REGIONAL CENTER BUSINESS JOURNAL

October 2021

IIUSA VIRTUAL EB-5
INDUSTRY FORUM
NOVEMBER 2-11, **2021**

EDITION

IN THIS ISSUE:

- The Current "State" of TEAs: What was Old is New Again (For Now)
- Removal of Conditions and Keeping the Promise to Investors
- The International Entrepreneur Parole Rule
- EB-5 Direct: An Alternative Approach to EB-5 Financing for Regional Centers
- True Success in the EB-5 Green Card Pursuit, Removal of Conditions
- Immigrant Capital Investment and Priority Infrastructure

IIUSA
INVEST IN THE USA

CANAM'S VALIDATED* TRACK RECORD

CanAm Enterprises

*Includes data audited by PKF as of December 31, 2020

$3 Billion
Capital Raised

$2 Billion
Capital Repaid

45+ completed and repaid projects

60+
Projects Funded

30+
Years of Experience

4,000
Investor-families Repaid

14,900
Conditional Green Cards

5,000 I-526 approvals representing 14,900 conditional green cards (includes family members)

7,700
Permanent Green Cards

2,470 I-829 approvals representing 7,700+ permanent green cards (includes family members)

+1 (212) 668.0690 | Wall Street Plaza, 88 Pine St, 20th Floor, New York, NY 10005 | www.canamenterprises.com

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LEADERSHIPCIRCLE

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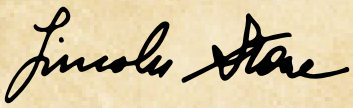
Letter from the Editor

DEAR READERS:

This edition of the *Regional Center Business Journal* is published in conjunction with the 2021 Virtual EB-5 Industry Forum. Both emphasize the ongoing obligations of USCIS-designated regional centers – to remain compliant with regional center reporting and oversight requirements, and to support EB-5 investors in their ongoing quest for full immigration status.

With or without a Regional Center Program, where foreign capital is raised for U.S. investment and investors are seeking U.S. immigration, compliance with U.S. securities laws and with the EB-5 visa eligibility requirements are a must. Several articles in this edition are apropos.

As of this writing, the Regional Center Program has been in lapse for over three months. Through its outreach, leadership of IIUSA has shared details of the negotiations in Washington aimed at Regional Center Program renewal. Within these pages you will find testament to the economic impacts of the lapse, as well as a few more thoughts on what a revived Regional Center Program might include. As always, whether your ideas are old or new, they are welcome.



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IIUSA Editorial Committee

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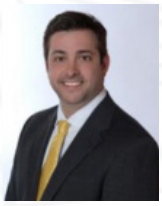

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BREVET

Brevet Capital ("Brevet") is a leading credit investment and specialty finance firm with over 23 years of investment management experience advising and structuring over $20 billion in successful transactions. Brevet is an SEC Registered Investment Advisor with nearly $2 billion in assets under management across a family of five funds. Brevet's experienced management team has a successful track record of creating exclusive and often proprietary financing solutions for our partners, focused on risk adjusted returns with an emphasis on government transactions that are sustainable through multiple economic cycles.

Federal, state, and municipal agencies often turn to Brevet for strategic solutions to complex government programs. Brevet serves as a strategic resource for private middle market companies by providing "finance as a service" through guidance and bespoke financing solutions necessary to help secure government contracts and effectively complete projects.

eb5 MARKETPLACE

eb5Marketplace helps investors choose an EB-5 investment — direct or regional center — with confidence. Review and compare multiple investments with expert due diligence in our Data Room. Plus, we offer a trusted lawyer directory, news, articles, and webinars. Official partner of IIUSA and member of IIUSA Leadership Circle. Securities offered through Dalmore Group, LLC, member FINRA/SIPC.

golden gate global EB-5 INVESTMENT FUND

Golden Gate Global (GGG) is an award-winning EB-5 Immigrant Investment Regional Center, and a trusted partner in the EB-5 industry offering an investment platform at institutional quality standards. GGG has raised more than $650 million in EB-5 funds, bringing over 1,300 client families from more than 30 countries to live in the United States. GGG is proud of its stellar track record, including 100% USCIS project approval rate, timely investor repayments and creation of over 22,000 American jobs through its high quality EB-5 projects.

CMB REGIONAL CENTERS EST. 1997

CMB Regional Centers, the leader in the EB-5 industry, is one of the oldest active regional center operators with 24 years of experience. Nearly 6,000 families from 103 countries have chosen to invest in one of CMB's 78 EB-5 investment opportunities. As of today, CMB has helped more than 5,000 investors receive I-526 approval, over 1,600 investors achieve I-829 approval to live and work permanently in the United States, and have returned capital to over 1,900 investors. There are very few regional centers that can come close to this level of success for their EB-5 investors and families.

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JTC Americas, formerly NES Financial, is the US division of JTC Group, a multi-jurisdictional provider of fund, corporate and private client services. Listed on the London Stock Exchange's FTSE 250 Index, JTC Group administers more than $130 billion in assets and employs more than 1,200 people in 26 offices worldwide. JTC Americas is a leader in specialty financial administration, serving markets characterized by high administrative complexity, elevated transaction security needs and challenging compliance requirements.

LCR Capital Partners is a private investment and advisory services firm that serves families interested in global opportunities. Founded in 2012, the firm's primary focus is working with clients interested in immigrant investor programs. LCR has helped over 850 clients move to the United States via the EB-5 Immigrant Investor Visa, which grants investors and their immediate family members US Green Cards. LCR also works with the E-2 Investor Visa, the Portuguese Golden Visa, and Grenada's Citizenship by Investment program which are all government-approved investments.

CanAm Enterprises is an integrated, multinational investment management firm that specializes in immigration-linked investment funds. With over three decades of experience, CanAm's strategic approach to utilizing investor capital and managing risk has raised over $3 billion in EB-5 funds from over 6,000 foreign investors. To date, $2 billion of the capital has been repaid from 60 completed projects.

Certified by United States Citizenship and Immigration Services (USCIS) as an EB-5 Regional Center since 2011, Houston EB5 now holds over a decade of experience and is one of the few regional centers to successfully assist clients from obtaining conditional residency to the repayment of investment with profits.

Pine State Regional Center is a subsidiary of Arkansas Capital Corporation, one of the oldest economic development institutions in the United States founded in 1957. We are a well-known non-profit organization with a heavy emphasis on risk control and our management team has a long track record of creating jobs and working closely with the state and federal government.

For 64 years, ACC has originated, structured, and executed development financing transactions to support economic growth, with an emphasis on rural and underserved areas. Pine State is dedicated to continuing that success through our EB-5 investment offerings, providing confidence and security for our EB-5 investors.

Miller Mayer is a full-service law firm located in Ithaca, New York, home of Cornell University. Since 1986, we have provided legal services to individuals and businesses of all sizes. We've built our reputation by forging client relationships around the world through our renowned immigration practice. Our EB-5 practice group in particular is internationally known for its expertise and experience. Having provided counsel in the EB-5 area for over 25 years, Miller Mayer is today one of the leading EB-5 immigration law firms in the world. Leveraging our unmatched industry experience, Miller Mayer attorneys represent investors, regional centers, and developers at each stage of the EB-5 process.

Carrasquillo Law Group (CLG) is a boutique law firm consisting of a multi-disciplinary group of attorneys from various practice areas, offering our clients –both domestic and international– a deep level of advisory experience regarding both their business and legal needs. Our attorneys come from large law firms and international practices and understand the needs of our entrepreneurial-minded clients. CLG's practice areas include Corporate & Securities, Immigration, Real Estate & Finance, International Tax, Litigation and Compliance Services. The EB-5 practice group focuses on all aspects of the EB-5 program. We bring an international perspective with a local understanding to our clients.

Fragomen, a global immigration firm and member of the Am Law 100 and Am Law Global 100, is a leading firm dedicated exclusively to immigration services worldwide. The firm has more than 4,100 immigration professionals and support staff in more than 50 offices across the Americas, EMEA and Asia Pacific. Fragomen offers immigration support in more than 170 countries. The firm supports all aspects of global immigration, including immigration program management strategic planning, quality management, compliance, government relations, case processing and program reporting. These capabilities enable Fragomen to represent a broad range of companies and organizations of all sizes as well as individuals, working in partnership with clients to facilitate the transfer of employees worldwide.

* Over 1/3rd of active EB5 projects as clients * 350+ in person EB5 events across the world * 130+ in person H1B to EB5 events in USA * 20+ years in immigration with offices in NYC and Mumbai * We are an execution machine Contact:webmaster@ilw.com or Call:212-545-0818

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Atlantic American Partners ("AAP") is part of a 47-year old investment bank and private equity fund manager headquartered in Tampa, Florida. AAP manages a series of private equity funds exclusively for EB-5 investors operating under the names Atlantic American Opportunities Funds and Atlantic American Fortune Funds. Structured as a private equity fund, AAP pools its investor's capital and invests in a "portfolio" of several projects (targeting 3 – 6 per fund). EB-5 applicants become Limited Partners (or owners) of the entire fund, and therefore own an equal share of each project, not just one. Much like a mutual fund, this structure helps manage investment risk because the investor's total $900,000 investment no longer has to rely on the success of one single asset. We focus on quality of projects rather than the quantity of investors and intentionally invest in smaller, more manageable projects that have a higher probability for success and profitability. AAP's EB-5 funds today are focused on ground up development in the areas of multifamily, hospitality and student housing. In addition, AAP manages a series of non-immigration funds investing in student housing and multifamily ground up developments across the U.S. To date, AAP has successfully invested in 35 EB-5 projects with 100% project approvals to date (both I-526 and I-829) and have returned capital with profits on multiple EB-5 offerings. For more information, please see our website at www.atlanticamericanpartners.com.

Founded in 1996, American Life, Inc. operates the country's longest-established EB-5 Regional Center program, having helped over 3,000 investors and their families immigrate to the United States through its equity-based investment projects. American Life has completed more than 45 projects, and oversees an investor-owned portfolio of internationally-branded hotels, office buildings, and commercial real estate worth over $1.5 billion.

HomeFed Corporation is a real estate development company that specializes in creating vibrant, mixed-use masterplan communities that combine innovative placemaking techniques and environmental stewardship. The company owns a portfolio of successful projects in California and along the East Coast from the state of New York to the panhandle of Florida.

Visa Franchise is the premier advisor for families in search of businesses eligible for the E-2 & EB-5 investor visas. Since our founding in 2015, we have helped hundreds of families from over 60 countries find the right business opportunity that best fits their unique circumstances.

Donoso & Partners LLC is a leading business immigration law firm dedicated to helping employers, academics, professionals and foreign investors successfully navigate the U.S. visa process. We are especially recognized for our expertise in EB-5 investor green cards.

MLG is 100% focused on providing immigration legal services to corporations, start-ups, and investors. With offices in San Francisco, San Diego, Charlotte and Vietnam, we are internationally renowned for providing exceptional, efficient and client-focused services. We would like to pursue an opportunity for us to work with you.

USASIA Pacific is a part of a successful set of companies with over 21 years experience and has completed over 3000 real estate transactions. Our principal came to the United States in 1993 as a political refugee from South Vietnam. The brokerage companies have completed $100,000,000 in sales volume annually. Our development company, Seattle Modern Living (SML), currently has more than 2,000 residential units and 100,000 sq ft of retail space in pre- development or under construction. These assets include multi-family, residential, and retail developments. Upon completion, this real estate portfolio will be valued at over $500,000,000.

Since 2008, FirstPathway Partners has assisted hundreds of immigrant investors from over 40 countries become United States citizens through the EB-5 program, raising millions in funds for job-creating enterprises and creating thousands of jobs for US workers. FirstPathway Partners is also one of few regional centers to have obtained I-829 approval, and redeemed full investor capital contributions, placing us in the highest category of EB-5 industry achievement.

American Regional Center Group LLC ("ARCG") provides sound and reliable US immigration strategies through EB-5 and E2 investment opportunities for foreign investors and their families who wish to obtain permanent residency or temporary status in the United States.

David Hirson & Partners, LLP ("DHP") is a group of compassionate attorneys who are also immigrants or from an immigrant family. David Hirson is the founding and manager partner of DHP, and he is internationally-recognized for his decades of success in investment immigration. DHP's attorneys have many decades of combined experience in advising individuals, start-ups, large corporations, hospitals, and universities in navigating complex areas of employment immigration. The firm is a full-service immigration law firm with a business and employment-based immigration practice that provides a full range of services.

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Texo Capital is an EB-5 Regional Center covering the state of Ohio and parts of Pennsylvania. It is involved with the promotion of economic growth through creation of new jobs, improved regional productivity and increased domestic capital investment. Texo has multiple projects that are TEA approved under both new and old rules.

Dickinson Wright, with strategic offices on the southern and northern U.S. border, has more than 475 lawyers in nineteen offices across ten states in two countries; offers an experienced business immigration team supported by the firm's more than 40 diverse practice areas including corporate, securities, international, customs, and mergers/acquisitions.

BHAVYA CHAUDHARY & ASSOCIATES, LLC

Bhavya Chaudhary And Associates Law (referred to as 'BCA Law') specializes in U.S. Immigration laws. Our team of experienced Attorneys and paralegals assists with Investment based, Employment based, family based and removal defense matters. We have helped scores of people with complicated matters.

Dynaxe Capital is an international finance group based in Miami, Florida. It is built on trust, handling due diligence, risk mitigation, and SOF. Specializing in US investment immigration consulting, Dynaxe works with industry leading immigration, financial, and business professionals worldwide. Services offered are conducted as registered representatives of Dalmore.

Since its approval by USCIS in January 2011, Manhattan Regional Center (MRC) has successfully helped hundreds of EB-5 investors across the world with their EB-5 process by providing attractive projects in New York City. Under the leadership of its managing member, a prolific real estate developer, attorney, and financier with over 30 years of experience, MRC has a world-class team of seasoned professionals working closely together to achieve immigration and investment success for its investors.

CGRC designation from USCIS in 2013, headquartered in Charlotte, NC., covering 18 counties in the Carolinas. CGRC primarily promotes the Rent-a-RC model with developers who have EB5 track record and selectively evaluates sponsorship for RC and /or Direct EB5 to ensure proper oversight and compliance. In 2020, CGRC reported processing 6 real estate projects valued at 151MM with 32 MM EB-5 funds | 64 filings of I526 | 24 approvals | 1507 economic job creation.

STEP GLOBAL is an immigration consultancy firm comprised of a network of globally licensed lawyers and immigration specialists who provide active guidance through the entire immigration process. We are a single point of contact between all parties involved to ensure the most optimal chances for approval of your application for migration. We specialize in U.S. EB-5 Immigrant Investor Program with over 12 years of experience in the industry, and a 100% track record of approval across the Middle East, India, and Africa.

Lexcuity PC, originally launched as Homeier & Law, P.C. in 2009, focuses on the needs of clients. With the firm's shareholders and attorneys possessing prior experience from working at large and prestigious law firms, we designed our practice to be based on a client first approach. We aim to better serve clients whose needs are underserved by traditional law firms.

Crowned as a Cool Vendor by Gartner, Tada provides a revolutionary platform with patented Digital Duplicate™ technology that connects people, products and processes to provide collaboration, orchestration and visibility across your entire enterprise ecosystem. Our system operates mission-critical supply chain solutions from the most complex Fortune 100 to mid-size supply chains in manufacturing and healthcare.

Peng & Weber handles all aspects of EB-5 from setting up regional centers and projects to filing high volumes of investor petitions. Firm leaders, Elizabeth Peng and Cletus M. Weber, have both served on AILA's national EB-5 Committee, and Mr. Weber currently serves on the Board of Directors of IIUSA.

Klingner Jazayerli LLP attorneys have 15 years' experience representing individuals seeking U.S. permanent residency through investment, and U.S. companies seeking EB-5 Regional Center designation to allow them to finance job creating projects; and attorney Rana Jazayerli has participated on and moderated many EB-5 panels. She is also a member of the IIUSA Best Practices Committee.

Global Investment Attraction Group, Inc. (GIAC) is a one stop shop soft landing company that provide affordable solutions to help develop plans for Foreign Direct Investment (FDI) clients on both sides of the transaction in the domestic and international spectrum, and invest in the most financially strategic markets in the US.

golden gate global

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Creating Institutional Quality Investment Opportunities

$650M+	300+	100%
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- Golden Gate Global has helped over 1300 families from more than 30 countries achieve their immigration goals through its high quality investment offerings.
- Our EB-5 investment portfolio includes highly reputable development partners such as Lennar Corp (NYSE: LEN), one of the nation's largest homebuilders; JMA Ventures; NBA's Sacramento Kings; and Signature Development Group, a leading multifamily homebuilder in the San Francisco Bay Area with over twenty years of development experience.
- Brooklyn Basin, our new EB-5 project in the San Francisco Bay Area, is a 64-acre waterfront master planned, mixed-use community. The full buildout will consist of up to 3,100 residential units, 200,000 square feet of ground floor retail and commercial space, 32 acres of parks, and a new marina.

