreme Court reaffirmed this "total mix" standard in 2011 in Matrixx Initiatives, Inc. v. Siracusano. In Siracusano, the Supreme Court rejected the defendant pharmaceutical company's policy that adverse event reports relating to its products are immaterial unless they pose a statistically significant risk that the product was the cause of the consumer's injuries. Instead, the Supreme Court reiterated that the undisclosed adverse event report in question, although not deemed statistically significant, was material as judged by the "total mix" standard. The Supreme Court further noted that this standard does not impose an affirmative duty to disclose material information, but only requires disclosure when it is necessary "to make . . . statements made, in the light of the circumstances under which they were made, not misleading."

Although five percent has generally been used as the materiality threshold for financial statements "based on the percentage of which an investment represents the company's total assets under management," courts look at both quantitative and qualitative factors in assessing materiality. This practice of deeming information immaterial if it is below a certain percentage threshold, however, has been more closely scrutinized by the SEC. Specifically, the SEC released a staff accounting bulletin that provides that a financial statement's materiality is determined in light of all relevant circumstances such that "there are numerous circumstances in which misstatements below 5% could well be material."

The following chart details cases highlighting the nuances of the issue of materiality in the context of federal securities laws as interpreted by certain circuit courts:

| CASE | MATERIALITY DECISION |
|---|---|
| In re Merck & Co. Securities Litigation., 432 F.3d 261 (3d Cir. 2005) | The Third Circuit held that the defendant's misrepresentation of its revenue was immaterial as a matter of law based on the movement in the price of the company's stock "in the period immediately following disclosure" because when the defendant finally disclosed that there was an improper accounting for revenue, the defendant's stock price did not drop. |

| CASE | MATERIALITY DECISION |
|---|---|
| Greenhouse v. MCG Capital Corp., 392 F.3d 650 (4th Cir. 2004) | The Fourth Circuit held that the defendant's CEO's statement that he had graduated college although he had only completed three years was immaterial despite a drop in the company's stock after the misstatement was revealed. The court reasoned that the CEO's failure to finish college did not "alter the total mix of information [available] to a reasonable investor." |
| City of Monroe Employees Retirement System v. Bridgestone Corp., 399 F.3d 651 (6th Cir. 2005) | The Sixth Circuit held that the defendant company committed a material omission based on its failure to cite any evidence supporting its statement that there was objective data supporting the safety of its tires. According to the court, once the company "elected to make statements such as the statement regarding the 'objective data,' it was required to qualify that representation with known information undermining (or seemingly undermining) the claim." The court reasoned that an affirmative duty to disclose information may arise when an incomplete or misleading disclosure has been made. |
| FindWhat Investor Group v. FindWhat.com, 658 F.3d 1282 (11th Cir. 2011) | A company offering internet "pay-per-click" advertising services was sued after its stock price dropped following its revelation that part of its revenue was based on "click fraud." The Eleventh Circuit held that the CEO of the company did not commit a material omission by not revealing that part of the company's revenue was coming from illegal click fraud when he announced an increase in the company's revenue because "[n]o reasonable investor would believe that a conclusory, but apparently accurate, report of company-wide revenue growth naturally implied that all was well within every component of the company that could possibly affect revenue in the future." |

Even though there is no bright-line rule for materiality, issuers that strictly comply with certain safe harbors may shield themselves from liability. One such safe harbor is the judicially-created "bespeaks caution" doctrine, under which forward-looking information will generally not be deemed material if it also has sufficient cautionary language. For cautionary language to meet the requirements of this doctrine, such language "must be substantive and tailored to the specific future projections, estimates or opinions" at issue. Likewise, the Private Securities Litigation Reform Act contains a safe harbor for forward-looking statements provided that (i) such forward-looking statements are accompanied by "meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those" in the forward-looking statements or (ii) the forward-looking statement was not made with actual knowledge that such statement was misleading or false. Moreover, the Securities Act of 1933 contains its own safe harbor provision—SEC Rule 405—which provides that information is material only if "there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered."

In the context of the EB-5 Program, the SEC has filed enforcement actions against securities issuers and principals for violating the materiality provisions of the federal securities laws. Most of these SEC enforcement actions involve allegations of diversion of capital invested by EB-5 investors for personal use. Because capital was used for purposes not described in the offering documents, and that fact (i) if known, would be important to the decision of whether to invest and (ii) was not disclosed to investors, the SEC alleged securities laws violations grounded in materiality. One recent SEC action, filed against the principal of the issuer, involved raising funds through the EB-5 Program for the construction and operation of frozen yogurt and smoothie franchises. The business model articulated in the offering materials was to construct and operate these franchises as conventional stores located in strip malls. However, the principal changed the business model to developing smaller kiosk stores in sports arenas and university campuses, resulting in a substantial downsizing of each enterprise with much smaller investment returns and the creation of fewer jobs. In its complaint, the SEC emphasized that the change in business model was material, because if the fact had been known it would be important to the decision of whether to invest, considering the expectations of financial returns and eligibility for the EB-5 immigrant visa classification. While also alleging that the principal misappropriated over $1 million of EB-5 investor funds for his personal use, the SEC thus charged the principal with violating Section 10(b) of the Exchange Act and Rule 10b-5, among other federal securities laws. The misappropriation of funds was "material to investors because, among other reasons, it has been so extensive that [the principal] and [the commercial enterprise] have not had sufficient funds to complete construction of the stores contemplated in the offering materials." These allegations point to the possible benefits of supplementing offering materials when there has been substantial change in the business model that was described in the original offering documents.

Securities laws thus consider materiality in the light of the statutory mandate to disclose any facts with real potential to influence the decision of whether to invest. Relatively considered, the net is cast wide and issuers are well advised to disclose new facts via supplemental offering documents when in doubt. On the other hand, USCIS has articulated a doctrine of "material change" that penalizes EB-5 investors, mandating the re-filing of I-526 petitions where the changed facts render unapprovable a petition that otherwise would be approved. This conception of materiality, consequently, is directly tied to concluding that new facts make the EB-5 investor ineligible for the immigrant visa. Compared to securities law, it is a narrower conception of materiality; it concerns actual ineligibility for the EB-5 visa, not merely a potential ineligibility. This is clear from the U.S. Supreme Court case relied upon by USCIS, where the Court held the misrepresentation of date and place of birth was not material because the true date and place of birth would not make the applicant ineligible for naturalization. This distinction explains why, for example, a relatively minor adjustment to an earlier job creation estimate should not add up to material change for purposes of immigration law but a major adjustment that results in an estimate of job creation below the minimum 10 jobs per EB-5 investor threshold would be deemed a material change. Although securities counsel may urge disclosure consistent with the purpose of securities laws, this does not have to be at the cost of sacrificing the EB-5 investor's pending petition because there may be instances where supplemental disclosures on account of updated facts should not trigger a finding of material change by USCIS. ■

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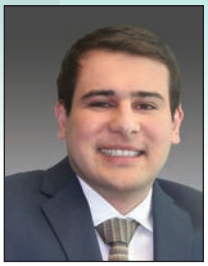
# THE CROSSROADS OF EB-5 INVESTMENT, U.S. TAX COMPLIANCE, AND PROPER TAX PLANNING


**DAVID APPEL, CPA/PFS**
SENIOR PARTNER, TAX & BUSINESS SERVICES,
MARCUM LLP - MIAMI

**JANA K. ARISTIZABAL, CPA**
SENIOR MANAGER, TAX & BUSINESS SERVICES,
MARCUM LLP - MIAMI



**ALEXANDER OUJEVOLK, CPA**
SENIOR, TAX & BUSINESS SERVICES,
MARCUM LLP - FT. LAUDERDALE


You have your project, you have your investors, you have your loans in place, and your USCIS filings are complete. Now, what comes next?

The EB-5 process is intricate and complex for all parties involved at any stage. With the increase in oversight anticipated from the new U.S. Congress, tax compliance and planning will become more critical to the success of any EB-5 project.

In this article, we will discuss accounting and tax matters pertaining to the project loan model. The loan model represents the majority of EB-5 investments made into qualifying programs. Under the loan model, individual EB-5 investors do not make a loan to a project directly but, rather, make an equity investment in a New Commercial Enterprise (NCE), which in turn makes a loan to the EB-5 Job Creating Entity (JCE). This model is accepted by the U.S. Citizenship and Immigration Services (USCIS) as a qualifying investment.

The administrative accounting oversight of a NCE is often overlooked and not properly budgeted. This is a common concern because NCE managers and general partners frequently underestimate the extent of accounting and tax compliance required to maintain the NCE. Not only is accounting record-keeping important for project management and reporting, but the U.S. tax system has required considerably more compliance by international investors in recent years. This article will provide insight into the complexity of tax law compliance, internal accounting requirements, investor reporting, and the need for proper documentation. In addition, it will discuss liability exposure for not properly withholding taxes.

## STRUCTURING AN NCE

In general, limited liability companies (LLCs) and limited partnerships (LPs) are the preferred investment vehicle for NCEs. The default classification of these entities is to be treated as pass-through entities for U.S. income tax purposes; thus, all items of income (loss), deductions, and credits pass through to each of the members or partners as stipulated in the operating agreement or limited partnership agreement of the entity.

As a general practice, most of these entities are organized for the limited purpose of raising EB-5 capital and making a loan to a JCE. Thus, the income generated is the interest from the loan. Administrative expenses incurred by the entity are also allocated to the members or partners based on the operating agreement or limited partnership agreement of the entity. An understanding of these agreements is critical to ensure the proper allocation of income and expenses. In addition, a careful review of transactions with the manager or general partner of the NCE or regional center is essential to recognizing accounting and tax implications. Please note that there are significant compliance concerns regarding transactions of this nature, which are beyond the scope of this article.

## NCE OPERATIONS

In order to properly record transactions in the NCE books and records, an understanding of the legal structure, business plan, loan agreement, private placement documents, and operating agreements or limited partnership agreements is crucial. From an accounting perspective, the NCE is responsible for properly allocating income, expenses, credits, and any preferred return to the members or partners of the entity. Capital accounts for each member or partner must be kept, along with an accurate accounting of the activity of the NCE for accounting and income tax purposes.

CONTINUED ON NEXT PAGE >>

Proper internal controls on the disbursement of loan draws to the JCE should be considered, and all distributions should be in compliance with the legal terms and conditions of the loan and other related documents. The NCE and JCE are two separate legal entities and should be respected as such in the day-to-day operations. Commingling funds or paying expenses on behalf of related parties or other entities not outlined in the signed loan agreement or business plan should be avoided. In addition, an ongoing review of the loan activity must be undertaken to make sure compliance is being properly maintained.

## WITHHOLDING REQUIRED BY NCE

The Internal Revenue Service (IRS) has passed regulations requiring U.S. entities taxed as partnerships to withhold taxes on income allocable to foreign partners. The type and rate of the withholding differs based on the type of income allocable to the foreign partner. Any taxable interest or other form of taxable fixed, determinable, annual or periodic income (FDAP income) received from the partnership will be subject to 30% withholding for federal income tax purposes, unless reduced or eliminated pursuant to a double tax treaty agreement. Withholding on FDAP income, such as interest is based on the gross amount received, rather than the net amount (gross minus expenses). In order to reduce or eliminate withholding taxes pursuant to a double tax treaty agreement, an investor will have to provide proper IRS documentation to the entity.

Entities are liable for ensuring the proper amount of taxes is withheld for each foreign investor. There are various steps an entity may take to ensure that it is treating foreign investors in the proper manner and in accordance with the requirements of the Internal Revenue Code. The burden and liability exposure of tax withholding is on the NCE and its officers.

Since EB-5 investors are typically nonresidents and are classified as nonresident aliens, until they obtain U.S. permanent residency, a majority will not have IRS tax identification numbers. Entities must ensure that foreign investors who do not already have Individual Taxpayer Identification Numbers (ITINs) obtain them.

With an ITIN, the partnership can withhold taxes on behalf of a foreign investor, and investors can be confident that the IRS will credit them for the taxes withheld on their behalf, with certainty. Depending on what country a foreign investor is from, he or she may be eligible for a reduced rate of withholding. If the foreign investor's country of citizenship or residence has a tax treaty with the United States, the foreign investor can complete certain tax forms based on his or her specific circumstances to claim the tax treaty benefits and become eligible for a lower withholding rate or no withholding at all.

Once an EB-5 investor is considered a U.S. tax resident, either because of a "green card" or "substantial presence", no withholding is required by the entity. However, the NCE must document this change in tax status.

## IMPACT ON INVESTORS

In general, investors are subject to withholding taxes while they are considered nonresidents for U.S. income tax purposes. As income and losses are passed through to the investors, each investor is responsible for reporting and timely filing a U.S. income tax return for his or her respective share of what is received from the NCE. To remain in compliance with the Internal Revenue Code, investors may be required to file an income tax return annually. Depending on each investor's individual facts and circumstances, they may be required to file a Form 1040NR, U.S. Nonresident Alien Income Tax Return, or a Form 1040, U.S. Individual Income Tax Return. If the only U.S. source income the investor received while considered a nonresident for U.S. income tax purposes relates to interest from the NCE, the investor may not be required to file a tax return, as long as the withholding is satisfied at the appropriate rate.

Investors who did not receive their green cards and enter the country will be considered nonresident aliens for U.S. tax purposes, unless they meet the IRS's "substantial presence test" which stipulates that they will be required to file a Form 1040, if they are physically present in the United States on at least:

1. 31 days during the current year, and
2. 183 days during the 3-year period including the current year and the two years immediately prior, counting:
   - All the days they were present in the current year,
   - 1/3 of the days they were present in the first year before the current year, and
   - 1/6 of the days they were present in the second year before the current year.

Because most foreigner investors are typically not familiar with the complexity of the U.S. income and estate tax regimes, it is crucial that each investor consults with a licensed CPA or tax attorney, in order to ensure that the most advantageous tax positions for the foreign investor have been taken.

Taxation of U.S. Tax Residents and Citizens

Once an investor becomes a U.S. tax resident by meeting the "green card" or "substantial presence" test, the investor will be taxed on his or her worldwide income.

It is crucial that foreign investors begin income and estate tax planning during the preliminary stages of the EB-5 process. As well as being subject to income tax on worldwide income, investors may be subject to U.S. estate tax (death tax) on their worldwide assets. The estate tax is a tax on the investor's right to transfer property upon his or her death. There are various tax strategies available to investors, based on their specific facts and circumstances, that could be utilized prior to the investor becoming a U.S. tax resident.

In summary, the above provides an overview of several key aspects of administrative accounting and U.S. tax compliance requirements in the EB-5 process from the investor and NCE business perspective. These requirements are burdensome and need to be considered as part of the overall budget of the NCE. In addition, the investor needs to become familiar with the tax and related compliance implications of obtaining a green card, and the associated timing considerations to ensure adequate tax planning. ■

*Marcum LLP is a top national accounting and advisory services firm with offices throughout the U.S., as well as Grand Cayman, China and Ireland. For information about Marcum's EB-5 Investor Services Practice group and other Marcum services, visit www.marcumllp.com.*

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CMB REGIONAL CENTERS

# TEA DESIGNATIONS:

## *Proposed DHS Rule Would Significantly Alter the Process*

**BY MICHAEL KESTER**
PARTNER, ECONOMIST,
IMPACT DATASOURCE

On January 13th, 2017, the Department of Homeland Security (DHS) issued a Notice of Proposed Rulemaking to amend certain regulations governing the EB-5 Immigrant Investor Program.

