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VIA [www.federalregister.gov](http://www.federalregister.gov)

March 13, 2023

U.S. Citizenship & Immigration Services  
Department of Homeland Security

**RE: Notice of Proposed Rulemaking - U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements CIS No. 2687–21; DHS Docket No. USCIS 2021–0010**

To Whom It May Concern:

Invest in the USA (IIUSA)<sup>1</sup> registers its strong objection to the proposed fee increase to Forms I-956, I-956G, I-526, I-526E, and I-829, as the basic assumptions used as inputs to the NPRM analysis are profoundly flawed rendering its conclusions inappropriate and unduly burdensome.

We are particularly alarmed by the proposed extreme fee increase because the NPRM does not anticipate using the additional fees to provide significant additional resources or staff for EB-5, even though processing times for EB-5 applications are already staggeringly long.<sup>2</sup>

Also, because processing times are so long, the filing fees will presumably increase even further following the Fee Study mandated by the EB-5 Reform and Integrity Act of 2022 (“Reform Act”), as USCIS imposes fee increases to pay for additional resources to bring processing times within the timeframes laid out in the Reform Act.<sup>3</sup> The Reform Act specifically requires a fee study, and adjustments in fees to bring EB-5 processing times in line with the prescribed times in the Reform

<sup>1</sup> Invest in the USA is the 501(c)(6) non-profit trade association of the EB-5 Regional Center industry.

<sup>2</sup> “Despite the changes in the law and program, DHS has proposed fees in this rule based on the currently projected staffing needs to meet the adjudicative and administrative burden of the Immigrant Investor Program Office pending the fee study required by section 106(a) of the EB-5 Reform and Integrity Act of 2022.” (NPRM p. 107) At \$59 million, the “Projected Total Cost” used as input for EB-5 forms in the NPRM is only 9% higher than the \$54 million Total Cost input for EB-5 Forms in the FY2016/2017 fee rule – in real terms a significant decrease, considering 22% cumulative rate of inflation from 2017 to 2023 (IEF Supporting Documentation Appendix Table 3). In the FY 2022/2023 fee review, USCIS estimates an annual average requirement of 245 positions in IPO. (NPRM p. 509), which has been the authorized staffing level since 2017

([USCIS Ombudsmans 2017 Annual Report to Congress.pdf](#) p. 11). Under this resource level, median processing times for EB-5 forms have ballooned from under 2 years as of 2018 to over 4 years as of 2023 (<https://egov.uscis.gov/processing-times/historic-pt>).

<sup>3</sup> EB-5 Reform and Integrity Act of 2022, Section 106(a).

Act. Instead of following that requirement, USCIS has increased fees (dramatically), without any study, or plan to bring down processing times.

### *Inaccurate Inputs to the Model*

The proposed EB-5 fees in NPRM are so high primarily because NPRM inappropriately forecasts such a small number of incoming EB-5 receipts to cover the cost. As explained in the NPRM, its method is to determine the required operating budget, and then spread those costs over the estimated future volume of receipts. As the number of receipts entered in the fee formula go up, the calculated fee per receipt comes down, and when the estimate of future volume of receipts underestimates the number of receipts, the calculated fee per receipt goes up.

As an example, the NPRM determined the cost input for Forms I-956 and I-956F (share of resources necessary for IPO to sustain operations and deliver services) is \$2,177,846 per year. The NPRM then divides this figure by the number of expected receipts per year to determine the estimated cost per filing. In this case the NPRM assumed a total of only 62 I-956 and I-956F filings per year. Dividing \$2,177,846 by 62 produces a cost per I-956 or I-956F of \$35,127. The NPRM then proposes to add what it deems is the EB-5 industry's fair share of non-EB-5 USCIS costs in the amount of \$12,568 per filing, for a total filing fee of \$47,695.

