IIUSA
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Board of **DIRECTORS**

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Leadership **CIRCLE**

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Letter from the EDITOR

Dear Readers,

As we move through 2026, the EB-5 industry finds itself at a pivotal—and energizing—moment. With just six months until the September 30, 2026 grandfathering deadline, stakeholders across the industry are actively preparing, refining processes, and ensuring readiness for what lies ahead. While this milestone is important, it is one we approach with clarity and confidence, grounded in the strength and resilience the industry has demonstrated in the years since the Reform and Integrity Act.

At the same time, the September 30, 2027 reauthorization deadline is coming into sharper focus. IIUSA and its members are already engaged in thoughtful, proactive advocacy—working to ensure that policymakers understand the continued value of the EB-5 Program as a driver of economic development and job creation across the United States. These efforts underscore the importance of collaboration and a unified industry voice in shaping a strong and sustainable future.

This edition of the *Regional Center Business Journal* reflects both progress and momentum, offering insights and expertise to help practitioners navigate today's landscape while preparing for tomorrow.

Thank you to all of our contributors—and especially the IIUSA Editorial Committee—whose dedication makes this publication possible.

Sincerely,

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

IIUSA Editorial Committee


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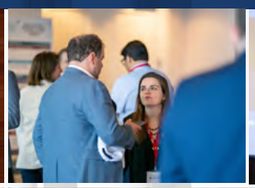

2026 IIUSA EB-5 INDUSTRY FORUM
WASHINGTON, DC

AGENDA

WEDNESDAY, APRIL 29

1:00- 2:00pm 3:30 - 5:00pm	**REGISTRATION**	Exhibit Hall - Regency Foyer
1:00 - 3:00pm	**IIUSA COMMITTEE MEETINGS** (COMMITTEE MEETINGS ARE FOR IIUSA MEMBERS ONLY)	

	YOSEMITE	BRYCE	
1:00 - 2:00pm	**PUBLIC POLICY COMMITTEE**	**BEST PRACTICES COMMITTEE**	
2:00 - 3:00pm		**EDITORIAL COMMITTEE**	
2:00 - 2:30pm	**MEMBERSHIP & INVESTOR MARKETS COMMITTEE**		Yellowstone/ Everglades
2:30 - 3:15pm	**NEW MEMBER WELCOME SOCIAL**		
3:30 - 5:00pm	**21ST ANNUAL IIUSA MEMBERSHIP MEETING** BOARD OF DIRECTORS ELECTIONS BYLAWS AMENDMENTS MEMBER RECOGNITION CEREMONY		Regency Ballroom A

5:00 - 6:30pm	**WELCOME RECEPTION**	Hosted by Carrasquillo Law Group Thornton Room
7:00 - 9:00pm	**EB-5 INDUSTRY APPRECIATION EVENT** Casamara Rooftop at the DC Sixty Hotel | 1320 18th Street NW	Hosted by EB5 United *No transportation provided*

THURSDAY, APRIL 30

7:45am - 3:00pm	**REGISTRATION**	
7:45 - 8:45am	**NETWORKING BREAKFAST**	Exhibit Hall - Regency Foyer
7:45 - 8:45am	**IIUSA LEADERSHIP CIRCLE BREAKFAST** (INVITATION ONLY)	Congressional B