A significant portion of the proposed rules are related to TEAs, and these amendments, if enacted, would drastically alter the way high-unemployment TEAs are both calculated and certified (rural TEAs would not be impacted). The following discussion addresses each of the proposed changes related to TEAs.

### REMOVAL OF STATE INVOLVEMENT – DHS WOULD TAKE OVER

**DHS proposes to eliminate the ability of a state to designate high-unemployment areas, and instead, DHS would make such designations. Petitioners would submit a description of the boundaries of the geographic or political subdivision and the unemployment statistics in the area for which designation is sought as set forth in proposed 8 CFR § 204.6(i), and the method or methods by which the unemployment statistics were obtained. Investors would be required to provide sufficient evidence demonstrating the location would qualify for the reduced investment threshold.**

Due to adjudication processing times for I-924 applications and I-526 and I-829 petitions that are already exceedingly long, the prospect of DHS taking over TEA designation requests and the perhaps scant likelihood of their processing such applications in an efficient and timely manner is of great concern for EB-5 stakeholders. As TEA-eligibility is, at least currently, a make-or-break issue for most projects when deciding to venture down the EB-5 path, not having an efficient or predictable adjudication timeframe for TEA designation requests would be concerning for most EB-5 stakeholders, and would add another layer of unpredictability to an already complex program.

Under the current TEA regulations, states have the authority to designate high-unemployment areas. While this state-dependent process has led to some ambiguity and inconsistency in the calculation and designation

of high unemployment areas, most states are relatively efficient, and will provide a TEA designation letter (or respond with a rejection) within two to three weeks (and some much sooner). This efficient aspect of the EB-5 program has been essential for EB-5 stakeholders.

The prospect of DHS taking over the TEA designation process would therefore seem to give rise to two key questions for EB-5 stakeholders: 1) how long would it take DHS to actually process the requests, and 2) since investors would be required to provide sufficient evidence of TEA eligibility, would DHS provide clear guidance regarding the required evidence of data and methodologies used to make these determinations?

The proposed rules do not provide clear guidance on either of these two key questions. Regarding the length of time required for USCIS to provide a Notice of Decision designating a TEA, the DHS proposed rule notes only that the "cost savings" to states in eliminating them from the TEA process would mean some "additional costs for DHS in adjudication review time in order to evaluate TEA submissions." But USCIS declines to estimate the impact on processing times, stating only "DHS cannot accurately predict such added time burden to the Government at this time." It is unclear also whether the DHS TEA adjudication process would result in a TEA designation only when USCIS adjudicates an I-526 petition (currently a period of over 15 months), or if a Notice of Decision for a TEA designation would be issued before the I-526 petition is adjudicated. It should be noted that some previous legislative bills that also proposed transferring authority to designate TEAs from the states to DHS explicitly stated that DHS would respond to a TEA designation request within 60 days.

Regarding the data and methodologies to be utilized, again DHS does not provide any additional guidance beyond the limited information gleaned from current policy and practice. For example, the recently published USCIS Policy Manual chapter on EB-5 states only the following:

> *Acceptable data sources for calculating unemployment include U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from Local Area Unemployment Statistics).*

The main justification DHS points to in proposing to eliminate state involvement in the TEA process is that the current state-driven system has "resulted in the application of inconsistent rules by different states." One would think then that DHS would elaborate on the TEA standards it would like to see adhered to, and provide clear-cut guidance on the data and methodologies that should be utilized. Without further guidance, however, it seems inconsistencies in the designation of high unemployment areas will persist, and I-526 petitions will continue to be filed with supporting evidence comprising a variety of methodologies and data.

## LIMITS ON CENSUS TRACT AGGREGATION

The Proposed Rule indicates DHS would limit the number of census tracts that could be combined for purposes of high-unemployment TEAs. DHS proposes that a high-unemployment TEA may consist of the following, so long as the weighted average of the tract or tracts is at least 150 percent of the national average:

(a) a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business (i.e. the project tract(s)) or

(b) the project tract(s) and any or all additional tracts that are directly adjacent to the project tract(s)

In short, if the project tract (or tracts – for projects that span more than one tract) does not qualify on its own, one may only combine/aggregate census tracts utilizing census tracts that are touching/adjacent to the project tract(s).

In current practice, most high-unemployment TEAs involve the aggregation of two or more contiguous census tracts (or block groups as discussed later). Furthermore, states currently have been given flexibility in certifying the "areas" or "shapes" of the TEA. DHS notes in the proposed rules that this "reliance on states' TEA designations has resulted in the application of inconsistent rules by different states" and has "resulted in the acceptance of some TEAs that consist of areas of relative economic prosperity linked to areas with lower employment." To counteract this, DHS proposes a significantly stricter regulation regarding census tract aggregation, and one in which DHS would make the TEA determination.

DHS provided the following map (**FIGURE 1**) and corresponding description as an example of how high unemployment areas would be designated.

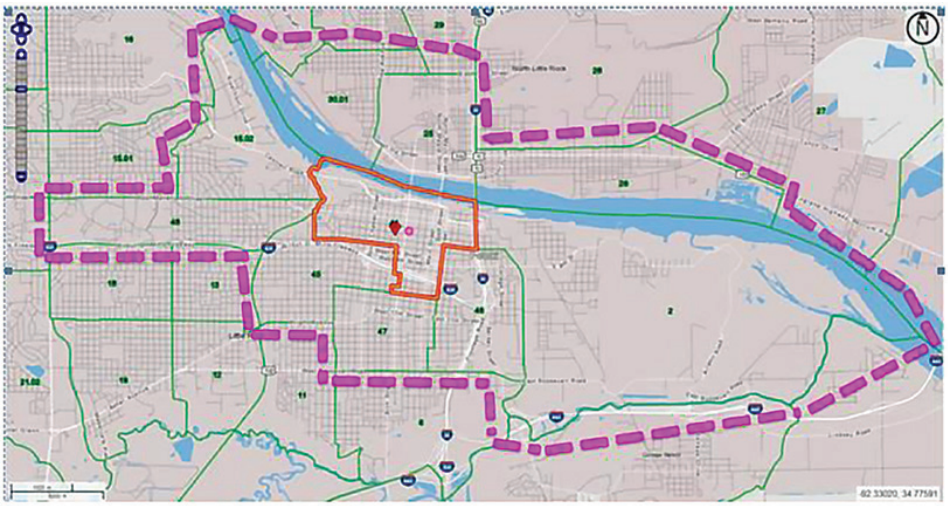


**FIGURE 1**

*The broader area outlined in a dashed bold line contains all of the tracts that are adjacent to the project tract. Under the proposed regulation, the tract outlined in a solid bold line may independently qualify as a TEA. If it does not, an area consisting of that tract and any or all of the additional tracts outlined in the dashed bold line could qualify as a TEA, so long as the weighted average of the combined unemployment rates of each tract is at least 150% of the national average.*

## TEA DESIGNATIONS – PROPOSED DHS RULE WOULD SIGNIFICANTLY ALTER THE PROCESS

Of the many possible legislative changes related to TEAs discussed over the last few years, an arbitrary limit on the number of census tracts that may be aggregated has been at the forefront. The proposed rule provides for a general limit on combining census tracts by permitting aggregation only with the tracts adjacent to (i.e. touching) the project tract(s). For reference, USCIS refers in the comments to the proposed rule to its analysis of a random sample of 390 census tracts throughout the US, resulting in a range of 3 to 8 adjacent census tracts, with an average and median of approximately six (6) adjacent census tracts to each tract.

The proposed rule for aggregation of census tracts would be a significant departure from current practice, and the proposed limitations could severely hinder many potential projects/investments that would otherwise have a positive impact on the labor force in high unemployment areas.

For example, we analyzed a census tract in downtown Memphis under the current TEA standards versus the proposed DHS rules. As the city of Memphis would not qualify on its own, and neither would the MSA or county containing Memphis, we turned to census tracts for a possible high-unemployment TEA.

In the following maps, high unemployment census tracts are shown in orange, with the project census tract highlighted in light blue. As the maps demonstrate, downtown Memphis has a significant number of high-unemployment census tracts in the area.

Under the current rules, the site would be TEA-eligible by a relatively simple and reasonable combination of only three tracts (one of several possible reasonable combinations). This type of combination would currently be certified painlessly by almost all states, and is shown by the three-tract aggregation encompassed by the green outline in the map on the left.

**FIGURE 2:** CURRENT TEA STANDARDS: ONE OF MANY POSSIBLE COMBINATIONS

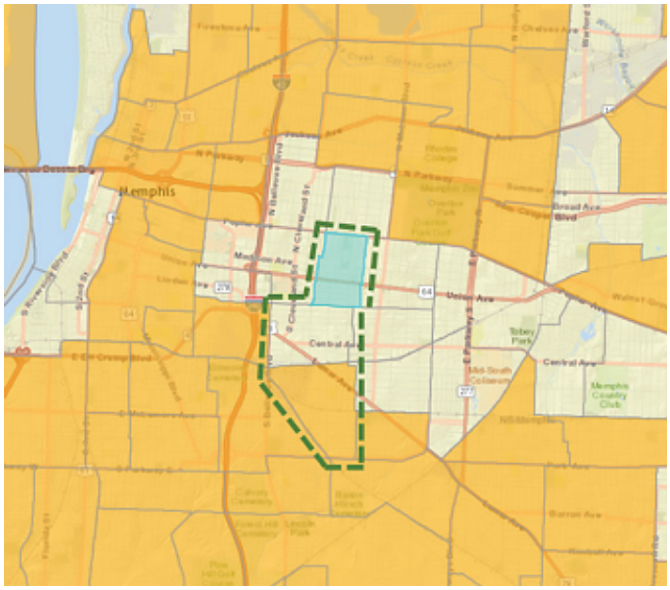
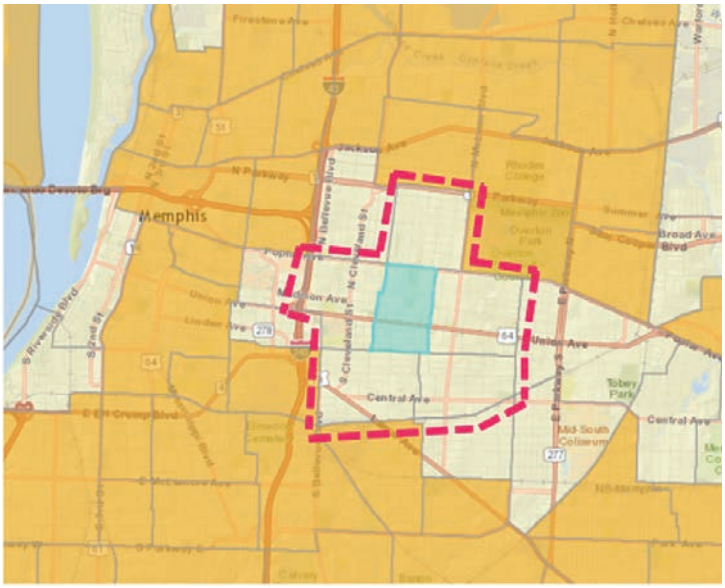



**FIGURE 3:** PROPOSED DHS TEA RULES: CENSUS TRACT NOT TEA-ELIGIBLE




This example is not unique, as the proposed DHS rules would result in similar limitations throughout the United States. In Memphis, like many cities, higher unemployment areas are highly concentrated in a certain area of the city, as opposed to being scattered throughout. While the rules are partly intended to limit perceived "gerrymandering", "gerrymandering" is tough to define. While instituting a general census tract limit might remove some possibilities of what may appear to be "gerrymandering", more significantly a tract limit could hinder potential EB-5 projects that would have had real, measurable positive economic impacts on nearby high unemployment areas. As such, if these sorts of limits were imposed, which do not take the reality of commuting patterns into account, projects located in parts of the city with lower unemployment might not be TEA-eligible, even though these projects would positively impact the labor force in nearby high-unemployment areas.

### OTHER IMPORTANT NOTES RELATED TO HIGH-UNEMPLOYMENT AREAS

#### BLOCK GROUPS

The proposed rule notes that "DHS also surveyed agencies in several locations to obtain information regarding how they have approached the TEA designation process, namely: the states of Illinois, New York, and California, and the city of Dallas, Texas. Every state or local agency consulted by DHS relied on census tract level unemployment data in the TEA designation process."

This statement is a bit misleading, as many states, including New York, also currently permit the use of block groups in TEA determinations. As the use of block groups has grown in popularity over the last few years, it is also somewhat surprising that DHS makes no specific reference to block groups in the sample of existing TEAs they analyzed to try and gauge the impact of the proposed rules.

A block group is a smaller sub-area than a tract, as each tract is made up of one or more block groups. While in current practice, tracts are the typical building blocks of a TEA, several states (New York, Washington, Oregon, New Mexico, several cities in Texas, and others) currently utilize block groups when determining TEA-eligibility. Block groups can provide a significant amount of flexibility, due

to the use of a smaller subarea.

As the proposed DHS rule only discusses census tracts, it appears the use of block groups would no longer be permitted, which would make the impacts of the proposed rule even more drastic in states such as New York that currently utilize block groups on a regular basis.

## HOW LONG IS A TEA LETTER VALID?

Currently, TEA-eligibility for a project can change over time, and there is no guarantee that a site will remain TEA-eligible in the future. Currently, TEA "timing" can be problematic. Decisions involving potentially hundreds of millions of dollars are made based on the perceived TEA eligibility of a project. The absence of predictability and lack of clear-cut guidelines can lead to poor decision-making, wreak havoc in the EB-5 marketplace and potentially stifle projects that might have otherwise created jobs. More predictability regarding the length of validity of TEA designations would vastly improve decision making at the initial planning stages, and ameliorate one aspect of the challenging task of marketing an EB-5 project. This would also lead to a greater comfort level for investors making the important, potentially life-changing decision to invest an in an EB-5 project.

While several of the draft legislative bills over the last few years provided language to lock-in a TEA determination for a set period of time, the proposed DHS rules do not address this issue.

## CITIES AND TOWNS WITH A POPULATION OF 20,000 OR MORE

**DHS proposes to allow any city or town with high unemployment and a population of 20,000 or more to qualify as a TEA. Currently, TEA designations are not available at the city or town level, unless a state designates the city or town as a TEA and provides evidence of such designation to a prospective EB-5 investor for submission with Form I-526.**

While investors would no longer have to obtain a state letter for locations that are within a city that qualifies on its own, this rule would have little to no impact overall. Currently, projects located in high-unemployment cities/towns are virtually always easily certified by the states. As an economist who has analyzed hundreds of sites for TEA-eligibility, I have not come across a state that would refuse to certify a location in a city that qualifies as a high-unemployment TEA in its entirety.

## RURAL AREA DEFINITION

**DHS is also proposing to amend the definition of a "rural area" to mean any area other than an area within a metropolitan statistical area (as designated by the Office of Management and Budget (OMB)) or within the outer boundary of any city or town having a population of 20,000 or more based on the most recent decennial census of the United States.**

The proposed DHS rules would not impact "rural areas", as the above is strictly a clarification of the existing language defining a "rural area", and is meant to clarify that "consistent with statute, that qualification as a rural area is based on data from the most recent decennial census of the United States".

