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EB-5

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Letter from the Editor

Dear Readers,

As we approach the September 30, 2026 grandfathering deadline, the EB-5 industry stands at an important crossroads. What once felt far off is now just one year away, and stakeholders are taking stock, reviewing compliance, and preparing for what comes next under the Reform and Integrity Act.

Looking a bit further ahead, the September 30, 2027 reauthorization deadline is already on the horizon. While two years may seem like plenty of time, experience reminds us that reauthorization efforts require early, coordinated advocacy. IIUSA is hard at work ensuring policymakers and the public understand the continued importance of EB-5 to U.S. economic development and job creation.

This edition of the Regional Center Business Journal highlights both reflection and readiness — exploring how the industry has adapted to the RIA and what is needed to ensure a strong, sustainable future. I am grateful to the authors and members of the **IIUSA Editorial Committee** for their time, expertise, and commitment to sharing knowledge that strengthens our community.

If you are passionate about EB-5 and interested in shaping the conversation, the **IIUSA Editorial Committee** is actively seeking new, energetic members to join us. Whether you enjoy brainstorming article ideas, writing, or editing, we welcome your participation in advancing the RCBJs mission of providing premier education for EB-5 stakeholders. To learn more or express interest, please contact **education@iiusa.org**

Thank you for reading — and for your continued engagement in shaping the next chapter of the EB-5 Program.

Sincerely,
Osvaldo (Ozzie) Torres
IIUSA Editorial Committee Chair | Torres Law, P.A.

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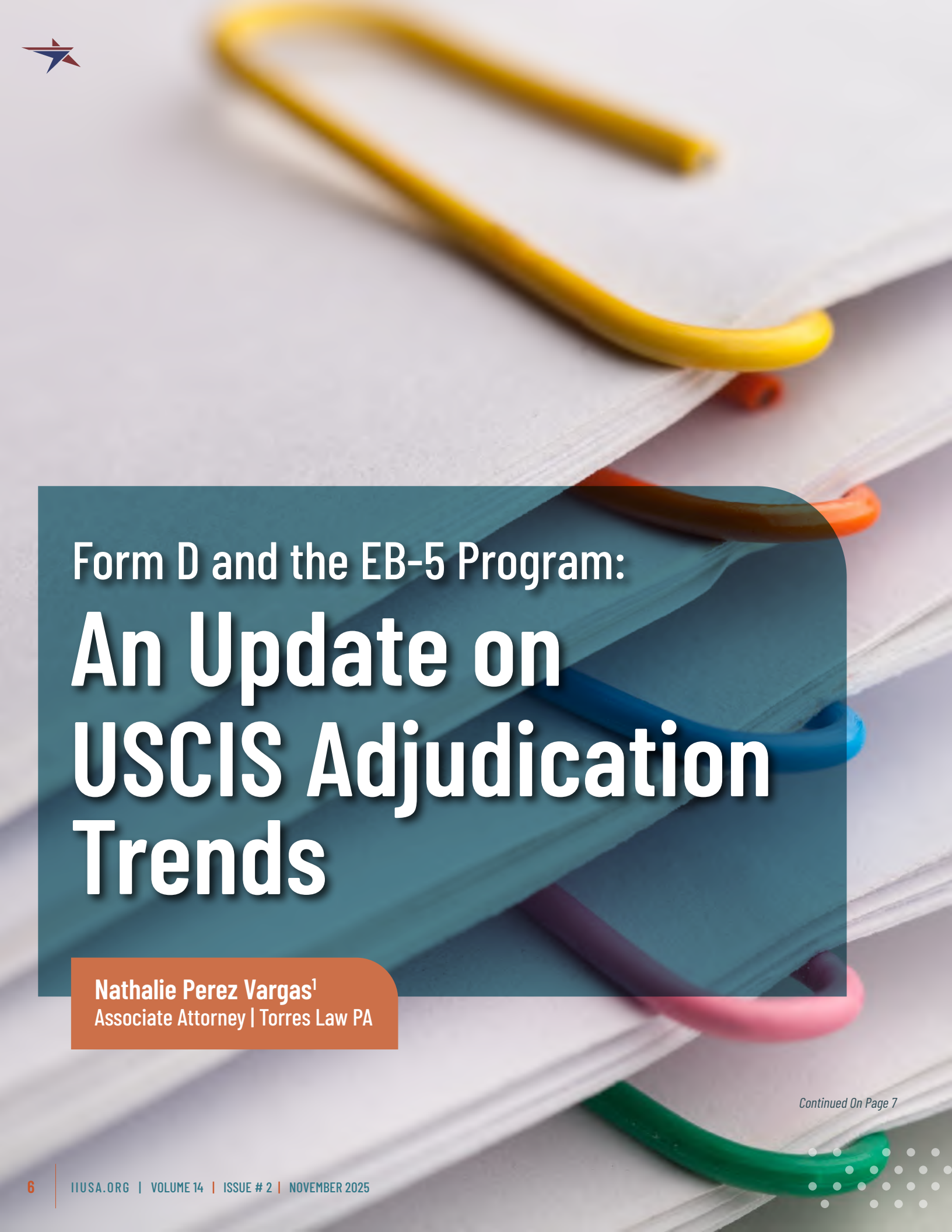

Form D and the EB-5 Program:

An Update on USCIS Adjudication Trends

Nathalie Perez Vargas[1]
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The EB-5 Reform and Integrity Act of 2022 (the "**Integrity Act**") requires regional centers to provide evidence of federal and state securities filings in connection with EB-5 project applications.[2] As with any other element subject to review as part of a EB-5 project application, lack of evidence of such securities filings could jeopardize the approvability of an EB-5 project filing. In fact, USCIS is seemingly issuing a Request for Evidence "**RFE**") or Notice of Intent to Deny ("**NOID**") for EB-5 project applications that do not include a Form D filing and/or similar state level filings—even if, technically, a Form D was not required to have yet been filed by the new commercial enterprise ("**NCE**") from a securities law perspective. Nevertheless, it appears that USCIS has determined that a Form D filing is a necessary component of an EB-5 project application, and will issue an RFE or NOID where a copy is not included in the filing package (and irrespective of whether an NCE has accepted investors under Regulation D). Given this recent trend, this article (i) provides a general overview of Form D and its enforcement under federal securities laws, (ii) discusses the impact of Form D on EB-5 offerings and adjudications of EB-5 project applications, and (iii) explores the necessity of preemptively filing Form D to avoid undue delay.

FORM D: AN OVERVIEW

Federal securities laws require offers or sales of securities to either be registered with the Securities and Exchange Commission (the "**SEC**"), or to meet an exemption from registration under the Securities Act of 1933 (the "**Securities Act**").[3] Most offers and sales of securities by to EB-5 investors that are U.S. persons or otherwise located in the U.S. are conducted under the exemption afforded by Regulation D. More specifically, Regulation D offers two key safe harbors: Rule 506(b) and Rule 506(c) . Under Rule 506(b), an NCE may sell its securities to an unlimited number of "accredited investors" provided that the NCE does not engage in any general solicitation or advertisement.[4] Rule 506(c), on the other hand, allows an NCE to conduct general solicitation and advertising of the offering and securities; however, all investors must be "accredited investors".[5] Notably, the issuer must typically take reasonable steps to verify the "accredited status" of the investors.[6]

An additional requirement of Regulation D is that all issuers relying on such exemption must file a notice known as Form D with the SEC.[7] Form D is a notice filing with the SEC that must generally be filed no later than 15 calendar days after the first sale of securities in the offering.[8] The first sale is considered to be the date on which the first investor is irrevocably contractually committed to invest in the offering.[9]

Form D includes, amongst other things, general information about the issuer and the offering, including the state of formation of the issuer, names and addresses of the principals of the issuer, the exemption upon which the issuer is relying, certain information about the offering (e.g., offering amount, number of investors), and information about brokers engaged by the issuer.[10] The filing of Form D is a two-step process. Issuers must first submit a form known as Form ID to request access to the SEC'S Electronic Data Gathering, Analysis and Retrieval ("**EDGAR**") system.[11] Following approval of Form ID, issuers can file Form D in EDGAR.

An issuer may amend a previously filed Form D at any time.[12] However, there are specific events or changes that required an amendment to Form D.[13] Furthermore, a Form D must be amended on or before the first anniversary of the filing or the filing of the most recent amendment, if the offering is ongoing.[14] In addition to filing Form D, issuers must also comply with state securities laws registration known as "blue sky laws." Although every state has its own blue-sky requirements, states often require issuers to also register their offering in the state where it conducts a sale.[15] Most states require proof of Form D filing together with the applicable state registration or notice.

SEC ENFORCEMENT OF FORM D

Failure to file Form D when required by applicable securities laws is a violation of securities laws and can have severe consequences for an issuer and its offering. On December 20, 2024, the SEC announced charges against two private companies and one registered investment adviser for failing to timely file Forms D for several unregistered securities offerings in violation of Rule 503.[16] One of the companies involved in this action was GRID 202 LLC d/b/a Re-Envision Wealth ("**GRID**").[17] The SEC found that two funds controlled by GRID conducted unregistered offerings and were involved in general solicitation.[18] GRID failed to timely file a Form D for these offerings in violation of Rule 503.[19] The SEC further provided that because GRID used general solicitation, the offerings could not have been conducted without the exemptions under Rule 504 or Rule 506(c)[20] (since offerings conducted in reliance upon these two rules must also comply with the requirements of Rule 503 of the Securities Act, and therefore must also file Form D).[21]

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[2] See INA 203(b)(5)(F)(i)(III)
[3] See www.investor.gov/introduction-investing/investing-basics/glossary/rule-506-regulation-d.
[4] Id.
[5] Id.
[6] Id.
[7] See 17 C.F.R. §230.503(a)(2025)
[8] Id.
[9] See www.sec.gov/resources-small-businesses/exempt-offerings/filing-form-d-notice
[10] See Form D (2027) - www.sec.gov/files/formd
[11]
[12] See 17 C.F.R. §230.503(a)(2)
[13] See at (a)(3)
[14] Id. at (a)(3)(iii)
[15] See https://www.investor.gov/introduction-investing/investing-basics/glossary/blue-sky-laws
[16] See www.sec.gov/newsroom/press-releases/2024-210
[17] See In the Matter of GRID 202 LLC d/b/a Re-Envision Wealth, Securities Act Re. No. 11346 (December 20, 2024)
[18] Id.
[19] Id.
[20] Id.
[21] Id.

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In its release the SEC explained that:

... "when an issuer does not follow the requirements to file a Form D (or amend its existing Form D filing) it has multiple negative effects. First, the Commission's ability to fully assess the scope of the Regulation D market is impeded, which is key to the Commission's understanding of whether Regulation D is appropriately balancing the need for investor protection and the furtherance of capital formation, particularly as it relates to small businesses. Second, it harms the Commission's ability to monitor and enforce compliance with the requirements of Regulation D as well as state regulators and self-regulatory organizations' ability to monitor and enforce other securities laws and the rules of securities self-regulatory organizations. Finally, it impacts investors and other market participants" ...

The SEC further provided that although a failure to file a Form D does not result in a loss of the exemption under Section 5 of Regulation D, the failure to comply with the requirements of Rule 503 itself is a violation of the Securities Act and rules promulgated thereunder.[22] In addition to cease-and-desist orders, GRID was ordered to pay a civil penalty of $60,000 to the SEC.[23]

FORM D AND THE EB-5 PROGRAM

Like other exempt private placements, EB-5 offerings must comply with applicable securities laws. In fact, it should be clear by now that securities laws compliance is a point of emphasis under the Integrity Act. In fact, Section 203(b)(5)(F)(i)(III) of the Integrity Act expressly requires regional centers to include any documents filed with the SEC under the Securities Act, or with the securities regulators of any state, as required by law.[24] This would, of course, include a copy of Form D filed with the SEC, so long as such filing would be required by applicable securities laws at the time an NCE submits its EB-5 project application.

However, as mentioned above, USCIS is seemingly including Form D on its adjudication checklist, and is issuing RFEs and NOIDs when a copy is not preemptively included in a project application.

For a securities law practitioner, a request of this nature will immediately trigger a closer analysis of the facts and circumstances surrounding an EB-5 offering. Although USCIS might consider Form D necessary for any and all EB-5 offerings, the fact is that Form D is not required for every EB-5 offering. For instance, not all NCEs accept Regulation D investors; and even if there is flexibility to accept such an investor in the future, such flexibility does not inherently require that Form D be filed at the time of the EB-5 project application.

As an additional example, some EB-5 offerings are conducted entirely offshore in reliance upon Regulation S of the Securities Act. Assuming all the relevant requirements of Regulation S have been satisfied, offers and sales made under Regulation S do not trigger a Form D filing.[25] Furthermore, timing is an important consideration in determining whether Form D is required. Even where an NCE intends to rely on Regulation D, a Form D is not required until 15 days from the date of the first sale. In that context, an issuer would not be required by applicable securities laws to have filed Form D with the SEC at the time of the filing of the EB-5 project application.

Nevertheless, it seems that USCIS' trend is to request further evidence (or potentially deny an EB-5 project application) where no Form D is included in the application, irrespective of whether the NCE has already determined that such filing is not required by applicable securities laws at such time. While that may not comport with applicable securities laws, EB-5 industry participants must be aware of how USCIS is adjudicating project applications in the context of Form D filings, and must balance the risk of RFEs and NOIDs (and the inherent delays they cause) with the "cover" that may be afforded to an issuer that preemptively files Form D and submits a copy to USCIS alongside its project application.

Ultimately, EB-5 industry participants would be well advised to consult with securities counsel on the applicability of Form D to their EB-5 offering. Even though a Form D filing may not necessarily be required at the time of an EB-5 application, a preemptive Form D filing may provide comfort with respect to future securities laws compliance and also help NCEs avoid unnecessary scrutiny from USCIS during adjudication of the project application.

[22] Id.
[23] Id.
[24] See INA 203(b)(5)(F)(i)(III)
[25] See 17 C.F.R. §230.500(g)

The Gold Card Proposal and EB-5:

Complementary Pathways to U.S. Investment Immigration

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Founder & Managing Partner | Williams Global Law

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INTRODUCTION

Investment immigration is once again in the spotlight. In February 2025, President Donald Trump unveiled the concept of a new "Gold Card" visa — originally structured as a $5 million direct-payment pathway to U.S. residency, framed as a tool to reduce the national debt and attract ultra-wealthy foreign nationals. The proposal was notable for its departure from traditional investment visa models, relying on a donation-style contribution rather than requiring funds to be invested "at risk" in a job-creating enterprise.

In September 2025, President Trump issued an Executive Order revising the program, lowering the threshold to $1 million, introducing a $2 million contribution tier, and reserving the $5 million level for an enhanced "Platinum Card" option that promises additional incentives, including extended U.S. presence without worldwide tax liability. The Executive Order directs the Departments of Commerce, Homeland Security, and State to implement the program within 90 days and to establish expedited processes for immigrant visa issuance and adjustment of status.