Contact Golden Gate Global and let us help your clients achieve their investment immigration goals

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For more information visit www.3gfund.com

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Florida is one of the largest and most international U.S. states, with a rapidly expanding consumer market, favorable business environment, deep pool of highly-skilled labor, and easy global access. For many of the same reasons that Florida attracts tens of millions of international visitors each year, it is also a magnet for businesses from all over the world.

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Whitestone Companies is a full-service real estate and investment company based out of Columbus, Ohio. It specializes in identifying undercapitalized assets in major US markets that present a significant upside return through capital injection, management change, and brand repositioning. Whitestone only seeks investment partners in projects in which it believes so deeply in the asset's success, that it takes a significant direct investment in the project as well. More information on the company at Whitestonecompanies.com.

FRR is traditionally a Financial Services Corporate headquartered in Mumbai, India primarily engaged in equities and foreign exchange broking catering to retail and institutional investors assisted by 70 highly qualified professionals. It operates under the regulations of the Reserve Bank of India and the Securities Exchange Board of India. In 2016, FRR chose to offer immigration by investment programs to its captive clientele as an added value product which very quickly emerged as a standalone business under FRR IMMIGRATION in 2018 having transacted approx. USD 50 million for its clientele. FRR IMMIGRATION, the only SEBI approved broker-dealer in India, has carefully handpicked the programs that of: the USA, Portugal, Grenada, Malta, Turkey, Greece, Canada and UK for its clientele. You can find more information about us on: www.frrims.com

Mona Shah & Associates Global is a boutique law firm committed to giving the investor or project individualized attention. At MSA you will find experienced, exposed, talented and highly qualified staff. We seek to make a difference to the Industry and our clients.

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

Shirazi immigration Law brings together a dedicated staff with a unique set of skills to meet the full range of immigration legal needs, from family-based to business and employment-based immigration, from temporary visits to citizenship and naturalization, and from refugee, asylum, and temporary protected status to deportation defense. We provide the knowledge, skills and determination needed to solve immigration issues efficiently and effectively and with the highest commitment to helpful and friendly client customer service.

NuRide exists to improve the transportation systems used by hundreds of millions of people through innovation and a disruption of the stagnation that proliferates within our industry. We feel that progress should never be forfeit to complacency, especially where there are those with particular needs for whom services should be more reliable and abundant. The goal of NuRide is to provide reliable, affordable transportation options that continually evolve and expand. We look at things from both practical and visionary standings, so that we can shoot for the moon while our feet stay on the ground.

Crowned as a Cool Vendor by Gartner, Tada provides a revolutionary platform with patented Digital Duplicate™ technology that connects people, products and processes to provide collaboration, orchestration and visibility across your entire enterprise ecosystem. Our system operates mission-critical supply chain solutions from the most complex Fortune 100 to mid-size supply chains in manufacturing and healthcare.

Kurzban Kurzban Tetzeli and Pratt P.A. ("KKTP") is the leading law firm in complex immigration litigation in the United States, including specializing in EB-5 litigation. KKTP has litigated over 50 federal immigration cases, has argued in the Supreme Court and the lower federal courts, & obtained the only EB-5 circuit court precedent decision in Chang v. U.S., 327 F.3d 911 (9th Cir. 2003). KKTP successfully represents regional centers and investors in federal courts to review denials of I-526 and/or I-829 petitions, mandamus actions to obtain adjudications, and representing individual investors who seek review of their denied 1-829 petitions in removal proceedings before the immigration court.

Carolyn Lee PLLC is a U.S. immigration law firm dedicated to investment immigration services. Principal Carolyn Lee has helped project clients raise over $2.5 billion EB-5 capital across America and represented thousands of investors. CLP specializes in complex EB-5 representation including project restructuring and litigation support. American Immigration Lawyers Association (AILA) National EB-5 Committee Chair and Vice Chair for an unprecedented 6 terms, Carolyn leads in EB-5 advocacy and proudly serves as IIUSA Legislative Counsel.

At Jackson Walker, we solve complex legal challenges in a way that is straightforward, cost-effective, and strategically tailored to our clients' needs. For over 130 years, we have helped businesses of all sizes navigate the increasingly complex legal landscape. We serve a broad mix of private and public companies in a wide range of industries across the globe.

IIUSA VIRTUAL EB-5
INDUSTRY FORUM
NOVEMBER 2-11, **2021**

SCHEDULE OF EVENTS

A link to individual sessions will be made available to registrants closer to the event

TUESDAY NOVEMBER 2	**12:00 - 1:00 PM ET**	***EB-5 REGULATIONS: BACK TO THE FUTURE*** **KURT REUSS,** eb5marketplace *(Moderator)* **ROBERT DIVINE,** Baker Donelson **ABTEEN VAZIRI,** Brevet Capital **DAVID MORRIS,** Visa Law Group **CAROLYN LEE,** Carolyn Lee PLLC
	1:00 - 1:30 PM ET	**NETWORKING BREAKOUTS**
	2:00 - 3:00 PM ET	***USCIS ISSUES, OPPORTUNITIES, AND REASONS FOR OPTIMISM*** **IRINA ROSTOVA,** Rostova Westerman PA *(Moderator)* **BHAVYA CHAUDHARY,** Bhavya Chaudhary & Associates **JOSEPH MCCARTHY,** American Dream Fund **LEON RODRIGUEZ,** Seyfarth Shaw
WEDNESDAY NOVEMBER 3	**12:00 - 1:00 PM ET**	***COVID-19'S IMPACT ON THE INVESTMENT IMMIGRATION INDUSTRY*** **JOSEPH BARNETT,** WR Immigration *(Moderator)* **EDWARD BESHARA,** Beshara PA **BRUNO L'ECUYER,** Invesment Migration Council **JENNIFER SHERER,** FirstPathway Partners **DARRELL SANDERS,** American Life Inc
	1:00 - 1:30 PM ET	**NETWORKING BREAKOUTS**
	2:00 - 3:00 PM ET	***COMPLYING WITH AND IMPLEMENTING INTEGRITY REFORMS*** **JILL JONES,** JTC Group *(Moderator)* **EREN CICEKDAGI,** Golden Gate Global **NIRAL PATEL,** David Hirson & Partners **REBECCA SINGH,** Mona Shah & Associates **MIKE XENICK,** InvestAmerica Capital Advisors
THURSDAY NOVEMBER 4	**12:00 - 1:00 PM ET**	***PROJECT WORKOUTS: BEST PRACTICES AND PROTECTING INVESTORS*** **ADAM GREENE,** EB5 New York State *(Moderator)* **CHAD ELLSWORTH,** Fragomen Worldwide **ROHIT KAPURIA,** Saul Ewing Arnstein & Lehr **GENEVIEVE ROMAN,** Brevet Capital **DAVE SOUDERS,** Todd Associates Inc.
	2:00 - 3:00 PM ET	**E-2 TO EB-5: PRACTICAL KNOWLEDGE FOR THIS ALTERNATIVE PATH** **BRANDON MEYER,** Meyer Global Law *(Moderator)* **PATRICK FINDARO,** Visa Franchise **RANA JAZAYERLI,** Klingner Jazayerli LLP **SURESH RAJAN,** LCR Capital Partners

SCHEDULE OF EVENTS

A link to individual sessions will be made available to registrants closer to the event

TUESDAY NOVEMBER 9	**8:30 - 10:00 AM ET**	***INVESTOR MARKET TRENDS AND UNDERSTANDING THE EB-5 PROCESS*** **NICOLAI HINRICKSON,** Miller Mayer LLP *(Moderator)* **ROGELIO CARRASQUILLO,** Carrasquillo Law Group **ISHAAN KHANNA,** American Immigrant Investor Alliance **PREEYA MALIK,** Step Global **JANAK MEHTA,** FRR Shares **DANIEL RYAN,** Atlantic American Partners **ANDREW WALL,** Dynaxe Capital
	12:00 - 1:00 PM ET	***EB-5 LEGISLATIVE UPDATE: WHERE WE ARE AND WHERE WE'RE GOING*** **AARON GRAU,** IIUSA (Moderator) **RUSH DEACON,** Pine State Regional Center **WILLIAM P. GRESSER,** EB-5 New York State **ROBERT KRAFT,** FirstPathway Partners **GEORGE MCELWEE,** Commonwealth Strategic Partners **STEPHEN STRNISHA,** Cleveland International Fund
	2:00 - 3:00 PM ET	***DIRECT EB-5: A TEMPORARY FIX OR AN EMERGING SOLUTION?*** **CHRISTIAN TRIANTAPHYLLIS,** Jackson Walker *(Moderator)* **ROBERTO CONTRERAS IV,** Houston EB5 **MICHAEL KESTER,** Impact DataSource **MICHAEL HOMEIER,** Law Office of Michael G Homeier **MONA SHAH,** Mona Shah & Associates Global
	3:00 - 4:00 PM ET	**NETWORKING BREAKOUT & VIRTUAL COCKTAIL (COFFEE) HOUR**
WEDNESDAY NOVEMBER 10	**8:00 - 10:00 AM ET**	***DIRECT EB-5 PROJECT SPOTLIGHT*** ***PARTICIPANTS INCLUDE:*** Eb5marketplace.com NuRide Transportation Group TADA Now Whitestone Companies
THURSDAY NOVEMBER 11	**12:00 - 1:00 PM ET**	***LITIGATION IN EB-5: UPDATES AND IMPLICATIONS FOR THE INDUSTRY*** **MATT GALATI,** The Galati Law Firm *(Moderator)* **DAVID ANDERSSON,** WORC **BRAD BANIAS,** Wasden Banias **DANIEL LUNDY**, Klasko Immigration Law Partners **JOHN PRATT,** Kurzban Kurzban Tetzeli & Pratt P.A.
	2:00 - 3:00 PM ET	***POLICY MANUAL UPDATES AND OTHER ISSUES IMPACTING REDEPLOYMENT*** **IGNACIO DONOSO,** I.A. Donoso Law *(Moderator)* **CHRISTINE CHEN,** CanAm Enterprises **MATTHEW HOGAN,** CMB Regional Centers **CHARLES KAUFMAN,** Lexcuity PC **OZZIE TORRES,** Torres Law, PA

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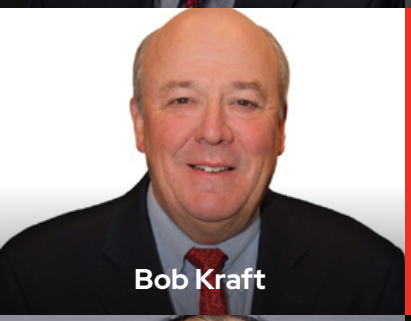

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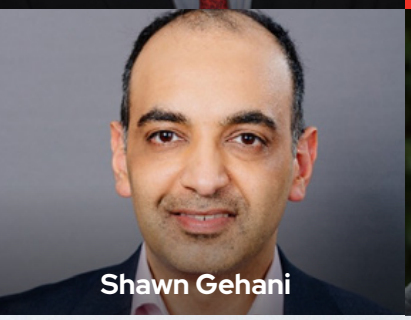

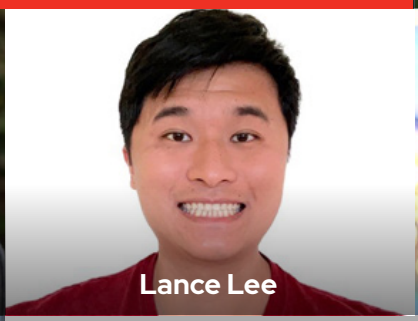

Hosted by Preeya Malik and Abteen Vaziri

The Current "State" of TEAs:
What Was Old is New Again (For Now)

MICHAEL KESTER
LEAD EB-5 ECONOMIST, IMPACT DATASOURCE

As of the date of this article, the EB-5 Immigrant Investor Program Modernization Final Rule that was published by the Department of Homeland Security (DHS) and took effect November 21, 2019 remains vacated. Furthermore, the Regional Center program was allowed to lapse by Congress. Based on these two realities, only the Direct EB-5 program remains in effect, and the targeted employment area ("TEA") standards for the Direct EB-5 program are reflective of the pre-November 21, 2019 rules (with USCIS permitting States to once again certify TEAs at an investment level of $500,000).

For ease of reference in this article, we use the terms "$500K TEA standards" and "$900K TEA standards" to mean the following:

- The **"$500K TEA standards"** mean the TEA standards that are currently in effect (i.e., $500,000 minimum investment for projects in a TEA; with each state authorized to designate TEAs using census tract combinations determined by the state)
- The **"$900K TEA standards"** mean the TEA standards that were recently vacated by a federal judge (i.e., $900,000 minimum investment for projects in a TEA, requiring USCIS determination of TEA status and restricting tract aggregation to "directly adjacent" tracts only.[1])

While the $500K TEA standards do provide more flexibility, there are also challenges due to the unpredictability and differing TEA approaches of the individual states. Notably, the TEA standards for rural projects did not change under the Final Rule and are thus the same under both the $500K TEA standards and the $900K TEA standards. Therefore, this article focuses only on the issues with respect to high unemployment TEAs.

1 For further detail on the $900K TEA standards (which are currently vacated but could be re-adopted in the near future), please see the article "New TEA Standards: A Year in Practice – Remaining Questions, Risks, and COVID-19" in the November 2020 issue of the Regional Center Business Journal.

Alert: On June 22, 2021, the U.S. District Court for the Northern District of California, in Behring Regional Center LLC v. Wolf, 20-cv-09263-JSC, vacated the EB-5 Immigrant Investor Program Modernization Final Rule (PDF). While USCIS considers this decision, we will apply the EB-5 regulations that were in effect before the rule was finalized on Nov. 21, 2019, including:

- No priority date retention based on an approved Form I-526;
- The required standard minimum investment amount of $1 million and the minimum investment amount for investment in a Targeted Employment Area (TEA) of $500,000;
- Permitting state designations of high unemployment TEAs; and
- Prior USCIS procedures for the removal of conditions on permanent residence.

In other words, we are applying the regulations in effect before Nov. 21, 2019, on this website and in the USCIS Policy Manual, Volume 6, Part G, Investors. In addition, we again will accept the April 15, 2019, version of Form I-526, Immigrant Petition by Alien Entrepreneur, because the Nov. 21, 2019, version of the form reflects updates from the now-vacated rule.

What guidance has USCIS provided for the $500K TEA standards with respect to high unemployment TEAs?

In July 2021, USCIS released the following guidance on how it would address the current state of the EB-5 program:

From the release, the key takeaways related to TEAs are that USCIS is "applying the regulations in effect before November 21, 2019" from the *"USCIS Policy Manual, Volume 6, Part G, Investors,"* and that USCIS is "permitting state designations of high unemployment TEAs."[2]

What does the Policy Manual Say about TEAs and State Letters?

The Policy Manual[3] in effect before November 21, 2019 stated that in order to demonstrate that the area of the investment is a TEA, as of the date of investment or date of filing the I-526 petition[4] each immigrant investor "must demonstrate that the TEA

2 https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program (last visited August 31, 2021).
3 https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2 at §5 (last visited August 31, 2021).
4 As applicable to the specific investor. See Id.

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meets the statutory and regulatory criteria" by submitting either:

This means that in order to satisfy the

> - A letter from the state government designating a geographic or political subdivision located outside a rural area but within its own boundaries as a high unemployment area;[57] or
> - Unemployment data for the relevant MSA or county;

$500K TEA standards, a state TEA letter should be obtained unless one of the two items below are true:

- The county where the project is located is eligible as a TEA on its own:
  - Many notable counties currently qualify in their entirety based on the latest calendar year data (CY2020), for example – Los Angeles County, Philadelphia County, Clark County, NV.
  - If the County is eligible as a TEA, then an independent analysis including acceptable unemployment data should be included with the I-526 (state TEA letter is not needed); or
- The Metropolitan Statistical Area (MSA) where the project is located is eligible as a TEA on its own
  - If the MSA is eligible as a TEA, then an independent analysis including acceptable unemployment data should be included with the I-526 (state TEA letter is not needed)

In practice, most EB-5 projects must still rely on a "geographic or political subdivision" that is smaller than the county or MSA for TEA eligibility. Typically, this is done by analyzing census tracts (or block groups if the state permits block groups). In these cases, a state-issued TEA letter will be required in order to rely on census tracts.

Are all States providing TEA letters?

The $900K TEA standards that took effect in November 2019 removed TEA certifying authority from the states and gave it directly to USCIS. As states have not been issuing TEA certification letters for almost two years, it has been a challenge to obtain state designation letters again.