Regency Ballroom A			
8:45 - 8:55am	**WELCOME ADDRESS**	**AARON GRAU, IIUSA Executive Director** EB5 CAPITAL | HOST CITY SPONSOR	
8:55 - 9:55am	**SESSION 1**	**EB-5 Advocacy & Government Affairs: IIUSA's Goals, Strategies, and Track Record**	
9:55 - 10:10am	**SESSION 2**	**EB-5 Advocacy: What Can You Do?**	
10:10 - 10:30am	**NETWORKING BREAK**	Sponsored by Law Office of Seema Mehta Exhibit Hall	
	REGENCY BALLROOM A	**LEXINGTON & CONCORD**	
10:30 - 11:30am	**SESSION 3A** **EB-5 Deal Structuring: Economic, Project, and Location Strategy**	**SESSION 3B** **EB-5 in a Shifting Immigration Landscape**	
11:30am - 12:30pm	**SESSION 4A** **Regional Center Operations - Risk Management, Investor Communications, and Marketing**	**SESSION 4B** **EB-5 Investor Market Update**	
12:30 - 1:30pm	**LUNCH**	Sponsored by Atlantic American Partners Exhibit Hall	
1:30 - 2:00pm	**SESSION 5**	**Special Session: Brett Horton | Chief Advocacy Officer, American Hotel & Lodging Association**	Regency Ballroom A
2:00 - 3:00pm	**SESSION 6**	**USCIS Adjudications I: Regional Center and Project Filings**	
3:00 - 3:20pm	**NETWORKING BREAK**	Sponsored by Law Office of Seema Mehta Exhibit Hall	
3:20 - 4:20pm	**SESSION 7**	**EB-5 Litigation: Strategy, Implications, and Practical Reality**	Regency Ballroom A
4:20 - 4:30pm	**BOARD ELECTION RESULTS ANNOUNCED**		
4:30 - 5:45pm	**NETWORKING COCKTAIL RECEPTION**	Hosted by Fragomen Exhibit Hall	
6:00 - 8:00pm	**HOST CITY OFF-SITE RECEPTION HOSTED BY EB5 CAPITAL** Smoke & Mirrors | 867 New Jersey Ave SE Roundtrip transportation provided from the Hyatt	EB5 CAPITAL	

FRIDAY, MAY 1

8:00 - 11:00am	**REGISTRATION**	
8:00 - 9:00am	**IIUSA PAC BOARD BREAKFAST** (INVITATION ONLY)	Congressional B
8:00 - 9:00am	**NETWORKING BREAKFAST**	Exhibit Hall - Regency Foyer

	REGENCY BALLROOM A	LEXINGTON & CONCORD
	General Session	EB-5 BASICS LIVE, IIUSA **Brought to you by Meyer Law Group** This is a separately ticketed event available only to those registered for this specific event.
9:00 - 10:00am	**SESSION 8** **EB-5 Data Party with Lee Li & Friends**	
10:00 - 11:00am	**SESSION 9** **EB-5 Compliance and Operating in Regulatory Uncertainty**	
11:00am - 12:00pm	**SESSION 10** **USCIS Adjudications II: Investor-Related Issues**	
12:30 - 2:00pm	**IIUSA BOARD OF DIRECTORS MEETING** INVITATION ONLY	Yellowstone/ Everglades

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2026 IIUSA EB-5 Industry Forum | Meet the Speakers


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WA Law Group


Roy Carrasquillo
Carrasquillo Law Group


Roberto Contreras IV
Houston EB5


Jess DeNisi
Klasko Immigration Law Partners


Lulu Gordon
EB5 Capital


Dan Healy
Civitas Capital Group


Jill Jones
JTC


Lee Li
IIUSA


Tom Martin
EB5 United


Warren Oakes
Baker Tilly


Jeremy Shackle
EB5 Group


Sebastian Stubbe
Pine State Regional Center


Dennis Tristani
Tristani Law


Simone Williams-Arrington
Williams Global Law


Jason Auerbach
Navis Wealth


Christine Chen
CanAm Enterprises


Will Cornelius
Torres Law


Robert Divine
Baker Donelson


Aaron Grau
IIUSA


Noreen Hogan
CMB Regional Centers


Rohit Kapuria
Saul Ewing


Mark Lin
Luby International


George McElwee
The Reserve Component


Charlie Oppenheim
WR Immigration


Jennifer Smith
American Life, Inc.


Dan Topple
Customers Bank


Clem Turner
PRXY Co


Dan Wycklendt
FirstPathway Partners


Joey Barnett
WR Immigration


Paul Chen
Meyer Law Group


Cherylle Corpuz
Southeast Regional Center


Chad Ellsworth
Fragomen


Adam Greene
Peachtree Group


Brett Horton
American Hotel & Lodging Association


Phuong Le
KLDP


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CSG Law


Mariza McKee
Kutak Rock


John Pratt
Kurzban Kurzban Tetzeli & Pratt


Rahul Soni
Fragomen


Ozzie Torres
Torres Law

Jayson Vail
Civitas Capital Group

Mike Xenick
InvestAmerica

Larry Blascovich
Flagstar Bank

Dhananjaysinh Chudasama
DJ Immigration Consulting

Vinh Dang
Khai Phu Investments & Migration

Michele Franchett
SGG Immigration

Bill Gresser
EB-5 New York State

Rana Jazayerli
Jazayerli Law

Carolyn Lee
Carolyn Lee PLLC

Kelvin Ma
Shanghai Demei Law Firm

Carel van der Merwe
EB5 Coast to Coast

Reza Rahbaran
Motcomb

James Sozomenou
Metropolitan Commercial Bank

Christian Triantaphyllis
Jackson Walker

Kyle Walker
Green Card Fund

Oliver Yang
Reid & Wise

Panels & Speakers

SESSION 1
EB-5 Advocacy & Government Affairs: IIUSA's Goals, Strategies, and Track Record