The announcement has sparked immediate debate within the investment immigration community. For an industry long anchored by the EB-5 Program, the key question is whether the Gold Card is intended to compete with, complement, or eventually disrupt the EB-5 framework.

For investors and practitioners who have watched EB-5 evolve over three decades — generating billions in capital investment, creating millions of U.S. jobs, and undergoing multiple reforms to strengthen compliance — the comparison highlights a fundamental policy divide. EB-5 ties immigration benefits directly to measurable economic development, while the Gold Card envisions a fiscal contribution model that channels capital to the U.S. government with no job-creation mandate.

A side-by-side analysis reveals where the two programs diverge, where they overlap, and whether they may ultimately coexist as parallel options in the U.S. immigration landscape.

WHAT IS THE GOLD CARD PROPOSAL?

The "Gold Card" is a newly announced immigration initiative launched by Executive Order, intended to serve as a fast-track pathway to U.S. permanent residency for ultra-high-net-worth individuals and corporations. Unlike the long-standing EB-5 Program, which is embedded in statute and requires investors to place capital "at risk" in job-creating U.S. enterprises, the Gold Card introduces a direct-payment model. Under the current framework, contributions of $1 million or $2 million by corporations may qualify, while an enhanced $5 million tier offers additional incentives. These contributions are not treated as investments subject to return or risk but are instead considered supportive evidence of eligibility for existing immigrant visa categories such as EB-1A (extraordinary ability), EB-2 (exceptional ability), and EB-2 NIW (national interest waiver). Successful applicants would obtain permanent residency under one of these existing categories, while a related initiative—the Platinum Card—would permit recipients to reside in the United States for up to 270 days per year without incurring U.S. tax liability on non-U.S. income.

The Gold Card marks a clear departure from traditional investor visa frameworks. It eliminates requirements to generate U.S. jobs, assume commercial risk, or deliver a measurable return. Instead, it functions as a donor-driven revenue channel for the federal government, targeting individuals and corporations with significant liquid assets. Advocates argue that its simplicity could make the U.S. more competitive with countries that already operate "golden visa" or citizenship-by-investment programs. Critics, however, warn that the absence of statutory authorization, economic multipliers, or integrity safeguards exposes the program to legal and political vulnerabilities, including questions about whether it aligns with congressional intent behind EB-1 and EB-2 immigration categories.

In short, while EB-5 has built its legitimacy on measurable economic impact and strict compliance mechanisms, the Gold Card positions itself as a luxury, contribution-based residency option, emphasizing speed and flexibility over broader U.S. economic multipliers.

The proposal was first unveiled by President Trump in February 2025, framed not as an economic development tool but as a fiscal instrument designed to raise revenue and reduce the national debt. At that time, the concept was pitched as a straightforward $5 million flat contribution in exchange for permanent residency, with potential eligibility for U.S. citizenship thereafter. Commerce Secretary Howard Lutnick initially suggested that the Gold Card might replace the EB-5 Program, criticizing EB-5 as "full of nonsense, make believe and fraud." Subsequent clarifications, however, indicated that the Gold Card would likely operate alongside EB-5, sparking debate within the investment immigration community about whether it should be seen as a supplement to or a substitute for existing pathways.

On September 19, 2025, the Administration issued an Executive Order lowering the investment threshold from $5 million to $1 million, introducing a middle-tier $2 million option, and reserving the $5 million contribution level for the newly created Platinum Card. The stated goal was to make the program more accessible while still ensuring significant capital inflows. The Executive Order directed the Departments of Commerce, Homeland Security, and State to implement the Gold Card within 90 days and to establish an expedited process for immigrant visa issuance and adjustment of status "consistent with law, public safety, and national security."

Despite this directive, no implementing regulations or detailed guidance have been issued, leaving critical questions

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unresolved. Under U.S. law, new visa categories must be created by Congress through the Immigration and Nationality Act (INA). While the Gold Card does not purport to establish a brand-new category, it instead attempts to fit within the framework of existing EB-1 and EB-2 classifications by treating a qualifying contribution as additional evidence of eligibility. This approach, however, leaves the program on uncertain legal footing: key operational issues—including how adjudicators will weigh donations as evidence, the role of oversight and compliance, and the program's alignment with EB-5 and other investment pathways—remain undefined and vulnerable to legal or political challenge.

The structural design of the Gold Card and Platinum Card diverges sharply from established investor visa models. Whereas EB-5 requires capital to be invested in a manner that produces measurable job creation, the Gold Card's $1–$5 million contributions would be treated more as donations—a one-time transfer to the federal government untied to specific enterprises or economic outputs. This positions the Gold Card less as an economic stimulus program and more as a pure fiscal instrument, with analysts noting that it would distinguish the United States from other golden visa regimes worldwide, which typically set lower entry thresholds and link eligibility to defined asset classes such as real estate, government bonds, or infrastructure funds.

Proponents suggest that the Gold Card could generate substantial government revenue if global demand is strong. However, the program is likely to appeal only to a narrow segment of ultra-high-net-worth individuals, particularly those who have historically avoided U.S. residency due to worldwide taxation rules. The Platinum Card seeks to address this deterrent by offering extended U.S. presence without taxation on foreign-sourced income—though the mechanism for achieving such an exemption under current tax law remains unclear.

In short, the Gold Card proposal highlights a shift in U.S. immigration policy: away from linking residency to job creation and economic development, and toward leveraging immigration benefits as a revenue-generating tool. While potentially attractive to global elites seeking speed, prestige, and tax flexibility, its legitimacy, durability, and ultimate impact remain open questions until statutory authority, regulatory guidance, and oversight mechanisms are fully defined.

WHAT IS THE EB-5 PROGRAM?

Created by Congress in 1990, the EB-5 Immigrant Investor Program was designed to harness foreign capital for domestic job creation.[1] Unlike the Gold Card's proposed direct-payment model, EB-5 requires applicants to place funds "at risk" in a commercial enterprise that generates at least ten full-time U.S. jobs. The investment thresholds—currently $800,000 in targeted employment areas (TEAs) or infrastructure projects and $1.05 million elsewhere[2]—make the program accessible to a broader pool of high-net-worth individuals than the Gold Card's $5 million flat price point.

What sets EB-5 apart is not only its job-creation mandate, but also its track record. Independent analysis has shown that from 2016 to 2019 alone, EB-5 investments generated $75.2 billion in private capital, created 1.7 million jobs, contributed $184 billion to GDP, and raised $14.5 billion in tax revenues—all without burdening U.S. taxpayers. Each investor, on average, supported forty-five American jobs, and every $500,000 invested catalyzed an additional $1.6 million in private capital.[3]

The program has also evolved to ensure greater integrity. The EB-5 Reform and Integrity Act of 2022 reauthorized the Regional Center Program through 2027 and implemented strict safeguards: mandatory audits, transparency measures, escrow protections, and heightened compliance with federal securities laws.[4] These reforms have fortified EB-5 against fraud and reinforced its reputation as a structured, job-creating channel for investment immigration.

In short, EB-5 is a program that ties immigration benefits to demonstrable economic outcomes, distinguishing it sharply from the Gold Card's revenue-raising model. It is not simply a buy-in for residency, but an engine of measurable impact across American communities.

COMPARATIVE ANALYSIS: EB-5 vs. GOLD CARD

Investment Thresholds and Capital Access

EB-5. The EB-5 program sets investment thresholds at $1,050,000 for standard projects or $800,000 in Targeted Employment Areas (TEAs). These levels are high but attainable for a broad pool of high-net-worth individuals, particularly entrepreneurs and professionals from countries with long visa backlogs. EB-5 investments are typically structured through regional centers or direct projects in ways that produce at least a minimal return, even if the investor's overriding motivation is immigration. The design emphasizes capital at risk, with investors sharing both financial and immigration outcomes tied to project performance.

Gold Card. The Gold Card sets contribution levels of $1 million and $2 million for qualifying applicants, with an enhanced $5 million option that provides additional incentives. Unlike EB-5, these funds are not invested in a commercial project with the potential for returns; rather, they are structured as direct, unrestricted transfers to the U.S. government. Applicants would not anticipate even nominal investment returns, underscoring that the Gold Card is intended primarily as a fiscal revenue mechanism rather than an economic development program tied to job creation or business growth

Job Creation Requirements

EB-5. A central feature of EB-5 is its statutory job creation requirement: each investment must create or preserve at least ten full-time jobs for U.S. workers. These jobs must be documented and verified as part of the investor's petition to remove conditions on permanent residency. This framework ties immigration benefits directly to measurable economic outcomes

[1] See 8 U.S.C. § 1153(b)(5).
[2] See 8 U.S.C. § 1153(b)(5)(C)(i)-(ii).
[3] "New Report: EB-5 Immigrant Investor Program Contributed $184 Billion to U.S. Economy and Created 1.7 Million Jobs in 2016-2019 Alone," IIUSA, Invest In The USA, 06 Jun. 2025, https://iiusa.org/blog/new-report-eb-5-immigrant-investor-program-contributed-184-billion-to-u-s-economy-and-created-1-7-million-jobs-in-2016-2019-alone/
[4] 8 U.S.C. § 1153(b)(5)(E)-(F).

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and ensures that foreign capital translates into domestic employment.

Gold Card. The Gold Card, as described, carries no job creation requirement. Instead, its rationale rests on indirect effects: high-spending residents will contribute through consumption, taxes, and perhaps philanthropy. While proponents suggest these individuals will "employ a lot of people" by virtue of their wealth, the absence of a statutory job mandate distinguishes the Gold Card sharply from EB-5's development-driven model.

Oversight, Compliance and Lawful Source of Funds

EB-5. The EB-5 Program is embedded within a detailed regulatory framework. Petitions are adjudicated by USCIS, subject to Department of Homeland Security oversight, and reviewed for lawful source of funds. The 2022 Reform and Integrity Act strengthened this oversight by requiring regular audits, enhanced reporting, and compliance protocols at the regional center level. Several states, such as Vermont, have added their own rules, including annual audits, escrow protections, and complaint procedures.[5] EB-5 investments are explicitly classified as "securities," bringing them under federal and state securities regulation. These layers of scrutiny have built confidence in the program's integrity.

A defining feature of the EB-5 Program is its stringent focus on the origin and lawful path of investment capital. Every petition must be supported by comprehensive documentation tracing the investor's funds from their original source—whether personal savings, business proceeds, sale of property, gifts, or loans—through each layer of transfer, until the capital reaches the U.S. enterprise. This evidentiary standard goes well beyond a simple declaration; it requires a paper trail that demonstrates both the lawful source and the lawful path of the funds. To enforce this, the Department of Homeland Security established the Immigrant Investor Program Office (IPO), where adjudicators receive specialized training in financial forensics and fraud detection. This level of scrutiny has made EB-5 one of the most tightly monitored immigration programs, with the practical effect of screening out illicit funds and reinforcing the integrity of the investment pool.

Gold Card. The Gold Card, by contrast, has not yet been legislated or operationalized. As such, the details of vetting, adjudication, and compliance mechanisms remain to be defined. Proponents of the proposal have emphasized that investors would undergo screening to ensure suitability, but the precise standards—whether related to source of funds, anti-money laundering, or national security—are not yet specified. Specifically, the Gold Card initiative has not yet outlined a comparable framework for source-of-funds review. Because it is structured as a donation-based program layered onto existing EB-1 and EB-2 visa categories, the Executive Order does not explicitly mandate the same rigorous financial tracing that EB-5 investors must undergo. That said, it is reasonable to expect that the Administration may draw on EB-5's established compliance model, particularly if the program is to gain credibility with regulators, Congress, and the public. The IPO, with its institutional expertise in vetting complex financial records, would be a logical candidate to oversee any Gold Card funds review. However, expanding the IPO's responsibilities to include Gold Card adjudications could stretch its already limited resources, potentially slowing processing not only for Gold Card applicants but also for the EB-5 pipeline. This raises important operational questions about how—and by whom—the integrity of Gold Card donations will ultimately be verified. This open space offers policymakers flexibility: they could adapt proven safeguards from EB-5 or design new systems tailored to the distinct features of the Gold Card.

Tax Treatment

EB-5. For EB-5 investors, the tax implications are well-defined. Once an individual becomes a lawful permanent resident (green card holder), they are considered a U.S. tax resident under the Internal Revenue Code. This means they are subject to worldwide taxation—reporting and paying U.S. taxes on all income, regardless of whether it is earned in the United States or abroad. While predictable and consistent with long-established statutory rules, this requirement can significantly impact high-net-worth investors with substantial foreign-sourced income, family-owned businesses overseas, or complex global asset structures. Many EB-5 investors must engage in careful pre-immigration tax planning to restructure holdings, establish trusts, or relocate assets to minimize double taxation and comply with reporting requirements such as FBAR (Report of Foreign Bank and Financial Accounts) and FATCA (Foreign Account Tax Compliance Act). In this respect, EB-5 provides certainty, but the burden of full U.S. tax residency is a material consideration in the decision-making process.

Gold Card. In contrast, the Gold Card and particularly the Platinum Card introduce a new dynamic. Gold Card recipients, by securing permanent residence under existing EB-1 or EB-2 visa categories, would fall under the same worldwide taxation regime as EB-5 investors, with all of the same compliance obligations and planning challenges. The Platinum Card, however, stands apart. It has been described as offering the ability to reside in the United States for up to 270 days per year without triggering U.S. tax liability on non-U.S. income. This feature, if implemented as proposed, would be a powerful incentive for global elites who wish to spend significant time in the United States without becoming full U.S. tax residents.

Yet the legal foundation for this promise remains highly uncertain. The Internal Revenue Code currently does not contain provisions authorizing such a carve-out, and executive action alone may not be sufficient to override statutory residency rules. Without an amendment to the Code or implementing regulations, the Platinum Card's tax exemption could be vulnerable to administrative reinterpretation, legal challenges, or reversal by a future administration. This lack of statutory grounding means that, while the Platinum Card may appear highly attractive from a tax optimization standpoint, it carries significantly greater policy and legal risk compared to EB-5.

Immigration Benefits and Pathways

EB-5. EB-5 investors first receive conditional permanent residency, valid for two years.[6] They must then prove job creation to remove conditions and secure unconditional permanent residency. From there, they are eligible to pursue U.S. citizenship after satisfying residency and naturalization

[5] See 10 V.S.A. § 20.
[6] See generally 8 C.F.R. § 204.6; Path America KingCo LLC v. United States Department of Homeland Security, 426 F.Supp.3d 770 (2019).

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requirements. The staged process ensures compliance with statutory goals while offering a clear path to integration.

Gold Card. The Executive Order creates an expedited immigrant visa pathway through a financial gift of $1 million. The financial gift can serve as evidence of "exceptional business ability and national benefit," which is intended to expedite eligibility for an immigrant visa under existing categories like EB-1 and EB-2. We note that the process is subject to national security and public safety vetting.