As of the date of this article, the following states have confirmed they are reviewing and issuing TEA certification letters again: *California, Florida, Illinois, Louisiana, Minnesota, New Jersey, New York, Nevada, Oklahoma, Oregon, Pennsylvania, Tennessee, Washington and Wisconsin.*

Also as of the date of this article, the following states have indicated that they are not yet reviewing or issuing TEA certification letters (and it is unclear if or when they might begin doing so): *Arizona, Arkansas, Colorado, Georgia, North Carolina and Ohio.*

In Texas, obtaining TEA letters can sometimes be even more challenging, because in Texas the cities and counties have historically certified TEAs.

Not all states are listed above. Other states not listed above may or may not be providing TEA letters.

What methodology are States using for TEAs?

Each state has its own (and sometimes evolving) policy regarding TEA certifications and one must work within those parameters to understand and provide the data or analysis required to obtain a TEA certification. Regarding census tract combinations, the majority of states are relatively flexible, however some have very restrictive policies. Some permit block groups (which provides even more flexibility), but most do not.

The $500K TEA standard affords states much more flexibility than the $900K TEA standard which restricted tract aggregation to only "directly adjacent" census tracts. States can generally certify any TEA using census tracts (or block groups) that are contiguous and within their boundaries as long as the unemployment rate calculations are done correctly. USCIS will defer to the state for determining the boundaries of a TEA, but will review state determinations of the unemployment rate and assess the methods by which the state authority obtained the unemployment statistics.

With the $500K TEA standard, most states use the "census-share method" for measuring unemployment at the census tract level,[5] Almost all states have historically provided TEA certifications on a calendar year basis, updating the TEA data once a year when new data is released by the Bureau of Labor Statistics (around April/May). For further reading on the census-share method, please see the article *"New TEA Standards: A Year in Practice – Remaining Questions, Risks, and COVID-19 in the November 2020 issue of the Regional Center Business Journal.*

In general, for those states that are providing letters, they are using the same methodology as they did prior to the $900K TEA standard taking effect in November 2019. One reasonable industry concern was that some states might decide to adopt the "directly adjacent" restrictions of the $900K TEA standards, but so far that has not been the case.

Common Issues and Questions in Practice

The following are some of the most common issues and questions that are arising in practice with the renewed use of the $500K TEA standard:

5 For further reading on the census-share method, please see the article "New TEA Standards: A Year in Practice – Remaining Questions, Risks, and COVID-19" in the November 2020 issue of the Regional Center Business Journal.

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What can be done if a location is mathematically eligible as a TEA, but the state is not yet certifying TEAs?

This is currently the biggest issue facing many EB-5 stakeholders who must rely on census tracts (or block groups) for TEA eligibility. Some states with historically high levels of EB-5 activity (such as California) are not yet certifying TEAs. In this situation, many EB-5 issuers are moving forward with a project with the expectation that the state will begin certifying TEAs in the future and that the state will eventually issue a TEA certification letter. While this is a reasonable expectation, there is increased risk with this approach that should be discussed with all interested parties. It would also increase the risk of denial to move forward with a TEA that did not follow the guidelines that the state previously used for certification of TEA status.

Does it make sense to also make sure my project would qualify if the $900K TEA standards return?

With so much uncertainty surrounding how long these more flexible $500K TEA standards might be around, some EB-5 issuers are also reviewing whether or not their location also qualifies based on the more restrictive $900K TEA standards, as it seems likely those will be reinstated at some point. This would be especially important for issuers who are unsure if they will be able to quickly find investors to file while the $500K TEA investment amount is still in effect. For some EB-5 issuers, it might be safest to only move forward with a project that also satisfies the more restrictive $900K TEA standards.

It might mitigate risk if the TEA is eligible based on the more restrictive $900k TEA standards (directly adjacent census tracts) if the state where the project is located does not issue TEA certification letters. Immigration attorneys may wish to argue that if a state will not issue TEA certification letters, the next best criteria should be those that would be applicable under the 2019 regulations; however, such a position is without textual support in the currently effective version of the regulations.

Other questions/issues

- *Should an EB-5 issuer wait for a state to issue a TEA certification letter?* Some states that previously issued certification letters very quickly are taking a longer time to process TEA certifications. With all of the uncertainty surrounding the program now, this can cause additional uneasiness for EB-5 issuers who are trying to move quickly to file investors at the $500K level before the $900K TEA standards are restored. Some EB-5 issuers may elect to move forward because their investors can only afford the $500K minimum investment.

- *Is a TEA certification letter required if the city where the project is located qualifies on its own (but not the county or the MSA)?* Unfortunately, not according to the text of the regulations and by USCIS police. The Policy Manual only indicates that you do not need a state-issued TEA certification letter if the county or MSA qualifies.

- *Is a TEA certification letter required if the project is located in an eligible single census tract TEA, or if it only requires "directly adjacent" census tracts?* While projects located in these areas would have qualified under the more restrictive $900K TEA standards, unfortunately the Policy Manual only indicates that a state-issued TEA certification letter is not required if the county or MSA qualifies. The Policy Manual for the $500k TEA standards makes no distinction between simple or elaborate census tract combinations.

- As the guidance issued by USCIS in July 2021 states that USCIS is "permitting" state TEA designations, rather than "requiring" TEA designations, are TEA certification letters required? Since USCIS' intent is unclear and the pre-2019 regulatory text required TEA certification letters, it would mitigate the risk of denial to obtain a state TEA certification letter if possible.

Summary

EB-5 stakeholders have had to make many adjustments as the standards for high unemployment TEAs keep changing. For projects with investors filing I-526 petitions under the $500K TEA standards that must rely on census tracts or block groups, the safest route forward is to obtain the state TEA letter. However, with so many uncertainties (only some states providing TEA letters, the regional center program being allowed to lapse, the uncertainty around how long the $500K TEA standards will be in place, etc.), EB-5 stakeholders should continue to carefully consider the potential TEA certification of their respective projects with their experienced EB-5 economists and attorneys.

The International Entrepreneur Parole Rule

DARREN SILVER
PARTNER, DARREN SILVER & ASSOCIATES LLP

ROBERT BLANCO
SENIOR ASSOCIATE ATTORNEY,
DARREN SILVER & ASSOCIATES LLP

This year, U.S. Citizenship and Immigration Services ("USCIS") relaunched the International Entrepreneur Parole Rule ("IEP"), which allows foreign entrepreneurs to request parole to run a qualifying U.S. start-up. However, the IEP is essentially a new program, so there is very little data or even anecdotal evidence of USCIS adjudication policies or trends. Nevertheless, IEP provides another immigration option for certain foreign entrepreneurs, especially those who do not qualify for an E-2 investor visa or EB-5.

It is important first to define the immigration benefit under this program – parole. The secretary of Homeland Security may parole an individual into the U.S. for a temporary period for urgent humanitarian reasons or significant public benefit. It is not a visa or a green card, nor does it directly lead to any type of formal immigration status. Although it is sometimes marketed as "EB-6" or an "entrepreneur visa," these descriptions imply a much more robust immigration benefit. Finally, parole can be revoked at any time, without notice, if USCIS believes that parole is no longer warranted. Entrepreneurs seeking parole should consult with an immigration attorney to ensure that it is the best option for travel to the U.S.

To qualify for parole under the IEP, a foreign entrepreneur must own at least 10% of a U.S. start-up company, created within the 5 years preceding the application. The entrepreneur must play an active and central role to the operations of the business and must provide a significant public benefit to the U.S. Based on the other requirements discussed below, USCIS will likely focus on job creation to determine whether the start-up will benefit the U.S., but this is up to the discretion of USCIS. If a start-up will provide other public benefits, the entrepreneur should clearly articulate those benefits and include supporting evidence. Up to three entrepreneurs per start-up can utilize the IEP.

In addition to the threshold requirements above, the start-up must have received, within the last 18 months, an investment of $250,000 from qualified U.S. investors or $100,000 of government funding for economic development, research and development, or job creation awards or grants. If the entrepreneur does not meet either the full capital investment or government funding, parole can be granted based on "compelling evidence" of substantial potential for rapid growth and job creation.

A qualified investor is one who, during the past 5 years, has invested at least $600,000 in start-ups and has invested in at least 2 start-ups that have created 5 qualifying jobs for U.S. workers or generated $500,000 in revenue with a 20% growth rate. Unlike many other immigration petitions, these criteria require a significant amount of information from third-party investors who may not be willing to provide sensitive or proprietary information about their other investments. A foreign entrepreneur should discuss these requirements with potential investors to gauge their willingness to cooperate. Similarly, an entrepreneur may need to be creative in finding publicly available evidence when investors or their portfolio companies are

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unwilling to share private information.

To apply for IEP, each entrepreneur must file his or her own Form I-941 application and supporting evidence with the $1,200 filing fee and $85 biometrics fee. Once approved, the entrepreneur must apply for a travel document at a U.S. Embassy or Consulate in order to be paroled into the U.S. Due to consulate closures and severe backlogs from COVID-19, this step may involve significant wait times. Canadian citizens can simply present their I-941 approval notice at the port of entry and do not need a separate travel document.

An entrepreneur's spouse and children may also be paroled into the U.S. They must file a Form I-131 application for an advance parole document, either concurrently with the entrepreneur's I-941 application or separately. Spouses may also file a Form I-765 application for employment authorization.

Under the IEP, entrepreneurs may be paroled into the U.S. for a period of 30 months and may only work for their start-up company. Entrepreneurs may request a second period of parole – called "re-parole" – for another 30 months if the start-up meets at least one of the following four criteria: 1) receive an additional $500,000 in capital investments or government funding, 2) generate $500,000 annual revenue at 20% growth rate, 3) create at least 5 jobs, or 4) if the start-up only partially meets the first three criteria, the entrepreneur may provide compelling evidence of the start-up's substantial potential for rapid growth and job creation. Entrepreneurs must also maintain income of at least 400% of the poverty guidelines, which is $51,250 for single person.

Although the IEP has many specific requirements regarding investment amounts, job creation, etc., the decision to grant parole is discretionary. It is important to remember that the IEP is still a new program and USCIS is still developing its policies and adjudication standards. For example, at the time of this writing, USCIS does not publish processing times for Form I-941 applications on its website. In fact, during its only stakeholder call on the IEP, USCIS admitted that it could not estimate processing times because it had not received a sufficient volume of cases. Entrepreneurs should be patient as this program develops.

In addition to the IEP, the newly proposed H.R. 4681, the Let Immigrants Kickstart Employment (LIKE) Act offers even more optimism for foreign entrepreneurs. The LIKE Act would create a new W-1 nonimmigrant visa with criteria very similar to the IEP. The W-1 visa could be issued for two 3-year increments and two additional 1-year extensions. Start-ups could also use the visa for up to 5 essential employees (who need not be founders) depending on the size of the company. Moreover, the LIKE Act provides a path to permanent residence, allowing an entrepreneur to self-petition a green card application if the start-up has created 10 qualified jobs, raised $1,250,000 in qualifying investments, and generated at least $1 million in revenue in the 2 years prior to applying.

The IEP and proposed LIKE Act are encouraging immigration policies that welcome vetted entrepreneurs to the United States. Allowing these entrepreneurs to build their companies in the U.S. while working closely with the U.S. investment community is an exciting development. It is easy to imagine how the IEP will create many of the same long-term benefits as the EB-5 and other immigration by investment programs.

Immigrant Capital Investment and Priority Infrastructure

LINCOLN STONE
PARTNER, STONE, GRZEGOREK, & GONZALEZ LLP

Through the Base Realignment and Closure ("BRAC") process, successive Administrations in the post-Cold War era sought to increase efficiency and cut costs in the Department of Defense by closing and realigning military bases. For the 1990s economy of the Inland Empire of Southern California, the closures of Norton AFB (San Bernardino) and George AFB (Victorville), followed by the downsizing of March AFB (Riverside Co.), meant the loss of $3.1 billion in total economic activity and 27,400 civilian jobs. The Riverside-San Bernardino MSA was thus the region of the country most adversely impacted by the early BRAC, a severe blow to an area already afflicted by high unemployment rates, low incomes, and declining property values, all helping explain why one-third of San Bernardino residents were on public assistance.[1]

The former Norton AFB had served as an aircraft and missile logistics depot, tasked with maintenance and support, supplies, and heavy lift transport, and as a consequence its 2,000 acres of developable industrial and commercial space and FAA-approved tower held out promise as a civilian commercial asset. The local base reuse authority, the Inland Valley Development Agency ("IVDA"), was challenged with determining how to transform the location to productive civilian use, which would require substantial investments in roads with connections to interstate freeways, demolition of outdated buildings and asbestos removal, and replacement of electrical, natural gas and telecommunications infrastructure. However, BRAC did not include the funding needed for redevelopment, nor did IVDA then have abundant other resources. Into this void $650,000 was lent to IVDA by a partnership associated with a designated regional center in the EB-5 investor visa program, providing the seed funding that enabled IVDA to obtain a matching $1.8 million infrastructure development grant from the U.S. Department of Commerce Economic Development Administration. This seed funding for infrastructure led to the rehabilitation of light manufacturing buildings with new electrical wiring, fire sprinkler systems, and roofing as well as

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1 Most of the economic impact references dating to the 1990s were drawn from earlier project work by economist John Husing.

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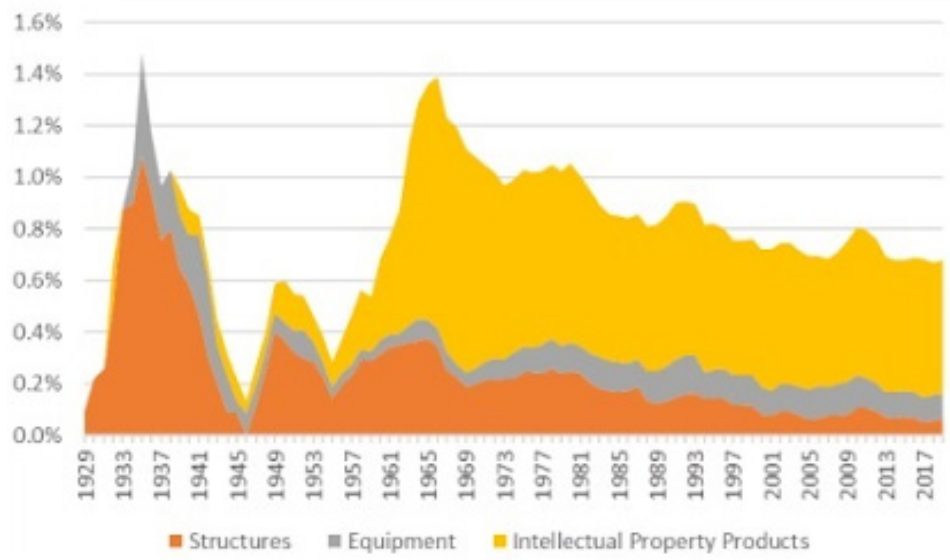
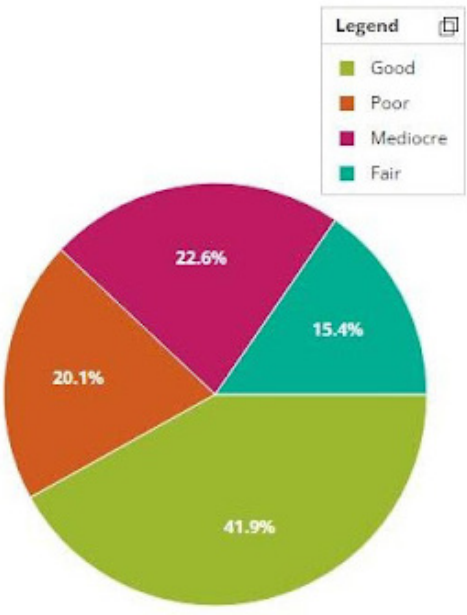
street access ways and asbestos removal. These core infrastructure investments paved the way for transformation of the former Norton AFB.

Infrastructure, its current state or the need to invest in it, is very much in the news coming out of Washington as the current Administration seeks to pump money into the economy in ways that yield both near- and longer-term benefits. "Hard" infrastructure, generally, refers to the physical systems like roads, transportation, water, sewage, electric, and communications that form the backbone for a developed economy. The framework of "critical" infrastructure provides a somewhat different lens, focusing on the assets, systems and networks (as in the energy sector, information technology sector, waste and wastewater systems, to name a few) that are vital to the interests of the United States. Their incapacitation would jeopardize security, national economic security, national public health or safety. Funding sources of infrastructure development vary considerably and increasingly involve a public-private partnership ("P3"). Questions concerning sources of funding often run into the public vs. private and federal vs. state debates. Certain infrastructure development has identifiable funding sources, as in user fees and tolls for transportation and gasoline taxes for roads maintenance, while other infrastructure classes do not have standard sources. Where P3s exist, the added consideration of private ownership of infrastructure assets may surface as a political challenge.