## OTHER METHODOLOGIES CONSIDERED BY DHS

**Commuting patterns:** DHS also considered options based on a "commuter pattern" analysis, which

Would focus on defining a TEA as encompassing the area in which workers may live and be commuting from, rather than just where the investment is made and where the new commercial enterprise is principally doing business. According to DHS, "the 'commuter pattern' proposal was deemed too operationally burdensome to implement as it posed challenges in establishing standards to determine the relevant commuting area that would fairly account for variances across the country."

**The California model:** DHS considered limiting TEA configurations to an area containing up to, but no more than, 12 contiguous census tracts, a method currently used by the state of California. However, DHS reasonably concluded that it was "not confident that this option is necessarily appropriate for nationwide application, as the limitation to 12 census tracts may be justifiable for reasons specific to California but may not be feasible on a national scale."

**Further extensions:** DHS considered extending the cluster to census tracts beyond those directly adjacent to the project tract(s), but determined that doing so in some cases would include areas that are too far from the site of the proposed project. While this might be true in some cases, DHS did not elaborate in great detail about consideration of this methodology, beyond the citing of a few studies in a footnote.

## SUMMARY

The proposed DHS rule would significantly alter the way high-unemployment TEAs would be both calculated and designated. While transferring authority to designate high unemployment area TEAs from the states to DHS is of great concern to EB-5 stakeholders for the reasons discussed above, of even greater concern is the very restrictive proposal limiting the aggregation of census tracts, which could result in USCIS playing a heightened role in the decision-making process for developers in project site selection. In analyzing the potential impacts of the rule changes related to census tract aggregation, DHS notes that "for example, a regional center seeking to locate a project on one city block that would no longer qualify as a TEA may opt to locate the project on another block that could qualify as a TEA under the new rule". This statement appears to reflect a lack of understanding of the complexities of bringing a development to fruition. Even if a developer could easily move a project, which is not typically the case, DHS does not seem to recognize that the viability of the project itself may be undermined by doing so.

While the main motivation for proposing a limit on census tract aggregation may be the desire to eliminate what it perceives as "gerrymandering," the proposed DHS rules do not recognize employment creation that positively impacts workers commuting from areas outside the census tracts immediately adjacent to the project tract. Based on current EB-5 market realities, restricting high-unemployment TEAs to those few tracts immediately adjacent to the project tract will limit potential EB-5 projects that would otherwise positively impact nearby areas experiencing high unemployment and economic hardship. Unemployment is not uniform across a community, and the benefits of a more carefully considered USCIS EB-5 adjudication policy that allows for flexibility reflective of the significant variations in the concentration of high unemployment areas at the local level would seem to outweigh the additional potential operational burdens that might arise. ■

## Person of the Year 2017

# LAURA FOOTE REIFF, ESQ.

Co-Chair Business Immigration Group and Shareholder at Greenberg Traurig, LLP

Each year, Education Fund of America (EFA) selects one professional that best exemplifies: Leadership, Integrity, Achievement, Humility and Tenacity. That person's life and achievements are later presented to the 10,000+ children in our EB-5 funded charter schools as an example of a person to emulate and a career to consider. We are proud to award Laura Foote Reiff this recognition for 2017.

At the end of this school year, EFA, through Laura, will provide scholarship awards to the top student in each of our 20+ schools that best exemplifies the personal and professional traits that Laura is being recognized for.

Laura has helped thousands of people to successfully navigate the U. S. legal system to immigrate to America. Further, she has helped hundreds of businesses utilize numerous U.S. Visa programs to advance their causes. Laura is also a noted author, speaker and industry spokesperson.

Please join us in congratulating Laura for this well deserved recognition !

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# EB-5 Fund Administration:

## Considerations in Light of Increased Interest in Transparency and Third Party Oversight for EB-5 Transactions

**MARIZA MCKEE**
PARTNER, KUTAK ROCK LLP

**KURT REUSS**
CO-FOUNDER, EB5 DILIGENCE

In 2017, EB-5 dealmakers may be welcoming a new member to the deal team to provide a check on how EB-5 investment flows from investment accounts to deployment for job creation. Although there are a few exceptions, generally accepted business practices for most EB-5 deals do not call for the engagement of a third party to act as an usher of EB-5 funds through the investment and deployment cycles. As such, a mandate for independent signatories may cause many in our industry to start the search for the right qualified professional(s) to perform these services for their transactions. In this Integrity Spotlight article, we begin exploring a category of service provider that might be worth evaluating as a contender – an independent fund administrator.

Section (P) (Account Transparency Requirement) of H.R. 5992, a bill introduced in the House of Representatives in late September 2016, proposes that each new commercial enterprise (NCE) create a separate account to hold EB-5 investments at third-party banks or other financial institutions and that independent authorized signatories provide written consent before EB-5 investments are transferred – whether back to the investor, to the NCE, or to the job creating entity (JCE). The bill calls for the authorized signatory to be "independent of, and not directly or indirectly related to" the NCE, regional center associated with the NCE, JCE, or any of the principals or managers of these entities and either: (1) an officer at the bank or financial institution where the account is maintained; (2) an attorney, (3) a CPA, (4) a broker-dealer, or (5) a signatory otherwise authorized by the Director of USCIS. See Section 203(b)(5) of H.R. 5992. Although not specifically included in the enumerated list of authorized signatory candidates, an independent fund administrator may be eligible for authorization by the Director and may be among the most well-equipped professionals to provide oversight and signatory services to the EB-5 industry if Section (P) becomes law. Further, there has been an indication that future proposed bills may even go so far as to require that a fund administrator be engaged by an NCE to perform co-signatory and other functions in connection with the administration of EB-5 investment funds.

Based on review of a 2009 report prepared by the Alternative Investment Management Association (AIMA), Guide to Sound Practices for Hedge Fund Administrators, fund administrator engagements can be viewed in terms of phases of the fund's life cycle. The report lists five primary phases of engagement – Start-up Phase, Interaction with Investors, NAV Calculation, Completing the Service, and Support and Review. The report provides a best practice-based educational overview of the types of services that could fall within these five phases of fund administration. One takeaway from this report is that a fund administrator's role is defined by its service listing, which can vary based on the customer and should be tailored on a fund-by-fund basis.

Fund administrators are essentially monitors and reconcilers. They are typically engaged to track money coming in and out of the fund, maintain records, document income and expense allocation among members of the fund, and prepare reports for investors. Many fund administrators perform a fund accounting function to produce financial statements for the fund by helping them to complete their bookkeeping cycle and prepare tax returns. A fund administrator engagement may also include assistance with tracking assets, liabilities, income, and expenses of the fund. If the fund's operative documents call for an annual audit of its financial statements, the fund administrator may serve as a liaison between the fund and the auditor. Although the NCE's manager remains responsible, fund administration services may allow an NCE to outsource many of the in-house, back-office tasks that would otherwise fall on NCE managers to perform or oversee.

Examples of the roles and functions that are often undertaken by a fund administrator, depending upon the administrator's competencies, may include:

1. ***Regulatory Administration and Compliance Support Services***

- Compiling data for the fund's annual reports
- Preparing and reviewing the fund's financial statements

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- Upon advice and direction from fund's counsel, preparing regulatory forms
- Developing with the fund's counsel, agendas for meetings
- Attending meetings and preparing minutes
- Preparing a compliance calendar for the fund

2. ***Financial Accounting and Investor Reporting***

- Preparing administrative and procedural process
- Establishing and maintaining general ledgers
- Reconciling and confirming investor contributions
- Establishing, reconciling, and maintaining investor capital accounts and effecting all appropriate allocations
- Calculating management fees and incentive allocations
- Generating financing reporting packages
- Generating and distributing capital account statements
- Distributing offering and subscription materials per the fund's direction in accordance with marketing arrangements
- Coordinating processing of new investor subscriptions, which may include: coordinating receipt of funds, providing fund with status reports for wires and subscription agreements, coordinating fund transfers with escrow agent; coordinating holdback calculations and tracking per investor; returning investments to subscribers whose subscriptions have not been accepted; and sending acceptance letters to new investors

3. ***Audit Coordination***

- Conducting audit planning and coordination
- Preparing work papers and schedules for auditors
- Preparing financial statements, footnotes, and report drafts
- Acting as a liaison between auditors and the fund

An independent fund administrator in the context of an EB-5 transaction could assume, in part, the role of an independent third party trustee that would help comfort EB-5 investors that their interests are being looked after through execution of the agreed upon process and procedure. Further, if Section (P) of HR 5992 becomes law, fund administrators could help fund managers comply with legal requirements by acting as an authorized signatory. Some administrators already act as co-signers on a fund's bank account to help ensure that money transfers are limited to their intended and authorized purpose. Although acting as an authorized signatory as proposed in Section (P) may be outside of the suite of services that today's fund administrators typically provide, fund administrators may already have the personnel and expertise that will be needed to provide this type of independent oversight for the benefit of investors while at the same time reducing some of the administrative burden that currently falls on EB-5 fund managers.

Fraud has occurred in only a small number of EB-5 projects; however, in most instances of fraud the NCE maintained complete, unfettered control of the investment funds. In 2013, The U.S. Securities and Exchange Commission's (SEC) Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services (USCIS) issued a joint Investor Alert, reminding potential EB-5 investors to thoroughly research EB-5 offerings and to take steps to help protect themselves from fraud. Among the "hallmarks of fraud" listed in the Investor Alert is "Layers of companies run by the same individuals" – in essence, conflicts of interest is the common denominator of the EB-5 fraud cases to-date. As a result, it seems that EB-5 investors are asking more questions about procedure after funds are deposited into escrow than in prior years and Section (P) may be a way to help guide the industry toward a procedure that provides more comfort to savvy investors than has previously been offered by most EB-5 issuers. In retrospect, some of the proposals in Section (P) may have effectively curbed most of the known EB-5 fraud. Whether or not Section (P) or a similar iteration of regulation is enacted, EB-5 investors may soon demand more transparency and insight into how their funds flow through the investment process.

The regulatory landscape for the Regional Center Program remains rather vast and full of possibilities for industry pioneers. Bridges – from EB-5 investor, to NCE, to JCE posted by independent third-party sentries, like fund administrators, may help light the way through the EB-5 investment cycle increasing the likelihood that EB-5 investors reach their destination. ■

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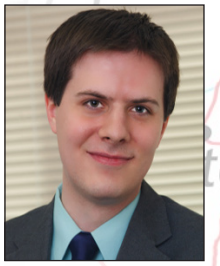
微信号 WeChat ID: PengWeber

# Stop in Wyoming on the Way to America:

## *The Use of Wyoming Trust Structures to Administer EB-5 Investment Funds Pending Removal of Conditions on Residence*

**AMY M. STAEHR**
PARTNER, LONG REIMER WINEGAR BEPPLER LLP; JACKSON, WY



**AARON J. LYTTLE**
ASSOCIATE, LONG REIMER WINEGAR BEPPLER LLP

**ROBERT V. CORNISH, JR.**
SPECIAL COUNSEL, PHILLIPS LYTLE LLP, WASHINGTON, DC

The EB-5 Immigrant Investor Program has enabled a steady influx of new investment in the U.S. economy while providing international investors with a pathway to permanent U.S. residency. However, the program's popularity, combined with a limited number of available visas, has resulted in a substantial backlog of visa applications. Many EB-5 investors now face a retrogression period, in which they must wait for an available visa, even after their EB-5 investment project has wrapped up. As the pool of EB-5 investors waiting to receive visas grows, so does the dollar value of funds invested in the U.S. which must remain "at risk" throughout the application period. This has raised the question of the most advantageous way to hold such funds prior to final approval of an investor's Form I-829 petition.

Wyoming trust structures provide an effective vehicle for holding and administering assets in connection with the EB-5 Immigrant Investor Program. After an EB-5 project is completed, the return on investment can be transferred to one or more trusts for the benefit of the investor's family which are administered by a Wyoming single-family private trust company. The result is a structure that maximizes investment flexibility and minimizes the expense and difficulty of regulatory oversight and mandatory federal or state registration. The trust assets—the return on investment—can then be invested and held "at risk" until the investor receives permanent resident status. Due to Wyoming's favorable trust laws, non-existent state income tax, and allowance of completely unregulated trust companies, this model provides a cost-effective approach to holding the proceeds of EB-5 investments while investors wait to receive their permanent green cards.

### THE EB-5 PROGRAM AND THE RETROGRESSION PROBLEM

The EB-5 Program provides qualified investors with a path to permanent resident status in the United States. An investor makes a standard capital investment in a new commercial enterprise, which must generally create ten new full-time jobs per investor. If the investor makes a qualifying investment and completes the program, the investor and his or her family receive lawful permanent resident status in the United States.

As an overview, the EB-5 immigration process generally proceeds through the following steps:

1. **After transferring funds to the relevant investment project, the investor files a Form I-526 petition for conditional permanent residency with the United States Citizenship and Immigration Services (USCIS).**
2. **After USCIS approves the Form I-526 petition, the investor files a Form I-485 petition with USCIS (or Form DS-230 with the U.S. Department of State if the investor resides abroad).**
3. **After the Form I-526 is approved, the U.S. Department of State issues a conditional permanent resident visa ("temporary green card"), which allows the investor to reside in the U.S. for two years.**
4. **Within twenty-one to twenty-four months after receiving the conditional permanent resident visa, the investor files a Form I-829 application to convert from conditional to permanent resident status. This application must show that:**
   a. The required funds were placed "at risk" throughout the period of the petitioner's residence in the United States;
   b. The required amount of capital was made available to the business or businesses most closely responsible for creating the employment;
   c. This "at risk" investment was "sustained throughout" the period of the applicant's residence in the United States; and
   d. The investor created (or maintained, if applicable), or can be expected to create within a reasonable period of time, the requisite number of jobs.
5. **If the I-829 petition is approved, the investor receives unconditional permanent resident status (a "permanent green card") and the investor may permanently live and work in the U.S.**

The EB-5 Program allocates 10,000 visas per year to qualified individuals and their family members. In 2014, following an explosion of popularity in the EB-5 program, primarily

from investors seeking to emigrate from mainland China, the U.S. ran out of EB-5 visas. This has resulted in retrogression, whereby EB-5 Program investors now potentially wait several years between receiving approval of their I-526 petitions and approval of the Form I-829 application conferring permanent resident status. With no signs of an increase in the 10,000 visa cap, this backlog is expected to grow over time.

The investor's capital must be placed at risk and continuously maintained until the I-829 petition is approved. To be "at risk," the investor must have both a risk of loss and a chance for gain. Retrogression combined with the at risk requirement results in a challenge faced by an increasing number of investors: how to ensure capital remains at risk after an investment project is complete and paid returns but before an investor has received an available EB-5 visa. Although the investor need not show that the ten full-time jobs continue to exist when USCIS finally adjudicates the Form I-829, USCIS has issued a draft policy memorandum stating the investors' capital must nonetheless continuously remain at risk during retrogression.