Further, the Gold Card would offer permanent residency rather than citizenship outright,[7] with naturalization still subject to existing statutory requirements.[8]

Program Status and Legal Foundation

EB-5. Established by Congress in 1990, EB-5 has since been repeatedly reauthorized and is currently extended through September 30, 2027 under the EB-5 Reform and Integrity Act (RIA). The RIA not only reauthorized the Regional Center Program but also codified "grandfathering" protections: investors who file petitions before statutory or regulatory changes are adjudicated under the rules in place at the time of filing. This stability has been critical for investor confidence. EB-5 investments are also explicitly classified as securities, bringing them under federal and state regulation.

Gold Card. In contrast, the Gold Card is not a congressionally enacted program but an initiative created through Executive Order. Rather than establishing a new statutory visa category, it repurposes existing provisions of the Immigration and Nationality Act (INA). Specifically, donations under the Gold Card are treated as supplemental evidence in support of eligibility under the EB-1A category (extraordinary ability in the sciences, arts, education, business, or athletics), the EB-2 exceptional ability category, or the EB-2 national interest waiver. This approach effectively "backs into" existing visa classifications, positioning the Gold Card as a pathway to permanent residence through established preference categories rather than a stand-alone visa class. The reliance on executive authority gives the Gold Card program flexibility and speed in rollout, but it also exposes it to greater policy risk: unlike EB-5, it lacks statutory protection, grandfathering provisions, or explicit congressional authorization. This means future administrations could amend, restrict, or rescind it more easily, and legal challenges may test whether its use of EB-1 and EB-2 categories aligns with congressional intent. For now, however, the program reflects a novel attempt to attract capital through immigration incentives, leveraging existing law while sidestepping the lengthy process of legislative approval.

Economic Impact and Targeting

EB-5. EB-5's impact is quantifiable. From 2016 to 2019, it generated $75.2 billion in private investment, created 1.7 million jobs, added $184 billion to GDP, and raised $14.5 billion in tax revenues—all at no cost to taxpayers. The program directs capital to key industries such as infrastructure, hospitality, healthcare, and manufacturing, while TEA incentives channel funds to rural and high-unemployment areas that might otherwise lack access to foreign investment.

Gold Card. The Gold Card envisions large fiscal inflows directly into the federal treasury. Yet unlike EB-5, these funds would not be tied to geographic or sectoral development. The model treats immigration primarily as a tool of deficit reduction rather than a vehicle for targeted economic development.

Visa Availability and Applicable Visa Categories

EB-5. The EB-5 Program is subject to an annual statutory allocation of roughly 10,000 visas for principal investors, which in practice translates into 20,000–30,000 total entrants once eligible spouses and children are included. These numbers are further shaped by the per-country limit of 7%, which caps the number of visas available to nationals of any single country. While designed to promote geographic diversity in U.S. immigration, this cap has created substantial visa backlogs in high-demand markets such as China, India, and Vietnam, where demand far exceeds the annual quota. Investors from these countries may face multi-year or even decade-long waits depending on visa bulletin movement and processing capacity.

To address these challenges, the EB-5 Reform and Integrity Act (RIA) introduced visa set-asides for rural projects, high-unemployment areas, and infrastructure investments—categories that offer priority processing and are not subject to the same backlogs as oversubscribed pools. This has opened strategic pathways for investors seeking faster adjudication and earlier visa availability.

Although these constraints have historically been a source of frustration for investors, they underscore EB-5's integration into the broader U.S. immigration framework. The visa cap system ensures that EB-5 must balance investor demand, equitable distribution across countries, and administrative capacity at USCIS. The result is a program that remains highly sought-after despite wait times, with investor confidence often tied to the predictability of visa allocation, the fairness of the per-country system, and the ability of the government to adjudicate cases efficiently.

Gold Card. Unlike what was initially expected, the Executive Order does not establish a brand-new visa category. Instead, it makes use of the already existing immigrant visa classifications under the Immigration and Nationality Act (INA). Within this framework, contributions made through the Gold Card Program are positioned as supplementary evidence of eligibility for existing categories—namely, EB-1A (extraordinary ability in the sciences, arts, education, business, or athletics), EB-2 (exceptional ability in the sciences, arts, or business), and the EB-2 national interest waiver. This means that rather than creating a separate immigration pathway, the program essentially redirects applicants into the EB-1 or EB-2 system, with a qualifying donation serving as an added factor to strengthen their case. Successful Gold Card applicants are therefore expected to obtain lawful permanent resident status through one of these established categories, while Platinum Card applicants would not receive a green card but could be permitted to live in the U.S. for up to 270 days each year without being taxed on foreign-sourced income. In practice, both the Gold Card and the Platinum Card are structured to function within already authorized visa channels. They do not constitute new programs created by Congress, though their reliance on executive action may raise questions about whether this

[7] The President must go through Congress to offer citizenship via the Gold Card because the power to confer citizenship is constitutionally vested in Congress, not the Executive Branch. Article I, Section 8, Clause 4 of the U.S. Constitution grants Congress the authority to "establish a uniform Rule of Naturalization." See also Lynch v. Clarke, 3 N.Y.Leg.Obs. 236 (1844). This power includes the ability to determine the requirements and processes for granting citizenship, as well as the conditions under which it may be revoked. The President, therefore, lacks the unilateral authority to create or implement a pathway to citizenship without congressional authorization.
[8] Citizenship may only be granted pursuant to the terms established by Congress in the Immigration and Nationality Act (INA).

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approach aligns with Congressional intent behind the EB-1 and EB-2 provisions.

An additional complication for the Gold Card is how it would apply to nationals of Mainland China and India, which are already the largest source countries for EB-1 and EB-2 filings. Both categories are heavily oversubscribed because of the per-country visa limits set by Congress under Section 202(a)(2) of the INA, resulting in multi-year delays before applicants can finalize permanent residence. If Gold Card petitions are funneled through these same preference categories, applicants from China and India would still be subject to the existing quota system. In practical terms, this means that while the Gold Card might offer expedited petition processing, it would not resolve the underlying visa availability problem. On the contrary, a surge of Gold Card applicants from high-demand countries could worsen the already significant backlogs in EB-1 and EB-2, extending wait times not only for new Gold Card applicants but also for thousands of individuals already in line.

Risk Comparison

EB-5. The EB-5 Program rests on a strong statutory foundation, having been created by Congress in 1990 and most recently reauthorized through the EB-5 Reform and Integrity Act of 2022. Investors benefit from clear rules, established adjudication standards, and statutory grandfathering protections that ensure petitions are judged under the regulations in place at the time of filing. Oversight is centralized in the Immigrant Investor Program Office (IPO), which has developed deep expertise in financial vetting, fraud detection, and compliance with securities laws. While processing times and backlogs remain a concern, the program offers a high degree of predictability and stability. For investors, the primary risk is not legal or structural uncertainty but rather the performance of the underlying investment and USCIS adjudication delays.

Gold Card. By contrast, the Gold Card rests entirely on executive authority and does not create a new statutory visa category. Instead, it attempts to fit within the existing EB-1A and EB-2 frameworks by treating contributions as supporting evidence of eligibility. This design leaves the program on far shakier ground. Without congressional authorization, it remains vulnerable to legal challenge on the grounds that it stretches the intent of existing law, and it could be narrowed or rescinded by future administrations. Unlike EB-5, there are no grandfathering protections to safeguard applicants if the program changes midstream. Oversight mechanisms have not been defined, raising questions about whether the IPO—or a new office altogether—will handle vetting and compliance. Until these issues are clarified, investors face significant policy, legal, and operational risk when considering the Gold Card.

Public and Political Reception

EB-5. The EB-5 Program, through periodic pauses[9] and reforms[10], has generally enjoyed bipartisan support in Congress due to its documented record of job creation and capital formation. Lawmakers who spearheaded the 2022 Reform and Integrity Act emphasized EB-5's safeguards and economic benefits as reasons for its continued authorization.[11] Public awareness of EB-5 remains limited, but within the policy arena, it is regarded as a pragmatic tool for economic development.
Gold Card. The Gold Card has drawn mixed reactions. Supporters have framed it as a bold fiscal innovation—an unprecedented way to attract ultra-wealthy foreign nationals while reducing the national debt. Some attorneys and industry figures have pointed to precedent in other countries' "golden visa" programs, suggesting that EB-5 and the Gold Card could operate in parallel Critics, however, have raised sharper concerns and have argued that the Gold Card proposal represents a form of commodifying U.S. residency, likening it to a system where wealth grants privileged access rather than adherence to traditional immigration criteria. And if history is any guide, the Gold Card could face the same challenges that have led other 'golden visa' programs to be scaled back or abolished in recent years, with the OECD warning that such schemes are often attractive to criminals and corrupt officials seeking to launder illicit funds.[12]

COMPARATIVE IMPLICATIONS

The contrast here is stark. EB-5 offers stability and clarity: investors know from the outset that U.S. permanent residence brings worldwide taxation, and they can plan accordingly. The Gold Card, while offering speed and simplicity through direct contributions, remains bound to existing EB-1 and EB-2 visa caps and therefore carries significant risks of long backlogs and policy uncertainty. The Platinum Card, on the other hand, promises flexibility and a more favorable tax regime, but with a fragile legal foundation that could change at any time. For risk-averse investors prioritizing certainty and permanence, EB-5 remains the more reliable option. For those who place a premium on mobility and tax efficiency—and are willing to tolerate regulatory ambiguity—the Platinum Card may hold appeal, but with an acknowledged level of uncertainty.

CONCLUSION

The Gold Card and EB-5 reflect two very different approaches to investment immigration. EB-5 is rooted in economic development, tying immigration benefits to job creation, oversight, and measurable community impact. The Gold Card, by contrast, is designed as a fiscal instrument—direct capital in exchange for residency—aimed at deficit reduction and attracting ultra-wealthy foreign nationals.

Yet these differences do not necessarily mean conflict. Industry leaders have emphasized that the programs can serve complementary roles: EB-5 as a channel for foreign direct investment that stimulates local economies, and the Gold Card as a tool for fiscal policy and revenue generation. Each appeals to distinct investor segments, and together they broaden the spectrum of ways foreign capital can support the United States.

For practitioners and investors, the task ahead is to watch how these proposals evolve in legislation and practice. EB-5, with more than three decades of demonstrated economic impact, remains a proven pathway. The Gold Card, still aspirational, could introduce an additional layer to the investment immigration landscape if implemented with appropriate safeguards. Both pathways underscore the enduring principle that foreign investment, when structured carefully, contributes meaningfully to the American economy.

[9] Dellon, Leslie. "Congress Ends Months of Uncertainty for Immigrant Investors in Regional Centers." American Immigration Council. 25 Mar. 2022. https://www.americanimmigrationcouncil.org/blog/eb5-update-immigrant-investors-regional-centers/.
[10] EB-5 Immigrant Investor Program Modernization, 84 Fed. Reg. 35,750 (July 24, 2019) (codified at 8 C.F.R. pts. 204, 216, 236); EB-5 Reform and Integrity Act of 2022, Pub. L. No. 117-103, div. BB, 136 Stat. 49, 1070.
[11] See "CONGRESSIONAL RECORD — SENATE." 10 Mar. 2022. https://www.govinfo.gov/content/pkg/CREC-2022-03-10/pdf/CREC-2022-03-10-pt1-PgS1105.pdf?
[12] "Trump's red carpet for wealthy foreigners." Financial Times. 26 Feb. 2025. https://www.ft.com/content/9e44c558-bf7e-4a72-81ae-2e1ffee1e7c1?

Litigation Strategies:

Writing of Mandamus - Factors & Trends to Consider

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U.S. immigration applicants are accustomed to the slow-moving immigration processes. EB-5 stakeholders are no different. Even with improvements under the EB-5 Reform and Integrity Act of 2022 ("RIA"), many petitions remain "stuck" without any signs of forward progress. Clients often ask, *"What can we do to move this along?"* In truth, there are only a handful of available options: submit case inquiries, contact your congressional representative, or file a writ of mandamus in federal court. While the first two are legitimate avenues, they rarely move the needle. By contrast, a mandamus action has consistently proven to be the most effective strategy to compel adjudication by all EB-5 stakeholders – be it investor, regional center (I-956), or New Commercial Enterprise or "NCE" (I-956F).

BACKGROUND ON MANDAMUS

A writ of mandamus is a lawsuit asking a federal court to order USCIS to do its job – to adjudicate petitions that have been pending for an "unreasonable amount of time." Essentially, the argument is that an individual or entity has fulfilled all the requirements on their side, and the unreasonable delay is solely on the agency.

A mandamus does not ask the court to approve an EB-5-related petition; instead, it pushes the agency to act on a case that has been pending for too long. Thus, a writ of mandamus does not decide a case or guarantee approval, but it can force USCIS to act when months or years of waiting have produced no progress.

In EB-5 cases, this tool has become increasingly important as processing times vary greatly, leaving investors, project sponsors, and Regional Centers in a state of immigration limbo.

FACTORS TO CONSIDER

While a mandamus is certainly a good option for EB-5 stakeholders, not every delayed case qualifies for a mandamus. There are multiple factors which must be considered to ensure the strongest possible mandamus lawsuit, including, but not limited to the following:

Timing: A mandamus lawsuit should be filed where a petition has been pending for an unreasonable amount of time. It is not an expedite request. If a mandamus is filed too soon, the government may argue the wait is still reasonable, refuse to negotiate, and even move to dismiss the lawsuit. There is no exact answer for how long a petition must be pending before a mandamus is appropriate, but if a plaintiff can show their petition has been pending longer than other similarly situated petitions, they may have a strong case. An investor must also give USCIS reasonable time to do their job. For example, if an investor only recently completed the balance of their investment and filed a supplemental filing, the adjudicating officer may not have had the opportunity to review the new documents.

Visa Bulletin: A mandamus for a pending I-526E and I-485 can only be filed if the I-526E priority date is "current." Therefore, an applicant seeking a mandamus must take the visa bulletin into account when considering a mandamus.

Court Venue/Jurisdiction: A mandamus complaint cannot be filed in any federal court. The complaint can typically only be filed in the district where the court has jurisdiction, such as where the plaintiff, i.e., investor resides, or the district where the case is pending. Venue/jurisdiction is a critical threshold issue and can make or break a case simply because some district courts are more receptive while others not so much.

Individual vs. Group Mandamus: Investors can file a mandamus individually or as part of a group. Besides potential economies of scale, joining a group may provide a strategic advantage, especially for investors in less favorable court districts, since they may be able to benefit from the lead plaintiff's venue options. The tradeoff, however, is that the lawsuit may move at the pace of the slowest group member, which can extend the overall timeline for adjudication and resolution. On the other hand, a mandamus for an individual can oftentimes be prepared quickly, and easily tailored to highlight the specific harms that an investor may face without being forced to wait on information/feedback from others in a group to finalize a lawsuit.