ANNUAL FEDERAL NONDEFENSE INVESTMENT, 1929-2019
(AS A SHARE OF GDP)



Source: CRS calculations based on data from the Bureau Economic Analysis



Source: Data from TRIP, a National Transportation Research Nonprofit

By one professional estimate, from the American Society of Civil Engineers ("ASCE"), the state of overall infrastructure in the United States is a grade "C-", with for example a "D" grade for just the roads infrastructure.[2] ASCE has been sounding this alarm for many years. A full 43% of public roadways are rated in poor or mediocre condition.

The backers of infrastructure-based legislative packages under consideration in Washington, with more than $600 billion allocated for infrastructure upgrades to roads, bridges, railways, airports and water systems, tout the needs of public health and safety, economic health and competitiveness, and national security.[3] The allocations for in-home medical care for the elderly and disabled push the price tag beyond the $1 trillion level.

The political focus on investment of public funds in infrastructure appears to arise out of a consensus that America's infrastructure has been neglected to the detriment of public welfare. That consensus seems to coalesce around data on declining public sector investment as a share of GDP.

ASCE observes, as further confirmation of the consensus, that since 2010 some 37 states have raised their gas tax to increase funding for transportation infrastructure, and in November 2020 balloting 98% of local infrastructure ballot initiatives passed. There also is recognition that infrastructure investments enable more private sector investment, production and efficient delivery of services. Over the longer term, the positive effects of infrastructure

2 *2021 Report Card for America's Infrastructure*, American Society of Civil Engineers, https://infrastructurereportcard.org/ (last accessed October 1, 2021).

3 The White House Briefing Room, U*pdated Fact Sheet, Bipartisan Infrastructure Investment and Jobs Act*, (Aug 2, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/ (last accessed October 1, 2021).

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investments are realized: The more private sector investment into infrastructure projects, the better for the economy.[4]

Funding for roads and bridges historically involved the Highway Trust Fund, which depends on fuels tax revenues that are declining due to the static rate of tax, inflation, and improved fuel economy of automobiles. The Fund is no longer the one-stop formidable funding source it once was. State and local sources, consequently, are actually funding most highway expenditures. Transit systems, meanwhile, rely on fare revenue for at least 1/3rd of operating expenses, and the federal share is barely 7%.[5]

It is against this backdrop that the Pennsylvania Turnpike Commission ("PTC") turned to EB-5 immigrant investor capital as a funding source. The PTC, an independent agency of the Commonwealth of Pennsylvania, is entrusted with constructing, operating and improving the state's turnpike highway system. While the PTC may fund much of what it needs for capital projects with the proceeds of senior revenue bonds that are secured by toll revenues collected by the Pennsylvania Turnpike, the PTC borrowed more than $380 million from partnerships formed by the Delaware Valley Regional Center ("DVRC"). This funding enabled PTC to efficiently pursue the construction, design and improvement of 130 miles of the Pennsylvania Turnpike, including the replacement or rehabilitation of various bridges, tunnels, and interchanges, and the enhancement of roadway safety.

In another example of EB-5 capital funding critical infrastructure, $180 million in funds lent by a separate DVRC-organized partnership to the Southeastern Pennsylvania Transportation Authority ("SEPTA") helped fund transit infrastructure and vehicle improvements. Using EB-5 capital alongside other local, state and federal funding sources, SEPTA has funded long-deferred maintenance of critical public transit infrastructure including -- for example, reconstructing track, installing power and communications systems, constructing and enhancing bridges and culverts, constructing a new terminus, building new railcar storage, and constructing new traffic intersections and access roads.

Maritime ports are significant economic engines for the national and regional economies, supporting millions of jobs, and yet, ports also are underinvested.[6] Funding for port infrastructure is derived from a variety of sources, including federal, state, and local funding, as well as private sector revenue streams. Infrastructure improvements at the Port of Baltimore, one of the East Coast's busiest and a substantial driver of regional economic activity and job creation[7] was the focus of another successful EB-5 funding. The P3 forged between the State of Maryland and a private operator (Ports America) for the management and operations of the Port of Baltimore, required substantial ongoing private investments in cargo terminal upgrades, maintenance-related capital expenditures, crane and equipment replacement, technology improvements, construction of a warehouse and mechanic shop, and facility paving. The Port of Baltimore desired upgrades needed to service the supersized ships that could reach the East Coast after expansion of the Panama Canal. Available funding could be sourced from bonds, bank debt, private equity, and projected operational revenues from the expansion of its Seagirt Marine Terminal. However, because the state had a limited ability to issue bonds to pay for projects like the Seagirt expansion, it increasingly looked to P3s to avoid funding shortfalls. The $45 million loan to Ports America arranged by the DC Regional Center funded the increase in number of terminal berths, extension of the wharf, and purchases of new super cranes.

While the Senate and House versions of infrastructure legislation include massive amounts of federal funding for a wide array of traditional infrastructure categories -- roads, bridges, public transit, rail, water infrastructure, to name a few – there also are significant provisions that target spending for rural and distressed areas.[8] Broadband investment, for example, is

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4 *Infrastructure and the Economy*, Congressional Research Office (Aug 5, 2021), citing to Pedro Bom and Jenny Ligthart, "What Have We Learned from Three Decades of Research on the Productivity of Public Capital?," *Journal of Economic Surveys*, vol. 28, no. 5 (December 2015), pp. 889-916, https://sgp.fas.org/crs/misc/R46826.pdf

5 *Transportation Infrastructure Investment as Economic Stimulus: Lessons from the American Recovery and Reinvestment Act of 2009* (Congressional Research Service, May 5, 2020), https://crsreports.congress.gov/product/pdf/R/R46343

6 ASCE gives maritime ports a "B-" grade - https://infrastructurereportcard.org/cat-item/ports/

7 *The 2017 Economic Impact of the Port of Baltimore in Maryland* (37,000 jobs in state generated by Port) https://mpa.maryland.gov/Documents/EconomicimpactofPOBMaryland2017_101518.pdf

8 See benefits for rural areas - https://www.farmprogress.com/farm-policy/whats-infrastructure-plan-rural-america

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needed for unserved and underserved areas, which generally means lower income and/or rural. Apart from the specific allocation of $65 billion for broadband expansion to these areas, the addition of broadband to the allowable category of private activity bonds ("PABs") could trigger very substantial additional private sector investment. Qualified PABs are tax-exempt bonds issued by local or state government to provide funding for qualified projects, a very useful funding tool in P3s. Studies show that notwithstanding billions invested by the telecom industry, the private sector is not presently incentivized to expand services to all areas.[9] Congress also is considering permanent extension of the New Market Tax Credits ("NMTC") program, which incentivizes with tax credits the needed investment in underserved areas; a specific NMTC allocation for tribal areas; as well as significant revisions to the tax credit program for low income housing in distressed areas. Insofar as members of Congress are wrestling over among other things the total price tag on these infrastructure programs, and not the question of whether infrastructure investment is a national priority (about which there seems to be true consensus), it does appear obvious that advocates for the EB-5 investor program could be championing EB-5 investor capital as part of the solution. Simply stated: EB-5 investor capital for infrastructure. That would be most fitting, it seems, for the underserved/underinvested areas of the country.

The CMB Regional Center coordination with the IVDA, starting decades ago, led to funding of infrastructure investments at the former Norton AFB. The seed funding, along with other public and private source capital invested over time, reversed what had been a downward economic spiral. The CMB Regional Center would use multiple EB-5 investor-funded partnerships to lend more than $101 million to redevelopment of the former Norton AFB and local infrastructure projects. Through a master development agreement, the IVDA eventually handed over the development responsibilities to an established developer (Hillwood). The EB-5 investor capital was used to help fund a wide variety of infrastructure projects, including construction of the landfill hardcap for parking and related road work that would entice Stater Bros. to build its corporate office, a grocery distribution center, and cold storage facility; bridge construction and road improvements; parking for an airport terminal and hangar; drainage improvements, flood abatement, solar installations, and airport tarmac projects. The EB-5 capital investments were combined with additional project-related capital funded by state, local and federal government sources as well as private investment. These numerous infrastructure projects were the foundation and development pad that attracted major private sector investments from Fortune 500 companies, and leading manufacturers and logistics firms (including Stater Bros., Kohls, and Amazon). Saving the former Norton AFB from the economic abyss, infrastructure investments at the former Norton AFB fueled further public and private sector investments that have created some 8,800 jobs, and more than 13,800 jobs when counting the total effects.[10]

As once-in-a-generation infrastructure legislation is highest of priorities for Congress, while the EB-5 investor visa program for regional centers is also seeking an audience for its renewal, it should be emphasized that EB-5 investor capital has successfully funded priority infrastructure. It would be a mistake to overlook the opportunity to align the future of EB-5 capital investment with priority infrastructure.

9 The Federal Communications Commission and U.S. Department of Agriculture both administer programs aimed at extending broadband to rural communities.

10 See reports of the Air Force Civil Engineer Center, https://www.afcec.af.mil/Home/BRAC/Norton/Norton-Today/ https://www.afcec.af.mil/News/Article-Display/Article/2051569/air-force-begins-fifth-5-year-review-of-environmental-cleanup-activities-at-for/; and for more on former Norton AFB -- https://www.sbsun.com/2019/03/29/san-bernardino-marks-25-years-since-closing-of-norton-air-force-base-eyes-future/

And The Compliance Beat Goes On

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One could broadly simplify the business of a Regional Center into two main elements: 1) capital aggregation and deployment and 2) fund management. While it is true this is an oversimplification, it helps to narrow our focus.

At the time of this writing, the EB-5 Regional Center Program, originally known as the Immigrant Investor Pilot Program when it was established by Congress in 1992, has expired. As of June 30th, 2021, the program has officially lapsed and USCIS will not accept any new investors or process any further conditional green card applications related to this program. For all intents and purposes, until the EB-5 Regional Center program is re-instated, the capital aggregation element of the business for Regional Centers is over (or at least on hiatus). Sure, a Regional Center operator could switch their business model to do direct deals. However, because of the nature of direct deal requirements, the amount of capital that could be raised for a project would be significantly less than in a regional center offering.

While Regional Centers are no longer function as capital aggregators, the fund management element of the business continues. As noted by USCIS on July 1, 2021, the program expiration does not affect those EB-5 investors that have already received conditional residency. Those investors can still file I-829 petitions and continue on their journey to permanent (unconditional) residency and then citizenship should they desire. It is estimated that there are currently more than 20,000 investors at the conditional residency status. Within the next 24 months, each of these investors will be eligible to have their I-829 petitions adjudicated. The successful I-829 petition has always been the primary motivation for investors and its success depends on significant support from the sponsoring Regional Center. So, despite the program lapse, there remains a lot of very important work to do.

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While most believe that the program will eventually be reinstated, current compliance regulations remain in effect, and it is likely that the reinstated program will include expanded and more rigorous compliance regulations. Therefore, Regional Centers would be wise to use the time and capacity available during the program shutdown to focus on the key areas of compliance.

Immigration Compliance for Existing Investors

For Regional Centers with investors currently in their period of conditional residency, now is a great time to ensure documents to support investors' I-829 petitions are organized and readily available for filing. In general, there are four main categories of evidence that each investor will need to include as part of his or her I-829 petition. These categories are as follows:

- Is the NCE properly established, and is it in good standing?
- Was the full (and proper) investment amount made into the NCE and subsequently into the job-creating activity?
- Was the full investment amount maintained at risk during the conditional residency period?
- Were the required 10 or more permanent jobs created?

For each one of the above categories, there are multiple pieces of supporting documentation that can be used as evidence. Different immigration attorneys may request different information in order to best position their investor clients for immigration success. Therefore, as a best practice, Regional Centers should be prepared to provide a range of documentation that immigration attorneys might want. Far too often, pulling together the required documents is left to the last minute, resulting in an expensive effort and a less robust I-829 submission.

If unsure as to what supporting documentation might be required, or if the information is not currently organized in the most effective manner, Regional Centers can turn to service providers within the EB-5 ecosystem that can help perform an initial audit and provide services to identify, assemble, organize and store information in the most effective way.

Ongoing Regional Center & NCE Compliance

Since 2010, EB-5 Regional Centers have been required to file a form I-924A at the end of each year. The purpose of this form is to demonstrate that the Regional Center has been conducting job-creating economic activity consistent with the goal of the EB-5 program in order to retain their Regional Center designation. Information required to be reported includes details about the amount of capital invested, job creation totals, and current statistics on investor filings and petitions.

With the termination of the Regional Center program, USCIS has announced that it will reject any new I-924 filings unless such are meant to amend the Regional Center's name, organizational structure, ownership or administration. USCIS has not said anything about I-924A's, and therefore Regional Centers should continue the practice of preparing and filing an I-924A as long as they have investors with pending petitions filed prior to June 30, 2021. For the avoidance of doubt, USCIS will still accept and process I-829 petitions associated with Regional Center projects, so it would be prudent to keep all Regional Center records and filings current in support of those petitions and the investors' final steps to permanent residency.

Similarly, the NCE entity (typically an LP or an LLC) has annual filing requirements with federal, state and local government agencies. The specific requirements will vary based on where the entity is domiciled and/or registered to do business, and how it is structured (i.e., an LLC vs. a Partnership or Corporation). The termination of the EB-5 Regional Center program does not relieve managers from maintaining filing compliance for the NCE (or other entities). Regional Centers should continue to plan to meet their entity maintenance compliance requirements in order to keep the entities valid and in good standing in the appropriate jurisdictions.

Timely filing of the I-924A and the applicable state reports is imperative and will help avoid potential Requests for Evidence (RFE's) or even Notices of Intent to Deny (NOID's) during the I-829 process. Among other things, the I-924A form requires detailed information related to Regional Center operations. In particular, the Regional Center needs to report on the amount of capital (both EB-5 and non EB-5) invested into the project and the resulting impact on job creation. This requires careful monitoring of the project, detailed tracking, and reporting. If the processes and systems currently in place are not as efficient as they could be, now (during the program suspension) is an ideal time to make the necessary improvements. For those that may not have the internal resources, there are many service provider options available to help Regional Centers implement procedures or automation to make these filings as cost efficient as possible.

Integrity Measures Compliance

Integrity measures were front and center in the proposed EB-5 Reform and Integrity Act of 2021.[1] However, that bill did not pass, and subsequently the Regional Center program expired on June 30th, 2021. It is important to know that the discussion of integrity measures like those included in that bill are nothing new. In fact, proposed integrity measures became one of the most substantial parts of the EB-5 dialogue as a result of the December 2013 Office of the Inspector General Report (OIG 14-19)[2] on the EB-5 Program. In that report, the OIG concluded that:

1 https://www.grassley.senate.gov/imo/media/doc/EB-5%20Reform%20and%20Integrity%20Act%202021.pdf
2 https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf

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> *"…USCIS has difficulty ensuring the integrity of the EB-5 regional center program… As a result, USCIS is limited in its ability to prevent fraud or national security threats that could harm the U.S., and it cannot demonstrate that the EB-5 program is improving the U.S. economy and creating jobs for U.S. citizens as intended by Congress."*

Since that report was published, many proposed EB-5authorizaton bills have included integrity measures and many integrity measures have been proposed as stand-alone bills. Over the years, many of these measures have been refined and condensed into those proposed in the EB-5 Reform and Integrity Act of 2021. The Act itself is far too expansive to review in this article and Regional Centers would be wise to review the detailed legislation and/or seek the help of expert service providers to determine how they may be affected. However, there are several concepts that have been in legislative drafts consistently over the last several years. Three are worth discussing here because they are common best practices or requirements in traditional funds. They include:

1. The Establishment of an Integrity Fund

The purpose of the fund will be to enable USCIS to administer and ensure compliance with the integrity measures. It will be funded from annual fees charged to Regional Centers and, based on the proposal in the most recent Act, the amounts will likely be material enough to require proper planning and budgeting on the part of Regional Centers.

2. The Use of Third-Party Administration

As the name implies, a third-party fund administrator is an unrelated firm that provides the back-office administration services of the fund. This approach is commonly used with traditional private equity funds at the insistence of investors in order to provide additional security, transparency and compliance. Commonly provided services in the EB-5 context include:

- Capital flow reporting of investor capital over the entire project lifecycle
- Proper bank account/escrow setup and daily bank account reconciliation
- Project expense document storage for Job Creating Enterprise expenses
- Monthly statements for each stage (Subscription, Invested, and Settlement)
- Storage for relevant documents:
  - Entity formation and operations documentation
  - Evidence of fund movement, and funding confirmation letters
  - Executed subscription agreements
  - Quarterly and annual statements
  - K-1 data storage and notification to investors
- Audit trail reports, summarizing investor funds tracked through all phases for I-829 support
- Invoices and receipts showing funds applied to project
- 24/7 transparent portal access for project owners, investors, and other interested parties
- EB-5 investor capital and settlement accounting
- Maintenance of key information and data for securities law compliance

Third party administration has been consistently included in proposed integrity bills for the last 5 years, and Regional Centers should expect that it will be part of any reinstatement of the program. In most versions of the proposed legislation, there have been exceptions for those meeting various licensing or regulatory standards; however, the majority of Regional Centers need to be prepared to incorporate a third party fund administrator into their offerings.