This session will provide a strategic update on IIUSA's advocacy priorities, legislative engagement, and agency strategy as the industry approaches reauthorization and key policy milestones. Panelists will discuss current initiatives, stakeholder impacts, and how coordinated advocacy efforts are shaping the future of the EB-5 program.

Aaron Grau IIUSA | Moderator
Lulu Gordon EB5 Capital
William P. Gresser EB-5 New York State
George McElwee The Reserve Component
Sebastian Stubbe Pine State Regional Center

SESSION 2
Guest Speaker

Details to be announced.

SESSION 3A
EB-5 Deal Structuring: Economic, Project, and Location Strategy

This session will examine advanced structuring considerations in today's economic and regulatory environment, including category selection, redeployment planning, escrow models, and capital stack positioning.

James Sozomenou
Metropolitan Commercial Bank | Moderator
Dan Healy Civitas Capital Group
Noreen Hogan CMB Regional Centers
Rohit Kapuria Saul Ewing
Tom Martin EB5 United
Dan Topple Customers Bank

SESSION 3B
EB-5 in a Shifting Immigration Landscape

An exploration of how emerging immigration pathways and administrative actions are influencing investor strategy and program dynamics.

Rahul Soni Fragomen | Moderator
Jason Auerbach Navis Wealth
Sunny An WA Law
Chad Ellsworth Fragomen
Simone Williams-Arrington Williams Global Law

SESSION 4A
Regional Center Operations – Risk Management, Investor Communications, and Marketing

This session will look at how Regional Centers operate in this setting, including risk management, investor communications, distressed project management, and integration of technology.

Adam Greene Peachtree Group | Moderator
Larry Blascovich Flagstar Bank
Carel van der Merwe EB5 Coast to Coast
Ozzie Torres Torres Law
Jennifer Smith American Life Inc.
Kyle Walker Green Card Fund

SESSION 4B
EB-5 Investor Market Update

A comprehensive overview of the hot and rising EB-5 investor markets.

Roberto Contreras IV
Houston EB5 | Moderator
Dhananjaysinh Chudasama
DJ Immigration Consulting
Vinh Dang Khai Phu Investments & Migration
Mark Lin Luby International
Kelvin Ma Shanghai Demei Law Firm

SESSION 5
Special Session

Brett Horton Chief Advocacy Officer, American Hotel & Lodging Association

SESSION 6
USCIS Adjudications I: Regional Center and Project Filings

An in-depth discussion of adjudication trends affecting Regional Center and project-level filings.

Clem Turner PRXY Co | Moderator
Roy Carrasquillo Carrasquillo Law
Robert Divine Baker Donelson
Phuong Le KLDP
Carolyn Lee Carolyn Lee PLLC
Warren Oakes Baker Tilly

SESSION 7
EB-5 Litigation: Strategy, Implications, and Practical Reality

A review of recent litigation trends affecting the EB-5 industry.

Jess DeNisi Klasko Immigration Law Partners | Moderator
Paul Chen Meyer Law Group
Rana Jazayerli Jazayerli Law
Dan Lundy CSG Law
John Pratt Kurzban Kurzban Tetzeli & Pratt

SESSION 8
EB-5 Data Party with Lee Li & Friends

A data-driven look at the EB-5 program, including visa usage, filing trends, and adjudication statistics.

Lee Y. Li IIUSA | Moderator
Christine Chen CanAm Enterprises
Charlie Oppenheim WR Immigration

SESSION 9
EB-5 Compliance and Operating in Regulatory Uncertainty

This session will examine compliance obligations and practical approaches to operating within evolving regulatory guidance.

Jill Jones JTC | Moderator
Cherylle Corpuz Southeast Regional Center
Reza Rahbaran Motcomb
Jeremy Shackle EB5 Group
Dan Wycklendt FirstPathway Partners
Mike Xenick InvestAmerica

2026 IIUSA EB-5 Industry Forum Handbook

SESSION 10

USCIS Adjudications II: Investor-Related Issues

This session will explore investor-level adjudication trends and impacts across the EB-5 lifecycle.