Provide Evidence of Harm caused by Unreasonable Delay: While not required, it can strengthen a case if it can be illustrated the harm one is facing due to the agency's delay. For example, an investor who is the sole breadwinner of the family and has an outstanding job offer contingent on receiving an Employment Authorization Document ("**EAD**") has a strong case for a mandamus.

For an I-956 or I-956F application, articulating real world economic and reputational harm is critical. For example, it is well-known that investors and agents typically prefer I-956F approved projects. A Regional Center can show real world economic harm if they can point to actual prospective investors or agents that have been lost to other I-956F approved projects.

Reserved Categories and Impact on Mandamus: Post-RIA, it is also useful to gather evidence of similarly situated processing times for I-526E petitions, I-956, and I-956F applications. This includes providing evidence of not only general approval times, but specific approval times for EB-5 petitions in high unemployment versus rural categories.

Exhaust Other Remedies: Even if a case has been pending unreasonably long, it is advisable to explore other avenues for relief first. While a plaintiff is not required to exhaust all available remedies before pursuing a mandamus, it can strengthen a case to show a record of "follow ups" and inquiries. These options are not free and sometimes may be enough to get the case adjudicated (especially in instances of a need to expedite an EAD or travel document due to personal urgent circumstances).

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RECENT TRENDS AND RISKS

Mandamus actions have become more common in the EB-5 space; however, results may vary. Some investors have seen approvals within months of filing, while others who have filed aggressively may face motions to dismiss and longer timelines. Overall, a mandamus is not required for most applicants, but it remains a useful and effective tool for those who do need to file.

Like any litigation, a mandamus comes with costs and no guarantees. Sometimes delays in adjudication may even benefit investors. For example, by giving children extra age-out protection under CSPA while the petition is pending or by allowing more time for an investor to complete their full investment.

Some investors may be concerned about retaliation by USCIS. However, officers are generally required to adjudicate a case on the merits, regardless of whether a lawsuit was filed. If the adjudicating officer has questions about the petition, they will issue a Request for Evidence ("**RFE**"). That would happen whether or not a mandamus was filed. The RFE is based on the petition itself, not the lawsuit.

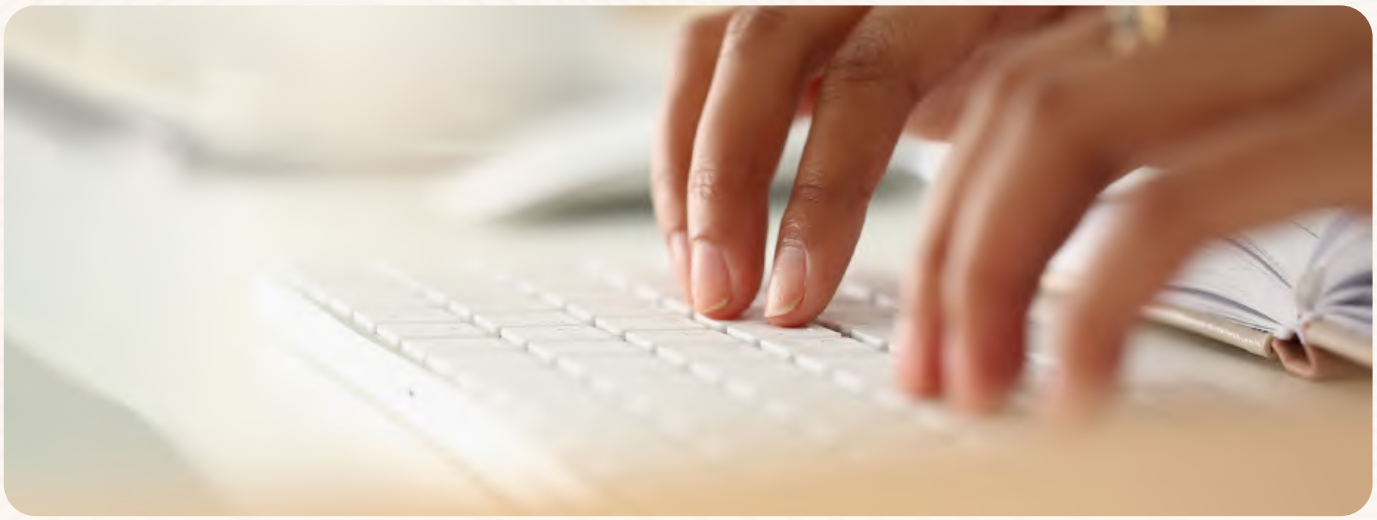
OTHER CONSIDERATIONS

As we've detailed above, mandamus lawsuits are one of the few effective tools the EB-5 industry has to push a case forward that's been pending for an unreasonably long period of time. However, it's also important to remember what mandamus lawsuits are not meant to be:

- They are not meant to be an option for expedited processing. While mandamus is an effective and powerful tool to ensure timely adjudication of cases, it is critical to understand that it is not meant to be weaponized as an expedited processing option. We are aware of investors becoming increasingly aggressive with filing mandamus after their cases have been pending for only a few months or banding together to file a group mandamus. It is critical to discuss the potential impact of filing mandamuses with the investor's EB-5 counsel (since litigation and EB-5 counsel is not always the same).
- Mandamus lawsuits do not guarantee approval or outcome of a case. Remember, all mandamus does is speed up processing of your actual case. The case will be adjudicated based on the strengths and merits that existed at the time of filing. Before filing, it's best to consult with your EB-5 attorney to understand if you have any potential risks of RFE (such as if you are using uncommon financing strategies).
- Have realistic expectations and remember litigation is a two-way street: Mandamus, like any strategy, can be abused. Consequences are dire – Assistant United States Attorneys ("AUSA") may be unwilling to negotiate, aggressively file motions to dismiss, or USCIS may issue retaliatory RFEs and Notices of Intent to Deny (irrespective of whether it's right or wrong).
- Consider whether your case is ripe. If you haven't fully funded your investment, for example, it's difficult to claim that you've fulfilled all requirements. Similarly, if you filed with a partial investment initially and have just funded the balance, one should wait 30 to 90 days to allow USCIS time to adjudicate the case.

CONCLUSION

A writ of mandamus can be an effective way for EB-5 investors to push USCIS into action. A mandamus forces action, not approval, and should be considered as a last-resort tool when other remedies have failed and the delay has become truly unreasonable. Success depends on the facts of the case, the court where it's filed, and the type of petition involved. With the right strategy and experienced counsel, a mandamus can be a useful tool to break through USCIS inaction and keep an EB-5 case moving forward.



The EB-5 Program & Federal Opportunity Zones: Together Driving Economic Impact

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Real Estate Developers, community stakeholders, and government officials in both urban and rural communities across the U.S. have sought innovative solutions to promote jobs, improve infrastructure, and spur community revitalization in America's most distressed communities. As these communities currently experience under-investment, and are often lacking in amenities such as affordable housing, access to healthy food options, and quality job opportunities, community stakeholders have explored a wide variety of tools to decrease real estate development costs, increase the rate of return, and expedite the development process in support of projects that bring positive social and economic benefits to these areas.

While there are a variety of programs and incentives implemented in support of these real estate projects, two initiatives, the EB-5 Immigrant Investor Program, and the Federal Opportunity Zone tax incentive, warrant special consideration given their similar goals of promoting economic activity and job creation in underinvested communities (via at-risk investments in both real estate projects and operating businesses). The purpose of this article is to offer insight into both of these important development tools, and to provide an overview for stakeholders in the EB-5 community seeking to utilize the Federal Opportunity Zone tax incentive to support EB-5 development deals.

DRIVING IMPACT IN THE USA: EB-5 PROGRAM & FEDERAL OPPORTUNITY ZONES

The EB-5 Immigrant Investor Program (EB-5 Program) was established by Congress in 1990 to spur economic development across the United States through job-creating investment in American communities, with an emphasis on promoting job creation in rural communities and in urban communities experiencing high-unemployment. According to the recent IIUSA economic impact study, between 2016 and 2019 alone, the EB-5 Program was responsible for creating over 1.7 million jobs and generating over $75 billion in total investments. Additionally, it is estimated that capital invested under the EB-5 Program has paid over $122 billion in wages to American workers and contributed over $184 billion to the U.S. economy. A key source of capital in rural areas and in areas experiencing high unemployment, the EB-5 Program is estimated by the IIUSA economic impact study to create 45 jobs and $1.6 million per EB-5 investor, which far exceeds the 10 jobs required to be created per EB-5 investor. The top five states for EB-5 investment during the study period were California, New York, Texas, Florida and Nevada.

Similarly, the Federal Opportunity Zone tax incentive, established by the 2017 Tax Cuts and Jobs Act, also has a stated purpose of promoting economic growth and job creation in low-income communities. These communities are defined as census tracts with: (1) a median family income below 70% of the state (or metropolitan area) median; or (2) a poverty rate of at least 20%. State governors are responsible for selecting up to 25% of eligible tracts for Opportunity Zone designation. According to Economic Innovation Group (2025), since the inception of Federal Opportunity Zones in 2017 to 2022, over $89 billion in OZ investments have been made in over 5,600 communities across the U.S. Furthermore, EIG estimates that OZ investments led to over 313,000 housing units across the country, with OZs being a catalytic investment tool spurring economic activity in both OZ and non-OZ census tracts. A recent study conducted by Novogradac (2025) estimates that the top five states for planned OZ investment are California, Arizona, New York, Texas and Ohio.

Though both of the EB-5 Program and Federal Opportunity Zone have stimulated job creation and economic activity throughout the U.S.'s most under-invested communities, each program has their unique investment objective.
In Federal Opportunity Zones, the investor is seeking the capital gains tax benefit that results from the investment, while EB-5 investors are seeking an investment that will yield a U.S. green card for themselves and their families. Notably, EB-5 investors are required to prove that the required jobs were actually created within the U.S. in order to obtain their U.S. green card, whereas OZ investors are not bound by job creation (but do remain limited to eligible investment locations).

FEDERAL OPPORTUNITY ZONES: A BI-PARTISAN COMMUNITY DEVELOPMENT TOOL

As noted above, the Federal Opportunity Zone tax incentive was created as a result of the 2017 Tax Cuts and Jobs Act, and bi-partisan efforts led by Senator Tim Scott (SC) and Senator Cory Booker (NJ), with an intention of encouraging impact investment throughout the U.S. On July 4, 2025, the One Big Beautiful Bill Act was signed into law and ultimately made the Federal Opportunity Zone tax incentive a permanent component of the U.S. Tax Code.

Federal Opportunity Zones facilitate impact as a result of investors who are eligible to receive favorable tax incentives by reinvesting eligible capital gains into a qualified opportunity fund, which then invests those funds into a qualified Opportunity Zone property. As a result of this investment, OZ investors are eligible to defer paying capital gains taxes, and depending on the length of the investment, a reduction in overall taxes owed.

Given that Federal Opportunity Zones and the EB-5 Program share the goal of promoting economic growth and job creation, and that Federal Opportunity Zones often overlap with "Targeted Employment Areas" under the EB-5 Program, real estate developers, impact investors, and community stakeholders have sought to incorporate both of these tools in support of high-impact real estate projects. Of course, doing so requires a careful understanding of the investment objectives and regulatory requirements of each program. For example, one key consideration when using EB-5 capital with the Federal Opportunity Zone incentive, is timelines. Opportunity Zone investors require a 10-year investment, while EB-5 investors want a plan for repayment in approximately 5 years (though they cannot be guaranteed any repayment). The following section contains an example of successful implementation of OZ Investment into an EB-5 deal and can serve as a guide on how developers across the country can utilize these tools within the same project.

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CEDAR CREEK ESTATES:
A CASE STUDY

The Cedar Creek Estates in Jacksonville, FL is an example of a successful project that utilized both the EB-5 Program and the Federal Opportunity Zone tax incentive. Cedar Creek Estates is a new, 45 home, single-family, for rent community. The community is located in a single census tract high unemployment area (USCIS I-956F approved) and in a Federal Opportunity Zone.

The EB-5 investment is managed by Bill Gresser of EB-5 New York State LLC. The developer, Ellavoz Impact Capital, is a social impact investor, advisor, asset manager, and real estate developer focused on creating and preserving workforce and affordable housing and other community-oriented real estate properties. In addition to the project's social impact, utilizing both programs helped achieve financial underwriting criteria, with the Federal Opportunity Zone incentive used for the equity (approximately 45% of the capital), and the EB-5 program providing the debt (approximately 55% of the capital), with a first-priority position mortgage, and no other debt or equity.

In the Cedar Creek project, the project owner, which is the recipient of OZ investment proceeds and the borrower under the EB-5 loan, will meet their required investment time frame for their equity investment, while at the same time, agreeing to refinance and repay the EB-5 loan in five years. This structure meets both the OZ requirements and the EB-5 investors' investment objectives.

Given the social and economic impacts of this project, the City of Jacksonville is a strong supporter of Cedar Creek Estates. These moderately-priced single-family homes range from 1,200 to 1,650 square feet, have an upscale kitchen, open floor plan, attached 2-car garage, and a private, fenced yard within the city limits of Jacksonville. As a newly built, for-rent community, Cedar Creek Estates is the perfect complement to the neighborhood, which has primarily older housing stock.

"As is usually the case with us," said Bill Gresser, President of EB-5 New York State, LLC, "the EB-5 investors find us directly or through their attorneys. This EB-5 investment project required a relatively small number of EB-5 investors who appreciated that the new U.S. jobs are created as construction is being completed in 2025, together with the NCE's first position mortgage to secure the Borrower's repayment."

As noted by the development team, using EB-5 capital to leverage their Opportunity Zone equity was a perfect fit for Ellavoz Impact Capital's Cedar Creek project. The five-year EB-5 loan term allowed Ellavoz Impact Capital to seamlessly transition from the construction phase to rental operations. While many lenders offer either construction or permanent financing, the ability to secure continuous debt capital through EB-5 New York State LLC was extraordinarily valuable to the success of the project. The positive experience and alignment of purpose has led Ellavoz Impact Capital to bring other Opportunity Zone project debt requests to Bill Gresser and his team.

CONCLUSION

Given aligned economic and social impact outcomes (job creation and community revitalization), similar communities (TEAs and low-income communities), and similar development ecosystems, Federal Opportunity Zones can play an integral role to the success of EB-5 Projects. As the EB-5 Program continues to promote impact throughout the United States, developers, investors, and other EB-5 stakeholders should consider the role Federal Opportunity Zones can play in transformative revitalization efforts nationwide.

Automatic Adjustment of

EB-5 Minimum Investment Amount in 2027

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The EB-5 Reform and Integrity Act of 2022 (RIA) inserted a new part of the EB-5 law to increase the minimum investment required every five years, with the first increase effective in January 2027, less than 15 months from now. While for targeted employment areas (TEAs), the investment requirement is still $800,000 today ($1.050 million for non-TEAs), the ***future*** investment requirements are based on formulas in the RIA law. This article explains the impact of these calculations based on this formula.