3. Transparency in The Use of Promoters

Within the integrity measures conversation, there has been a steady push for increased transparency related to the use of third-party promoters (regardless of whether they are foreign or domestic). Despite industry pushback related to the difficulties in applying consistent standards in the use of foreign agents, the topic continues to appear in integrity-related measures.

While the details of what might ultimately be required are far from decided, this is an area in which it would be wise for Regional Centers to prepare. At a minimum, it is anticipated that there will be a requirement for Regional Centers to maintain a documented program to ensure that investors are receiving consistent, accurate, and truthful information as to the visa process and the offering itself. These types of policies and procedures should be well documented and organized, and a plan to audit them on a regular basis is advised.

Whether you believe the lapse in the program will be brief, long, or even permanent, Regional Centers still have significant work to do to meet their compliance obligations and to ensure their investors have every opportunity for success. Given that there can be no new Regional Center I-924 filings or new investor I-526 filings during this time period (unless for direct EB-5/non-Regional Center projects), there has never been a better time to focus on internal operations to make them as organized, professional, and efficient as possible.

Achieving Industry Consensus:

Let's Start with Grandfathering

VOLUNTEERS FOR THE AMERICAN IMMIGRANT INVESTOR ALLIANCE

It has been more than eight weeks since the EB-5 regional center program lapsed. While the industry works towards reestablishment, tens of thousands of immigrant investors and their families find themselves in a precarious situation: their immigration process has stalled, and they are staring at an impasse wondering who is looking out for their interests. Now, more than ever, existing investors need advocacy.

There are two critical issues facing the industry today: (1) investor protection amidst the regional center program reauthorization process and (2) managing the perception of the EB-5 program in the eyes of the American public.

The Foreign Investor Fairness Protection Act

When the EB-5 regional center program lapsed on July 1, 2021, current immigrant investors were left in a state of limbo. U.S. Citizenship and Immigration Services (USCIS) issued guidance that it would not act on any pending regional center EB-5 petition dependent on the lapsed statutory authority until further notice. The Department of State updated the Visa Bulletin to state that no regional center visas may be issued overseas absent legislative action to extend the category and Regional Center EB-5 visas have been unavailable since June 30, 2021.

There is strong consensus within the EB-5 community that any lapse or expiration of the EB-5 Regional Center Program should have no retroactive effect on investors already committed to the process. To instill investor confidence any reauthorization efforts must have grandfathering provisions to allow safe passage through the immigration process to investors who already filed their petitions.

To that end, Robert C. Divine, head of immigration practice at Baker Donelson and former Chief Counsel and Acting Director of USCIS, drafted the Foreign Investor Fairness Protection Act (FIFPA). FIFPA would ensure that investors be grandfathered and therefore able to continue their immigration process under the eligibility rules in effect *as of the time they filed their initial immigrant petition*. In addition to protecting existing investors, the bill would also build confidence among future EB-5 investors if they know that political wrangling in Congress would not impact their immigration outcomes.

IIUSA, the only non-profit trade association of the EB-5 industry, supports FIFPA and includes this grandfathering language in their reauthorization efforts. The text enjoys additional support from several members of Congress, some offering to co-sponsor the legislation. The bill is non-controversial and has bipartisan support. While there is consensus the bill would pass if introduced, it still needs more support from investors and other industry groups to create enough political momentum

"Faces Behind EB-5"

Has the perception of the EB-5 Regional Center Program been managed optimally in the eyes of the American public? Does Congress, at large, fully value the benefit and potential of this program? Has there been an adequate response to counter the constant media assaults on this program?

Bending and contorting the image of the EB-5 has been a favorite media pastime for years, and unfortunately, many have a negative perception of the EB-5 Program. Anti-immigrant voices contort the program's requirements, and, with due respect, the EB-5 industry must acknowledge that it is not designed to respond to the assaults on the program.

Yet, EB-5 has been a vital job-creating tool, especially during economic downturns, providing funding for a wide variety of developments around the country at no cost to the American taxpayer. Entire communities have benefited from jobs and prosperity because of developments made possible by the EB-5 program. Since its inception in 1992, the regional enter program has attracted an inflow of more than $41 billion in foreign investment and created more than 820,000 jobs in states across the nation.

The challenge is that industry interests lack faces. And the American public relates best with other hardworking faces like themselves.

To address negative perceptions of EB-5, the "Faces Behind EB-5" program connects EB-5 investors directly to members of Congress to show the positive impact the program has hard-working immigrants as well as the faces of the investors who are creating American jobs and bringing capital to American communities. This campaign showcases investors as valuable civilians contributing to their communities while also highlighting their struggles in the wake of the Program's lapse. It is essential to put human faces to the Program to highlight the two principals at the core of the regional center program: American job creation and legal immigration.

Conclusion

While EB-5 Program reauthorization, FIFPA, and changing the public perception of the program are more immediate goals, there is still more work to be done, including engaging stakeholders to find ways to resolve and mitigate other programmatic issues like processing times, consistent adjudications, improved transparency at USCIS, and reasonable redeployment guidance which does not penalize immigrant investors involved in successful job creation.

Let's restore the EB-5 program and unleash its true economic potential - by focusing on its existing consumers first. Grandfathering is a common-sense idea and it can be the foundation to building much-needed consensus.

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The American Immigrant Investor Alliance (AIIA) was founded in April 2021 as a Washington D.C.-based 501(c)(4) non-profit to represent existing as well as future EB-5 investors. The alliance recognizes investors as the fundamental pillar of the EB-5 program and aims to advocate for all legislative, legal, and commercial decisions that would benefit investors, giving them a seat at the table that has been long overdue. Investors are critical to the long-term success of the EB-5 program and giving investors a voice and an opportunity to work with other industry stakeholders, such as IIUSA, is imperative to securing a better future for the EB-5 program.

Advocating Removal of Conditions for Good Faith Investors

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New capital investment by immigrant investors interested in the EB-5 visa regional center ("RC") program may be on pause while Congress puzzles out a legislative solution from historic negotiations on trillion-dollar public investments in infrastructure and social programs. Nevertheless, the petition process carries on for existing investors of private capital to remove the conditions on their permanent residence and finally settle their US immigration status. Over 11,000 petitions for removal of conditions remain pending at USCIS[1], and approximately 3,000 more petitions will be filed in each of the next two years, unaffected by the future of the RC program. Until these I-829 petitions are approved by USCIS, the immigration status for many thousands of investors and their families remains unresolved.

Three decades running, the practice of representing investors for removal of conditions has never been easy. The practice continues to be hampered by extra-legal adjudication standards and mind-numbing processing delays, as well as the case complications arising from the misfeasance and malfeasance of managers of the businesses enjoying the fruits of EB-5 capital investment. Considering that the EB-5 visa program was designed to attract good faith investment from foreign nationals into job-creating businesses in the United States, but USCIS denies good faith investors the promised ultimate immigration benefits of the EB-5 visa program, the removal of conditions process stands out as seriously flawed.

Unfortunately, recent legislative and program reform efforts fall short, as they contemplate and emphasize new capital to be invested by future EB-5 investors and the "integrity measures" the USCIS desires to police RC program operations. It appears, in stark contrast, that nothing is on the program reform table to help those thousands of EB-5 investors who already invested in good faith – those who thus have earned their conditional status and the removal of conditions, but who have not yet finally prevailed in the complex, uncertain and protracted EB-5 application process that is not over until conditions are finally removed. Without meaningful reform from Congress or USCIS, it is foreseeable that too many good faith investors will continue to be stranded by an agency that views the immigrant's bona fide investment as not integral to its decisions in the removal of conditions process. Good faith investors, or rather those who have not yet surrendered in the face of what they may perceive as the false promise of the EB-5 visa program, will continue to seek relief in the courts.

Courts have abundant reason to intervene considering the USCIS propensity to create new legal standards for I-829 petition adjudications. The Court of Appeals decision in *Chang v. United States*[2] remains a cornerstone precedent that is grounded in well-settled principles of federal administrative law. There, the Court of Appeals set aside the denial of the I-829 petition for removal of conditions where the denial was based on the retroactive imposition of a new substantive eligibility standard that did not exist when the EB-5 investor filed the initial I-526 petition, and the imposition of the new rule would cause undue burden on the EB-5 investor as compared to the government's interest in retroactive application to the I-829 petition adjudication. At issue was agency reliance on its precedent decisions such as *Matter of Izummi*. A separate but often related procedural objection to raise before the court is the failure of the agency to follow advance notice and comment prescriptions for its new "legislative" rules imposed in I-829 petition cases.[3] USCIS publication of new adjudication standards in its Policy Manual, in lieu of formal rulemaking, does not usually cure either the retroactivity problem or the notice defect.[4]

Substantively, at the outset of the EB-5 visa application process, investors are required to prove the investment is "at risk" of loss in the commercial enterprise. USCIS requires a comprehensive business plan to demonstrate the intended job-creating uses of the capital invested. Thereafter, as provided in the statute on removal of conditions, the EB-5 investor must prove the investment was made and sustained. The regulation promulgated to implement the statutory standard states the agency must consider whether the evidence demonstrates the investor "has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained" the investment in the new commercial enterprise. This regulation coheres with the statutory standard and just as surely arises out of the central purpose of the conditional nature of the initial period of permanent residence for EB-5 investors -- to deter EB-5 *investor* fraud.[5] What this means,

1 https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q3.pdf.

2 327 F.3d 911 (9th Cir. 2003).

3 The Administrative Procedures Act requires publication of formal notice of proposed rules in the Federal Register. 5 USC 553(b),(c)(requiring advance notice of rulemaking and opportunity for comment, except for interpretative rules and general statements of policy).

4 The failure of USCIS to follow the law of formal rulemaking for the EB-5 visa program has long been criticized. See, e.g., GAO Report to Congressional Committees, "Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors," GAO-05-256 (Apr. 2005); Office of the CIS Ombudsman, "Employment Creation Immigrant Visa (EB-5) Program Recommendations" (Mar. 18, 2009); Department of Homeland Security Office of the Inspector General Report (Dec. 2013, OIG-14-19, p. 11 – citing inconsistencies of interpretation within USCIS).

5 See, e.g., Regulatory Commentary: Investors are "admitted as conditional permanent residents as a means to deter immigration-related entrepreneurship fraud." Commentary to Final Rule,

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simplified, is if the EB-5 investor were to deceive by petitioning for immigration benefits without taking genuine steps to make investment capital available for potentially job-creating outcomes, the conditional period and the adjudication of the I-829 petition for removal of conditions serve to expose the absence of good faith. The statutory design of permanent residence as initially conditional for EB-5 investors, like in marriage-based cases, enables USCIS to separate out those petitioners acting without good faith. Those who do act to invest in good faith, on the other hand, should prevail before USCIS. For full context it is noted that as a rational legislative choice, Congress did not design the EB-5 visa program to require immigrant investors to "pick winners" out of the available pool of new business enterprises, a full 50% of which fail within the first five years.[6] Nor did Congress require EB-5 investors to prove, as a condition to be satisfied for full *un*conditional permanent residence, that at least ten jobs had been created. Before finalizing the statutory law on removal of conditions, Congress in fact clearly rejected the concept that removal of conditions requires evidence that ten jobs had been created.[7]

The relatively simple good faith formula that neatly frames what a USCIS examiner should be evaluating as the core focus in the I-829 adjudication has been ignored or elided by USCIS in numerous cases involving distressed businesses or questionable uses of enterprise assets by managers. And, with stunning consequences: Good faith investors are facing deportation before the immigration courts.

Of first significance to litigants, *Matter of Izummi* was an I-526 petition case; it did not consider I-829 petitions at all, nor did it consider the different body of legal standards that apply to I-829 adjudications.[8] It is therefore arguably untenable that *Matter of Izummi* is merely "interpretative" for I-829 petition adjudications, or that adjudication standards found in the USCIS Policy Manual are policy statements grounded in settled law for I-829 petition adjudications, when the supposed settled law is *Matter of Izummi*. Fast forward 20 plus years, USCIS continues to find random sentences in *Matter of Izummi*, take those out of context, and create new legal standards for I-829 petition adjudications.

Instead of the good faith regulation that has been law for more than 25 years, USCIS uses language from *Matter of Izummi* that is not specific to I-829 petition adjudications to, in effect, supplant clear and unambiguous regulations.[9] Of relevance to this writing, the *Izummi* case -- which involved an I-526 petition and the *initial design* of an investment that provided for administrative fees to be withdrawn from the $500,000 investment before it was invested into the commercial enterprise (interpreted to include a wholly-owned subsidiary) – stands for the proposition that the I-526 petition cannot be approved if less than the required minimum capital of $500,000 is invested in the new commercial enterprise. In current practice, USCIS is denying I-829 petitions filed by investors for the reason that the admittedly good faith investor, who has invested a full $500,000, is unable to prove how exactly the commercial enterprise expended all of its assets. Treating a bad actor manager's diversion of funds as some form of "derogatory information" that the good faith investor is held to rebut, USCIS finds the evidence wanting in the glow of the *Matter of Izummi* statement that the "full amount of funds must be made available to the businesses most closely responsible for job creation." With this "precedent" standard as the core focus of such I-829 petition adjudications, rather than the good faith regulation, USCIS (i) tends to move the analysis well beyond the commercial enterprise that the immigrant invested in, (ii) holds the good faith EB-5 investor to account for the entire history of transactions undertaken by the commercial enterprise with other entities in order to confirm that the "same money" invested by the EB-5 investor has been used by the commercial enterprise and by the so-called "job creating enterprise" toward job-creating business activity, and (iii) loses sight of the core facts that must be proven by a preponderance of evidence. Without such proof, USCIS has found that the good faith investor has not "sustained" the investment. And for similar reasons, although USCIS professes to agree that it is the commercial enterprise that creates the jobs, USCIS has found in cases of admittedly good faith investors (and even where a sufficient number of jobs have been created), that the evidence is deficient where the investor cannot show that the *petitioner's capital investment* has created the jobs.

The failure to abide by a binding regulation, as the good faith regulation is, sets up an argument in federal court for any good faith investor with an I-829 petition denial that the USCIS decision is arbitrary and capricious.[10] Or, as the government has initiated deportation proceedings against numerous good faith investors, and the legislative branch appears largely unresponsive to immigrant investor interests, the immigration courts may be tested to resolve these issues.

More than just an annoyance, the USCIS processing of I-829 petitions has evolved to be a form of avoidance, a poison pill of its own that tends to sap the confidence of even the most patient of EB-5 investors. Originally, as set forth in the statutory scheme, Congress had in mind a 90-day timetable for adjudication of the I-829 petition. Nowadays, USCIS states its processing times range from 32.5 to 63 months, or more than 5 years. Even putting aside one huge drawback of the EB-5 visa program that USCIS had no role in creating – the EB-5 visa unavailability at the front

59 Fed. Reg. 26587 (May 23, 1994), quoting S. Rep. No. 101-55, at 22 (1989). As first introduced, section 204 of the Immigration Act of 1989 was entitled "Deterring Immigration-Related Entrepreneur Fraud." S. 358, 101st Cong. §204 (1989).

6 According to the US Small Business Administration, 50% of all new small businesses with employees will go out of business within the first five years. SBA Office of Advocacy -- Frequently Asked Questions, https://www.sba.gov/sites/default/files/advocacy/Frequently-Asked-Questions-Small-Business-2018.pdf (Aug 2018), Small Business Facts https://www.sba.gov/sites/default/files/Business-Survival.pdf

7 See 134 Cong. Rec. S2119 (1988), and S. Rep. No. 101-55, at 21 (1989).

8 Compare INA 216A with INA 203(b)(5). See, e.g., Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006)(the distinct language used in different sections of a statutory scheme is intended to give effect to the distinction).

9 Recent cases reveal courts will not condone the agency's selective use of random language in Matter of Izummi as rationale for ignoring plain language of regulations. See, e.g., Zhang v. USCIS, No. 19-5021 (DC Cir. 2020); Mirror Lake Village v. Wolf, No.19-5025 (DC Cir. 2020); Chang v. USCIS, 289 F.Supp.3d 177 (D.D.C. 2018); Doe v. USCIS, 237 F.Supp.3d 297 (D.D.C. 2017).