In a standard loan to equity model, an investor makes an equity investment in a new commercial enterprise (NCE), which then makes loans to EB-5 projects. The EB-5 projects repay the loan principal, plus interest, to the NCE, which then distributes the investment plus return to the investor once the EB-5 process has completed and the investor receives permanent resident status. However, if an investor is subject to retrogression, the NCE cannot simply return the invested funds to the investor. Rather, the investment must remain sustained and at risk until the retrogression period ends. Simply holding the funds in the NCE's bank account or in escrow is insufficient. While the NCE itself could invest the funds to keep them at risk, this can create problems for the NCE, which might not be not registered with the Securities and Exchange Commission (SEC) as an investment adviser or investment company. It is therefore necessary to find a structure that can hold the repaid loan proceeds in a manner that will cause them to be treated as a sustained and at risk investment throughout the retrogression period.

## THE WYOMING TRUST SOLUTION

Wyoming trusts and private trust companies provide a solution to the problem of how to hold the proceeds of EB-5 Program investments pending receipt of permanent residency status. Under this approach, investors settle trusts to hold such capital. These trusts are established under Wyoming law and primarily administered within the state. Wyoming trusts are especially advantageous to the investor due to the state's complete lack of a state income tax, as well as the availability of a full menu of modern trust tools and protections, including privacy, directed trusts, trust protectors, purpose trusts, asset protection tools, virtual representation, and flexible migration, modification, and decanting procedures.

Each investor's Wyoming trust or trusts would be administered by a newly created Wyoming single-family private trust company, which may generally operate without a charter or state banking oversight if it serves only members of a single family. The underlying trust would be funded with the loan proceeds received by the NCE from an EB-5 project. The beneficiaries of the trust would be the investor and his or her family members, who would receive their return on investment as trust distributions once their retrogression period has ended and the investor has obtained permanent resident status. (See Appendix.) The trust itself could possibly function as a liquidating trust, which would hold and invest the loan proceeds until they are ready to be distributed to the investor.

## WYOMING SINGLE-FAMILY PRIVATE TRUST COMPANIES

Single-family private trust companies (PTCs) are corporations or limited liability companies that provides fiduciary services, such as acting as trustee for one or more related trusts. They provide a flexible means of administering family wealth while also providing the required nexus to take advantage of Wyoming's favorable trust laws.

Traditionally, trust companies have been viewed as acting like financial institutions and have therefore been required to obtain charters from the local banking authority before engaging in trust business. However, Wyoming is one of a small number of states that permit PTCs to operate without a charter or regulation by a banking authority. While Wyoming law has long permitted unregulated PTCs based on the Banking Commissioner's interpretation of the statutory definition of "trust business," the Wyoming Legislature amended the relevant statutes in 2015 to provide clear guidance to both regulated and unregulated PTCs. A corporation or limited liability company now qualifies to act as a PTC and need not register with the Wyoming Banking Commissioner if it provides fiduciary services only to members of a single family and "[d]oes not transact company business with, propose to act as a fiduciary for or solicit trust company business with the general public." The definition of "family member" is fairly broad and generally includes persons within the tenth degree of lineal kinship or ninth degree of collateral kinship from a designated common ancestor. This definition also includes a trust established and funded by a family member (i.e., a trust created by an investor and funded with the proceeds of the investor's investment in an NCE).

The process of forming a PTC is relatively fast and requires minimal regulatory compliance. After formation, an officer must execute a signed waiver acknowledging its status as a family trust company and that it is not subject to the requirements or oversight applicable to a chartered trust company, which must be delivered to the Banking Commissioner. For a fee, the Commissioner will provide a Letter of Assurance (essentially a no-action letter), which recognizes the company's family trust company status. The PTC is then free to provide fiduciary services (including making lawful fiduciary investments) to the relevant family. This will permit the PTC to invest funds and thereby keep them "at risk" during the EB-5 retrogression period. However, the PTC may not provide fiduciary services to the general public (i.e., to non-family members) and may not provide any banking business (i.e., accepting general deposits or issuing demand instruments).

PTCs have the option of voluntarily obtaining a charter from the Commissioner. Of course, establishing a chartered PTC will entail additional time, costs, and fees, as well as minimum capital requirements and mandatory examination, reporting, and oversight by the Commissioner. That said, the process does remain less stringent than a fully chartered public trust company. Some investors may opt for this model because they want a level of light regulation. Such state regulation may also be obtained in lieu of more stringent SEC investment adviser registration. However, as explained below, such state oversight will be unnecessary if the companies comply

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with the family office exception under the Investment Advisers Act. It is therefore likely that investors will have greater interest in the decreased costs and increased flexibility provided by truly unregulated PTCs.

PTCs created to hold investment proceeds during retrogression will be structured according to IRS Notice 2008-63 as well as to ensure compliance with the EB-5 Program's "at risk" requirements. Most notably, the NCE (or a limited liability company wholly owned and managed by the NCE) will be a member of the PTC's board of directors and could then direct the PTC to hire a bond manager or other money manager to make investment decisions regarding the trust assets—the return on investment. The PTC's organizational documents would be drafted to prohibit removal of the NCE (or its LLC) from the PTC structure until a final decision is made on the investor's I-829 petition, as well as to ensure the NCE's role constitutes sufficient custody and control over the EB-5 Program proceeds to ensure that the assets are considered "at risk" during the retrogression period. The NCE's role on the board of the PTC—the trustee—should obviate any concerns of USCIS as to custody and control for "at risk" purposes.

## SECURITIES REGISTRATION ISSUES

A Wyoming trust company structure can potentially eliminate the need for mandatory registration with and regulation by the SEC.

### *Investment Adviser Registration*

Unless an exception applies, the Investment Advisers Act (IAA) requires SEC registration by any individual or entity acting as an "investment adviser." An "investment adviser" includes any person "who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." With very narrow exceptions, this definition would appear to apply to many types of trustees that provide advice regarding investments, including trustees of trusts holding "at risk" assets during the pendency of an investor's retrogression period.

PTCs should be able to avoid mandatory IAA registration under the family office exception to the IAA's definition of "investment adviser." To qualify as a "family office," a trust company must (1) provide investment advisory services only to "family clients"; (2) be wholly owned by family clients and controlled by "family members" or "family entities"; and (3) not hold itself forth to the public as an investment adviser. SEC rules define "family client" fairly broadly, including ten generations of lineal descendants from a common ancestor, current and former spouses and spouse equivalents, key employees, and certain organizations, entities, estates, and trusts created by family clients.

Care must be taken to ensure that such a company provides services to and is owned and controlled by permissible persons and does not advertise itself or provide services to non-family clients. As an alternative if a particular trust company does not qualify for this exception, accepting light regulation by the Wyoming Banking Commissioner as a chartered family trust company should allow the trust company to avoid SEC regulation under the IAA. However, in most single-family situations, it is difficult to structure a PTC to fall within the family office exception.

### *Investment Company Registration*

The SEC also regulates investment companies under the Investment Company Act of 1940 (ICA). An "investment company" is an "issuer" that

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

An "issuer" is someone "who issues or proposes to issue any security, or has outstanding any security which it has issued." Unless an exception applies, an investment company is subject to mandatory registration with and regulation by the SEC. Such regulation can be quite burdensome.

A PTC that provides fiduciary services to a family and invests "at risk" assets will not have to register as an investment company if it does not issue or propose to issue securities. ICA registration may be implicated, however, if a PTC seeks to create or administer a pooled investment vehicle. For example, a trust company may create a common trust fund in which individual family trusts may purchase units. That fund would then be able to make investments that might otherwise be unavailable to individual family trusts, such as in private equity funds and hedge funds. Such vehicles may qualify the trust company as an investment company, thereby requiring an exemption or no-action letter from the SEC to avoid mandatory registration.

Family office pooled investment vehicles typically seek exemption from the ICA under one of two exemptions. The first is under Section 3(c)(1) of the ICA, which excludes from the definition of "investment company" an issuer whose "outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities." Such a company will be treated as an "investment company" only for the purpose of certain limitations on an investment company's ability to acquire securities in other investment companies.

The second common exception is under Section 3(c)(7) of the ICA, which excludes from the definition of "investment company" an issuer, "the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities." "Qualified purchasers" include persons who have significant investments, including individuals and certain companies and trusts with at least $5 million in investments.

Section 3(c)(3) of the ICA provides a specific exemption for common trust funds, though the exception is available to a trust company only if the company receives some form of state charter and oversight. Under this exemption, a common trust fund or similar fund maintained by a bank for collective investment and reinvestment of moneys contributed to the bank in its capacity as trustee is not an investment company if:

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

(i) advertised; or

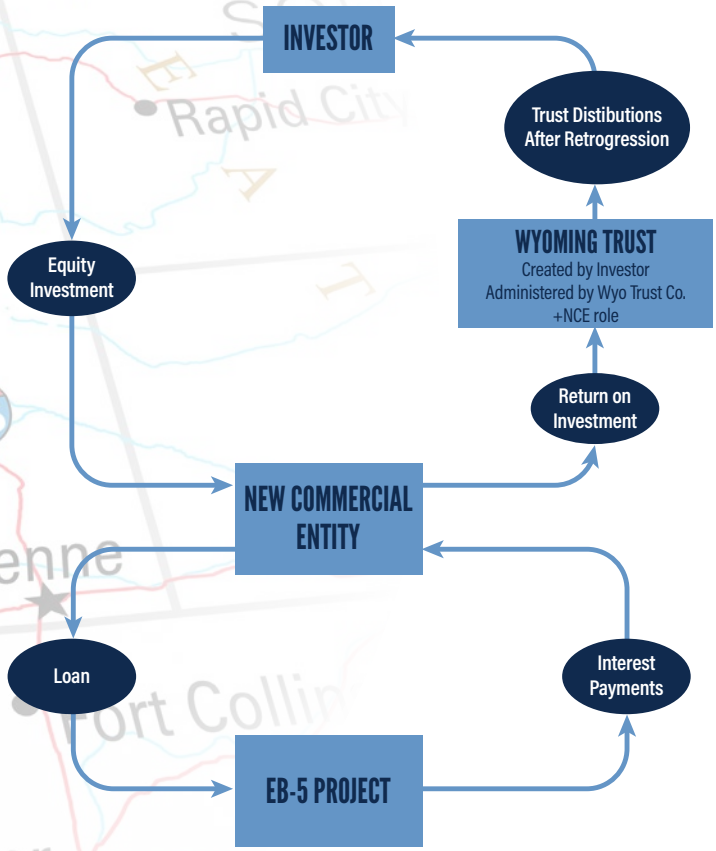
(ii) offered for sale to the general public; and

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

A "bank" includes a trust company,

> *whether incorporated or not, doing business under the laws of any State . . . , a substantial portion of the business of which consists of . . . exercising fiduciary powers similar to those permitted to national banks . . . , and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter.*

A Wyoming PTC would generally appear to meet this definition only if it voluntarily received a charter from the Wyoming Banking Commissioner. Additionally, there is a factual question of whether the company is "operated for the purpose of evading the provision of this subchapter." The SEC has stated that it will not issue no-action letters on this question to non-depository trust companies that are not wholly owned subsidiaries of a bank. However, it appears unlikely that a state regulated trust company that invests assets as part of its fiduciary services to trust clients would be viewed as operated for the purpose of evading the statute. We have been unable to find an example of a similarly situated trust company running afoul of this rule. Of course, the biggest difficulty with this rule is that many single-family PTCs will not want to accept the expense and oversight of voluntarily obtaining a charter.




Notwithstanding the foregoing, there is sufficient guidance from the SEC indicating that a trust structure cannot be used as a simple "conduit" through which an allocation to an investment company is facilitated. To this end, the actual investment of trust assets for EB-5 investors subject to retrogression are strongly suggested to mirror the exemptions provided for limited purpose or liquidating trusts under Section 7 of the ICA. No-action guidance provided by SEC concentrates on three factors to determine potential exemption, which are (a) limited purpose, (b) limited duration and (c) non-transferability.

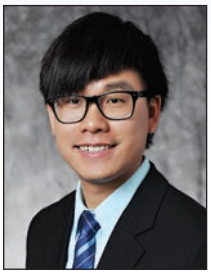
In order to satisfy the limited purpose factor, the sole objective and purpose of the entity must be to liquidate assets and distribute the proceeds to the beneficial owners. In doing so, the entity must not hold itself out as an investment company or conduct a trade or business. If proceeds are held by the entity for any period of time, the entity must invest such proceeds only in temporary short-¬term investments in investment¬-grade or similar securities. Further, the time limitation factor requires that the entity liquidate its assets and dissolve within a reasonable period of time in light of the entity's assets and any other relevant factors. For example, a PTC can provide compliant investments for a trust for the benefit of an EB-5 investor in retrogression through retention of an institutional bond manager who can handle the assets in a separately managed account of individual, investment grade (A+ or above) liquid bond holdings (not mutual funds ) of the same duration as the expected retrogression period of the EB-5 investor. In those instances where the retrogression period is uncertain, portfolio allocation concerning the duration of fixed-income securities can also be addressed accordingly. Such limitations on investment policies and the like can and should be memorialized in relevant trust formation documentation.

## CONCLUSION

The specifics of any structure require analysis pertaining to compliance with applicable state and federal law, including immigration and securities law issues. While the authors are not aware of their use in the EB-5 arena at present, Wyoming trusts administered by Wyoming single-family PTCs may provide a solution to the problem of how to hold "at risk" funds for EB-5 investors in meaningful investments after their EB-5 projects have ended, but before they have been granted permanent resident status. For sponsors of EB-5 investments and their investors, a stop in Wyoming during retrogression on the way to citizenship may prove both prudent and profitable. ■

# Seven Trends in EB-5 Investor Markets

## ILLUSTRATED BY THE LATEST I-526 FILINGS STATISTICS OF INVESTOR ORIGIN



**BY LEE LI**
IIUSA POLICY ANALYST

IIUSA believes in the power of data analytics to inform and enhance the EB-5 marketplace. As such, we consistently seek a variety of EB-5 statistics via the Freedom of Information Act (FOIA) in order to produce the latest EB-5 industry intelligence for our key constituencies. In particular, we are committed to empowering the EB-5 community with timely, quantitative insights on the latest EB-5 investor market trends with the goal of supporting our members to strategically develop and expand their EB-5 businesses on a global scale that would eventually stimulate economic development in their local communities.

Recently, our "FOIA machine" paid its dividends and delivered a comprehensive dataset of Form I-526 (Immigrant Petition by Alien Entrepreneur) receipt statistics by petitioners' country of birth (COB) from fiscal year (FY) 1991 to FY2015.

Compared to our first EB-5 Investor Markets Report which analyzed EB-5 investor origin based on the approval data of Form I-526 by petitioners' COB. The data recently received via FOIA that consists of the filing statistics of I-526 petitions could serve as a more accurate indicator of the latest demand trends of EB-5 visas.

Here are seven (7) of the most significant EB-5 investor markets trends, as illustrated by the latest filing statistics of I-526 petitions.

### 1 ASIA CONTINUES TO DOMINATE EB-5 INVESTOR MARKETS

As illustrated by Figure 1, Asia accounts for seven (out of 16) of the biggest EB-5 investor markets in FY2015. These Asian countries/territories contributed approximately 14,500 EB-5 investors in FY2015, which is equivalent to approximately $7.3 billion in EB-5 capital investments. In particular, five of the top six EB-5 investor markets from FY2015 and FY2014 are located in Southeast Asia. These top markets (China, Vietnam, India, Taiwan, and South Korea) account for 90% of all EB-5 investors who filed their I-526 petitions in FY2015.