CURRENT EB-5 INVESTMENT AMOUNT

Pre-RIA, the required EB-5 minimum investment was $1 million for non-TEAs and $500,000 for projects in TEAs . The Pre-RIA law had no provisions in place to adjust these investment amounts, and so those thresholds had been in place since 1990 (32 years) without adjustment.

The RIA raised these thresholds significantly to reflect public policy goals of Congress and inflation since the program's inception. The new minimum EB-5 visa investment amount required has been $1,050,000, reduced to $800,000 for TEA projects and qualifying infrastructure projects, since the RIA was implemented in March 2022.

A MANDATE FOR AUTOMATIC ADJUSTMENT JANUARY 1, 2027

The RIA law mandates automatic adjustments of the investment thresholds every five years, beginning January 1, 2027. These adjustments will be based on the cumulative annual percentage change in the Consumer Price Index (CPI). This ensures that the investment amounts remain aligned with inflation and economic conditions, preventing another extended period without adjustment.

INA Section 203(b)(5)(C)(iii) labeled "Automatic adjustment in minimum investment amount" reads:

> (iii) Automatic adjustment in minimum investment amount...
>
> (I) IN GENERAL, —Beginning on January 1, 2027, and every 5 years thereafter, the amount in clause (i) shall automatically adjust for petitions filed on or after the effective date of each adjustment, based on the cumulative annual percentage change in the unadjusted consumer price index for all urban consumers (all items; U.S. city average) reported by the Bureau of Labor Statistics between January 1, 2022, and the date of adjustment. The qualifying investment amounts shall be rounded down to the nearest $50,000. The Secretary of Homeland Security shall update such amounts by publications of a technical amendment in the Federal Register.
>
> (II) Beginning on January 1, 2027, and every years thereafter, the amount in clause (ii) shall automatically adjust for petitions filed on or after the effective date of each adjustment, to be equal to 75 percent of the standard investment amount under subcaluse (i).

As the language above indicates, the standard investment amount (non-TEA) is calculated first (based on the CPI increases). Then, the TEA/infrastructure amount is calculated by taking 75% of that standard amount. Based on the clauses related to the investment adjustment in the RIA, it appears that the $50,000 rounding provision only pertains to the standard (non-TEA) amount (and not to the 75% TEA/infrastructure calculation). The calculations below incorporate rounding of the base amount only. The projected TEA/infrastructure investment levels are calculated as 75% of the projected non-TEA amount without further rounding.

CPI-U DATA AND PROJECTIONS

As of the date of this article, actual CPI-U level data through August 2025 has been released. The following table demonstrates the actual annual CPI-U levels (2022 through 2025) utilized in this analysis. The beginning of 2022 saw relatively high levels of inflation in the US, while the annual CPI index settled back to around 3% in the second quarter of 2023.

Table 1: CPI-U Levels (Actual)

Date (Jan 1st)	CPI-U Index	% Increase (Annual)
2022	278.8	-
2023	299.2	7.3%
2024	308.4	3.1%
2025	317.7	3.0%

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Table 2: CPI-U Levels (with 2026 and 2027 Projected)

Date (Jan 1st)	CPI-U Index	% Increase (Annual)
2022	278.8	-
2023	299.2	7.3%
2024	308.4	3.1%
2025	317.7	3.0%
2026 (Projected)[1]	**327.6**	**3.1%**
2027 (Projected)	**338.5**	**3.4%**
Total % Increase (2022-27)		**21.4%**

The new investment thresholds will be effective January 1, 2027, and so the CPI-U indexes for January 1st, 2026 and January 1st, 2027 must be estimated at this time. For the main scenario discussed in this article, an annual estimate of inflation based on recent historical annual increases (approximately 3.0% to 3.5%) is utilized. The following table includes the January 1st, 2026 and January 1st, 2027 estimated CPI-U increases.

Under this scenario (with estimated continued annual inflation of between 3.0% and 3.5%), the total CPI-U increase over the relevant time-period for the RIA investment level adjustment requirements would be approximately 20%.

PROJECTION - JANUARY 1ST, 2027 RIA INVESTMENT LEVELS

Table 3: Projected January 1st, 2027 EB-5 Investment Levels (3.0% to 3.5% CPI-U Increase)

Current Investment Level (Standard)	% Increase (2022-27)	Projected Investment Level (Standard - 2027 - Rounded down to nearest $50k)	**Projected Investment Level (TEA - 2027 - 75% of Standard Amount)**
$1,050,000	21.4%	$1,250,000	**$937,500**

As shown in Table 3 above, assuming CPI increases of approximately 3.0% to 3.5% persist for the remainder of 2025 and all of 2026, the resulting TEA/infrastructure minimum investment level would be $937,500.

As these are projections based on recent historical patterns, it is meaningful to also analyze the possibility of higher inflation assumptions for the remainder of 2025 and 2026 (even if these scenarios might be more unlikely). Under these higher inflation scenarios, the 2025 and 2026 annual CPI-U increases would need to average a minimum of approximately 4.25%[2] for the TEA amount to be $975,000 and a minimum of approximately 6.25% for the TEA amount to be $1,012,500.

PLANNING FOR AN INCREASE TO EB-5 INVESTMENT AMOUNT

The changes brought by the RIA mark a significant shift in the investment landscape for prospective EB-5 investors. The increased thresholds and automatic adjustments reflect public policy choices by Congress to ensure the EB-5 program remains practical and reflects current economic conditions. Investors should stay informed about these changes and consider potential future increases in their planning.

[1] 2026 Projected CPI-U Index incorporates 2026 CPI-U through 8/31/25, and then projects inflation from 9/1/25 through 12/31/26 at an annual rate of 3.4%, which is the mid-point inflation rate between (a) 1.83%, the level that would see the TEA investment level remain at $900,000, and (b) 4.88%, the level that would see the TEA investment level increase to $1,012,500.

[2] 4.25% would be the average annual rate for 2025 and 2026 required to increase the TEA investment level to $1,012,500 based on 2026 inflation through 8/31/25, and the 4.88% rate that would be required from 9/1/25 through 12/31/26 to require the further increase.

EB-5 Origins:

Meet Mariza McKee

Founder of Kutak Rock's EB-5 Finance Practice Group

Marisa Marconi
Founder & Lead Consultant | Pinnacle Plan Writing

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There's a delightful irony about the world of EB-5: the program is rooted in building things—opportunities for investors, jobs for American workers, literal buildings. And the industry around the program has been built from the ground up by professionals and entrepreneurs who saw potential where others saw complexity. EB-5 is an industry of builders, and successful builders share common traits: the ability to see nuance and opportunity in the details; the pragmatism to create scaffolding and strategy that enables vision to become reality; and the wisdom to know when taking the risk is the right choice.

Mariza McKee had the makings of a builder from the start.
Born and raised in a tiny Southeast Kansas town, Mariza came from a long line of entrepreneurs. Her family was in the oil business, and she was in the mix from a young age. "By my early teens, I was working in our family office — reviewing contracts, making sense of production records, and tagging along to meetings," she explains. The experience gave her something most teenagers don't get: "an inside view of deal-making, watching how negotiations unfolded and strategies came together — not the typical after-school activity, but one that gave me vocabulary, context, and helped shaped how I approach complex transactions today."

The path continued through her undergraduate studies at the University of Kansas, where she also earned her law degree and MBA, fulfilling an ambition she'd held since fourth grade.

"When I was little, I used to write out courtroom scripts and recruit my friends to play the roles," she recalls. What seemed like childhood play was actually foundational: "At the time, I thought it was just a game, but looking back, it was my first attempt at organizing complex ideas and getting people aligned — something I still do today, just with higher stakes." She also studied international law at Cambridge, building a foundation that eventually led to Kutak Rock, where senior partners clocked her as a strategist and steered her into transactional work: M&A, private placements, the wiring behind complex deals.

But builders gotta build.

In 2011, a managing partner from Kutak Rock's Scottsdale office called with a puzzling transactional deal that had "something to do with immigration." "That was my first EB-5 deal — it landed on my desk in the midst of a heavy M&A workload. At the time, I thought it was just another transaction. I didn't realize it would change the course of my entire career," Mariza recalls.

Her managing partner sent her to an IIUSA conference in Dallas to learn more. What she found there changed everything. "When I first encountered EB-5, it just clicked. I could see it was a triple win: job creation, economic development, and no burden on taxpayers. It wasn't a risk to me; it was a worthy challenge. From the start, I saw the chance to build a finance practice around it. What stayed with me from that conference was the energy in the room — there was a genuine buzz of enthusiasm and possibility, and the timing felt important—we were all at the start of a new iteration of the program."

She saw the opportunity clearly: bridge securities and transactional expertise with the EB-5 program at a firm whose founder, Bob Kutak, literally chaired the commission that wrote the ABA Model Rules of Professional Conduct. "And, that's not just an interesting piece of history — it's a standard we live by. From the very beginning, I wanted our EB-5 practice to reflect those same values of clarity, ethics, and integrity. It's in the firm's DNA," Mariza reflects.

When she returned from the conference, Mariza not only closed the deal but pitched forming a new practice group. Her pitch was pragmatic: EB-5 wasn't a detour from the firm's strengths; it was a logical extension. "Kutak Rock pioneered bond finance and tax credit law, so when I looked at EB-5, it felt like a natural extension of that legacy in government incentive–based financing. From the very beginning, I had incredible support from firm leadership and a deep bench of more than 500 experienced colleagues across the firm to help build our EB-5 finance group, and that kind of strength behind me made all the difference."

Photo by Mariza McKee

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Photo by Mariza McKee

From the start, deciding what not to do was just as important as deciding what the practice group would do. "Those boundaries shaped the integrity of the practice as much as anything we built and I knew it was a long-game play that would require some careful pruning."
The early years were a blend of internal evangelism and external credibility building: conference panels, methodical drafting, a growing referral web. Through her connection with CDFA (the Council for Development Finance Agencies), she became involved with IIUSA early on, speaking at conferences. "When I first got involved, IIUSA was still in its early days, but even then, it was bringing people together and creating a real sense of community and camaraderie in the industry."

Her early visibility helped establish both her practice and her role in building the industry's foundation. She has since served two terms on IIUSA's Board of Directors, has chaired its Best Practices Committee, and has participated in countless conference panels, IIUSA initiatives, sub-committees, and articles.

But Mariza's building extends beyond legal practice. During COVID, she co-founded a firm-wide well-being initiative to serve the 1,000+ legal professionals at her firm, conducting what she believes was the first organizational well-being survey in the legal industry. "The survey gave us benchmarks and a way to actually measure our organizational well-being instead of running someone else's playbook. From there, we built a strategy that defined our initiatives, delivered tailored education and resources on a weekly basis, and, most importantly, proved to our colleagues that we had their backs in ways that really matter and that we were committed to continual improvement to help them build sustainable legal careers."

Today, Kutak Rock's EB-5 practice is a robust team with multiple partners, enough that Mariza can now take a spontaneous family trip and not haul a thousand-page project binder along. During COVID, she relocated from Chicago to Vermont, a decision based partly on her husband's love of the movie "White Christmas." Her Vermont life includes her husband, Patrick, their fifth-grade daughter Violet, Gatsby (a 130-pound mastiff-labrador who does not take orders so much as consider them), and a close-knit community of families who gather regularly for dinners and adventures. She's become the unofficial photographer for the group, drawn to capturing the details that make up their shared lives. "It started with me snapping pictures on my iPhone, but it's grown into a passion — a way to capture the present moment and build a collection of memories that our friends and family can hold onto."

Asked to distill what matters most, Mariza doesn't hesitate: "It's about connection. Building something in the industry or through the profession, or in my personal relationships with people that reflects respect, experience, values, and personal expression. I've found the best outcomes happen when people bring their authentic selves and follow their curiosity."
That curiosity led her to EB-5 nearly 15 years ago. Today, with Kutak Rock established as a leading EB-5 finance practice, she can't help but look to the future, exploring new opportunities around which she can create structure, both professionally and personally.

Because, well, fundamentally, builders don't change, they just find new things to build.

Photo by Mariza McKee

Putting EB-5 Investors on Solid Ground with Liquidated Damages

Charles S. Kaufman[1]
Shareholde | Lexcuity

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A troubling situation has arisen, especially during the wave of post-COVID EB-5 insolvencies, which has caused EB-5 investors to lose not only their financial investment, but their eligibility for permanent visas. Specifically in the case where an EB-5 project has been completed, with sufficient jobs created to support the permanent visas of all EB-5 investors in the project, but there are no financial resources available to preserve the records of the job-creating entity or support the preparation of I-829 petitions for investors. It is bad enough when EB-5 investors lose the value of their investments, but for them to face deportation because they cannot document job creation that actually occurred seems tragically unfair.
This article will explain and recommend a strategy that may, especially when the job creating entity files for bankruptcy, provide an additional source of financing that will allow for the creation and preservation of records that will allow EB-5 investors to prepare and file their I-829 petitions[2], and thereby retain the visa benefits of their investment, even if they lose their financial investment. It should be noted that this strategy will only work if the total value of the job creating entity is likely to exceed the amount it owes on all of its secured loans, and there is always a risk that this will not be the case. Nonetheless, including appropriate provisions in the investment documents at the outset of the investment will preserve the possibility of using the strategy to protect the visa benefits of EB-5 investors in the future even if the project is not financially successful.

BACKGROUND

Most EB-5 investment opportunities involve a company that pools investor funds (referred to as the "new commercial enterprise" or "NCE"), then reinvests the funds in another company that expects to create jobs by building or otherwise creating a new business (the "job-creating entity" or "JCE"). The NCE either lends the EB-5-sourced capital to the JCE (a "debt-model" transaction), or invests it in the equity of the JCE (an "equity-model" transaction).
In a loan-model transaction, the loan agreement between NCE and JCE will typically have detailed covenants designed to require the JCE to fulfill the requirements of EB-5 Program, including documenting job creation efforts and providing supporting documents for investors' I-829 petitions. In equity-model transactions, the investment contract between NCE and JCE, or the organizational documents of the JCE, will typically contain similar provisions for the benefit of the NCE's EB-5 investors.

THE PROBLEM

Unfortunately, when a JCE becomes insolvent, the loan covenants or investment contract provisions will usually be ineffective and leave the NCE and the EB-5 investors with no remedy if support of their future I-829 petitions ceases and necessary documents disappear or become unavailable.