10 Under the Administrative Procedure Act, a reviewing court must set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 USC 706(2)(A).

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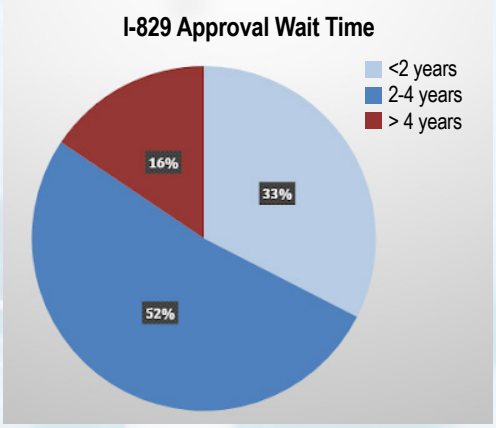
end for nationals of certain countries (presently, China) – the entire EB-5 process stands as a 10-year program when case processing delays are factored. Looking at actual cases, of the several hundred investor I-829 petitions approved by USCIS since 2019 through the efforts of our law practice, 68% of those clients waited more than 2 years after filing with USCIS for their I-829 petition approval. A full 16% of the clients waited more than 4 years before seeing I-829 petition approval.

Understandably, many investor clients have lost their patience. We filed mandamus lawsuits on 51 of those I-829 petitions for approved investors.

Congress did not create the EB-5 visa category as merely an immigration pathway for immigrants who had invested in the United States, rather it designed the EB-5 visa category to attract and reward good



faith investment that is at risk of loss and that truly is impactful in its potential for creating jobs that otherwise would not be created. The more than 11,000 investors and families awaiting I-829 petition approval, and the multiples of that in earlier application stages, are a reminder that the "attraction" part has succeeded. But the "reward" part has not worked out as well. In practice, the substantive and procedural hurdles for I-829 petitioners are many. As USCIS appears to have raised the bar in a growing number of cases, it is ever more clear that all avenues of advocacy must emphasize that the status of conditional permanent residence is meant as a standard review, to confirm good faith investment, along a clear and reliable track toward an end solution. As well, at the center of it all, usually, is a family desiring to fully embrace American life. Without that I-829 petition approval, however, USCIS not only holds the key to clarity about ongoing legal status but it also withholds naturalization. The full rights and commitments of US citizenship remain beyond reach. In many I-829 petition cases that USCIS seeks to deny, the evidence and applicable law support approval. Good faith investors who have kept their side of the bargain deserve approvals of their I-829 petitions.

True Success in the EB-5 Green Card Pursuit: Removal of Conditions

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The marketing efforts of regional centers trying to stand out from the crowd can sometimes blur the most important objectives of any hopeful immigrant investor. In a traditional business investment, success may be defined by ROI. But from an EB-5 immigration perspective, true success is achieved with the removal of conditions on the investor's conditional permanent residence ("Green Card") through the I-829 petition process. After all, achieving the milestone of unconditional Green Card is the reason any immigrant investor even considers making an EB-5 investment.

Investors should truly understand that USCIS approval of a regional center may be based on a general plan for promoting EB-5 investment, and that even USCIS approval of the I-924 application for a specific EB-5 "project" is based on a plan for intended future investment and business activity. USCIS consideration of the investor's I-829 petition for removal of conditions is inherently different, because USCIS reviews what actually occurred with the investment and business and necessarily involves consideration of successful execution of the investment plan. This fact reveals that investors need to consider not just general plans for investment and business, but also the roles, responsibilities and competence level of the various players involved in execution of the plan. In turn, investors should consider that regional centers and the services they provide can be very different. Some regional centers are issuers and aim to align their upside with that of the investor by engaging in substantial pre-investment due diligence and oversight/monitoring of business activities, other regional centers are raising EB-5 capital to help fund their own development projects, and still other regional centers do none of the above. Whether it is the regional center or a different entity that claims to be looking out for the investor's interests, the investor must consider that the individuals and organizations issuing and managing regional center investments are very diverse and have varying levels of experience and expertise. It is crucial to understand that ultimate success at the final I-829 petition stage is not the automatic outcome produced by an afterthought; instead, the investor, the investor's counsel, and all stakeholders committed to the investor's success must consider the I-829 petition process before the investor ever makes the investment.

Where there is I-829 petition success, there typically is found also an experienced and professional team that is committed to the investor's success. Assembling that team before an EB-5 offering is made available to the marketplace can help make the I-829 petition process smooth and easily executable. USCIS approvals of I-924 applications and I-526 petitions are great, but because those approvals are only based on prospective and projected fact patterns, a team that can prove their ability to execute on their plan and navigate the challenges of a project under development as well as the evolving landscape of USCIS policy is an invaluable asset to the investor focused on the ultimate immigration objective.

A conservative approach to EB-5 program compliance in the structuring of the EB-5 offering is far more likely to aid the investor's immigration quest. Placing your trust in experienced economists using approvable job creation models, maintaining a limited reliance on direct job creation for regional center projects, and avoiding the overleveraging of EB-5 as a funding source can all be ways to mitigate failure at the I-829 stage. Past industry failures have seen projects fall short on job creation or have their job creation methodologies challenged due to improper application, in many cases trying to stretch the overall job creation attributable to a project. These are things that can be the difference between an investor living their American dream or facing deportation.

In EB-5 compliance, documentation is key. Building a Matter of Ho compliant business plan serves as the road map for success at the I-829 stage. Properly identifying the intended uses of EB-5 funds, identifying a clear nexus between the EB-5 capital to the job creation, and properly structuring and identifying the mechanics of any bridge funding to be replaced by EB-5 capital can serve as the blueprint for supporting job creation at the I-829 stage. Over the years, the use of bridge financing strategies has become more and more prevalent, but regional centers and investors should proceed with caution. Many apparently think that the easy path to ensuring removal of conditions is to invest into a project where the jobs have already been created at the time of their investment. Doing so may present several challenges that need to be carefully thought out in advance. The bridge financing policy of USCIS could be very narrowly applied. USCIS will certainly consider how strongly related the

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EB-5 investment is to the jobs that have been created.

From the perspective of the investor, preparation starts with pre-investment due diligence. Understanding the reasonableness of the "inputs" to the job creation model (that is, future construction expenditures and/or future operating revenues), and identifying the ongoing roles and responsibilities of the individuals entrusted with project execution and oversight should be paramount in the due diligence exercise. Many believe that evidence of entitlements and construction permits, non-EB-5 funding sources, construction contracts, etc., are all due diligence items needed in order to receive the initial I-526 approval and they are. USCIS looks for these items to determine the likelihood that jobs will actually be created and so should investors. However, I-829 petition approval is a different matter. Unforeseen construction delays due to permitting and financing shortfalls are things that can stall job creation, and timely job creation is vital evidence for the I-829 stage. Further, identifying who is responsible for monitoring the project during construction, the use of the EB-5 funds, and the use of those funds for ongoing job creation should all be outlined ahead of time.

In the scenario where the regional center-sponsored entity raises EB-5 capital and makes a loan to a developer or project, the clear delineation of the responsibilities of the job-creating enterprise ("JCE") may be the difference between a risk mitigated project and a project set up for failure. The offering documents as well as the loan or operating agreements governing the funding of the JCE should clearly outline how the funds can be used and the requirements for completion of the planned project. Requiring third-party fund control agents and a draw review process can provide transparency during construction and can allow the regional center to analyze EB-5 job creation progress in real time. The documents should also clearly state who will be responsible for cost overruns, completion guarantees and the process of subordination should additional debt funding be required for the project to reach completion or to navigate operational challenges. During and after construction, several reporting requirements should be stated in the documents to not only provide a clear understanding of the project's performance, but also to address the EB-5 job creation as envisioned, whether it be through spending and operating revenue models or direct job creation when applicable.

Many regional centers lack a day-in day-out team responsible for monitoring and managing the project on behalf of the investors. The best regional centers in the industry have a dedicated group of construction and financial compliance professionals as well as economists who maintain regular dialogue with the JCE, conduct site visits, and report to the investors on the project's progress through construction and operations after construction. These professionals also may also be responsible for organizing and building the information that will be provided to USCIS at the I-829 removal of conditions stage. Their ability to stay alert to any construction challenges and collect data in real-time will prevent a mad scramble as an investor's I-829 filing window approaches.

In today's EB-5 program, adjudication and visa availability backlogs have created new challenges to prepare for. Planning for redeployment of EB-5 investor capital should also start with the initial structure of the EB-5 offering. Part of the removal of conditions stage is not only demonstrating job creation, but demonstrating that the investor's capital remained fully invested and at risk throughout the 2-year conditional permanent residency ("sustainment period"). Over the years, it has been clear that only a few regional centers have anticipated this need and have developed cogent plans for accommodating this possibility. Unfortunately, many other regional centers have belatedly scrambled to adjust their documents to best navigate these challenges. Combined with evolving USCIS policy, an ill- prepared group could mean the investor's immigration aspirations are clouded by immense uncertainty and haphazardly conceived strategies.

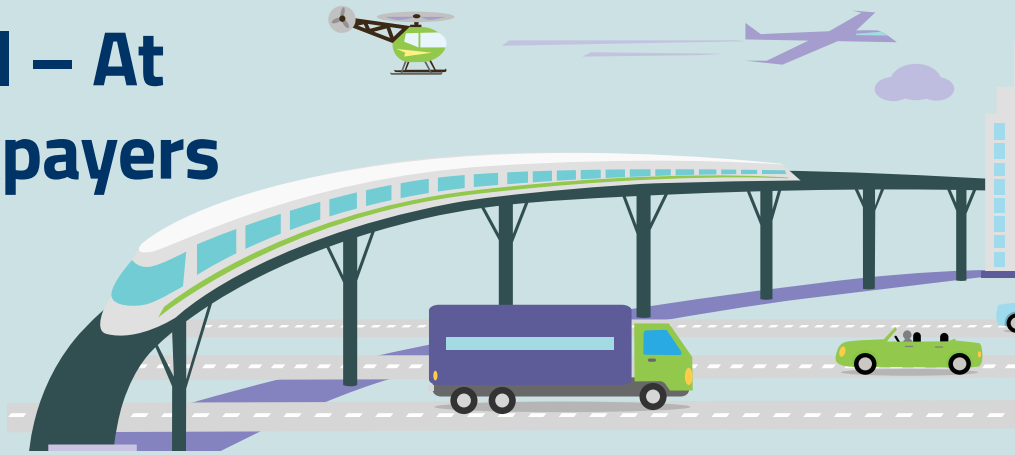
Finally, it should not be undersold that the adjudication timelines for I-829 petitions have grown steadily over the years. As of late August 2021, USCIS processing times for I-829 petitions ranged from 32.5 to 63 months – or, 5 years. USCIS policy allows for the investor to become eligible to receive the return of their capital investment with the completion of their sustainment period. This could be roughly the same time in which the investor will file their I-829 petition. Meaning, it is possible under USCIS policy that the investor could exit from the investment, even though the I-829 petition could remain pending for many more years. But does the agreement for investment permit an exit, or is the exit depending on I-829 petition approval? This is an important consideration for pre-investment due diligence.

During pre-investment due diligence, investors should ask how the critical project information and job creation results will be shared with themselves and their filing attorneys for the preparation of the I-829 petition. Knowing that the group you've placed your trust in is an experienced team of professionals to take on these tasks will allow you peace of mind that your removal of conditions process will be organized and smooth. Also keep in mind the need for ongoing assistance with documents may extend beyond the time the investor remains an owner, if USCIS should issue a request for further evidence sometime after the investor has taken advantage of an exit provision in the governing documents.

USCIS policies and adjudication trends may change. In addition to having a team that can monitor the project, the regional center should also remain a student of the industry throughout their investors' immigration life-cycle. Regional centers and their counsel should study notable court decisions, should analyze case studies on notable EB-5 successes and failures, and should remain aware of the most recent USCIS adjudication trends. Doing so will allow the regional center to remain knowledgeable of any potential pitfalls and prepared to address changes in the documentation process that can be addressed well prior to the point in which the investors file their I-829 petitions.

Careful planning and diligent follow through goes into preparing each investor for the removal of conditions phase. All involved must keep their eyes on the prize each step of the way. For investors, it is important to understand that there is no expedited processing or promised rate of return that can overshadow the importance of proper due diligence and placing your trust in a regional center with a proven track record at the I-829 stage.

How to Pay for Biden's Infrastructure Bill – At No Cost to US Taxpayers



MICHAEL HALLORAN
GROUP HEAD OF TECHNOLOGY STRATEGY, JTC AMERICAS

Debates around how to pay for President Biden's $1.2 trillion infrastructure plan will continue to heat up as Congress works through the legislative process – especially with experts saying that the proposed funding sources are "optimistic at best, and…at worst, smoke and mirrors."

The good news? There's a way to generate up to $2 trillion in revenue over the next decade through existing processes and infrastructures without raising taxes or hiking up deficits. To sweeten the deal, this plan would also create hundreds of thousands of jobs.

Here's how it works.

Look to EB-5

The EB-5 Immigrant Investor Program is a federal visa program that allows immigrants and their families to secure US residency by investing $500K - $1M in a U.S. business that creates or preserves 10 full-time jobs. In the last ten years, EB-5 has proven itself to be one of the most prolific job creation programs ever developed by the US government – extrapolating results from a Department of Commerce Study, from 2012 to 2016, it powered 6.9% of all US job growth – at no cost to taxpayers.

Through successful public-private partnerships, EB-5 has helped rebuild the Hudson Yards, the Port of Baltimore, and hospitals, airports, bridges, schools, and fire stations around the country.

Though some critics point to instances of fraud and theft by project sponsors, EB-5 has an extensive regulatory framework that makes it much safer than most programs (or private projects): money from foreign parties goes through extensive anti-money laundering / know your customer examinations and Office of the Comptroller requirements, followed by inspections by the Department of Homeland Security (DHS) and the US Customs and Immigration Services (USCIS); later, when the capital is pooled together in funds, the Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) also have oversight.

Although the EB-5 Regional Center program recently expired (with possible reauthorization under consideration by Congress), retooling its processes, regulatory oversight, and compliance mechanisms represent a real opportunity to fund Biden's infrastructure plan.

The Marshall Plan in reverse

Using EB-5 as a launching off point, we can model a new program that can pay for up to $2 trillion in infrastructure spending over the next decade. Here's what it would look like:

- A 10-year temporary infrastructure investment program supported by 50,000 (vs. the 10,000 now offered through EB-5) temporary annual visa allocations
- This would require a $1.5 million investment per immigrant in US infrastructure public-private partnerships: $1M would be directed toward the project and ultimately repaid to the investor; $500K would be directed to the US Treasury and not repaid to the investor
- At full subscription, individual foreign infrastructure investment would equal $50 billion

annually (with an incremental investment multiplier of 2-3X which was proven out in the EB-5 program, this would ultimately equal $150 - $200B annually)

The benefits of such a program go beyond revenue. Leveraging public-private partnerships means infrastructure projects are incentivized to move forward quickly and effectively. Nearly 1000 USCIS approved EB-5 regional centers already operate across the country and can be used to drive immigrant capital into this infrastructure activity. US corporations are already familiar with these centers and their associated projects. The EB-5 program's regulatory oversight and compliance mechanisms, as noted above, can be easily repurposed for this new program. And, at full capacity, this program would amount to 1.6 million new jobs a year.

Anecdotally, a program like this is popular with politicians on both sides of the aisle. But a reluctance to touch immigration policy – even if it creates US jobs and build US infrastructure – has kept it on the sidelines.

Now, as we emerge from the pandemic looking to rebuild our economy and the country's aging infrastructure, is the perfect time to bring this sort of program to life. If any concerns about immigrants funding our bridges and roads remain, we can draw on historical precedent.

After all, in 1948 the US instituted the Marshall Plan, offering foreign aid to rebuild war-torn Europe. Think of this new infrastructure investment visa as the Marshall Plan in reverse: we've made investments to help societies around the world – maybe it's time to let others invest in us.

EB-5 DIRECT: An Alternative Approach to EB-5 Financing for Regional Centers

MICHAEL G. HOMEIER
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While EB-5 Regional Center Program participants hold their breath awaiting reauthorization of the "indirect program," some pro-active regional center principals aren't sitting on their heels waiting. Instead, they are turning to the original EB-5 Immigrant Investor Program, the "direct program," regardless of if and when reauthorization occurs.