Inasmuch as the USCIS website indicated there were 632 designated regional centers as of October 25, 2021<sup>4</sup> (and this number is again confirmed in the Federal Register Notice regarding EB-5 Integrity Fees issued March 1, 2023.) This number does not account for I-956 applications for entirely new (not previously authorized regional centers.)<sup>5</sup> USCIS policy requires every one of them to file an I-956 Application for Regional Center Designation as an amendment or face termination, the estimate of only 62 I-956 or I-956F filings is wildly inaccurate. This is not hyperbole - dividing \$2,177,846 by 632 would produce a cost per filing of only \$3,446 compared to the NPRM's \$35,127.

The NPRM states further that “[c]aptured in the dataset for Form I-956 is also Form I-956G, which regional centers must file annually to establish continue eligibility for regional center designation for each fiscal year.”<sup>6</sup> If this is so, it should add another 632 filings to the estimated number of receipts.

In addition to the I-956 filing mandate, every regional center that seeks to offer EB-5 investment opportunities to individual investors must first file an I-956F Application for Approval of Investment in a Commercial Enterprise before any related I-526E petition may be filed. I-956F is a new form and process created by the EB-5 Reform and Integrity Act of 2022 (RIA). It is unlike the previous Form I-924, which could optionally be used as an “exemplar” to request project approval (an option that many regional centers chose not to exercise considering the disincentives of long processing times, lack of deference, and added cost). Form I-956F is not optional; an I-956F must be filed for

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<sup>4</sup> <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/approved-eb-5-immigrant-investor-regional-centers> , last visited March 6, 2023.

<sup>5</sup> CIS No. 2725-22; DHS Docket No. USCIS-2023-0001] RIN 1615-ZB97 Notice of EB-5 Regional Center Integrity Fund Fee federalregister.gov/d/2023-04295,

<sup>6</sup> NPRM, page 548.

every single regional center project offered to investors. The fee rule must consider I-956 and I-956F separately, since they are now entirely different forms, and neither equivalent to the predecessor I-924. But if considered together, the receipt estimate must include a significant number of I-956F filings per year at least at the same level of exemplar filings in 2019. This would further reduce the cost per filing.

Another USCIS policy that impacts the number of filings is the requirement that regional centers file an I-956 Application for Regional Center Designation as an amendment in the following circumstances:

- Changes to the regional center's name
- Changes to the regional center's ownership
- Changes to the regional center's organizational structure or administration
- Sale of the regional center
- Other arrangements, such as a new hire, or a promotion, that would result in individuals not previously subject to the bona fides verification requirements under INA 203(b)(5)(H) becoming involved with the regional center
- Changes to the geographic area of the regional center

These additional amendment filings would further increase the volume of I-956 receipts. While it is hard to imagine that the same fees would be applied to amendments of this nature that require very little in the way of USCIS resources, one would expect some fee would apply and impact the fee levels.

### ***EB-5's share of non-EB-5 USCIS cost allocation imbalanced***

IIUSA recognizes that fee waivers are required in certain cases unrelated to EB-5, and other fee-paying product lines must bear a portion of the cost of such applications. However, IIUSA believes that the allocation of such costs to EB-5 should be no more burdensome than the share apportioned to other employment-based filings. For example, the NPRM proposes Cost Reallocations of less than \$300 per form for I-129 and I-140 filings to cover unrelated USCIS costs, whereas the NPRM allocates an additional \$12,568 to I-956 and I-956F filings<sup>7</sup>. IIUSA believes regional centers should not shoulder a greater allocation of unrelated USCIS costs than employer-petitioners filing I-129 and I-140 petitions.

The NPRM states that "Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for a service than those with less ability to pay. The requirements of immigrant investor program indicate that immigrant investors and regional centers have the ability-to-pay more than most USCIS customers. In addition, compared to the amount of capital required and the required investment levels for an immigrant investor, the amount of the USCIS fees are an insignificant amount."<sup>8</sup>

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<sup>7</sup> IEF Supporting Documentation Appendix Table 4

<sup>8</sup> NPRM, page 510.