Under state and federal insolvency laws in the U.S., an insolvent JCE is generally placed under the supervision or management of a court-appointed bankruptcy trustee or receiver, who has a legal duty to handle the company's assets for the benefit of its creditors alone. After any secured creditors (like construction lenders) collect on their collateral, the trustee or receiver pools the remaining assets to make the maximum amount available to the unsecured creditors, who each typically receive (if anything) the same fraction of the amount originally owed.[3]

In a typical loan-model transaction, the NCE's remedy if the JCE fails to observe EB-5-related covenants is to declare a default on the loan, which increases the rate of interest and makes the entire loan immediately due and payable. However, in the insolvency situation, a default will have already occurred and the NCE will be in line with other creditors for any possible repayment. The NCE has no remaining lever to enforce EB-5 covenants and the NCE's interest becomes strictly financial. It has no legal basis to require the trustee or receiver to allocate funds to preserve EB-5 documents and prepare exhibits for an I-829 petition. If the project has sufficient value for a workout or to find a buyer to purchase it out of bankruptcy, the successor will take over the project free of all previous indebtedness, including the loan from the NCE with its carefully crafted covenants. The Project would be purchased from bankruptcy by the highest bidder, without any requirement that the bidder agrees to assume obligations to the EB-5 investors.

Many debt-model transactions are structured as "mezzanine loans," where the NCE's loan is secured by pledge of the equity ownership of the JCE. After a default, the NCE can foreclose on the JCE's equity and become its new controlling owner. Unfortunately, such foreclosure is likely of little value in an insolvency or bankruptcy. If a company does not have sufficient assets to repay its indebtedness, its equity is effectively worthless. It is extremely rare for equity holders of a bankrupt entity to have any financial or legal position in bankruptcy proceedings, or to have any role in a successor company that buys assets out of bankruptcy (unless the equity holders bring in in new funds to buy the assets themselves).

In insolvency, the NCE in an equity-model transaction naturally faces the same problem as the holder of an equity pledge. The NCE's financial interest in the JCE, along with its ability to enforce EB-5 obligations, vanishes when JCE's equity become worthless and the distressed company is managed exclusively for the benefit of its creditors.

A SOLUTION

In insolvency and bankruptcy proceedings, how can the NCE have a place at the table to preserve a morsel for the EB-5 investors as the creditors pick over the carcass of the distressed JCE? Some might suggest placing a penalty clause in the EB-5 loan or equity documents to make ignoring the future

[1] BIO and disclaimer on legal advice.
[2] EB-5 investors initially submit a petition on form I-526E to request conditional permanent U.S. residency. At the conclusion of a minimum two-year investment period, the investor submits a petition on USCIS Form I-829 to request removal of conditions based on the investment having successfully created the requisite 10 jobs. If the investor fails to make a timely Form I-829 submission, or USCIS finds reasons to deny the petition, the conditional visa expires and the investor (along with any family members who also received visas derived from the same investment) must leave the U.S. unless they have some other basis for residency.
[3] Even if a JCE with impending insolvency wished to repay the NCE ahead of other creditors, it probably could not. A bankruptcy trustee generally has the right to claw back a debt repayment made within 60 days of bankruptcy as a "preference"; if the NCE and JCE are affiliated, the claw-back right may extend to repayments within a year of the bankruptcy filing.

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I-829 petitions of EB-5 investors more costly than providing for them. Unfortunately, it is a bedrock principal of the common law of contracts that courts will not enforce contractual penalty clauses.[4] However, if properly constructed, courts will enforce a close cousin of the penalty clause: *a liquidated damages* clause.

A liquidated damages clause specifies in advance the amount of damages for the breach of a contract, and the clause is enforceable so long as (1) the amount specified is reasonable and (2) the amount of damages is uncertain at the time the contract is made and would be difficult to prove.[5] As to the first requirement, opportunity cost alone would justify a significant amount as reasonable. Considering the opportunity cost compared to other investments over the life of an EB-5 investment, as well as the costs of relocating back to one's home country, a value of $25,000 to $50,000 or even more seems entirely reasonable.[6] As to the second requirement, what could better characterize the nature of damages from lost immigration benefits than that the value is "uncertain" and "difficult to prove"? That is the crux of the problem that leaves EB-5 investors vulnerable when a JCE becomes financially distressed.

A liquidated damages provision in EB-5 loan or investment documents could, for example, state that if the JCE fails to provide evidence and documents needed to support an EB-5 investor's Form I-829 petition, then it must pay damages in the amount of $25,000. If the JCE has received investment proceeds from 10 EB-5 investors in the NCE, and the JCE breaches its EB-5 documentation and support obligations to all of them, it will then have liability in the amount of $250,000. The trustee or receiver (or court supervisor) then has a financial choice: allow the debt obligations of the bankrupt company to grow by $250,000, or avoid the additional obligations by authorizing a much smaller amount to collect, preserve and organize JCE records and prepare exhibits for future I-829 petitions.

If the JCE is reorganized or its assets are purchased out of bankruptcy, a clause imposing liquidated damages if the JCE dissolves or has a change of control without providing for performance of EB-5 obligations could also protect investors. The trustee or receiver (or supervising court) would then have the choice of seeing additional debt piled on the insolvent entity or, at a lesser cost, providing for the EB-5 obligations to be performed as part of the exit transaction (either completed prior to closing or assumed by the successor entity).

Liquidated damages can be especially beneficial in equity-model transactions. Though the overall nature of the investment in the JCE would remain equity in nature, the liquidated damages should be recognized as a debt obligation in bankruptcy or insolvency proceedings, bringing the NCE to the table as a creditor if the liquidated damages are triggered.

As a caveat, bankruptcy and insolvency laws are complex and it is possible that trustees, receivers or other parties to insolvency actions will develop strategies to defeat or mitigate the effect of liquidated damages clauses and not provide for the performance of EB-5 program-related obligations. But at a minimum, putting a number on the value of lost immigration benefits can only enhance the standing of the EB-5 investors in these proceedings, and will emphasize to any tribunal interested in a fair outcome the magnitude of avoidable harm the investors will suffer if their needs are not addressed.

RECOMMENDATIONS

Be aware of the following when considering and drafting EB-5 liquidated damages clauses:

- Well drafted liquidated damages clauses usually have a preamble clearly stating the intent that the legal doctrine around liquidated damages applies. The clause should expressly state that the loss of the ability to successfully petition on Form I-829 will cause significant and irreparable harm, that the amount of resulting damages is inherently difficult to prove, and that the parties have agreed on the stated amount as a reasonable estimate of the damages that would be suffered.
- Any language suggesting that the liquidated damages serve as a penalty must be avoided.
- Liquidated damages should not be assessed for loss of invested funds, or for job shortfalls that result from business failure. These could be seen as contravening the EB-5 Program's requirement that EB-5 investments remain "at risk."
- The time when liquidated damages arise could be critical. The clause should not be drafted so the liquidated damages are triggered at some indefinite future date – for example, when an I-829 petition is actually denied. Failing to collect, preserve and organize JCE records and prepare exhibits for future I-829 petitions should be an immediate breach when the JCE becomes insolvent or subject to bankruptcy.
- The amount of liquidated damages to be assessed per investor is debatable. To date we have no record of courts weighing the reasonableness of EB-5 liquidated damages awards. The amount of $25,000 - $50,000 is suggested above because it is likely high enough to carry weight among the competing interests in an insolvency action, yet should be deemed well within the range of reasonableness.
- The liquidated damages clause should be placed in the loan agreement for a debt-model transaction, and placed in the investment contract or JCE organizational documents in an equity-model transaction.
- Liquidated damages clauses are enforceable under basic tenets of the common law, and generally should be enforceable in all 50 U.S. states. Nevertheless, these clauses should be drafted by an attorney qualified to advise on the law that governs the contract to make sure any state-specific requirements are addressed.

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[4] Restatement (Second) of Contracts, § 356 (1981).
[5] Id.
[6] The "Gold Card" visa program proposed by the U.S. President could be seen as indicating that the value of permanent U.S. residency in the open market is $1,000,000. While it is possible for a court to disallow liquidated damages as unreasonably low, it would be unlikely to do so unless it had a basis to impose higher actual damages.

Some JCEs and EB-5 project sponsors may object to the kind of liquidated damages clauses recommended in this article. From their perspective, the liquidated damages may appear draconian, with a large total exposure if all investors are affected, and a limited ability to defend against payment once the liquidated damages are triggered. Nevertheless, we recommend that JCEs and project sponsors embrace properly drafted liquidated damages clauses for the following reasons:

- The damages should be easily avoided, at relatively low cost, by simply collecting, preserving and organizing JCE records and providing information needed for exhibits to future I-829 petitions.
- A properly drafted EB-5 liquidated damages clause should not be triggered by investors' loss of invested money, or by failure to create sufficient jobs because of challenges or delays in the JCE's business. It should be triggered only by breach of duties to document the jobs that actually have been created.
- An EB-5 liquidated damages clause is intended to be most useful in an insolvency situation, when even the best-intentioned JCE owner may be forced sit on the sidelines as a trustee, receiver or successor entity decides whether or not to honor obligations to support the immigration objectives of EB-5 investors. It might make the difference between deportation and permanent U.S. residency for the investors.
- Liquidated damages clauses are likely to become a "best practice," and omitting them could present a challenge when marketing an EB-5 investment opportunity.

An EB-5 project owner typically engages in extensive planning before launching a project and seeking investors, and can scarcely conceive that the project may end up in bankruptcy or insolvency. However, the last several years have taught us that even projects that seem safe and solid can be undone by unexpected events and changes to the economy. A properly drafted liquidated damages clause can help ensure that commitments made to EB-5 investors survive economic distress and that financial losses are not compounded by an avoidable loss of immigration benefits.

EB-5 Program Frequently Asked Questions:

A Valuable Resource for the EB-5 Industry

Ashley Sanislo Casey
Director of Education & Professional Development | IIUSA

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In August of this year, the IIUSA Best Practices Committee proudly published an incredibly detailed new resource of EB-5 stakeholders and the greater public: **EB-5 Program Frequently Asked Questions**.

While the idea of an FAQ document can seem rather basic, the one that the Best Practices Committee arduously worked on for nearly two years is anything but simple. The document is in-depth, detailed, and covers the vast array of topics that anyone within or interested in the EB-5 Program may have questions about.

The idea to draft a comprehensive FAQs document was born from the need to update and/or replace the former library of IIUSA best practices documents. After the EB-5 Reform and Integrity Act of 2022 (RIA) was enacted, everything in the previous best practices need to be thoroughly reviewed and heavily edited. Additionally, the previous documents were cumbersome and lengthy so the committee felt it would be to the industry's benefit to provide an easier to use resource.

The EB-5 Program Frequently Asked Questions (FAQs) are a practical, plain-language resource to help promote clarity, compliance, and sound business practices across the EB-5 industry. The FAQs covers everything from core program fundamentals to more nuanced compliance issues — all presented in a way that is accessible to practitioners at every level.
If you have not yet accessed this impressive resource, you are encouraged to do so. As the committee says, "Keep is close at hand and refer to it often in your work." You are also encouraged to share it with your business partners and anyone else who may come to you with questions about the Program as it is meant to be a resource for all.

Lastly, this document is meant to be a, "living document;" one that the committee intends to regularly review and update it, so it is aligned with the evolving laws, regulations, and market realities of the ever-changing EB-5 landscape. If you see anything that needs updating, you are asked to send your recommendation to education@iiusa.org

Thank you to the IIUSA Best Practices Committee for its tireless work to dream up this project, tirelessly draft, review, and redraft the document, and ultimately published a first-of-its-kind resource from which the entire industry can benefit.

READ THE IIUSA EB-5 PROGRAM FAQS

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EB-5 Regional Center Audits:

A Practical Review and Advocacy Roadmap

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AN EVOLVING TOOL WITH HIGH STAKES

As part of the post-RIA (EB-5 Reform and Integrity Act of 2022) landscape, regional center (RC) audits have emerged as a high-stakes compliance mechanism with broad implications. While the official rationale is to uphold program integrity and detect fraud, the reality is more complex. The audit process itself remains uneven, opaque, and at times detached from the very purpose it purports to serve.

This article provides practical insights drawn from the experiences of outside immigration counsel and in-house counsel as well as industry feedback. This article raises key questions about the audit's design, implementation, and consequences, and argues for a forward-looking advocacy framework to support both program integrity and sustainable EB-5 operations.

ARE AUDITS SERVING THEIR PURPOSE?

US Citizenship and Immigration Services (USCIS) audits are presumably intended to uncover fraud, prevent abuse, and ensure compliance with EB-5 statutory, regulatory, and policy requirements. In practice, the audit process can feel disconnected from this mission. Early audits were broad in scope and, in some cases, duplicative of information already submitted to USCIS via I-956G filings.

More recent audits show signs of standardization, but operators still face uncertainty due to the lack of published audit guidelines, undermining the very credibility and proactive compliance measures audits seek to reinforce. If audits are to strengthen program integrity, USCIS should publish a standardized audit framework or checklist, similar to United States Securities and Exchange Commission (SEC) examination manuals, to align expectations, mitigate uncertainty, and reduce unnecessary burden.

WHAT SIGNAL DOES A COMPLETED AUDIT SEND – MARKETING ADVANTAGE OR GREY ZONE?

Regional centers that have undergone an audit and emerged without a Notice of Intent to Terminate (NOIT) or similar notice, may be inclined to view this as a "clean bill of health," but regional centers should be cautious about how they interpret and communicate completion of the audit process. There is currently no official audit "grade" or report, making it somewhat unclear as to what the audit closure and the audit completion letter actually means. Moreover, USCIS has not confirmed whether the information received and reviewed during the audit process influences adjudications of other petitions or forms, such as Form I-829 or Form I-956G. Presenting audit completion as an endorsement risks overstating its significance and possibly misleading investors. To promote transparency and avoid misinterpretation, USCIS should considering issuing brief written audit summaries (even when no adverse findings are made).

While some may view audit completion as a marketing tool, regional centers should exercise caution. Without clear standards from USCIS, announcing a completed audit in promotional materials can raise legal and ethical concerns. Regional centers should consider using only factual descriptions and avoid language that equates an audit with project approval or endorsement of RC operations or compliance practices. Industry stakeholders may wish to develop developing best practices for audit-related disclosures to investors and agents.

PREPARING FOR THE AUDIT PROCESS

Although every audit is different, certain patterns and procedures are emerging as USCIS seems to be moving towards a more structured approach. Regional centers should expect requests for organizational charts (including historical ownership), resumes of key personnel and those in compliance roles, copies of Form I-956G filings and supporting exhibits, project documentation (e.g., Form I-956F filings), records of the flow of capital and banking information, job creation methodology and verification, investor tracking spreadsheets, CRM systems and related databases, and evidence of policies and procedures for compliance, among other potential requests. Regional centers should also expect tighter deadlines for production and, in some cases, "joint" audits for affiliated RCs.

Nonetheless, gaps remain, especially when it comes to the as yet unresolved issue of applying post-RIA standards to pre-RIA conduct. Regional centers may feel compelled to comply with sweeping requests, even when USCIS's legal authority over pre-RIA activities is unclear. Regional centers should adopt a two-pronged approach: cooperate fully with legitimate requests while documenting and challenging potential overreach.