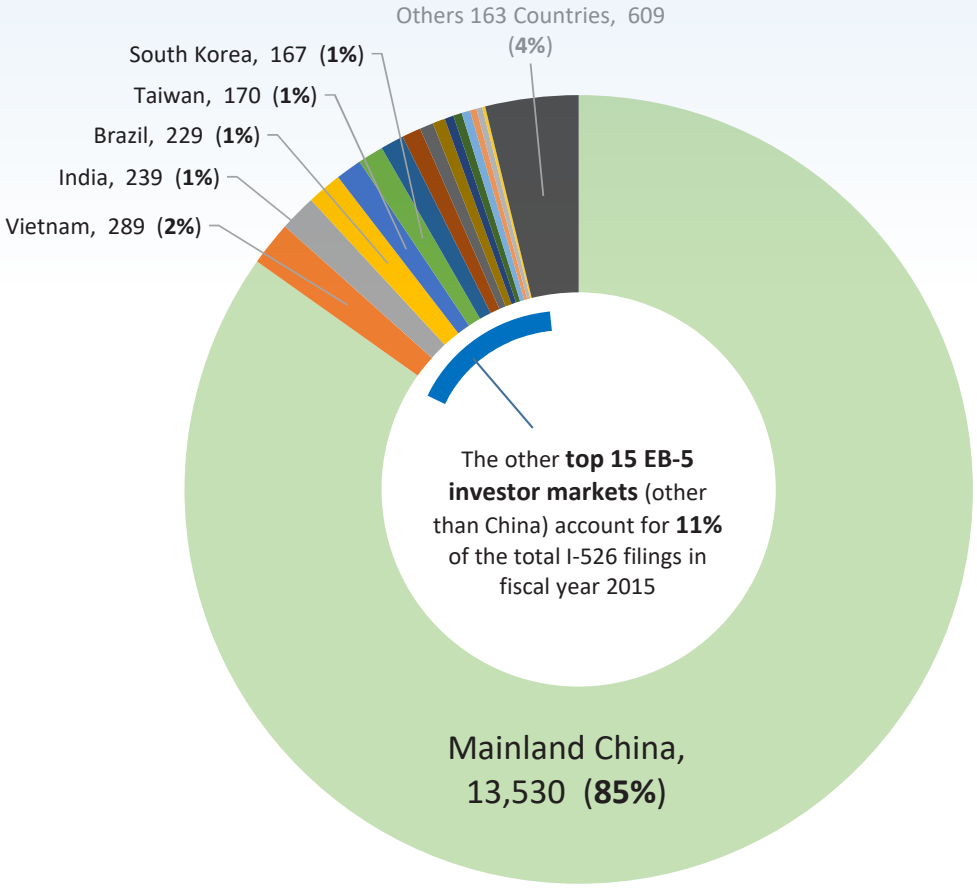
### FIGURE 1: ASIA CONTINUES TO DOMINATE THE EB-5 INVESTOR MARKETPLACE IN FY2015

Total EB-5 investments (in $million) by investors' country of birth (FY2015). The map below only displays countries/regions with I-526 filings of over 10 petitions in FY2015.


*Note: EB-5 investment amounts are calculated based on $500,000 per I-526 filing. Data Source: U.S. Citizenship and Immigration Services (IIUSA Obtained via FOIA)*

## FIGURE 2: THE TOP 16 COUNTRIES/TERRITORIES ACCOUNT FOR 96% OF ALL I-526 FILINGS IN FY2015

This chart shows the amounts and market share of I-526 filings by EB-5 investors' country of birth in FY2015.




### 2 TOP 16 EB-5 INVESTOR MARKETS ACCOUNT FOR 96% OF ALL I-526 FILINGS IN FY2015 – THESE ARE THE COUNTRIES WORTH YOUR FOCUS

The aggregate market shares of I-526 filings from the top 16 EB-5 investor markets (listed as Table 1) increased from merely 75% in FY2006 to over 95% in FY2015 (displayed at Figure 2). The continued high growths among the emerging investor markets like Vietnam, India, and Brazil, indicate that the number of EB-5 investors from these top 16 countries/territories will continue to increase in the near future.

## TABLE 1: I-526 FILINGS BY INVESTORS' COUNTRY OF BIRTH (FY2013–2015) - TOP INVESTOR MARKETS & GRAND TOTALS

| | FY2015 | | | | FY2014 | | | | FY2013 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Country/Region | Rankings | # of I-526 Filings | EB-5 Investments (in $million) | YoY Growth | Rankings | # of I-526 Filings | EB-5 Investments (in $million) | YoY Growth | Rankings | # of I-526 Filings | EB-5 Investments (in $million) | YoY Growth |
| China (Mainland) | 1 | 13,530 | $6,765 | 39% | 1 | 9,722 | $4,861 | 77% | 1 | 5,480 | $2,740 | 4% |
| Vietnam | 2 | 289 | $145 | 128% | 2 | 127 | $64 | 46% | 4 | 87 | $44 | 61% |
| India | 3 | 239 | $120 | 141% | 5 | 99 | $50 | 15% | 5 | 86 | $43 | 15% |
| Brazil | 4 | 229 | $115 | 358% | 10 | 50 | $25 | 163% | 13 | 19 | $10 | 6% |
| Taiwan | 5 | 170 | $85 | 60% | 4 | 106 | $53 | 16% | 3 | 91 | $46 | 40% |
| South Korea | 6 | 167 | $84 | 52% | 3 | 110 | $55 | 8% | 2 | 102 | $51 | -33% |
| Iran | 7 | 154 | $77 | 69% | 6 | 91 | $46 | 7% | 6 | 85 | $43 | 70% |
| Venezuela | 8 | 123 | $62 | 141% | 8 | 51 | $26 | 2% | 9 | 50 | $25 | -9% |
| Mexico | 9 | 89 | $45 | 75% | 8 | 51 | $26 | -28% | 7 | 71 | $36 | -16% |
| Russia | 10 | 82 | $41 | 30% | 7 | 63 | $32 | 11% | 8 | 57 | $29 | 19% |
| Nigeria | 11 | 60 | $30 | 114% | 12 | 28 | $14 | 4% | 12 | 27 | $14 | 170% |
| Canada | 12 | 56 | $28 | 133% | 13 | 24 | $12 | -20% | 11 | 30 | $15 | 0% |
| United Kingdom | 13 | 55 | $28 | 62% | 11 | 34 | $17 | 10% | 10 | 31 | $16 | -16% |
| Hong Kong | 14 | 42 | $21 | 133% | 15 | 18 | $9 | 80% | 16 | 10 | $5 | -29% |
| South Africa | 15 | 40 | $20 | 122% | 15 | 18 | $9 | 20% | 15 | 15 | $8 | -6% |
| Japan | 16 | 19 | $10 | -14% | 14 | 22 | $11 | 29% | 14 | 17 | $9 | -61% |
| Others 163 Countries | - | 609 | $305 | 37% | - | 443 | $222 | 36% | - | 325 | $163 | 25% |
| **Grand Total** | **-** | **15,953** | **$7,977** | **44%** | **-** | **11,057** | **$5,529** | **68%** | **-** | **6,583** | **$3,292** | **5%** |

*Data Note: EB-5 investments are calculated based on $500,00 per filing of I-526 petition.*
*Due to the discrepancy in grand totals between the data IIUSA obtained via FOIA and the data USCIS published on its wesbite, the margin of error could be +/- 9%.*
*Data Source: U.S. Citizenship and Immigration Services (IIUSA Obtained via FOIA)*

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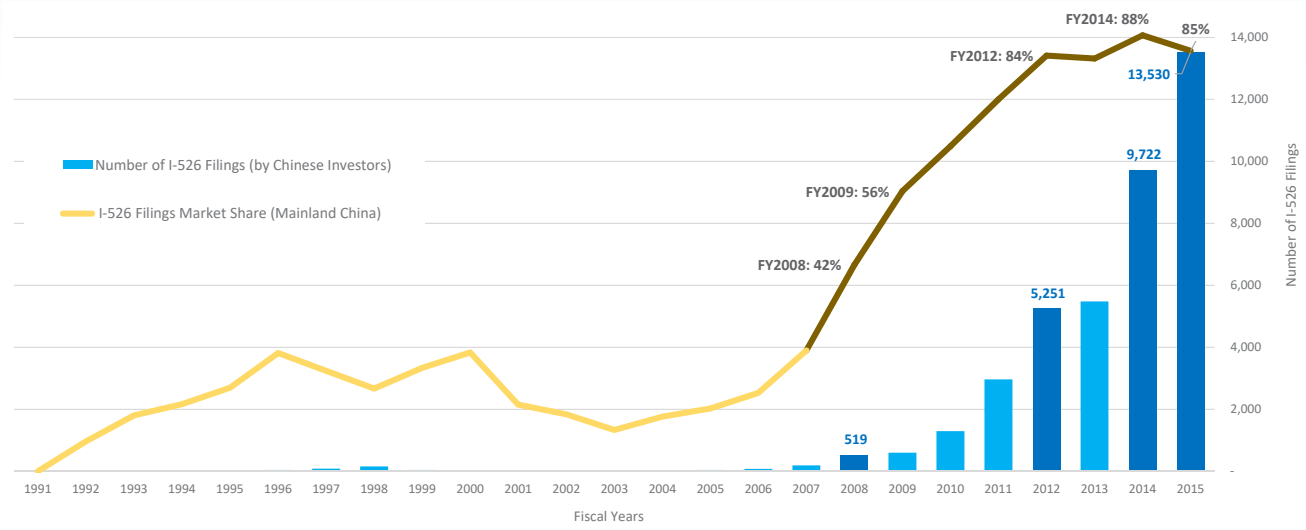
## 3 CHINA, WITH OVER 13,500 I-526 FILINGS IN FY2015, REMAINS THE DOMINANT EB-5 INVESTOR MARKET

Despite the minor decline in its market share, the amount of I-526 filings by Chinese EB-5 investors increased by 40% from FY2014 to a total of over 13,500 in FY2015, accounting for 85% of all I-526 filings worldwide. Even with challenges such as the visa number backlog for investors from mainland China, the data still shows that demand for the EB-5 visas among Chinese investors has soared significantly from FY2008 to FY2015.

As illuminated by Figure 3, since FY2009 when it eclipsed over 50% market share worldwide, mainland China's EB-5 investor market has grown more than 1,500% in terms of I-526 filing volume and reached its peak in worldwide market share of I-526 filings of 88% in FY2014.

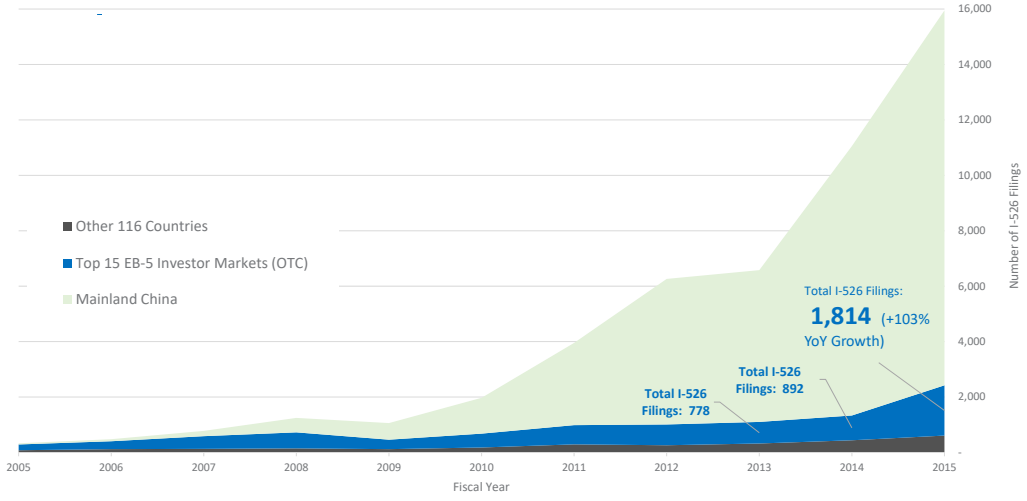
### FIGURE 3: NUMBER AND MARKET SHARE OF I-526 FILINGS BY EB-5 INVESTORS FROM MAINLAND CHINA (FY1991–FY2015)




## 4 I-526 FILINGS FROM THE TOP 15 INVESTOR MARKETS OTHER THAN CHINA DOUBLED FROM FY2014 TO FY2015

Although mainland China remains the dominant source to raise EB-5 capital worldwide, the growth of the established and emerging top EB-5 investor markets other than China ("OTC") is also outstanding. As illustrated in Figure 4, the aggregated I-526 filings from top 15 EB-5 investor markets (OTC) jumped from 890 in FY2014 to over 1,800 in FY2015, a year-over-year increase of over 100%. With the new reality of an increasing waiting line for investors from mainland China, these top OTC markets, led by Vietnam, India, and Brazil, serve as an important and emerging alternative source to acquire EB-5 investments. In fact, based on the I-526 filing statistics, the top 15 OTC EB-5 investor markets generate over $900 million in EB-5 capital in FY2015.

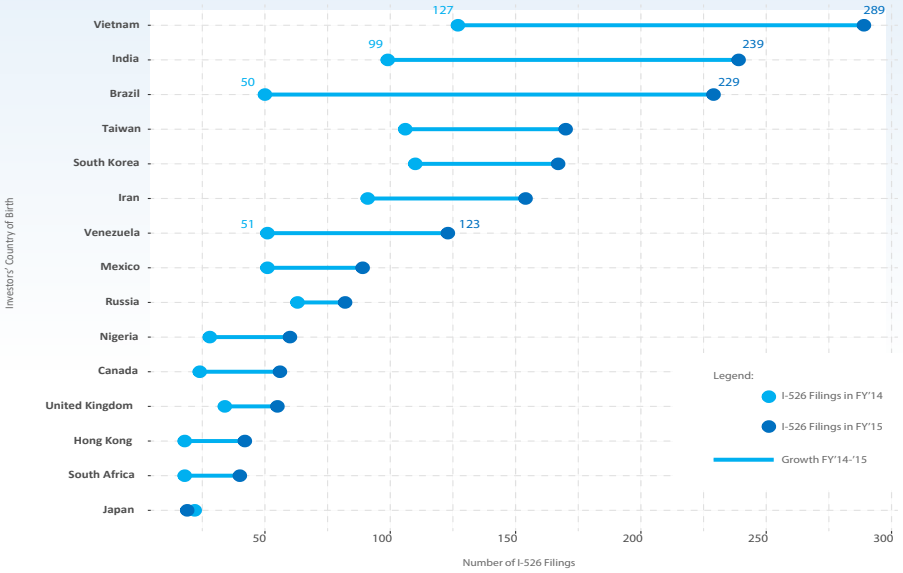
### FIGURE 4: NUMBER OF I-526 FILINGS BY EB-5 INVESTORS FROM MAINLAND CHINA VERSUS TOP 15 EB-5 INVESTOR MARKETS (OTC) VERSUS ALL OTHER COUNTRIES



## 5 VIETNAM AND INDIA ARE THE MOST IMPORTANT ALTERNATIVES TO MAINLAND CHINA IN RAISING EB-5 CAPITAL

Figure 5 shows that over 280 and 240 EB-5 investors from Vietnam and India, respectively, filed their I-526 petitions in FY2015. With an annual growth of more than 100%, these two markets have become the most popular alternatives to mainland China for raising EB-5 capital. In fact, together, investors from Vietnam and India contributed over $260 million in EB-5 investments in FY2015 based on the I-526 filing data.