Oliver Yang Reid & Wise | Moderator
Michele Franchett SGG Immigration
Dennis Tristani Tristani Law
Christian Triantaphyllis Jackson Walker

EB-5 BASICS LIVE

The 3-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.

This is a separately ticketed event.

Mariza McKee Kutak Rock | Moderator
Joey Barnett WR Immigration
Will Cornelius Torres Law
Jayson Vail Civitas Capital Group

EB-5 Basics Live!

IIUSA brings to life its renowned EB-5 Basics Module for in-person instruction.

May 1 | 9:00am - 12:00pm

Mariza McKee
MODERATOR
Partner | Kutak Rock

Will Cornelius
Associate Attorney |
Torres Law

Joey Barnett
Partner |
WR Immigration

Jayson Vail
Vice President, Operations |
Civitas Capital Group

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If you'd like to learn more about the IIUSA PAC, visit the IIUSA PAC booth next to registration at 2026 IIUSA EB-5 Industry Forum in DC, visit iiusa.org/pac or email pac@iiusa.org

SEC Approved Methods of Verifying Accredited Investor Status Under SEC Rule 506(c) for EB-5 Offerings

Catherine D. Holmes
Partner, Chair, Investment Capital Law Group
| Jeffer Mangels Butler & Mitchell

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Virtually all EB-5 securities issuers (i.e., "NCEs") rely on the exemptions from registration of their securities offerings with the U.S. Securities and Exchange Commission ("SEC") provided under Regulation D (for U.S. persons) or Regulation S (for non-U.S. persons). Under Regulation D, there are two methods available to an NCE to conduct its offering: (1) with no general solicitation under SEC Rule 506(b); or (2) with general solicitation (e.g., social media and other advertising) under SEC Rule 506(c). The primary difference between Rules 506(b) and 506(c) is that Rule 506(b) requires only an investor's own representation that the investor meets the standards of an "accredited investor,"[1] while Rule 506(c) requires that an NCE take reasonable steps to verify that each investor is an accredited investor and to form a reasonable belief that each investor is in fact accredited.

The SEC recently issued a no-action letter[2] (the "No-Action Letter") providing numerical certainty by clarifying that setting a minimum investment amount of $200,000 for individuals (non-institutional), where the investor represents the investment amount is not paid with debt, satisfies the requirement under Rule 506(c) that an issuer take "reasonable steps" to confirm an investor's accredited investor status. Setting the $200,000 figure stemmed from the SEC's existing policy that issuers should use a "principles-based approach" to determine the reasonable steps required under Rule 506(c).

Because the principles-based approach remains the current standard under Rule 506(c), NCEs can establish reasonable methods of verifying accredited investor status without directly relying on the non-exclusive and non-mandatory safe harbors provided under Rule 506(c)(2)(ii) (such as requiring investors to produce documentation establishing their individual accredited investor status directly to the issuer or indirectly through a third party).

This article explores the principles-based approach to compliance with Rule 506(c) and suggests some reasonable steps that could be used by NCEs to comply with Rule 506(c) that do not require third party verification.

The SEC has expressed a clear preference for a principles-based approach to verification of accredited investor status under Rule 506(c). In the original proposal to adopt Rule 506(c)[3], a flexible, principles-based approach was the only method specified in the proposed rule. However, many commenters on the proposed rule asked the SEC to provide clear guidance on the types of reasonable steps that would be sufficient to rely on Rule 506(c), which led to the inclusion of the list of non-exclusive and non-mandatory verification methods specified in the final Rule 506(c). Even so, the final rule release[4] for Rule 506(c) made it clear that issuers can establish their own reasonable steps to verify an investor's status as accredited.

The SEC describes the principles-based approach as an issuer's consideration of factors that are specific to the type of offering being conducted by the issuer. The SEC's final rule release[5] provides the following guidance regarding the components of a principles-based method of verification:

> "Under this principles-based approach, issuers would consider a number of factors when determining the reasonableness of the steps to verify that a purchaser is an accredited investor, such as:
>
> - the nature of the purchaser and the type of accredited investor that the purchaser claims to be;
> - the amount and type of information that the issuer has about the purchaser; and
> - the nature of the offering, such as the manner in which the purchaser was solicited to participate in the offering, and the terms of the offering, such as a minimum investment amount.
>
> These factors would be interconnected, and the information gained by looking at these factors would help an issuer assess the reasonable likelihood that a potential purchaser is an accredited investor, which would, in turn, affect the types of steps that would be reasonable to take to verify a purchaser's accredited investor status."