For example, regional centers may wish to request clarification for certain ambiguous government requests in writing, limit document production to only relevant date ranges, and document the legal rationale for not providing documents that are outside the scope of the audit. Regional centers should also negotiate reasonable deadlines to allow adequate time for thorough review before production, and maintain detailed records of all communications and document production requests related to pre-RIA activity. Regional center's immigration counsel can help prepare such responses in coordination with the RC in a manner that maintains cooperation while preserving the RC's legal position. Close coordination between outside immigration counsel and in-house counsel is critical to ensure consistency, manage risk, and balance regulatory compliance with the RC's operational realities.

CONSEQUENCES, FINALITY, AND COMPLIANCE IMPACT

One of the most troubling aspects of the audit process is what happens after. If USCIS concludes an audit without issuing a Notice of Intent to Terminate (NOIT), is the matter considered closed and truly resolved? Can the findings be revisited years

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later? How are audit findings communicated internally across USCIS, and how might they influence unrelated petitions or applications?

USCIS must provide guidance on the finality of the audits, the scope of information sharing and access between internal divisions, the rights of regional centers to challenge findings, and how remedial actions are treated in a NOIT or a post-audit environment.

Clearer regulatory or policy guidance from USCIS on the audit process and its consequences would help regional centers better understand their compliance obligations and foster greater confidence in the audit process. The absence of clear rules breeds uncertainty, which undermines compliance planning.

EFFICIENCY, EVOLUTION, AND INDUSTRY ROLE

USCIS has signaled interest in expanding the volume of audits, which makes efficiency crucial for both USCIS and the regional centers. Practical measures that may streamline the process include targeting audits using risk-based selection criteria and implementing enhanced training for auditors to ensure consistency and fairness. USCIS should also streamline its information requests to reduce administrative burden and introducing standardized audit report formats to improve clarity and consistency. Finally, USCIS should regularly review and update audit criteria based on industry feedback to ensure relevance and practicality.

As audit frequency increases, industry collaboration becomes more important. Stakeholders should proactively share feedback and advocate for refinement of procedures that reduce administrative friction while upholding program goals. USCIS should create a public-facing audit Q&A or guidance bulletin to respond to common industry questions.

CONCLUSION: AUDITS AS A LIVING TOOL

Regional center audits are here to stay. While they present challenges, they also present an opportunity to demonstrate robust governance and sound compliance and operational practices. For regional centers, this means maintaining organized records, responding cooperatively but thoughtfully to USCIS requests, and engaging in industry advocacy for a more transparent and predictable process. Handled well, audits can enhance program credibility with investors and regulators while also encouraging forward looking compliance practices among regional centers. Done poorly, audits risk creating confusion, investor uncertainty, and undue burden on good actors.

This article aims to serve as both a resource for regional centers preparing for audits and a platform for further discussion and advocacy. It is time for USCIS and industry leaders to work together toward a shared audit framework that prioritizes both integrity and sustainability. Greater collaboration between USCIS and industry stakeholders is essential to evolving the audit process into a transparent, fair, and effective compliance mechanism.

EB-5 VOICES
Powered By IIUSA

2026 IIUSA Passport Series: A Key to Our Success

Continued On Page 37

Darrell Sanders
Vice President of Investor Relations | American Life Inc.

With the recent announcement of the 2026 IIUSA Passport Series, American Life, Inc. is excited to share that we will once again be a Gold Level sponsor of next year's events. Our continued sponsorship of the Series has become a key element in our international marketing plan. I credit our sponsorship and attendance at the IIUSA Passport Series events in helping to further our objective to position the company and our very experienced team as known experts in the EB-5 industry.

There is no question 2026 is an important year for EB-5. With the need for reauthorization of the Regional Center Program just around the corner, and the numerous areas of uncertainty affecting the program, there is plenty to discuss as expert-panel topics at these events. With ongoing concerns around visa availability and the imminent backlogs, application processing times, sustainment period, set-aside visas, and the grandfathering of 526 applications beyond 2026…. *there is a lot to talk about*. In addition, with President Trump's continuing efforts, and now most recently an Executive Order, to establish a "Gold Card" visa option to EB-5, foreign agents, financial professionals, and potential investors need to hear from industry experts to sort through the truths and the myths of the President's initiative. Our participation in the panels demonstrates to attendees American Life's leadership and sustained commitment to the EB-5 program. Having been involved in EB-5 since the program's inception over 30 years ago, we are able to bring a unique and historical perspective to the conversations.

Education at these events flows both ways. We get to hear from local experts and learn about changes and concerns in these foreign markets. IIUSA has recently expanded the programming at the Passport Events to include even more panel participation from local industry professionals, sharing their observations of the specific market, and helping us adjust our marketing plans.

The structure of the Passport Series, combining three key cities into a relatively short period, also helps us lower travel and marketing costs. The countries selected for the 2026 Passport Series represent the core markets for EB-5. In the East Asian region, Mainland China, Taiwan, and Vietnam remain our key markets, while India continues to also dominate the EB-5 market due to concerns (recently amplified) over the H-1B, EB-3, and other visa alternatives.

We have seen real results from our investment in our Passport Series sponsorships over the years. We can directly trace the development of new agency relationships in core markets and see tangible results with new investors joining American Life projects. It also allows us to develop relationships with other financial and legal professionals working in those target markets, who can be a source of referrals and deepen our understanding of their local market.

Through our sponsorship, American Life continues to be seen as a trusted leader and expert in the EB-5 industry. We continue to deepen our market penetration and increase awareness of American Life. Participation in the 2026 IIUSA Passport Series will help us accomplish that objective….

See you there!

Redeployments in Affiliated EB-5 Projects:

Conflicts and other Considerations

R. William Cornelius, Esq.
Attorney | Torres Law PA

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Redeployment has long been a hot topic in the EB-5 industry. Arguably one of the most controversial aspects of the EB-5 program in recent years, redeployment refers to the reinvestment of EB-5 capital after repayment of the initial job-creating investment, but before an EB-5 investor has "sustained" his or her investment for the period of time required by the EB-5 program.

Despite debate over sustainment periods and redeployments, the stark reality is that sometimes redeployments are necessary to preserve the immigration benefits sought by EB-5 investors under the EB-5 program.

Increasingly, we are seeing more new commercial enterprises (NCE) redeploying investor capital into new projects with existing EB-5 financing already in its capital stack. While a redeployment in such context could be effected on an entirely arm's length basis, it is perhaps more common to see redeployments where principals of the original regional center, NCE and/or developer are part of the same control group and as such "affiliated" with the new EB-5 project, which inherently creates potential conflicts of interest.

This article provides a brief overview of redeployments, explores the potential conflicts of interest that may arise in the context of related-party redeployments, and discusses strategies to help mitigate potential risks that may arise by virtue of such conflicts.

REDEPLOYMENT: AN OVERVIEW

As most are probably aware, the EB-5 Reform and Integrity Act of 2022 (RIA) makes clear that an EB-5 investor's capital must remain "at risk" for the duration of their sustainment period.

Although the duration of the sustainment period for post-RIA investors remains unsettled, if an initial project repays its loan or equity capital before that period ends, the NCE must redeploy the funds into another qualifying investment to preserve the investor's immigration eligibility.

Assuming the original project was implemented without material change and created the requisite number of jobs, RIA and USCIS policy guidance currently permit redeployments anywhere in the United States (and not just in the regional center's approved geographic zone) so long as the EB-5 capital remains at risk and funds are not redeployed into purely passive investments. However, neither USCIS nor RIA prohibit redeploying into projects where there is already EB-5 financing in place, even where such project is affiliated with the same regional center, NCE or developer.

THE NATURE OF THE CONFLICT

Potential conflicts of interest can arise any time an NCE transacts with affiliates or other related parties because such transactions may be entered into without the benefit of "arms-length" negotiations. Redeployments of investor funds into existing EB-5 projects that are connected to the same regional center, NCE and/or developer are no different.

When NCEs redeploy into affiliated projects, several overlapping conflicts of interest may arise:

1. The NCE and its management team may favor affiliated EB-5 projects because they generate development fees, interest spreads or other compensation that inures to the benefit of management or related parties, irrespective of whether such project offers a lower risk profile or risk-adjusted return for investors.

2. Affiliated redeployments often lack independent valuation or underwriting, which can increase the risk profile associated with a redeployment project.

3. When two separate NCEs that are part of the same control group invest in the same project, there are inherent questions about which NCE would have priority with respect to payment or claims on shared collateral. Additionally, since available assets are likely already pledged as collateral to senior lenders and other EB-5 investments, a redeployment loan into an existing EB-5 project could be undercollateralized or subordinate to existing financing.

4. The EB-5 investors will be relying on the general fiduciary standards which apply to a manager or general partner of an NCE, though there can be no assurance that the interests of the NCE and its management team will be fully aligned with the interests of the EB-5 Investors.

5. Since redeployment transactions entered into between or among affiliates or related parties may not be the result of arm's-length negotiations between unrelated parties, they may not contain market terms designed to protect the interests of unrelated parties.

OFFERING DOCUMENTS & REGULATORY CONSIDERATIONS

Although RIA introduced several mechanisms intended to improve integrity and transparency, and existing securities laws already contain certain investor protections, those safeguards do not explicitly limit an NCE's right to redeploy EB-5 capital into existing EB-5 deals, even where such redeployment might constitute a conflict of interest.

Today, most offering documents expressly address the issue of redeployment. In fact, it is common to see offering documents grant the NCE (or its manager or general partner) broad authority to redeploy funds, even without investor consent.

Of course, issuers should be mindful of redeployment mechanics set forth in the offering documents and underlying operative documents, including requirements regarding notice, approval and consent.

[1] R. William Cornelius is an attorney at Torres Law, P.A., a leading EB-5 law firm specializing in corporate and securities law matters. Mr. Cornelius has extensive transactional law experience and has been actively engaged in the EB-5 arena over the past 10 years representing regional centers, projects and issuers through the corporate structuring, migration broker and offering process to maximize marketability, compliance and funding success.

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However, if redeployment is not addressed or properly treated in the offering and related operative documents and a redeployment is effected where there are undisclosed conflicts of interest, an NCE (and its principals and sponsors) could be exposed to claims for violating both securities laws and the fiduciary duties it may owe to investors.

First, since investors often make their initial investment years before redeployment occurs, they may argue that they were not informed that a redeployment could occur, or that they have not consented to a redeployment into an affiliated EB-5 project (even though offering documents commonly provide that EB-5 investors will not have the ability to approve the nature or risks of redeployments). While the NCE's manager may well benefit from such operational flexibility, NCEs should be mindful that disclosure and informed consent of material terms and potential conflicts of interest – even when done prophylactically – can help shield an NCE from potential liability.

Depending on the NCE's structure, managers also likely owe certain fiduciary duties to EB-5 investors under general principles of partnership or corporate law. NCE managers must bear in mind that they must operate in the best interests of the NCE and EB-5 investors. Undisclosed related-party redeployments, or redeployments where the manager is economically incentivized to the detriment of, or at the expense of, EB-5 investors could violate those duties (in addition to the anti-fraud provisions of federal securities laws where investors were not provided adequate disclosure).

In either circumstance, investor lawsuits could challenge redeployment practices or mechanics, particularly where EB-5 investors believe that a redeployment prioritized the control group's interests over those of investors.

It is also possible that the SEC could seek enforcement of applicable securities laws, especially where affiliated transactions are inadequately disclosed (as regulators may characterize the conduct as omitting material information, misleading investors or misappropriating funds).

BEST PRACTICES FOR MITIGATING POTENTIAL CONFLICTS

Even when potential conflicts may arise in affiliated redeployments, regional centers and NCEs can implement a range of best practices to enhance transparency and potentially mitigate such conflicts:

- **Disclosure and Consent**. If possible. offering documents should describe potential redeployment projects or scenarios, including the possibility of affiliated transactions. Even where authority for redeployment is clear, it is still best practice to notify investors of the redeployment, including information about the new project, key investment terms, potential conflicts of interests, and potential risks. Ideally, NCEs should seek ratification and approval of the proposed redeployment to ensure there is consensus, even if not technically required.
- **Independent Review**. Engaging an independent third-party to underwrite the redeployment project and prepare valuations and fairness opinions can help ensure that affiliated redeployments occur on market terms.
- **Investor Updates and Reporting**. Regular updates and financial reporting with respect to the affiliated redeployment can improve transparency and reduce litigation risk.
- **Alignment of Interests**. Increasing returns payable to EB-5 investors during the redeployment period, or structuring management team compensation so that managers are rewarded only for successful projects (rather than simply placing capital into the project), can align the interests of the control group with benefits that would insure to investors.
- **Intercreditor Agreement**. Entering into an intercreditor (or similar) agreement amongst the redeployment project's lenders, including the NCEs being operated by the same control group, can help memorialize priority with respect to available cash flow and enforcement rights over shared collateral.

CONCLUSION

While redeployment is sometimes necessary to preserve immigration eligibility, a redeployment into an existing EB-5 project that is part of the same control group can be complex. Though NCEs should not be dissuaded from affiliated and/or related party redeployments, they should carefully examine their redeployment mechanisms and procedures and, if necessary, discuss with counsel to ensure they are properly navigating potential conflicts of interest, fiduciary duties, and securities laws compliance.

Wasted Set-Aside Visas and A Call for Urgent Action to USCIS

Continued On Page 41

Joey Barnett
Partner | WR Immigration

Lee Y. Li
Director of Policy Research and Data Analytics | IIUSA

Despite strong investor demand and over $8 billion in EB-5 investment since 2022, only 1,000 reserved visa numbers have been used through May 2025, and over 10,800 set-aside visas lost to the reserved categories of rural area, high unemployment area, and infrastructure projects during this same time. This is unacceptable and must urgently change for the EB-5 Program to succeed as Congress mandated.

The likely "invisible" EB-5 visa backlog in the reserved visa categories (rural area, high-unemployment area, and infrastructure projects) is beginning to emerge, and sophisticated immigrant investors are rightfully concerned about green card wait times after shelling out $800,000 plus costs. They see the growing number of I-526E petitions pending at USCIS and the competition to raise EB-5 capital compared to the limited visa numbers in the oversubscribed categories and question whether the U.S. government will uphold its end of the bargain.

The fact that invisible visa backlogs in the EB-5 reserved categories exist just over three years after Congress created the visa categories is unremarkable; it's the massive size of the unnecessary backlog and the delay of the immigration benefit due to USCIS' spotty and underwhelming I-526E processing that matters. This article seeks to shed light on this potential crisis as we get closer to the need to reauthorize the regional center program before September 2027.

THE LAW

Under the EB-5 Reform and Integrity Act of 2022 (RIA), 32% of the annual EB-5 visa supply is set aside for investments in these reserved categories. These reforms were designed to incentivize investment into underserved areas and to make EB-5 more accessible to investors from historically backlogged countries like India and China.