### FIGURE 5: GROWTH OF I-526 FILINGS (FY2014-15) IN TOP 15 EB-5 INVESTOR MARKETS (OTC)



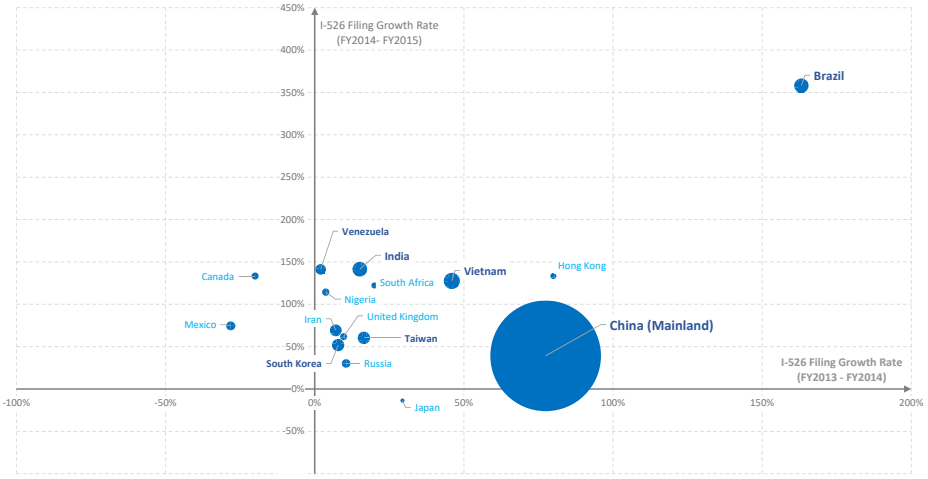

## 6 BRAZIL AND VENEZUELA ARE THE RISING STARS (NOT JUST IN LATIN AMERICA)

When looking at growth between FY2014 to FY2015 (as illustrated by Figure 5), Brazil stands out with a significant jump from 50 to almost 230 I-526 filings in a single year, representing approximately $115 million in EB-5 capital in FY2015. Additionally, Figure 6 compares the growth rates of FY2014-FY2015 (in y-axis) to the growth rate of FY2013-FY2014 (in x-axis) for the top EB-5 investor markets. It shows Brazil to be the only EB-5 investor market positioned in the upper right corner of the chart – meaning it has triple digit growth rates not only in FY2014-FY2015 (360%) but also in FY2013-FY2014 (160%).

It's also important to note the growth of EB-5 applicants hailing from Venezuela, the second largest EB-5 investor market in Latin America. With an annul growth of 140%, more than 120 investors from Venezuela filed their I-526 petitions in FY2015, representing over $60 million in EB-5 investments.

### FIGURE 6: I-526 FILING BY BRAZILIAN INVESTORS - CONSISTENT HIGH GROWTH RATE FROM FY13 TO FY15

I-526 filing growth rates in FY2013-14 versus growth rates in FY2014-15 in top EB-5 investor markets. Bubble size represents the amount of I-526 filings in FY2015.




## 7 SOUTH KOREA AND TAIWAN – THE TWO LARGEST TRADITIONAL EB-5 INVESTOR MARKETS SEE MODERATE GROWTH IN FY2015

South Korea was the second largest EB-5 investor market between FY2005 to FY2013 in terms of I-526 filings and Taiwan consistently ranks within the all-time top 10 EB-5 investor markets since the inception of the EB-5 Regional Center Program (the "Program") in 1992. These two investor markets achieved a growth rate of 52% and 60%, respectively, in FY2015. Although South Korea and Taiwan do not demonstrate a growth as fast as Vietnam and India, they still contribute an average combined amount of 200 I-526 filings every fiscal year since FY2013 and serve as two established and stable capital markets for EB-5 project sponsors.

As the Program grew significantly in the past five years, various established and emerging EB-5 investor markets are being developed and serving as alternative capital sources for different type of EB-5 projects. The diversification of EB-5 investor markets is a pivot component of the Program's sustainability and its continued success in promoting local economic development and supporting American jobs at no cost of tax payers. IIUSA will continue to serve as a committed resource to provide the latest intelligence and data analytics on the EB-5 investor markets to support our members and other key constituencies. ■

# EB-5 Corporate & Securities

Osvaldo F. Torres, the firm's Managing Partner, has over 25 years of sophisticated corporate and securities law experience. "Ozzie" has been immersed in the EB-5 space for numerous years assisting regional centers and projects with all of their offering, structuring and SEC compliance needs. His project experience includes hotel development, multifamily residential, assisted living, franchises and alternative energy.

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# PRESIDENT TRUMP'S TRAVEL BAN AND EB-5:

## *What You Need to Know*

**BY ROBERT C. DIVINE**
VICE PRESIDENT, IIUSA;
SHAREHOLDER, BAKER, DONELSON, BEARMAN, CALDWELL, & BERKOWITZ

Everyone is reading the news about President Trump's executive order "travel ban" for people "from" the previously identified seven "countries of concern": Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. And with legislative and regulatory proposals about EB-5 changes afoot and the need to spend your time singing the praises of EB-5 to support regional center program extension, you don't need to waste time reading irrelevant things.

So here's what's relevant to the EB-5 industry. The relevant agencies are ordered to figure out a more comprehensive set of screening efforts for visitors and immigrants. The agencies are also directed to figure out what information is needed from home country governments and whether those governments will provide that information, but this seems to be focused on the refugee program and particularly Syria. That part has not been challenged, yet.

But for 90 days pretty much all visas and admissions for people from the seven countries were to be stopped while the agencies did their thing. At least one court order has restrained the 90 day ban, and the Ninth Circuit just refused to overturn that restraining order, citing due process and equal protection grounds tied to background statements of Trump about his purpose behind the ban. A preliminary injunction hearing should now ensue, and appeals from that can be expected either way. Other legal challenges are afoot, and the issue seems destined for a period of litigation and perhaps resolution in the Supreme Court at some point.

So what are the implications for EB-5? USCIS has issued an internal memo stating that (regardless of any legal challenges) Trump's order does not affect any USCIS adjudications, which includes I-526 petitions, extension or change of temporary stay within the U.S. (such as visitors, students, H-1B, etc.), adjustment of status to conditional resident for those with approved I-526 and available visa number, I-829 to remove conditions on residence, and naturalization-- even for people from the seven countries. One could expect USCIS officers to be at least a little more careful about adjudicating applications for people from the seven countries, but one already could have expected that, as anyone with an Iranian investor could confirm.

For now the agencies are following the court restraining order and essentially giving no effect to the ban on visas and admissions for the people from countries of concern. To the extent the courts remove their blocks on the "travel ban" aspect of the executive order, the agencies will stop holding and scheduling visa interviews for people from those countries, including visitor, student, temporary worker, and EB-5 immigrant visas. Any visas issued to those people would be "provisionally revoked," meaning that the visas will remain unusable for being admitted to the U.S., including for people who might be in the U.S. already but go out on a temporary trip. Travel carriers would be prohibited from letting people from those countries on a vessel bound for the U.S., and CBP would refuse admission to anyone who somehow got to a port of entry anyway.

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So what effects would follow the end of the 90 days, assuming the ban is not temporarily extended? It seems unlikely that meaningful specific effects on EB-5 investors and their family would linger. Again, such people already have experienced what seems like extra vetting, and the scouring of source and path of funds experienced by all EB-5 investors already seems to constitute some of the most "extreme vetting" known to U.S. immigration processing. Nevertheless, the USCIS Investor Program Office could become more rigorous in parsing and investigating source and path of funds evidence, though in our observation that already was happening. We have seen U.S. Government investigators independently contacting EB-5 investors' former employers, bank lenders, and other parties in the source of funds requesting verification of evidence, and some early findings of fraud through these efforts are likely to lead to their expansion. Meanwhile, the USCIS Administrative Appeals Office has been affirming some rigorous analysis of types of sources and specific evidence of them.

Very few EB-5 investors have ever originated from the seven countries except Iran. The latest figures available show that 28 Iranians and 9 Syrians were issued EB-5 visas in FY2016. 150 Iranian investors filed I-526 petitions in FY2015, and it is unclear whether the difference between 150 and 28 represents a low approval rate for Iranians or a long delay in adjudication, or both. Less than 30 investors from the other six countries combined filed I-526 petitions in FY2015, and 18 of those were from Syrians. At this point it seems unlikely that President Trump would expand the travel ban to other countries if he can overcome the current legal hurdles facing the current ban. The current list of seven "countries of concern" was based on designation in existing law, which was handy to try to distance the suggestions of Trump's discriminatory animus. But who knows.

So far the Trump Administration has not breathed a word about any specific policy approach to substantive EB-5 project eligibility, the proposed regulation published in the last days of the Obama Administration, or the legislation needed to renew the regional center program in April. ■

*Robert C. Divine leads the Global Immigration Group of Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., a law firm of over 650 lawyers and public policy advisors with offices in 20 cities in the U.S. including Washington, D.C. Mr. Divine served from July 2004 until November 2006 as Chief Counsel and for a time Acting Director of U.S. Citizenship & Immigration Services (USCIS). He is the author of Immigration Practice, a 1,600 page practical treatise on all aspects of U.S. immigration law now in its Fifteenth Edition (see www.jurispub.com). He has practiced immigration law since 1986 and has served as Chair of various committees of the American Immigration Lawyers Association and currently serves on the EB-5 Committee. He has served six years as Vice President of Invest in the USA (IIUSA), the EB-5 industry trade association. Under his leadership, Baker Donelson serves a wide range of legal needs for regional centers, developers, and investors, including immigration, securities, business, real estate, tax, international, government investigations, and litigation.*

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# THE CAUTIOUS GIANT: EB-5 LESSONS FROM NIGERIA

**BY CHAD ELLSWORTH**
PARTNER, FRAGOMEN, DEL REY, BERNSEN & LOEWY, LLP

On my recent business trip to Nigeria in mid-August, I had the opportunity to discuss the U.S. EB-5 Immigrant Investor Program with many potential immigrant investors and advisors of high net-worth individuals. Nigeria was a natural destination on my multi-country Africa trip because of the country's economic prominence on the continent and in the developing world. The country is often referred to as the "Giant of Africa" due to its large population and economy. Nigeria is the most populous country in Africa and the seventh most populous country in the world. As of 2015, Nigeria boasts the world's 20th largest economy, worth more than $500 billion and $1 trillion in terms of nominal GDP and purchasing power parity. Nigeria is also considered an emerging market by the World Bank, a regional power on the African continent, a middle power in international affairs, and an emerging global power. Further, in Fiscal Year 2015, Nigeria placed 9th out of the Top 10 EB-5 Visa Countries.

While many Nigerians remain interested in the U.S. economic residency program, they are also proceeding with greater caution due to the widespread news in the country that an American businessman, Marco Ramirez, had defrauded Nigerians out of $2.3 million in a recent EB-5 investment scam. Earlier this year, in April 2016, the Economic and Financial Crimes Commission (EFCC) of Nigeria arraigned Mr. Ramirez and his companies, Eagle Ford Instalodge Group LP and USA Now LLC, on eight counts for obtaining money by false pretenses. Mr. Ramirez allegedly duped several Nigerians by soliciting them for investment funds and promising them green cards through the EB-5 investment program. However, instead of maintaining the funds in the Regional Center's escrow account, which is the customary practice for most projects, Mr. Ramirez allegedly took the money and used it for his own benefit. The consensus amongst the Nigerian high net worth advisor community was that the affected immigrant investors failed to retain independent financial advisors and/or seasoned EB-5 immigration counsel prior to investing with Mr. Ramirez and USA Now LLC. As a result, many Nigerian investors lost their money causing a recent "chilling" effect on the use of the U.S. residency program despite a genuine local interest in immigrating to the United States.

Notably, in 2013, the U.S. Citizenship and Immigration Services ("USCIS") and the Securities and Exchange Commission ("SEC") had issued a joint press release warning investors about Mr. Ramirez in the context of EB-5 investment. In a 2013 case the SEC brought against Mr. Ramirez and his wife, Bebe Ramirez, in the U.S. District Court for the Southern District of Texas McAllen Division, the SEC obtained a court order to freeze the assets of their three companies, USA Now LLC, USA Now Energy Capital Group LP, and Now Co. Loan Services. The Ramirezes had allegedly fraudulently obtained $5 million from foreign investors mainly from Mexico, Egypt, and Nigeria by promising to invest the funds in EB-5 investment projects when in reality the Ramirezes took the money and used it for personal gain including funding their Cajun-themed restaurant in Texas.

## LOOK BEFORE YOU INVEST

Seasoned and competent EB-5 immigration attorneys do not hold themselves out to be experts in financial matters related to an EB-5 investment offering. However, they should give some general due diligence guidelines to investors as a best practice when selecting an EB-5 project that can greatly mitigate the risk of fraud, including the following:

- **Solicit a Financial Expert.** It is a best practice to obtain an experienced financial advisor to understand the financial offering

and potential investment risks. By regulation, the EB-5 project must be an "at risk" investment to qualify for visa issuance. Immigrant investors need to proceed with caution if anyone promises a guaranteed return of their investment or states that their investment will not be at risk.

- **Know the Immigration History.** It is important to know the immigration history of the Regional Center project and whether any EB-5 visas, conditional green cards, full validity green cards and/or loan repayments have been successfully issued to investors for the same project or similar past projects.
- **Research All Major Players.** Investigate all the major stakeholders involved in the EB-5 Regional Center project for their reputation in the industry. The EB-5 Regional Center's offering documents should list the names of the economists, escrow banks, developers, and other major players who are involved in the project.
- **Ask Questions about the Project.** It is important to closely scrutinize and analyze the offering documents provided by the Regional Center (e.g., business plan, economic report, escrow and LLC agreements, etc.) and ask questions if greater clarification is needed or to address any ambiguities. Another critical question is to ask what percentage the EB-5 funding is in relation to the project's overall capital stack. In the event that things do not go as planned, it is essential to know ahead of time if the project has a repayment plan.

To help potential EB-5 investors navigate through the EB-5 project selection, the SEC and the USCIS have also put together their own list of steps and potential warning signs any seasoned EB-5 immigration counsel should review with clients as a best practice including the following:

- **Confirm that the Regional Center has been designated by USCIS**
- **Obtain copies of project documents provided to USCIS**
- **Request investment information in writing**
- **Ask if promoters are being paid**
- **Seek independent verification**
- **Examine structural risk**
- **Consider the developer's incentives**
- **Look for warning signs of fraud:**

1. Promises of a visa or becoming a lawful permanent resident
2. Guaranteed investment returns or no investment risk
3. Overly consistent high investment return
4. Unregistered investments
5. Unlicensed sellers
6. Layers of companies run by the same individuals

For a more comprehensive description of the steps and warning signs above you can review the SEC's and the USCIS' joint EB-5 investor alert checklist at: **www.sec.gov/investor/alerts/ia_immigrant.htm**

While risk is inherent in every EB-5 investment by regulation, there is no need for an immigrant investor to expose himself or herself to any undue risk due to fraud and bad actors. ■

# THE U.S. ASIA-PACIFIC ECONOMIC COOPERATION BUSINESS TRAVEL CARD PROGRAM

**BY SPENCER MCGRATH-AGG**
ATTORNEY, BOUNDARY BAY LAW, PLLC

After brief correspondence with a colleague who travels to China frequently, it became apparent that the U.S. Asia-Pacific Economic Cooperation Business Travel Card ("ABT Card") Program is not as well-known as it ought to be. Since Department of Homeland Security ("DHS") will stop issuing these cards on September 18, 2018, those who travel to China regularly for business, such as EB-5 Program participants, may wish to consider applying for an ABT Card soon.