The No-Action Letter reaffirms the SEC's preference for using a principles-based approach. The No-Action Letter agreed with an interpretation of Rule 506(c) proposed by a major international law firm that a minimum investment amount of $200,000 would be sufficient to establish that a natural person is an accredited investor under certain circumstances. Setting a $200,000 minimum investment amount for natural persons constitutes reasonable verification steps if the investor represents to the issuer that borrowed funds were not used to make the investment, provided the issuer has no reason to believe the investor is not accredited. As explained in the No-Action Letter, this interpretation is supported by the words of the Adopting Release, which state as follows:

> "We agree that a high minimum investment amount is a relevant factor in verifying accredited investor status. As you note, the Commission stated that "if the terms of the offering require a high minimum investment amount and a purchaser is able to meet those terms, then the likelihood of that purchaser satisfying the definition of accredited investor may be sufficiently high such that, absent any facts that indicate that the purchaser is not an accredited investor, **it may be reasonable for the issuer to take fewer steps to verify or, in certain cases, no additional steps to verify accredited investor status other than to confirm that the purchaser's cash investment is not being financed by a third party.**"

[1] SEC Rule 501(a) defines an "accredited investor" as a person who meets one of several criteria. In the case of EB-5 investors, the most commonly used criterion is the net worth of the investor, which provides as follows:
"(5) Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000;
(i) Except as provided in paragraph (a)(5)(ii) of this section, for purposes of calculating net worth under this paragraph (a)(5):
(A) The person's primary residence shall not be included as an asset;
(B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and
(C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;"
[2] Latham & Watkins LLP no-action letter (Mar. 12, 2025).
[3] Securities Act Release No. 33-9354 (August 29, 2012)
[4] Securities Act Release No. 33-9415 (July 10, 2013)
[5] Id.

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A discussion with SEC Staff has confirmed that the No-Action Letter was not intended to be limited to any specific type of issuer, but was intended to apply broadly to any issuer who followed the principles-based approach under Rule 506(c).

Public remarks by the SEC encourage issuers to adopt a more flexible approach so that more issuers will use 506(c). SEC staff have indicated that the remarks given in a 2014 speech by the Director of the Division of Corporate Finance of the SEC to the Angel Capital Association Summit[6] are still relevant today. In that speech, the Director encouraged issuers to consider innovative approaches to complying with verification requirements and use methods that best suit their needs. The Director pointed out that the list of methods of verification in Rule 506(c) was not intended to be the primary means of verification, stating that:

> "In fact, it is ironic that this list of verification methods is being viewed by some as the primary way to verify a purchaser's accredited investor status when, in fact, the Commission originally proposed the principles-based approach as the way issuers would comply with the rule's verification requirement and added the list of specific verification methods only in response to address the concerns of commenters who wanted more certainty.
>
> "On that note, we have had recent inquiries asking whether the staff would provide guidance – presumably on a case-by-case basis – confirming that a specified principles-based verification method constitutes "reasonable steps" for purposes of the rule's requirement. The notion of the staff reviewing and approving specific verification methods seems somewhat contrary to the very purpose of a principles-based rule and I am not yet convinced of the need for this type of staff involvement. Rather, this is an area where issuers and other market participants have the flexibility to think about innovative approaches for complying with the verification requirement of the rule and use the methods that best suit their needs. While the staff may not be in a position at this point to provide guidance on what constitutes "reasonable steps" under particular circumstances, I also believe the staff will not be quick to second guess decisions that issuers and their advisers make in good faith that appear to be reasonable under the circumstances."