Instead, USCIS's inaction has completely undermined that mandate because EB-5 investors can only take advantage of available visa numbers at the time their I-526E petition is approved. The problem arises because USCIS has been slow to adjudicate I-526E petitions, resulting in thousands of reserved visas going unused in recent fiscal years, even as demand surged. While these unused visas roll over to the next year, they do not remain in the reserved pools beyond two years. Meanwhile, the number of pending I-526E petitions filed under the reserved categories – particularly by nationals of India and China – is growing rapidly. If USCIS actually starts approving these cases in greater volume, the available visa supply will be quickly exhausted, triggering visa retrogression and multi-year wait times.

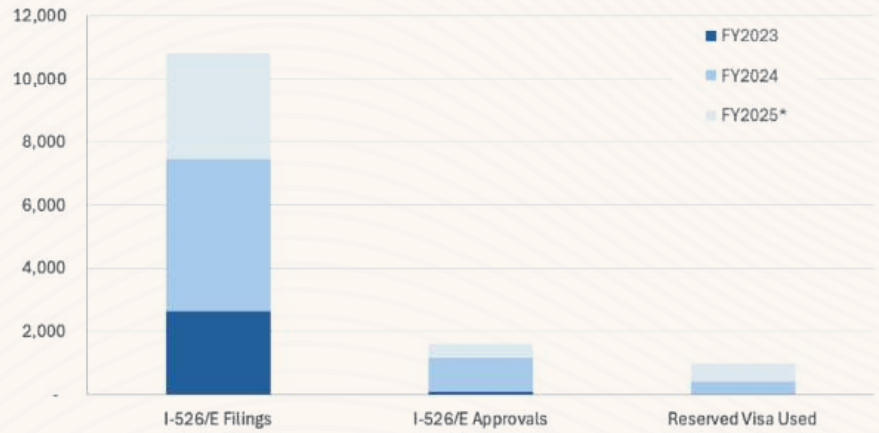
THE DATA

While USCIS understandably requires time to review EB-5 petitions for compliance, the data reveals a significant gap between Form I-526E/I-526 filings and approvals. Since the enactment of the RIA, more than 10,800 petitions have been filed, yet fewer than 1,700 have been approved.

Moreover, even after approval, there is an additional lag before EB-5 visas are issued. As shown in Figure 1, during the first four years after the RIA's passage, fewer than 1,000 reserved EB-5 visas were used, despite nearly 17,900 being available across the set-aside categories. In FY2023 and FY2024 alone, more than 10,870 reserved visas went unused and were permanently lost in the rural area, high-unemployment area, and infrastructure projects set-aside categories, largely due to USCIS' low approval volumes.

10,800+ Filings, Fewer Than 1,700 Approvals, and Only 1,000 Visas Used

Figure 1: Post-RIA Case Filings, Approvals, and Reserved Visa Usage



** Note: FY2025 data: I-526/E filings and approvals in Q1 and Q2 only; visa usage from October to May 2025, consular processing only.*
Source: USCIS & DOS
Prepared by: IIUSA

Continued On Page 43

Consular processing data indicates that thousands of reserved EB-5 visas could also be lost in FY2025. Table 1 shows that more than 6,600 set-aside visas were available for the rural and high-unemployment area categories combined. Yet, in the first eight months of FY2025, fewer than 520 reserved visas were issued through consular processing — just 8% of total availability.

Thounsands of Reserved Visas Could Be Lost This Year

Table 1: FY2025 Reserved Visa Availability, Year-to-Date Usage, and Potential Loss

	Total Visa Available (from Carryover)	FYTD Visa Used via CP* (% of Total Availability)	FYTD Visa Used via AOS	Visa Unused (Total)	Visa Unused (from Carryover)
Rural	4,416 (2,286)	402 (9%)	?	4,014	1,884
HUA	2,208 (1,143)	116 (8%)	?	2,092	1,027
Total	**6,624** **(3,429)**	**518** **(8%)**	**?**	**6,106**	**2,911**

** FYTD visa used: through May 2025*
Data Souce: DOS
Prepared by: IIUSA

Of the 6,600 reserved visas available in FY2025, more than 3,400 were carryovers from FY2024. Under the RIA, any carryover visas that remain unused by the end of FY2025 will be permanently lost to the reserved categories and reallocated to the unreserved pool in FY2026. Although the State Department has confirmed it will prioritize using carryover numbers before newly allocated visas to maximize visa number use, the latest data through May 2025 suggests that nearly 2,900 carryover set-aside visas remain unused with only four months left in the fiscal year.

Even under an optimistic scenario where USCIS doubles its EB-5 related I-485 adjudications this fiscal year and issues 800 reserved visas in FY2025 — twice the number used in FY2024. Still, more than 2,000 carryover reserved visas would be permanently lost from the set-aside categories under current visa usage trends.

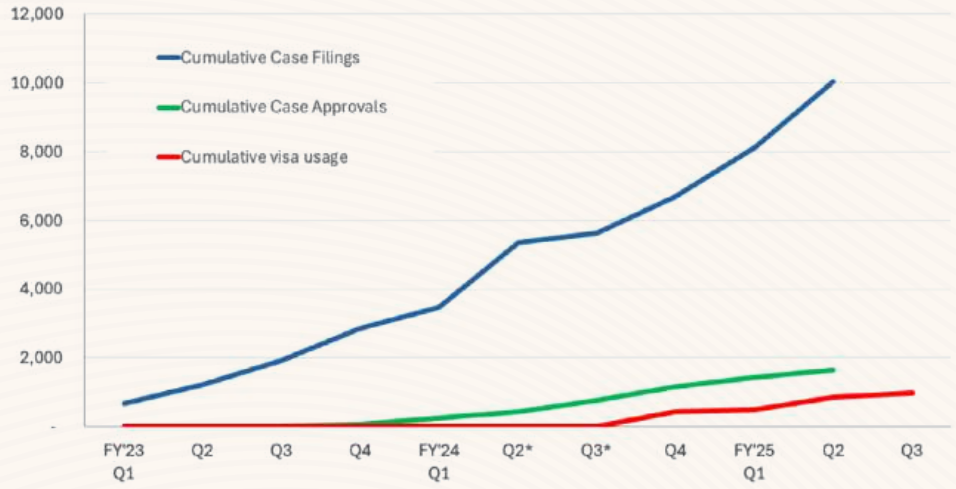
With nearly 9,000 I-526E/I-526 petitions still pending, the continued loss of reserved visa numbers will further exacerbate future retrogression, particularly in the high-unemployment area category once a cut-off date is established.

As illustrated in Figure 2 below, quarterly trends in case filings, approvals, and visa usage show that the gap is still widening: demand continues to accelerate while adjudications and visa usage lag behind. In the second quarter of FY2025, USCIS reported 1,918 new I-526E/I-526 filings — the highest quarterly total since the RIA's passage. Yet approvals have fallen to roughly 200 cases per quarter, far below the filings of I-526E petitions. Even at its recent peak in Q4 FY2024, USCIS approved only 396 I-526E and I-526 cases. The widening gap indicates that reserved visa usage will remain low until USCIS significantly increases its adjudication pace. Without such improvements, the I-526E backlog will keep growing and additional reserved visas will continue to be lost.

Continued On Page 44

The Gap Between Case Filings and Approvals Is Increasing

Figure 2: Cumulative I-526/E Filings, Approvals and Reserved Visa Usage



** Note: FY2025 data: I-526/E filings and approvals in Q1 and Q2 only; visa usage from October to May 2025, consular processing only.*
Source: USCIS & DOS
Prepared by: IIUSA

THE PROBLEM

Congress did not set aside 32% of EB-5 visas for rural area, high-unemployment area, and infrastructure projects. Yet, USCIS has delayed adjudication of these petitions and allowed the reserved visa supply to go unused. USCIS must now prioritize the adjudication of pending Form I-526Es (as well as adjustment applications for investor families with approved Form I-526Es) before the backlog spins even further out of control.

The government's delay in processing petitions has temporarily masked the demand pressure—but once that demand begins hitting the Department of State (DOS) visa system, the reserved categories will no longer offer the fast-track route investors were promised. Without immediate improvements in processing, the reserved categories could become just as backlogged as the traditional EB-5 quota, undercutting Congressional intent and creating further inequity in the program.

Thousands of good-faith investors have followed the law and submitted I-526E petitions into the reserved categories based on the promise of faster adjudications and available visas. But USCIS has not timely processed these cases in a timely manner, nor has it expedited Form I-485 Adjustment of Status applications that follow I-526E approval. The result is that the reserved visas have been wasted, while demand has ballooned, and now the reserved pools are on the verge of retrogression. Congress created a priority path, but USCIS has squandered these visas

The agency has failed to issue transparent processing protocols, failed to scale its IPO operations despite a statutory mandate to conduct a fee study and charge additional fees, and failed to meet even the most basic expectations for timely adjudication.

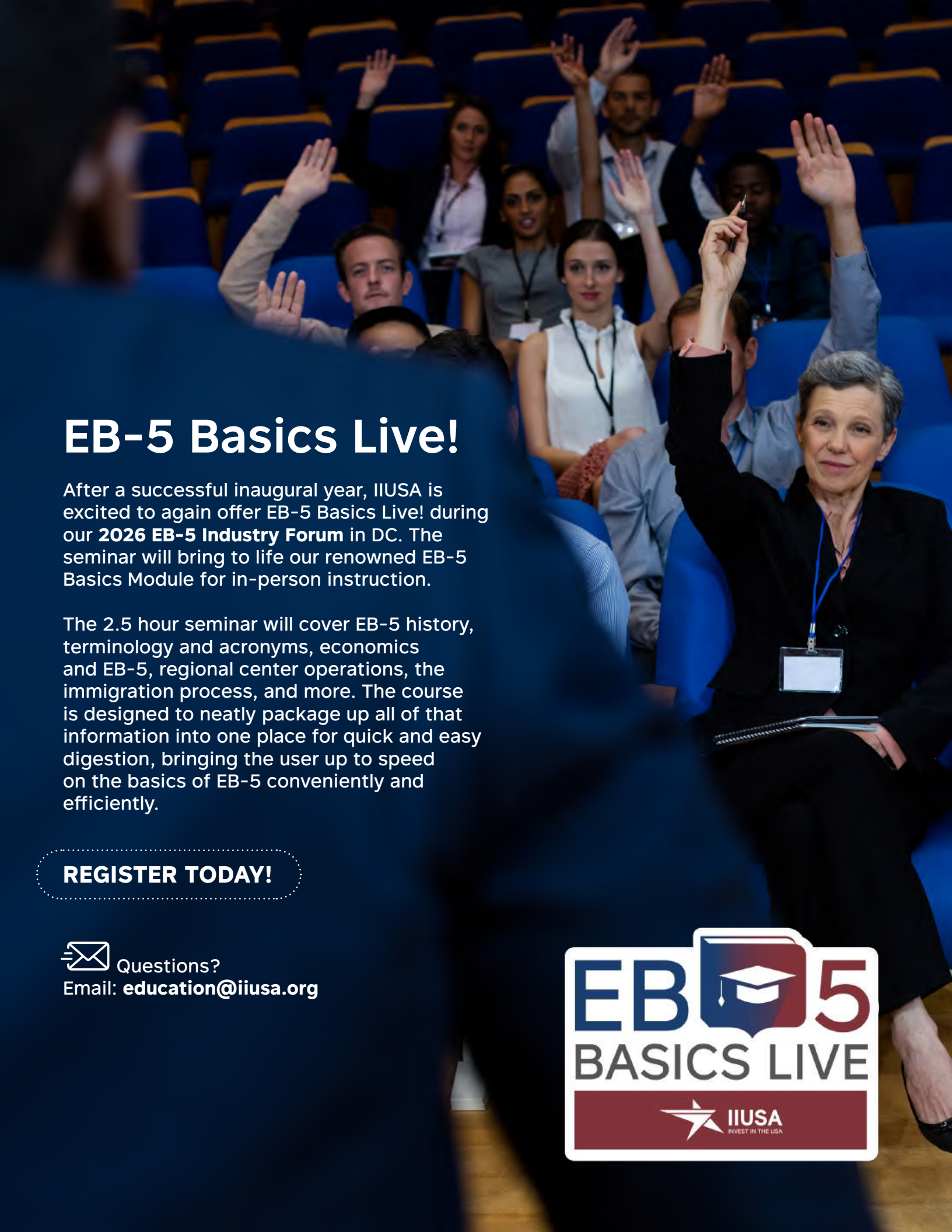
SOME SOLUTIONS

USCIS must establish a procedure to allow immigrant investors with approved Form I-526Es to quickly select the desired visa category for the processing of their EB-5 based AOS applications. DOS' National Visa Center's (NVC) has already done so. Instead, to date, USCIS has defaulted by using "Current" reserved visa numbers for adjustment of status applications.

This will become more important for ROW immigrant investors once FADs are established in the reserved visa categories, possibly before the end of FY 2026, This will present a crisis for Indian reserved investors once the unreserved visa backlog clears out by end of decade. Without such a mechanism, petitioners who have filed concurrent AOS would be left in limbo, despite current available EB-5 visas. Given the significant impact that this visa category selection has on visa availability and AOS processing, we urge USCIS to urgently implement a procedure like NVC's category election process to facilitate processing and avoid visa wasting.

A bolder solution is new legislation that includes a push to temporarily reallocate visa numbers from the Diversity Visa (DV) Lottery Program to EB-5, a measure that mirrors past actions of Congress. For example, under the Nicaraguan Adjustment and Central American Relief Act (NACARA) Congress reduced DV lottery allocations by 5,000 annually from FY 1999 to help cover visa needs for beneficiaries under NACARA. This reduction continued until 2019 and was designated as a "temporary reduction" that ultimately became a long-term adjustment. More recently, in December 2024, Congress again reallocated DV visa numbers, reducing the DV allotment by approximately 3,650 visas annually through FY 2025 to compensate for critical immigrant needs under the National Defense Authorization Act.

These reductions demonstrate a precedent for reallocating DV lottery visas to meet other visa category demands and doing so for EB-5 as temporary relief would immediately improve the EB-5 program's viability. The EB-5 program has demonstrated its power to boost the U.S. economy, especially in rural and underserved areas. By supporting short-term visa relief, Congress can maximize job creation and investment potential, supporting America's economic future.



EB-5 Basics Live!

After a successful inaugural year, IIUSA is excited to again offer EB-5 Basics Live! during our **2026 EB-5 Industry Forum** in DC. The seminar will bring to life our renowned EB-5 Basics Module for in-person instruction.

The 2.5 hour seminar will cover EB-5 history, terminology and acronyms, economics and EB-5, regional center operations, the immigration process, and more. The course is designed to neatly package up all of that information into one place for quick and easy digestion, bringing the user up to speed on the basics of EB-5 conveniently and efficiently.

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