Speaking for the regional center industry, we find the boldness of these assumptions breathtaking. EB-5 regional centers should not be viewed as having a greater ability-to-pay than the many corporations filing thousands of H-1B petitions every year. The highest EB-5 filing fees are charged to regional centers, and USCIS acknowledges in the NPRM it has no insight into the revenues of regional centers to determine whether they qualify for small entity status<sup>9</sup>. It is not the regional centers that receive the capital investments of EB-5 investors. The EB-5 investors must make an investment into a new commercial enterprise affiliated with the regional center. The NCE in turn must use the funds for job-creating activities, and USCIS, in adjudicating I-829 petitions, verifies the funds were expended for job-creating activities. It is the agreement between the regional center and new commercial enterprise that determines what compensation the regional center will receive in exchange for extending the regional center relationship to the NCE. Often the bulk of administrative fees paid by individual investors – which the NPRM notes average \$50,000, are paid to agents and brokers who introduce investors to the new commercial enterprise.

The NPRM proposal to burden EB-5 filing fees with an annual total \$21.27 million to be reallocated to non-EB-5 expenses is unreasonable not only by comparison to other EB categories, but considering USCIS needs at the Investor Program Office. IPO itself has a significant non-fee-paying EB-5 workload to handle, especially since the EB-5 Reform and Integrity Act created new EB-5 tasks including new EB-5 forms with no filing fee (I-956K). Now more than ever, the Investor Program Office needs all possible resources to handle the EB-5 workload, considering that EB-5 form processing times have become consistently the worst of any category (with the exception of I-918),<sup>10</sup> And finally, USCIS currently has an outstanding liability<sup>11</sup> of almost \$100 million to the EB-5 category based on deferred revenue from uncompleted work (calculated from the number of Form I-526, I-829, I-924, and I-924A pending as of September 30, 2022, multiplied by the filing fee received for each of those unadjudicated forms). Given these facts, diverting revenue and resources away from EB-5 is reckless.

### ***Other observations***

NPRM assumes, without explanation, that the future will see fewer investors reaching the I-829 stage than in recent years, as well as fewer regional center annual report filings.

NPRM does not include Form I-956H or Form I-956K in the fee analysis. The Form I-956K currently does not have a filing fee and are not considered as a revenue source, but it does create costs. The NPRM analysis lists I-526 and I-526E petitions as a single line item with one fee, assuming that they are essentially the same form and have identical workload. In fact, the new I-526E has half the content of the new I-526, and neither form is identical to the old I-526. Adjudication of I-526E petitions is greatly simplified under the Reform Act by virtue of the ability to incorporate by reference the related I-956F filing. On the other hand, standalone I-526 petitions remain complex. These filings should be considered as separate product lines.

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<sup>9</sup> NPRM, page 558

<sup>10</sup> <https://egov.uscis.gov/processing-times/historic-pt>

<sup>11</sup> Considering the explanation of deferred revenue in FY2022-2023 Immigration Examinations Fee Account: Fee Review Supporting Documentation (January 2023), p 22.

The NPRM treats Form I-956F as an uncounted subset of Form I-956, assuming that they are essentially the same form and have identical workload. In fact, the I-956 and I-956F have entirely different content and workload, and neither has content identical to the predecessor I-924. I-956 and I-956F should have their costs, receipts, and fees listed and assessed separately.

In short, the NPRM proposes to increase EB-5 form filing fees by 150% to 300%, using completely inappropriate inputs and at the same time does not anticipate significant additional resources or staff for EB-5. The proposed EB-5 fee increase is driven by the assumption that EB-5 costs will remain fairly constant while volume of fee-paying receipts will drop going forward.

The USCIS fee review severely underestimates the future costs and staffing requirements that IPO will require to provide adequate service. Consider the small number of I-526, I-829 and I-924 decisions in 2020, when IPO already had 236 staff, as evidence that backlogs will likely grow if authorized staff remains capped at 245.

For all these reasons, we object to the NPRM's proposed fee increases for EB-5 benefits urging instead the use of sounder bases and assumptions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron L. Grau", with a long horizontal flourish extending to the right.

Aaron L. Grau  
Executive Director