These regional center principals still have all the contacts, connections, experience, and education accumulated from years of success in the Regional Center Program and are leveraging all those assets in order to keep working. The Direct Program is viewed as limited by a lower job creation ceiling counting only "payroll-provable" jobs, compared to the high ceilings allowed by econometric-modelled indirect job creation under the Regional Center Program. To be sure, with significantly fewer "count-able" jobs, direct projects can accommodate fewer investors and thus produce smaller raises. But modest-sized projects with raises of up to a dozen or two dozen investors can be enough to enable projects with total budgets in the $10-30 Million range (including EB-5) to be green-lit, in particular those that will generate large numbers of direct jobs such as manufacturing, services, restaurants, health care, education, even tech.

To make it work, of course, requires careful planning and meticulous execution, in particular with regard to the job creation obligation, as there is less margin for error than that often afforded by indirect job calculation. But then, success in EB-5 has always required careful planning and follow-through, even for indirect projects with larger capital stacks, larger EB-5 raises, and highly complex structures. So, what's different? How does Direct EB-5 compare to Indirect Regional Center EB-5? What must be done differently than the old familiar RC projects?

"Doing Direct" utilizes all the prior education, experience, practices, strategies, and people involved in "doing Indirect" – except where it doesn't. Most of what Regional Center principals have done before with Indirect remains relevant to Direct. There's no need to abandon all past practices or learn an entirely new approach—just a modified one. The following are some highlights of the primary differences for the seemingly novel Direct EB-5 scenario, from the areas of immigration and jobs, securities/corporate compliance, business plan writing, and examples of how economists can contribute validation to Direct job counting.

Immigration/jobs

Under the direct program, when making an investment in a "New Commercial Enterprise," (also known as the "NCE)," an EB-5 investor can only satisfy the EB-5 job creation requirements through the employment of qualified workers who are compensated as employees on the NCE's payroll. This means that the NCE must create or preserve[1] 10 full-time jobs (each position being a minimum of 35 hours per week) for qualifying U.S. workers, for each EB-5 investor invested in the NCE, within two years and six months after adjudication of each investor's I-526 petition. The EB-5 investor must show that the NCE directly created these full-time positions for qualifying employees, which are U.S. citizens, lawful permanent residents, and other certain

1 In order to count jobs that are preserved, the business must be "troubled", which is defined by USCIS as one that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period before the date of filing. As such, this route for the EB-5 direct model entails additional requirements and associated evidentiary due diligence.

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qualifying immigrants. The EB-5 investor and his or her immediate family members do not count towards the tally of new jobs for EB-5 purposes. Jobs created outside of the NCE are also not counted. And existing jobs – even in the case where the NCE acquires an existing business – do not count, except in the case of a troubled business.

For direct jobs created as a result of the EB-5 investor's investment, evidence to prove job creation may include, but is not limited to, payroll records, relevant tax documents, and Employment Eligibility Verification (Form I-9) showing employment by the NCE. E-Verify, which is a web-based system that allows employers to confirm the eligibility of their employees to work in the United States, is an excellent way to document the EB-5 job creation requirements under the direct program.

The 10 full-time jobs created by the NCE as a result of EB-5 investment also need to be considered as permanent jobs. According to the United States Citizenship and Immigration Services (USCIS) Policy Manual, "[d]irect jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs … jobs that are expected to last for at least 2 years generally are not considered intermittent, temporary, seasonal, or transient in nature."

Same as the Regional Center Program, the EB-5 investor must file his or her I-829 petition with USCIS within 90 days prior to the 2-year anniversary of being issued conditional permanent resident status, and one of the most significant components of the I-829 is demonstrating that the job creation requirements were met. Job creation within the direct program typically means that the business must generate sufficient revenue to continue operating and hire employees. However, an important clarification about receiving credit for job creation is that the USCIS Policy Manual makes it clear that USCIS does not require that the jobs still be in existence at the time of adjudicating the I-829 petition, so long as the job creation requirements were otherwise already fulfilled. This clarification is important to keep in mind for certain EB-5 investors subject to long backlogs due to the EB-5 visa cap, who will be filing their I-829 petitions many years after the 10 full-time jobs were already created.

On a note related to EB-5 visa backlogs, an EB-5 investor must also maintain his or her qualifying investment "at risk" for up to two years from the date of being granted conditional permanent resident status, otherwise known as the Sustainment Period for the EB-5 investor's investment in the NCE. If an investor has not completed his or her Sustainment Period before receiving his or her investment funds back from the NCE, USCIS is likely to determine that the EB-5 investment is no longer at risk or sustaining the job creating investment, and will deny that investor's I-829 petition. However, the concept of redeployment may serve as a solution towards maintaining the at-risk investment through the EB-5 investor's Sustainment Period if the NCE receives a return of its EB-5 capital from a sale of its project assets, rather than a sale of the NCE's equity interests, and then redeploys the cash proceeds from the sale of assets into another at-risk project in order to enable the EB-5 investor to complete his or her Sustainment Period. New jobs do not need to be created through the redeployment of EB-5 funds if a sufficient number of qualifying jobs were already created by the original business, especially if those jobs will be maintained by the new operator of the business.

Securities/corporate

From a corporate point of view, the most significant difference between Direct and Indirect is the deal structure. In most cases Indirect uses a two-entity structure with (1) a funding entity (the NCE) deploying aggregate EB-5 capital into (2) a separate business entity (the "Job Creating Entity" or "JCE") which spends the EB-5 financing and creates the jobs credited back to the NCE. By contrast, the Direct structure involves only a single entity, the NCE, that serves as both the investment vehicle for the EB-5 investors and as the job creating entity (JCE) spending the funding and creating its own jobs for its "in-house" investors. The Direct entity is referred to below as the combined "NCE+JCE."

The Direct structure reflects the original EB-5 Program job creation requirement that only jobs directly on the NCE's payroll count toward the minimum, unlike the Indirect structure, which also counts indirect and induced jobs. In the latter, jobs are deemed created by calculating the employment-enhancing economic impact of a project's expenditures and operating revenue. This literal "jobs-multiplier" effect permitted larger EB-5 raises as more jobs allowed more investors bringing in more money. Further, the two-entity structure that is common under the Regional Center Program is considered indirect from a corporate law perspective, since the EB-5 investors become equity owners not of the actual Job Creating Entity, but instead in the separate NCE; while the NCE does loan or invest the aggregate EB-5 funds its investors provide to it to the JCE, the JCE has no EB-5 investors itself.

The issue of "where the investors are located" (that is, are they holders of the equity of the NCE or the JCE) makes a significant difference due to the rights that accrue to investors. All equity owners of U.S. entities have significant "shareholder" rights (whether LLC members, limited partners, or preferred shareholders) under state corporate laws to participate in the management, receive timely and accurate information, and inspect the books, records, and accounts of the entity into which they invest, and the managers of their investment entity owe them significant and broadly un-waivable fiduciary duties of good faith, fair dealing, loyalty, and the like. While rights may be affected by contract (primarily the investment entity's governing agreement, whether an LLC operating agreement or limited partnership agreement), many of those required by statute are broadly un-waivable and afford "shareholders" significant protection—and pose significant issues for the investment entity. "Shareholder" litigation brought to enforce these rights can restrict or freeze an entity's freedom of action, second-guess or substitute decision-making, or even force management's replacement by new management recruited by shareholders, even before reaching a final conclusion. These difficulties can be magnified by competing blocs of shareholders with conflicting

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objectives.

From a developer/owner JCE's perspective, having the EB-5 investors investing in a separate NCE is highly advantageous: all these issues are not the JCE's. In an Indirect scenario, the JCE itself has no EB-5 investors to recruit, manage, report to, or worry about all the technicalities of immigration compliance and satisfying all of the EB-5 Program's many particular requirements. Additionally, all of the risks attending to "shareholder" rights and fiduciary duties attach to the entity in which the "shareholders" are invested—the separate NCE. In an Indirect context, these are issues for the NCE's principals (often also the sponsoring regional center's principals). By contrast, in a Direct structure, these issues are the NCE+JCE's issues, because it functions both as the NCE and JCE combined.

Likely the primary risk issue for the developer in the Direct, single-entity scenario involves the "location" of the developer's assets: the land, improvements, and/or operating business typically owned by the JCE. With Direct investors "inside" the developer's entity, even though they are co-owners of the entity and not of its individual assets, the investors have much greater access to the assets and much greater ability to impact them, not only through potential control but also ultimate liquidation. The "firewall" protection afforded by the two-entity Indirect structure with the investors' co-ownership of the NCE whose only connection to the JCE and its assets is either an attenuated preferred equity interest or a likely unsecured lender interest, disappears in the Direct single-entity structure with the investors directly co-owning the asset-owning NCE+JCE.

Many developers balk at this enhanced risk profile, and it is likely the primary reason other than limited raise size for potential recipients of EB-5 capital declining participation in the Direct Program historically. However, as demand for capital continues and alternate sources and providers become more stressed due to rising inflation and flat economic performance, this risk profile is proving more tolerable to developers and other potential NCE+JCE businesses, especially for those already experienced with accommodating non-EB-5 private equity. Careful NCE+JCEs can utilize wholly-owned subsidiary entities to hold assets or employ workers, allowing for some diffusion of "inside the house" concerns assuming scrupulous alter ego avoidance. Lawfully minimizing "shareholder" risk and avoiding alter ego complications are standard, legitimate corporate risk management strategies, and presuming legitimate motives, they cannot be assumed to be predicates to fraudulent intent. Accurate and complete disclosure in the NCE+JCE's Private Placement Memorandum as compelled by securities law compliance requirements, and thereafter doing what was promised to be done (and not done) following the EB-5 raise, should go far not only to ease the concerns of potential investors and protect actual "shareholders," but also to afford protection to the NCE+JCE's principals as well.

As for the securities laws, an additional issue exists for the Direct single-entity scenario: the broker-dealer prohibition of unregistered salespeople selling investments. In the Indirect scenario, the NCE is the issuer of securities to the EB-5 investors, and its principals contract with foreign emigration brokers and agents overseas who source the investors. To the extent the NCE is involved in sourcing investors, it is usually viewed as technically not brokering, defined as a person selling an investment opportunity "for the account of others." Classically, Indirect NCEs are operated by principals with deep experience in EB-5, often also active in operating the Regional Centers necessary for Indirect projects. By contrast, in the Direct scenario, investors purchase an investment opportunity of the combined NCE+JCE, not a stand-alone NCE, and the Direct NCE+JCE business owner/developer is typically inexperienced with the EB-5 Program, certainly with sourcing of immigrant investors. Experienced Indirect NCE and Regional Center principals who engage in sourcing EB-5 investors for Direct NCE+JCEs would appear to be selling an investment opportunity for the account of another. Doing so "outside" the NCE+JCE raises brokering issues. Whether an "Issuer Exemption" or other avenue may exist allowing for the lawful participation of experienced Indirect principals "inside" the NCE+JCE without running afoul of the broker issue is a complicated fact-based inquiry on an individual project by project basis for which consultation with securities counsel in advance of a Direct EB-5 offering is strongly advised. For this survey, suffice to say avenues may well exist if carefully planned for in advance.

Modeling Job Creation in a Direct EB-5 Business Plan

Of course, economic models are the best method for predicting job creation in Indirect/Regional Center projects because they account for indirect and induced job creation as well as direct job creation from construction and operations. Further, the economic model can be used at both the I-526 stage and the I-829 stage: a project uses estimated project costs and a pro forma to project job creation in the former and actual project costs and operating statements to prove job creation in the latter.

Obviously the approach is different for Direct EB-5 projects. While an economic model may be an approved methodology for projecting job creation of a new enterprise at the I-526 stage, USCIS requires employment documentation (i.e., W-2 forms and other payroll records for employees) to prove job creation at the I-829 stage.

While economic reports do include direct operations jobs in the overall results, the results are derived from methodologies and multipliers, and can skew higher than the on-the-ground hiring and staffing decisions of management teams and executives. This is one of many reasons the business plan is typically the primary documentation for projecting new job creation in a Direct EB-5 project. The business plan's purpose is to show that – due to the nature and the size of the business – the minimum number of jobs will be created. To accomplish this, a Direct EB-5 business plan should include a five-year forecast for job creation, showing the yearly positions hired, average salary per position, and associated payroll costs. But it's not enough to simply assert that the jobs will be created; the business plan needs to present data and evidence that the job projections are reasonable and realistic relative to the business model, industry, and

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market. A business plan writer will typically start with staffing input from the project developer/owner, and provide an analysis, using national and industry data, to ensure that the projected job creation aligns with industry standards, relative to the size and projections of the business. The plan should also include a comprehensive market analysis or feasibility study, ideally by a third-party industry organization, to provide justification that the size and job projections of the business are realistic relative to standard employment parameters in the market. This level of detail and analysis gives the business plan credibility and is fundamental to making the plan Matter of Ho compliant, which is a requirement of business plans under the Direct program just as it is under the Regional Center Program.

Examples of Economist Contribution to Validate Job Creation

Although a job creation study is not required for Direct EB-5 projects, it could easily be argued that including one in an I-526 petition could corroborate the direct job creation estimate of the developer contained in the business plan. As most Direct EB-5 project I-526 packages do not include economic job creation reports, it is unclear how well and/or close to the developer's plan the economic models estimate direct job creation. Therefore, we thought it would be interesting to examine a couple of actual Direct EB-5 projects to see how closely the economic model comes to the staffing forecast contain in the project proforma income statement and business plan. The economic model used in this analysis is the IMPLAN (Impacts for PLANning) model V3.1 and associated 2019 model year data.

The first example studied was a full-service sushi restaurant in the Atlanta, GA area, and the geographic area used for the IMPLAN model was the Atlanta Metropolitan Statistical Area (MSA). The proforma from the developer forecast total restaurant gross revenues at $1,365,100 in 2019 with a corresponding total direct job count of 18 W-2 employees ranging from the Manager down to the Servers. Running the total revenue figure of $1.37 million in the IMPLAN model for year 2019 resulted in the results below. As one can see, the IMPLAN model forecasts the direct job count as 18 jobs, the same as the developer, so the model forecast is quite accurate in this case. The added benefit of having full economic model results are the other data generated by the analysis for the project in its local region. Although the direct job count is the only job creation estimate that is pertinent for a Direct EB-5 application, the full results from the model concerning the other standard variables produced by the model are fully applicable. In other words, the project will generate $1.35 million in Labor or Household Income, $2.27 million in Value Added or the change in Gross Domestic Product (GDP), and $4.16 million of total spending or Output.

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	18	$368,957	$612,395	$1,393,646
Indirect Effect	5	$280,101	$478,751	$897,057
Induced Effect	12	$703,103	$1,176,503	$1,869,291
Total Effect	35	1	$2,267,648	$4,159,995

The second example examined was a hotel in the Phoenix, AZ area with corresponding geographic area of the Phoenix, AZ MSA. The proforma from the developer forecasts total gross hotel room revenues in 2023 at $2,925,688 with a corresponding total direct job count of 22 full time W-2 employees ranging from General Manager down to Housekeepers. Running the total revenue figure of $2.93 million in the IMPLAN model for year 2023 resulted in the following full set of results. The direct jobs estimate from the IMPLAN model is 24 jobs compared to 22 projected by the developer, so the IMPLAN forecast is a bit high for this project. As with the previous example, we see the full estimate of Labor Income is $3.10 million, and the change in GDP is $5.37 million, while the change in total spending (Output) is $8.72 million.

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	24	$984,216	$1,875,340	$2,849,629
Indirect Effect	6	$354,365	$557,629	$1,060,378
Induced Effect	31	$1,765,581	$2,935,223	$4,806,103
Total Effect	61	$3,104,162	$5,368,192	$8,716,110

While an economic job creation study is not required for a Direct I-526 petition, it can provide useful corroboration of the developer's job estimates and estimates of other measures of economic impact obtained from the total impacts from the project, including the change in Labor Income and changes in GDP.

Conclusion

Direct EB-5 is do-able. It has its notable differences, including immigration, corporate/securities, and business plan development, and still benefits from support from economists even absent the controlling econometric modelling of the Indirect avenue. The most significant differences are touched upon above. (There are more, to be sure.) But Direct involves variations on The Theme, rather than an entirely different game with completely novel rules and concepts. For principals already experienced in the EB-5 Program's rules and approaches, especially those with expertise in the suspended Regional Center Program, it's an issue of learning those differences, rather than going back to school spending years earning a degree in an alien field. Doing so allows participation in an additional area of real investment activity, albeit of more modest size, as long as the original investment minimums and state approved Targeted Employment Area rules remain resurrected.

Supervising your Supervisory Broker:

Evaluating Your Broker-Dealer's Compliance Policies

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So, you engaged a registered broker-dealer in connection with your EB-5 offering believing in the cloak of protection marketed to you by the broker-dealer and now you ask why everything is not hunky-dory?