On November 12, 2011 President Obama signed the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011. Under this Act the Secretary of Homeland Security is authorized to issue ABT Cards to "any eligible person." The ABT Card enables business travelers pre-cleared, facilitated short-term entry to participating member economies.

According to a final rule published on November 23, 2016, use of an ABT Card saves travelers an average of 43 minutes at airports in these countries.

To qualify for an ABT Card, the applicant must be a member of U.S. Customs and Border Protection ("CBP") Trusted Traveler Program, however, 8 CFR 235.13(b)(4) permits an applicant to apply for an ABT Card at the same time as he or she applies for membership in a Trusted Traveler Program. Additionally, the applicant must be a U.S. citizen, and engaged in the trade of goods, the provision of services, or the conduct of investment activities in the APEC region (or a U.S. government official actively engaged in APEC business). Professional athletes, news correspondents, entertainers, musicians, artists or persons engaged in similar occupations do not qualify for an ABT Card.

To apply for an ABT Card, an applicant must log-in, or create an account using the Global Online Enrollment System ("GOES"). Next, the applicant must complete an application and certify that he or she is a member in good standing of a Trusted Traveler Program (or enroll in such a program). Applicants must maintain enrollment in a Trusted Traveler Program for the duration of the validity of their ABT Card. Before an ABT card can be issued, applicants must attend an interview, provide a signature, and pay the application fee of $70 (8 CFR 103.7(b)(1)(ii)(N)) (plus any GOES application fees that may apply).

To use the ABT Card once it is issued, card holders may access a dedicated fast-track lane for expedited processing at participating airports in the countries listed above. Card holders must present their travel documents (eg. passport and visa) at this desk. Importantly, the ABT Card may only be used if the card holder is traveling solely for business purposes to a foreign APEC member economy and is not engaging in paid employment in the foreign APEC member economy.

An ABT Card may be valid for up to five years, and will continue to be valid even if the expiry date occurs after DHS stops issuing these cards on September 18, 2018. Given the average time savings provided by an ABT Card, it is a valuable investment for anyone who makes regular business trips to any of the countries listed covered by the Program. ■


## APEC BUSINESS TRAVEL CARD MEMBER ECONOMIES

Australia
Brunei Darussalam
Chile
China
Hong Kong
Indonesia
Japan
South Korea
Malaysia
Mexico
New Zealand
Papua New Guinea
Peru
Philippines
Singapore
Thailand
Vietnam


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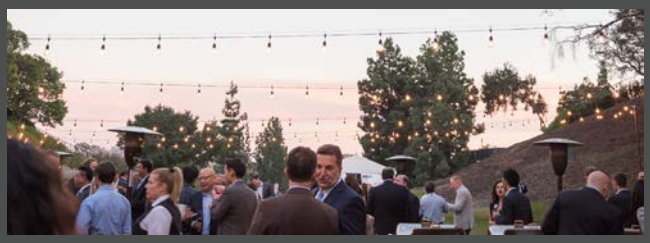
# EB-5 Industry Convenes in Los Angeles for Education and Business Development




**BY MCKENZIE PENTON**
IIUSA MEMBERSHIP COORDINATOR

From October 10-11, 2016 IIUSA hosted a successful 6th Annual EB-5 Industry Forum in sunny Los Angeles, CA at the brand new Meyer and Renee Luskin Conference Center at the University of California Los Angeles (UCLA). The EB-5 Industry Forum, hosted each fall, is the premier industry conference focused on education and business development. The 6th Annual Forum brought together EB-5 stakeholders from around the globe to learn, network and receive important updates on the state of the EB-5 industry from expert panelists and federal government representatives.

Throughout the conference, participants were updated on important advocacy efforts taking place in Washington, DC as well as empowered with industry data and intelligence to ensure that their businesses and the Program continue to thrive. Members of IIUSA's ten standing committees as well as the Board of Directors also conducted their bi-annual in-person meetings to discuss ongoing initiatives and plans for the year ahead.

The forum featured over 350 attendees, 38 sponsors and 23 exhibitors, with an agenda that included 3 general session symposiums, breakout sessions covering hot-topics specific to regional centers and investors, and due diligence and case studies seminars. 45+ speakers contributed their expertise on topics ranging from investor market diversification, capital redeployment, securities law considerations, program integrity and legislative reform, just to name a few. The conference also featured guest of honor speakers from Congress, United States Citizenship and Immigration Services (USCIS) the Securities and Exchange Commission (SEC), and the U.S. Department of State (DOS).

## COMMITTEE & BOARD OF DIRECTORS MEETINGS

### MONDAY, OCTOBER 10

On Monday, IIUSA's ten committee's and the Board of Directors held meetings to discuss the important business of the organization and advance the discussion on committee goals and initiatives for the year ahead. Nearly 100 IIUSA members actively participate on committees and it is through their dedication and hard work that the numerous initiatives of the organization are possible.

## DUE DILIGENCE AND CASE STUDY SEMINARS

### MONDAY, OCTOBER 10

The programming kicked off with case study seminars on hot topics including capital redeployment, project marketing, investor market diversification, and law enforcement and litigation. In the afternoon, IIUSA hosted it's first-ever EB-5 Due Diligence Seminar with panels on immigration due diligence, transactional due diligence, investor fund protection and compliance with U.S. Securities Laws.

### CASE STUDIES SEMINAR: REDEPLOYMENT OF CAPITAL

- **Roald Fieldstone**, Partner, Arnstein & Lehr LLP
- **Enrique Gonzalez**, Partner, Fragomen, Del Rey, Bersen & Loewy
- **Daniel B. Lundy**, Partner, Klasko Immigration Law Partners
- **Joe McCarthy**, Principal, American Dream Fund
- **Julia Park**, Managing Director, Advantage America EB-5 Group

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### CASE STUDIES SEMINAR: PROJECT MARKETING & INVESTOR DIVERSIFICATION

- **Mona Shah**, Principal, Mona Shah & Associates
- **Edward Beshara**, Managing Partner, Beshara P.A.
- **Irina Rostova**, Partner, Rostova Westerman Law Group, P.A.
- **Jeff Carr**, President, Economic and Policy Resources
- **Bruno L'ecuyer**, Chief Executive, Investment Migration Council

### CASE STUDIES SEMINAR: LAW ENFORCEMENT & LITIGATION

- **Michael Homeier**, Founding Shareholder, Homeier & Law, P.C.
- **John Pratt**, Partner, Kurzban Kurzban Weinger Tetzeli & Pratt P.A.
- **Chris Robertson**, Partner, Seyfath Shaw LLP
- **Russell Weigel**, Principal, Russell C. Weigel, III, P.A.

### EB-5 DUE DILIGENCE SEMINAR: IMMIGRATION DUE DILIGENCE

- **Dawn M. Lurie**, Shareholder, Polsinelli LLP
- **Peyman Attari**, Co-founder, President & CEO, AISA Investment Advisers
- **Angelo Paparelli**, Partner, Seyfarth Shaw LLP
- **Michael Kester**, Economist, Impact DataSource
- **Rachel Zou**, Chairperson, Lianhong Overseas Consultants Service Limited

### EB-5 DUE DILIGENCE SEMINAR: INVESTOR FUND PROTECTION

- **Kurt Reuss**, Co-founder and Advisor, EB5 Diligence
- **Dan Smith**, President, Trident Fund Services
- **Jim Gamble**, Vice President-Director of Construction Management, Tetra Tech, Inc.
- **Jay Rosen**, Partner, Arnstein & Lehr LLP
- **John Shen**, CEO, Regional Centers Holding Group

### EB-5 DUE DILIGENCE SEMINAR: COMPLIANCE WITH U.S. SECURITIES LAWS

- **Rupy Cheema**, Co-founder and Senior EB-5 Business Analyst, EB5 Diligence
- **Mariza McKee**, Partner, Kutak Rock LLP
- **Russell Scarcela**, Director of Investigative Due Diligence and Business Intelligence, BDO USA LLP
- **Michael Fitzpatrick**, Partner, Baker Tilly Virchow Krause, LLP
- **Christian Moore**, COO, Global Verification Network
- **Robert V. Cornish Jr**, Partner, Phillips Lytle LLP

### EB-5 DUE DILIGENCE SEMINAR: RETURN OF CAPITAL AND EXIT STRATEGY

- **Rupy Cheema**, Co-founder and Senior EB-5 Business Analyst, EB5 Diligence
- **Rob Lee**, CEO, Elite EB-5 Solutions
- **Bill Gresser**, Director Emeritus, IIUSA; President, EB-5 New York State, LLC
- **Scott Barnhart**, Economist, Barnhart Economic Services
- **Jonathan Bloch**, Shareholder, Brownstein Hyatt Farber Schreck LLP

## KICKOFF RECEPTION
### MONDAY, OCTOBER 10

After a long day of engaging panel discussions, committee meetings and networking, conference attendees headed to an off-site kickoff reception, hosted by a distinguished group of Los Angeles-based IIUSA members, at the beautiful Bel Air Country Club. The reception gave attendees the opportunity to relax after a long and immersive day of panel discussions and meetings by socializing with business acquaintances and networking with new ones. Re-charged from the reception, attendees were prepared for the important day of business development and industry education the following day.

## I-829 AWARD CEREMONY
### TUESDAY, OCTOBER 11

For the fourth consecutive year, IIUSA was honored to recognize the success of member Regional Centers with I-829 petitions approved by USCIS in fiscal year 2016. Together


these Regional Centers represent diverse projects across the country that have contributed thousands of jobs to the U.S economy and are prime examples of the local economic development occurring everyday thanks to the EB-5 Regional Center Program. The recipients of this years awards include:

- American Dream Fund
- BirchLEAF Capital
- CanAm Enterprises
- Civitas Capital Group
- Cleveland International Fund
- CMB Regional Centers
- EB-5 Jobs for Massachusetts
- EB-5 New York State
- EB5 Capital
- Florida Overseas Investment Center
- Maryland Center for Foreign Investment, LLC
- Metropolitan Milwaukee Association of Commerce
- New York City Regional Center
- Whatcom Opportunities Regional Center

## IIUSA GUEST OF HONOR SPEAKERS

### TUESDAY, OCTOBER 11

IIUSA was pleased to host several distinguished guest of honor speakers from the federal government who discussed their unique insights into EB-5. These included the Chairman Michael McCaul (R-TX 10th District), Chairman of the House Homeland Security Committee; Julia Harrison, Deputy Chief, USCIS Immigrant Investor Program Office (IPO); Charles Oppenheim, Chief of the U.S. State Department Visa Controls Office; and Michele W. Layne, Regional Director U.S. Securities and Exchange Commission (SEC) Los Angeles Regional Office.

**Chairman Michael McCaul** - Representative (R-TX 10th District), Chairman, House Homeland Security Committee

IIUSA welcomed the Chairman McCaul as a guest of honor speaker on Tuesday morning. During his address, the Congressman highlighted the important work of the Homeland Security Committee as well as some of the security concerns the committee has considered with regards to the EB-5 Program.

Chairman McCaul also highlighted the important economic development that he has witnessed first-hand in his district in the greater Houston area, which has attracted sizable EB-5 investment over the past few years.

**Julia Harrison** - Deputy Chief, USCIS Immigrant Investor Program Office (IPO)

Also on Tuesday morning, Julia Harrison, Deputy Chief of the IPO addressed the audience. Ms. Harrison provided a comprehensive overview of the work of the IPO in addition to discussing the pressing issue of visa backlog and the steps the IPO has taken to address it, which includes a significant staffing increase. Ms. Harrison also answered questions and took suggestions from the audience on a range of topics including agency processing times, filling of exemplars and potential regulatory changes.

**Michele W. Layne** -Regional Director U.S. Securities and Exchange Commission (SEC), Los Angeles Office

On Tuesday afternoon, Michele W. Layne, Regional Director of the SEC's LA office took the stage to discuss EB-5 and securities. Ms. Layne provide an overview of securities concerns with regards to the EB-5 program in addition to addressing recent SEC enforcement actions and their implications.

**Charles Oppenheim** - Chief, Visa Controls Office, U.S. Department of State (DOS)

Moderated by:

- Robert C Divine, Vice President, IIUSA; Shareholder, Donelson, Bearman, Caldwell & Berkowitz P.C
- Lee Li, Policy Analyst, IIUSA

On Tuesday, Charles Oppenheim joined Robert C. Divine and Lee Li to discuss the current visa waiting time and his perspectives on growing Mainland-China backlog and emerging EB-5 Investors markets.

## BREAK OUT SESSION PANELS

### TUESDAY, OCTOBER 11

On Tuesday, October 11, two separate breakout sessions were held which focused on the practical implications of enacting proposed EB-5 legislation for both EB-5 projects as well as investors.

## ISSUE SPOTTING IN EB-5 LEGISLATION FOR REGIONAL CENTERS

- **David Andersson**, President, IIUSA; President, Whatcom Opportunities Regional Center

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- **Nima Korpivarra**, Partner, David Hirson & Partners, LLP
- **Bob Kraft**, Director, IIUSA; President, and CEO of FirstPathway Partners
- **John Tishler**, Partner, Sheppard Mullin, Richter & Hampton LLP

## ISSUE SPOTTING IN EB-5 LEGISLATION FOR INVESTORS

- **David Chen**, Partner, Visas Consulting Group
- **Michele Franchett**, Partner, Stone Grzegorek & Gonzalez LLP
- **Cletus Weber**, Co-Founder and Senior Attorney, Peng & Weber, PLLC
- **Mina Tran**, Founder, Tran Law Group

## PRACTICAL ISSUES IN PROJECT MANAGEMENT IN UNCERTAIN TIMES

- **Michael C. Gibson**, Partner, Bass, Berry & Sims PLC
- **Chad Ellsworth**, Partner, Fragomen, Del Rey, Bernsen & Loewy, LLP
- **Ali Jahangiri**, CEO, EB5Investors.com and EB5Investors Magazine
- **Mark Roberts**, VP, Specialty Banking Manager, Alliance Bank of Arizona
- **Steve Shpilsky**, Co-Founder, CaRE EB-5 Regional Center

## PRACTICAL ISSUES IN MARKETING TO INVESTORS IN UNCERTAIN TIMES

- **Kevin Wright**, Principal, Wright Johnson LLC
- **Robert Whyte**, Managing Partner, Whyte & Co
- **Grant King**, Managing Partner, Hollywood International Regional Center
- **Devin Williams**, President, EB5 Global
- **David Enterline**, Partner, WTW – Taipei Commercial Law Firm

## GENERAL SESSION SYMPOSIUMS

### TUESDAY, OCTOBER 11

Throughout the day on October 11, IIUSA hosted three general session symposium-style panels on the three most important issues facing the EB-5 industry: legislation and regulatory reform, program integrity and visa capacity.