Unfortunately, using a registered broker dealer is not the panacea that many EB-5 issuers believe it to be. For the most part, the promised protection is spotty at best. Recently, Primary Capital, LLC, a widely known broker-dealer in the EB-5 industry ("Primary"), admitted to violating certain rules enforced by Financial Industry Regulatory Authority, Inc. ("FINRA") and agreed to settle the charges it was facing by submitting a Letter of Acceptance, Waiver, and Consent to FINRA.

Background

FINRA is a nongovernmental organization that governs registered brokers and broker-dealer firms in the United States. Overseen by the U.S. Securities and Exchange Commission (the "SEC"), FINRA is a membership-based self-regulatory organization (SRO) that creates and enforces rules for members based on federal laws.

While the SEC is generally responsible for ensuring fairness for individual investors, FINRA is tasked with overseeing and monitoring U.S. stockbrokers and brokerage firms.

FINRA also has the authority to fine, suspend and/or bar brokers and firms from the securities industry and can file formal complaints, in which case the broker would face a formal enforcement hearing. However, it is not unusual for brokers and broker-dealers to settle FINRA alleged violations by entering into what is known as a Letter of Acceptance, Waiver, and Consent (an "AWC").

An AWC will typically provide a factual background and the circumstances that lead to FINRA's findings and will also cite the FINRA rules believed to have been violated. An AWC will also contain the agreed upon penalties that are being imposed as part of the settlement. Although the exact penalties vary on a case-by-case basis, practically speaking those signing AWCs are: (i) accepting FINRA's recitation of the named violations; (ii) waiving the right to a hearing and to any appeal with respect to the named violations; and (iii) consenting to the penalty described in the AWC.

Primary's AWC

Based on the information contained in Primary's AWC from August 16, 2021 (the "Primary AWC"),[1] we know Primary first became involved in EB-5 offerings in December 2013 after hiring two (2) unnamed representatives (the "Representatives").

The Representatives conducted their EB-5 business through Primary and EB-5 securities offerings ultimately became an integral component of Primary's business, constituting over 50% of its revenue by 2018. According to the AWC, Primary acted as finder or placement agent for at least 70 EB-5 offerings between December 2013 and February 2019.

Although the Representatives previously left Primary and Primary is no longer engaged in the EB-5 securities offering business, FINRA still pursued Primary for various FINRA rule violations cited in the Primary AWC that Primary committed between 2013 to 2017.

The first violation set forth in the Primary AWC involves Rule 3110(a), which requires member firms like Primary to establish and maintain systems to supervise "associated persons" (that is, the Representatives) in order to achieve compliance with securities laws and FINRA regulations. Similarly, Rule 3110(b) requires member firms to establish, maintain and enforce written procedures to supervise the

1 See https://www.finra.org/sites/default/files/fda_documents/20170531168 01%20Primary%20Capital%2C%20LLC%20CRD%20127921%20AWC%20rjr.pdf

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types of business in which it engages.

Primary consented to the violation of Rule 3110 by acknowledging that it allowed the Representatives to conduct EB-5 business as "outside business activity" that wasn't subject to Primary's supervision policies. As an additional example, Primary did not conduct any review of the Representatives' electronic communications relating to the EB-5 business. As a result, Primary did not have any system in place that could reasonably monitor its EB-5 business.

Moreover, Primary failed to update its written supervisory procedures (WSPs) to address its involvement in EB-5 offerings until December 2017, nearly four years after it first became involved with EB-5 transactions and thus required it to be so registered. Even then, the WSPs failed to provide adequate guidance to representatives who facilitated and participated in EB-5 transactions, specifically failing to provide guidance on procedures concerning soliciting customers to invest in an EB-5 project.

The second violation alleged in the Primary AWC was Rule 2210, which addresses member communications with the public.

Since Primary's own WSPs specify that websites fall within advertising for the purposes of FINRA rules, Primary required its representatives to obtain advance approval with respect to their websites.

However, the Representatives maintained their own websites from 2013 to 2017 and Primary failed to conduct regular supervisory reviews of those websites in violation of Primary's own WSPs.

Finally, the Primary AWC alleges violation of FINRA Rule 5123, which requires that a member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act of 1933 either: (i) submit a copy of any private placement memorandum, term sheet or other offering document used in connection with such sale to FINRA within 15 calendar days of the date of first sale, or (ii) notify FINRA that no such offering documents were used.

However, from April 2017 through February 2019, Primary failed to make timely filings with FINRA related to 16 offerings.

Although the Primary AWC does not require Primary to admit to any of the findings contained in the Primary AWC, Primary did consent to the imposition of (i) a $50,000 fine and (ii) formal censure by FINRA relating to the factual findings contained in the Primary AWC.

Impact of Substandard Broker Dealer Behavior on Your EB-5 Offering

Unfortunately, the Primary AWC demonstrates that sometimes the broker dealers engaged to help facilitate compliant EB-5 transactions can violate their own supervisory rules. Although there is no implication that any EB-5 offering conducted through Primary violated any securities laws, there are potential problems that could be caused by a broker-dealer engaged by an EB-5 issuer.

First, the public nature of an AWC (including the possibility of censure by FINRA) lead to potential reputational and relationship issues for EB-5 issuers.

Second, depending upon the nature of the violations, a broker-dealer's violation of securities laws in connection with an EB-5 offering could potentially nullify the securities exemption on which the offering relies. In that event, the EB-5 offering itself could be subject to claims of securities law violations, including claims that might be asserted by investors in those offerings.

Third, depending upon the nature of any statements made by a broker-dealer in connection with an EB-5 offering, it is possible that those statements could be attributed to the EB-5 issuer, and could potentially lead to claims being asserted by investors against the EB-5 issuer under federal and state securities laws.

Supervising your Supervising Broker

Based on the lessons learned from the Primary AWC and the potential ramifications for broker dealer violations, EB-5 industry operators would be wise to properly vet potential broker dealers and their compliance policies.

It would also be prudent for EB-5 issuers to periodically contact their broker dealers to an effort to ensure the broker is taking the necessary steps to conduct the offering on behalf of the EB-5 issuer in a manner that is compliant with all applicable securities laws and FINRA rules.

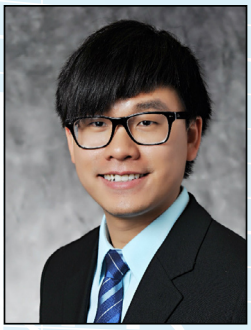
Although each EB-5 offering and broker dealer arrangement is different and requires a unique approach to due diligence, the following questions may serve as a preliminary guide for EB-5 issuers desiring to more closely monitor their broker dealer:

- Do you have written policies in place designed to achieve compliance with applicable securities laws and FINRA rules?
- If so, do your written policies contain guidance specific to EB-5 transactions and soliciting prospective EB-5 investors?
- Did you file our offering memorandum and other offering documents with FINRA?
- Are all employees associated with our EB-5 offering registered broker dealers? And is their activity actively monitored and subject to your firm's policies concerning compliance?

Additionally, EB-5 issuers would also be well advised to periodically monitor their broker dealers using FINRA's broker check website,[2] where operators can learn more about any disciplinary actions, AWCs or other regulatory events pertaining to their broker dealer.

2 See brokercheck.finra.org.

Impact of the Lapse of the EB-5 Regional Center Program on Investors, Investments, and Job Creation



LEE Y. LI
DIRECTOR OF POLICY RESEARCH & DATA ANALYTICS, IIUSA

Summary

The EB-5 Regional Center Program (the Program) was created as a pilot program by the Congress in 1992 to stimulate local economic growth via foreign direct investment. Since its inception, the Program has served as a catalyst to the U.S. economy, saving and creating hundreds of thousands of American jobs and delivering tens of billions of capital investment for American businesses. While the Program has been experiencing short-term reauthorizations since 2015, it has expired since July 1, 2021 because Congress failed to pass a legislation to extend the Program beyond its last sunset date.

Not only is the current lapse in statutory authorization of the Program preventing regional centers from generating new foreign direct investment to aid in the nation's economic recovery, it's also putting EB-5 investments already in place and committed to job-creating projects at stake. With their legal immigration process put on hold indefinitely due to the lapse of the Program, immigrant investors who have already invested in the U.S. through an approved regional center could withdraw their EB-5 application and capital investment, potentially leading to tens of thousands of lawsuits and putting economic funding and job creation at risk.

Our analysis shows that the current lapse has affected nearly 32,600 committed immigrant investors with an I-526 petition on file, putting at least $15 billion in capital investment and over 486,900 American jobs in jeopardy (see Table 1).

Committed EB-5 Investors & Families Affected by the Lapse

Under the current lapse in authorization of the Program, United States Citizenship and Immigration Services (USCIS) has halted their adjudication of all I-526 petitions filed by EB-5 investors affiliated with regional centers. According to USCIS, nearly 12,800 EB-5 investors had a pending I-526 petition as of June 30 when the Program expired. Historically, according to the Department of State, 93.4% of the EB-5 visa numbers have been used by applicants who invested through a regional center. That is, nearly 12,000 EB-5 investors with an I-526 petition on file will not receive any adjudication on their EB-5 cases during the lapse of the Program and experience delays in their legal immigration process (see Table 2).

In addition, the July, August, and September Visa Bulletins noted that EB-5 visa numbers are "unauthorized" for issuance to all applicants who are associated with the Program (the "I5" and "R5" categories). As a result, visa applicants

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TABLE 1: IMPACT OF THE LAPSE OF THE REGIONAL CENTER PROGRAM

Number of EB-5 Investors and Families Impacted		32,590
Amount of EB-5 Investment Committed	$	15,216,600,000
Number of American Jobs at Stake		486,931

Source: Author's Calucation based on Data from USCIS and DOS

TABLE 2: : ESTIMATED NUMBER OF RC-AFFILIATED EB-5 INVESTORS WITH AN I-526 PETITION PENDING WHEN THE PROGRAM EXPIRED

As of June 30, 2021

Number of I-526 Petitions Pending	12,798
Percentage of I-526 Petitions Affiliated with a RC	93.40%
Number of RC-Affiliated I-526 Petitions Pending	**11,953**

Source: Author's Calucation based on Data from USCIS and DHS

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with an approved I-526 petition currently are not able to receive any EB-5 visa number after the Program's expiration on June 30. Based on data from USCIS and Department of State, IIUSA estimates that more than 20,630 EB-5 investors whose I-526 petitions have been approved are not able to continue their legal immigration process due to the lapse of the Program (see Table 3).[1]

I-526 Petition Awaiting Conditional Legal Permanent Residency (CLPR)

Overall, it's our estimate that nearly 32,600 EB-5 investors who have invested in a job-creating project through an approved regional center are affected by the current lapse of the Program. These committed investors and their family members are facing an indefinite delay in their legal immigration process until the Program is reauthorized by Congress.

Capital Investment & Job Creation at Stake

Each one of these EB-5 investors who are affected by the lapse of the Program has already committed at least $500,000 in capital investment to an economic development project in the U.S. By our estimates, approximately 300 of these investors have invested at least $900,000 through a regional center after the EB-5 regulatory reform raised the minimum investment amount between November 21, 2019 and June 22, 2021.

We estimate that nearly $4.9 billion in capital investment has been or is in the process of being injected into the U.S. economy through a regional center from EB-5 investors with a pending I-526 petition when the Program expired on June 30.[2] In addition, EB-5 investors whose I-526 petitions have been approved have already generated over $10.3 billion, funding a variety of job-creating projects through regional center across the country. **Together, more than $15 billion in capital investment has been committed by the EB-5 investors who are affected by the current lapse of the Program (see Table 4).** These investments are at stake if the Program is not reauthorized by Congress.

Furthermore, these EB-5 investments save and create jobs for American workers. In fact, the Department of Commerce concluded that each unit of EB-5 investment is expected to create 16 jobs when used in conjunction with other financing sources.[3] **That is, nearly 487,000 American jobs would be generated by the EB-5 investment associated with the immigrant investors whose legal immigrant process is affected by the lapse of the Program.** These jobs are now at stake.

Lastly, the vast majority of EB-5 projects are funded by a combination of EB-5 investment and other financing sources such as bank loans, developer equity, etc. In addition, EB-5 investors are required to pay taxes to the federal, state, and local governments on their worldwide income. The role of EB-5 investment in a project's capital stack and the tax benefits from immigrant investors both indicate that the economic consequences associated with the lapse of the Program are well beyond the amount of EB-5 investment or the number of American jobs at stake, and potentially could amount to tens of billions of dollars. It is imperative for Program to be reauthorized by Congress in order to prevent this significant economic loss.

1 Due to data scarcity, we have to rely on approximation to estimate the number of investors that fall into this category. Specifically, according to USCIS, 21,503 EB-5 applicants with an approved I-526 petition were awaiting visa availability due to the backlog. These investors are affected by the lapse and not able to receive any EB-5 visa numbers even though they are not used by other applicants. In addition, based on USCIS' latest data on I-526 quarterly statistics, a total of 592 I-526 petitions were approved during Q3, FY2021. It's unlikely that these investors with a newly I-526 approval were able to secure a conditional permanent residency before the Regional Center Program expired on June 30th given the current processing time for visa interviews.

TABLE 3: ESTIMATED NUMBER OF RC-AFFILIATED EB-5 INVESTORS WITH AN APPROVED

As of June 30, 2021

Number of Approved I-526 Petitions Awaiting Visa Availability	21,503
Number of Approved I-526 Petitions Awaiting Conditional Legal Permanent Residency	592
TOTAL Number of EB-5 Investors with an Approved I-526 Petition (As of June 30)	22,095
Percentage of I-526 Petitions Affiliated with a RC	93.40%
Number of RC-Affiliated I-526 Cases with an Approved I-526 Petition Awaiting CLPR	20,637

Source: Author's Calucation based on Data from USCIS and DOS

TABLE 4: EB-5 CAPITAL INVESTMENT AND JOB CREATION AT STAKE DUE TO THE LAPSE OF THE PROGRAM

Case Status	Capital Investment Committed	Job Creation as Stake
EB-5 Investors with a Pending I-526 Petition	$ 4,898,200,000	156,742
EB-5 Investors with an Approved I-526 Petition	$ 10,318,400,000	330,189
TOTAL	**$ 15,216,600,000**	**486,931**

Source: Author's Calucation based on Data from USCIS and Dept. of Commerce

2 According to USCIS Office of Policy & Strategy, approximately 391 EB-5 investors filed I-526 petitions when the minimum investment amount was raised to $900,000 between December 2019 and May 2021. The estimated amount of EB-5 investment generated by EB-5 regional center investors with a pending I-526 petition is calculated based on the minimum investment amounts ($500k and $900k) and the 12-month average I-526 approval rate.
3 U.S. Department of Commerce. 2017. Estimating the Investment and Job Creation Impact of the EB-5 Program.

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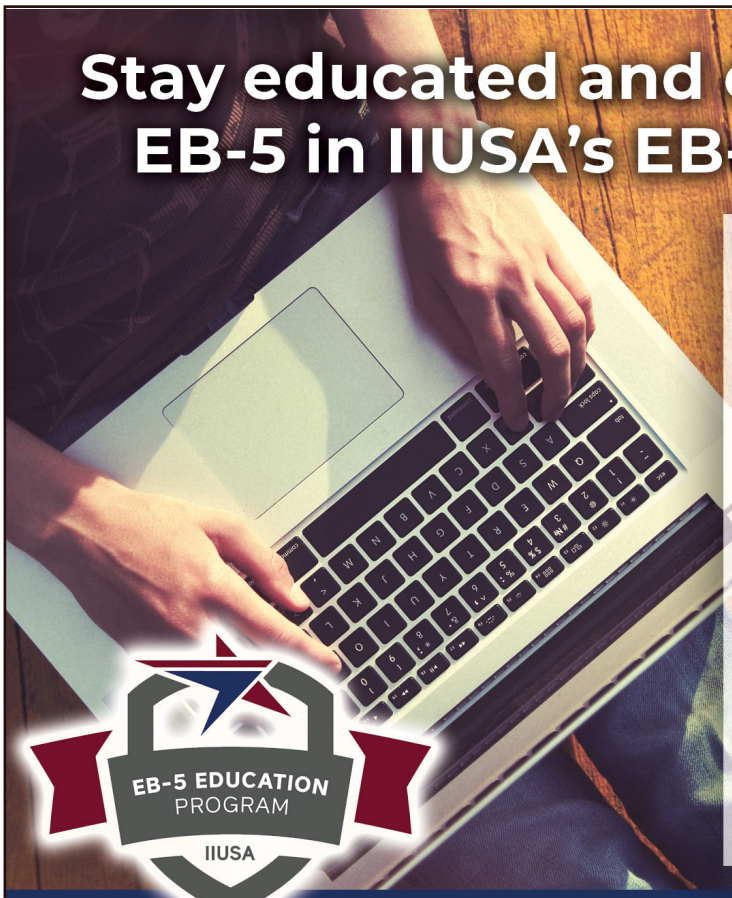

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