## EB-5 LEGISLATION AND REGULATORY REFORM

- **Peter D. Joseph**, Executive Director, IIUSA
- **Hans Rickhoff**, Senior Council, Akin Gump Strauss Hauer & Feld LLP
- **Hunter Bates**, Principal, Republic Consulting, LLC
- **Dan Healy**, Director, IIUSA; CEO, Civitas Capital Group
- **Tom Loeffler**, Senior Council, Akin Gump Strauss Hauer & Feld LLP
- **Stephen Strnisha**, Secretary-Treasurer, IIUSA; CEO, Cleveland International Fund
- **Matt Virkstis**, Practice Group Attorney, Greenberg Traurig, LLP

## EB-5 PROGRAM INTEGRITY

- **Lincoln Stone**, Partner, Stone Grzegorek & Gonzalez LLP
- **Osvaldo Torres**, Founder, Torres Law, PA
- **Reid Thomas**, Executive Vice President, NES Financial
- **Mary King**, COO, New York City Regional Center (NYCRC)
- **Dave Souders**, Director, IIUSA; Broker, Todd & Associates, Inc.

## VISA CAPACITY

- **Bernard Wolfsdorf**, Partner, Wolfsdorf Rosenthal LLP
- **Patrick F. Hogan**, Director, IIUSA; CEO and Managing Member, CMB Regional Centers
- **David Hirson**, Partner, David Hirson & Partners, LLP
- **Kristal Ozmun**, Partner, Miller Mayer LLP
- **Kyle Walker**, Director, IIUSA; CEO, Green Card Fund, LLC

## LOOKING AHEAD TO IIUSA EVENTS IN 2017

The 2016 EB-5 Industry Forum will go in the books as another successful event for IIUSA and attendees that further drove industry development, education and advocacy. As we embark on 2017 and the important legislative and regulatory months ahead, the 2016 EB-5 Industry Forum provided a strong foundation from which to build industry and business development in the year ahead. IIUSA is looking forward to welcoming the EB-5 industry to Washington, D.C. for the 10th Annual EB-5 Advocacy Conference and 12th Annual Membership Meeting this coming April 26-28, 2017.

We hope you will be able to join us for this important industry advocacy event. With the EB-5 Regional Center Program extended through April 28, 2017, the EB-5 Advocacy Conference could not come at a more important time for the industry. ■

FRAGOMEN
WORLDWIDE
PRIVATE CLIENT PRACTICE

# EB-5 Investor Program

**A WORLD OF DIFFERENCE IN IMMIGRATION**

Fragomen's Worldwide Private Client Practice helps high net worth individuals, their families, and their advisors navigate the legal complexities of immigration requirements related to investment and entrepreneurial opportunities in the United States of America.

Please contact any of our EB-5 immigration thought leaders for the immigration advice that can help you:


**AUSTIN FRAGOMEN, CHAIRMAN**
New York, NY
afragomen@fragomen.com

**ENRIQUE GONZALEZ, III, PARTNER**
Coral Gables, FL
egonzalez@fragomen.com

**PARISA KARAAHMET, PARTNER**
New York, NY
pkaraahmet@fragomen.com

**MITCH WEXLER, PARTNER**
Irvine, CA
mwexler@fragomen.com

**MICHAEL TURANSICK, PARTNER**
Chicago, IL
mturansick@fragomen.com

**CYNTHIA LANGE, PARTNER**
Silicon Valley, CA
clange@fragomen.com

**CHAD ELLSWORTH, PARTNER**
New York, NY
cellsworth@fragomen.com

**CHAD BLOCKER, PARTNER**
Los Angeles, CA
cblocker@fragomen.com

**ANNA MORZY, PARTNER**
Chicago, IL
amorzy@fragomen.com

**ROBERT HORSLEY, EXECUTIVE DIRECTOR**
Silicon Valley, CA
rhorsley@fragomen.com


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# COMMITEE CORNER

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

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



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

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

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

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

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

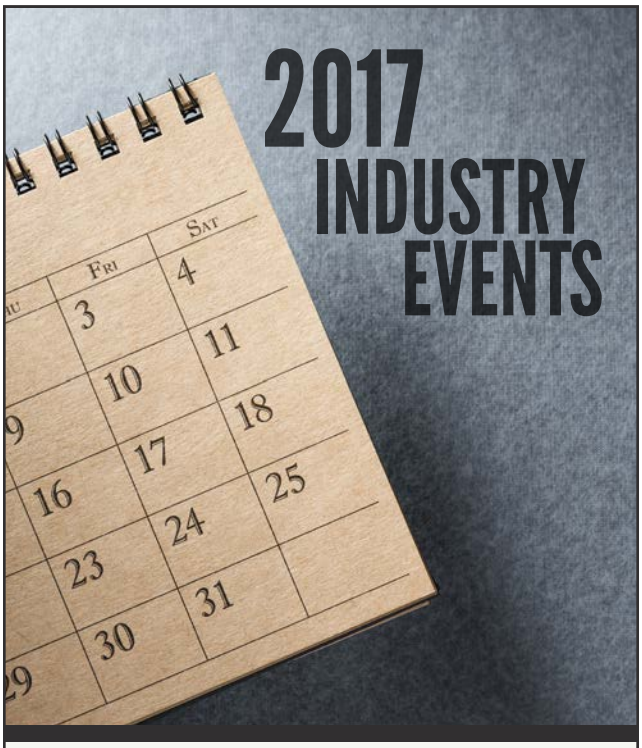
### MEMBERSHIP
Improve IIUSA's value proposition to members through consistent benefits analysis, recommending new programming, and leading outreach efforts to desirable new members.

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

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

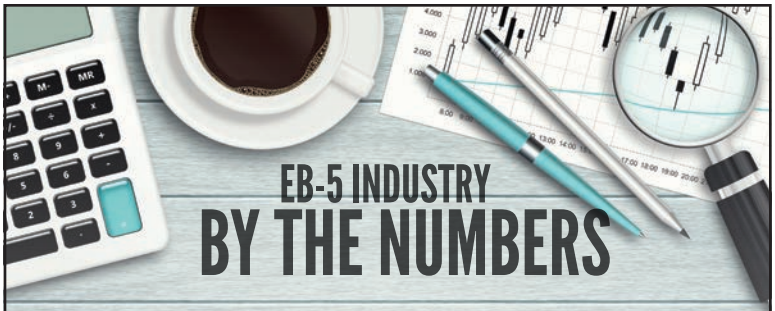
### PUBLIC RELATIONS
Provide ongoing input to IIUSA public affairs strategy and its implementation, and assisting with outreach efforts to members and media alike.

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



# 2017 INDUSTRY EVENTS

- **3/1** – IIUSA 1st Annual Membership Banquet in Vietnam (Ho Chi Minh City, Vietnam)
- **3/13-23** – SelectUSA Roadshow (Changchun, Jinan, Zhengzhou, Kunming, Xiamen, Nanjing – China)
- **3/28-30** – SelectUSA Roadshow (Mexico City, Merida, Mexico)
- **4/26-28** – IIUSA 10th Annual EB-5 Advocacy Conference & 12th Annual IIUSA Membership Meeting (Washington, D.C.)
- **6/6-6/7** – The Investment Migration Forum 2017 (Geneva, Switzerland)
- **6/18-6/20** –2017 SelectUSA Investment Summit (National Harbor, MD)
- **6/21-24**— AILA National Annual Conference (New Orleans, LA)



# EB-5 INDUSTRY BY THE NUMBERS

**$2.4 Billion** According to U.S. Citizenship and Immigration Services (USCIS) data, the EB-5 Program contributed $2.4 billion to U.S. Foreign Direct Investment (FDI) from Q1-Q3 down from $3.2 billion during the same time period in 2015.

**19,406** According to U.S. Citizenship and Immigration Services (USCIS), as of Q3 2016 there were a total of 19,406 pending I-526 petitions, which represents a 48% increase from this time last year. Yet, the total number of pending petitions continues to decrease from its all-time high (21,988) in the first quarter of 2016.

**04/08/14** The U.S. Department of State, Bureau of Consular Affairs released its revised Visa Bulletin for the month of January, revealing that for mainland-China born visa applicants, the cutoff date is March 8, 2014 moving up from the previous month's bulletin.

**865** As of December 6, 2016, USCIS has approved 865 regional centers. A full list of all approved Regional Centers can be viewed online at iiusa.org.

**24,629** According to National Visa Center (NVC) statistics, as of November 2016, there were a total of 24,629 applications pending in the national visa office for the EB-5 visa category, representing a nearly 40% year-over-year increase from November 2015. Of the 24,629 EB-5 applicants on the waiting list 22,910 are from Mainland-China, which is 93% of all applicants.

**76%** According to unofficial U.S. Department of State data, EB-5 visa usage of Mainland China applicants accounts for 76% of the total EB-5 visa usages in FY2016, an almost 10% decrease from FY 2015.

**845/848** In the second quarter of FY2016, USCIS received 845 I-829 petition filings and 848 I-526 petitions. This was the first instance that amount of filings for I-829's were nearly the same as I-526's for any given quarter in EB-5 Program history.

**334** In FY2016, approximately 334 EB-5 visas were used to Vietnamese EB-5 investors and their family members. Vietnam surpassed South Korea to become the second largest EB-5 investor markets in FY2016 in terms of visa usage.

**$3,675/$11,565/$3,035** Earlier this year USCIS published a final rule in the federal register adjusting the fees required for most immigration applications and petitions, including the EB-5 Program. Under this final rule the fees increase by a weighted average of 21 percent and establish a new fee of $3,035 covering USCIS costs related to the processing of Form I-924A and increased fees for processing of Form I-526 and I-924. The new fees took effect 12/23/16.

# CUSTOMIZE YOUR IIUSA MEMBER EXPERIENCE TODAY!

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

*Visit the IIUSA Subscription Center Today at* ***member.iiusa.org***

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

# EB-5 HISTORY
## OCTOBER-FEBRUARY

The feature *This Date in EB-5 History* serves to highlight EB-5 Program milestones and changes, key pieces of legislation, publishing dates of U.S. Citizenship and Immigration Services (USCIS) memos, IIUSA achievements and important industry events that have occurred over the past two decades. To access the memos, be sure to visit the IIUSA Member Portal.

***member.iiusa.org***

### OCTOBER

- October 02, 2002- 21st Century Department of Justice Appropriations Authorization Act of 2002
- October 12, 2003- Basic Pilot Program Extension and Expansion Act of 2003.
- October 01, 2014- Migration Policy Institute publishes report: "Selling Visa and Citizenship-Policy Questions from Global Boom in Investor Immigration".

### NOVEMBER

- November 11, 2011- Conversation with Director Mayorkas- Introducing the Document "A Work in Progress: Towards a New Draft Policy Memorandum Guiding EB-5 Adjudications"
- November 12, 2013-IIUSA Editorial Committee holds first ever meeting
- November 19-21, 2014- IIUSA Executive Director, Peter D. Joseph, Speaks at 2014 CDFA National Development Finance Summit

### DECEMBER

- December 11. 2009- USCIS Updates Adjudicator's Field Manual: Adjudication of EB-5 Regional Center Proposals and I-526 and I-829 Petitions
- December 11, 2013- Hon. Alejandro Mayorkas nominated as Deputy Secretary of DHS
- December 26. 2014- NYU Stern School publishes report: "A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects"

### JANUARY

- January 4, 2014- IIUSA Publishes First Blog on IIUSA.org
- January 5, 2015- IIUSA Headquarters moves to Washington, DC
- January 16, 2009- USCIS sends letter to Sen. Cornyn about Position on Direct Construction Jobs

### FEBRUARY

- February 1, 2014- Brookings Institute publishes report on EB-5: *Improving the EB-5 Investor Visa Program: International Financing for US Regional Economic Development*
- February 12, 2012- USCIS Holds Clarification Call on Tenant Occupancy
- February 27, 2009-IIUSA Hosts 2nd Annual EB-5 Regional Economic Development Advocacy Conference in Washington, DC

# Where will you be...

# ...on the EB-5 Sunset Date?

10TH ANNUAL IIUSA

## EB-5 ADVOCACY CONFERENCE

IIUSA Invest In the USA®

APRIL 26-28, 2017



**ADVOCATE | CONNECT | LEARN | NETWORK | SUCCEED**

Invest in the USA (IIUSA), the EB-5 industry not-for-profit trade association, cordially invites you to join us in Washington, DC from April 26-28, 2017 for the 10th Annual EB-5 Advocacy Conference and 12th Annual Membership meeting.

The EB-5 Advocacy Conference, held each spring, is the industry's largest advocacy-focused conference which brings together leaders throughout the industry - and federal government - to learn, network and advocate for the future of EB-5 Regional Center Program.

With the EB-5 Regional Center Program extended through April 28, 2017, the conference will be held concurrent with the sunset date, allowing EB-5 stakeholders to dedicate time to both advocacy activities on Capitol Hill as well as industry education and business development.

**To purchase your tickets today, visit https://iiusa.org/dc2017/.**

Early bird tickets are now on sale ($650/member, $850/nonmember). The Early bird rate is valid through March 1, 2017. All purchases are final, non-refundable and non-transferable.

## INTERESTED IN SPONSORING?

For sponsorship inquires, contact McKenzie Penton, mckenzie.penton@iiusa.org or (202) 795-9667.

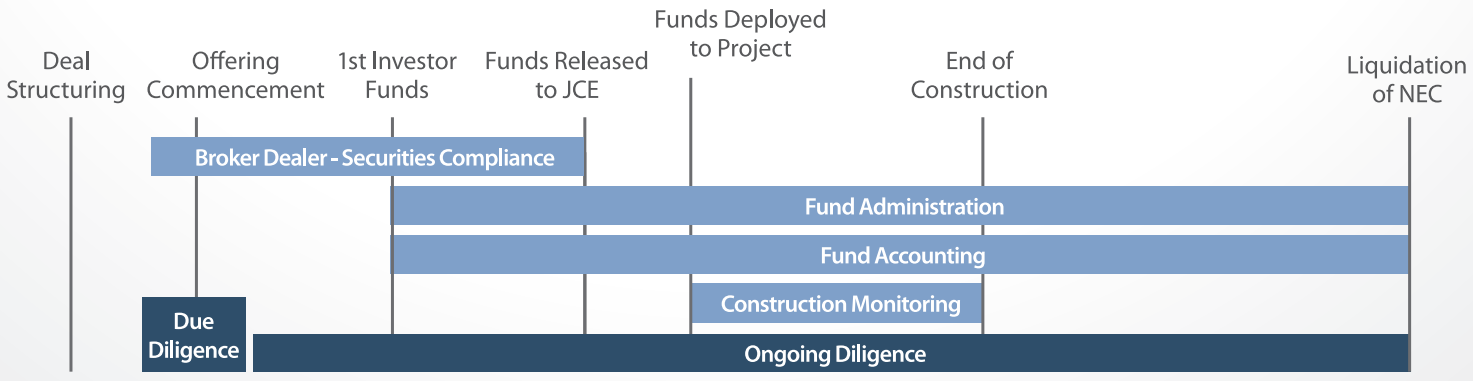
EB5 DILIGENCE

# Ongoing Diligence

## *Throughout the EB-5 Investment Lifecycle*

A complete professional services solution, providing transparency and independent oversight of regional centers, NCEs and JCEs.

## EB-5 Investment Lifecycle

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