What types of verification methods would be reasonable for NCEs conducting EB-5 offerings to comply with the requirements of Rule 506(c)? In applying the principles-based approach favored by the SEC to EB-5 offerings, some of those methods could include the following:

a. **Minimum Amount of EB-5 Offerings**. The minimum offering amount of $800,000 far exceeds the minimum $200,000 investment amount that the SEC viewed as sufficient in itself to verify an investor's accredited status, without any further due diligence other than a representation from the investor that he or she did not use borrowed funds to make the investment, so long as the NCE has no reason to believe the investor is not accredited. The minimum EB-5 offering investment amount alone might be sufficient based on the SEC's rationale in the No-Action Letter. However, in the absence of a definitive statement from the SEC that this is enough for EB-5 offerings, we believe that it is prudent to consider additional reasonable steps to support an NCE's documentation of compliance under Rule 506(c).

b. **Investment Amount Not financed**. The No-Action Letter confirms that if an issuer intends to rely upon the minimum investment amount as the primary criteria for verifying the investor's accredited status, the investor must also represent that he or she is not using borrowed funds to make the investment. In the case of an EB-5 Offering, since every investor will be required to provide a source of funds report with their I-526E Petition filed with USCIS, it would be reasonable to require investors to affirm to the NCE, at the time of subscription, whether their source of funds for the EB-5 investment will include any loans or borrowed funds. If the investor responds that he or she will not include any loans or borrowed funds in their source of funds report filed with USCIS, that would seem to give the NCE a reasonable basis for determining that the investor will meet this criteria.

c. **Investor Identification of Sources of Funds that will be used for EB-5 Investment**. An NCE could take the extra step of requiring each EB-5 investor to identify, generally, the categories of sources that the investor is using to fund the EB-5 investment, such as sale of real estate, income from investments, employment income, or other types. Rather than a "check the box" question, this could be presented as one that requires the investor to fill in the categories, which could provide stronger evidence that the EB-5 investor will not use borrowed funds for the EB-5 investment.

The Regulation D exemption is not lost if an investor misrepresents his or her source of funds or other information provided to the NCE. A key concern of every NCE will be whether the NCE would lose the exemption under Regulation D if an EB-5 investor makes a misrepresentation on which the NCE relies to confirm the investor's accredited status. The SEC's compliance and disclosure interpretations Question 260.06 specifically addresses this concern:

> "An issuer does not lose the ability to rely on Rule 506(c) for an offering if a person who does not meet the criteria for any category of accredited investor purchases securities in the offering, so long as the issuer took reasonable steps to verify that the purchaser was an accredited investor and had a reasonable belief that such purchaser was an accredited investor at the time of the sale of securities."

Importantly, this also means that if an EB-5 investor later makes a statement, such as in the investor's I-526E Petition, stating that the EB-5 investor is using borrowed funds for the EB-5 investment, the NCE is not required to return that investor's funds in order to retain the Regulation D exemption.

Other methods of verification of accredited investor status can still be used for EB-5 investors who are using borrowed funds to pay for their EB-5 investment. Rule 506(c) does not require that an issuer use only one method of verification for all investors. In fact, the principles-based approach encourages the issuer to use appropriate steps based upon what is known about each investor. If an EB-5 investor is using borrowed funds, that would mean that the NCE could not rely solely upon the minimum investment amount as a factor in determining accredited status, and that the NCE would have to use other means to verify the investor's net worth. That could still be done using any of the non-exclusive and non-mandatory safe harbors described in Rule 506(c)(2), such as a letter from the investor's attorney, accountant or investment adviser stating that such person has reviewed the investor's financial information and determined that the investor does have the required $1 million net worth exclusive of primary residence required to comply with Rule 506(c).

Is it safer to use third party verification instead of the other methods of verification permitted by Rule 506(c)? The non-exclusive methods of verification of accredited investor status described in Rule 506(c) are a safe harbor for NCEs, meaning that if they use one of the non-exclusive methods of verification, there is a presumption that the NCE did take reasonable steps as required under Rule 506(c). In that respect, the third-party verification method may still be considered safer than other reasonable methods of verification. However, some NCEs may view it as too difficult or disruptive to their marketing efforts to obtain third-party verification for every U.S. resident who invests in an NCE using the Regulation D exemption. And yet those NCEs may inadvertently be using marketing methods that could be considered general solicitation, which would require that those NCEs comply with Rule 506(c). It might be more reasonable for those NCEs to choose to comply with Rule 506(c) using a principles-based verification process rather than risking a loss of the Regulation D exemption by using marketing methods that could be considered general solicitation. Every NCE should discuss this issue with their securities counsel to determine the best method of compliance with Regulation D based on their own marketing process.

[6] Keynote Address at the 2014 Angel Capital Association Summit, Keith F. Higgins, Director, Division of Corporation Finance (March 28, 2014) available at www.sec.gov/newsroom/speeches-statements/2014-spch032814kfh.

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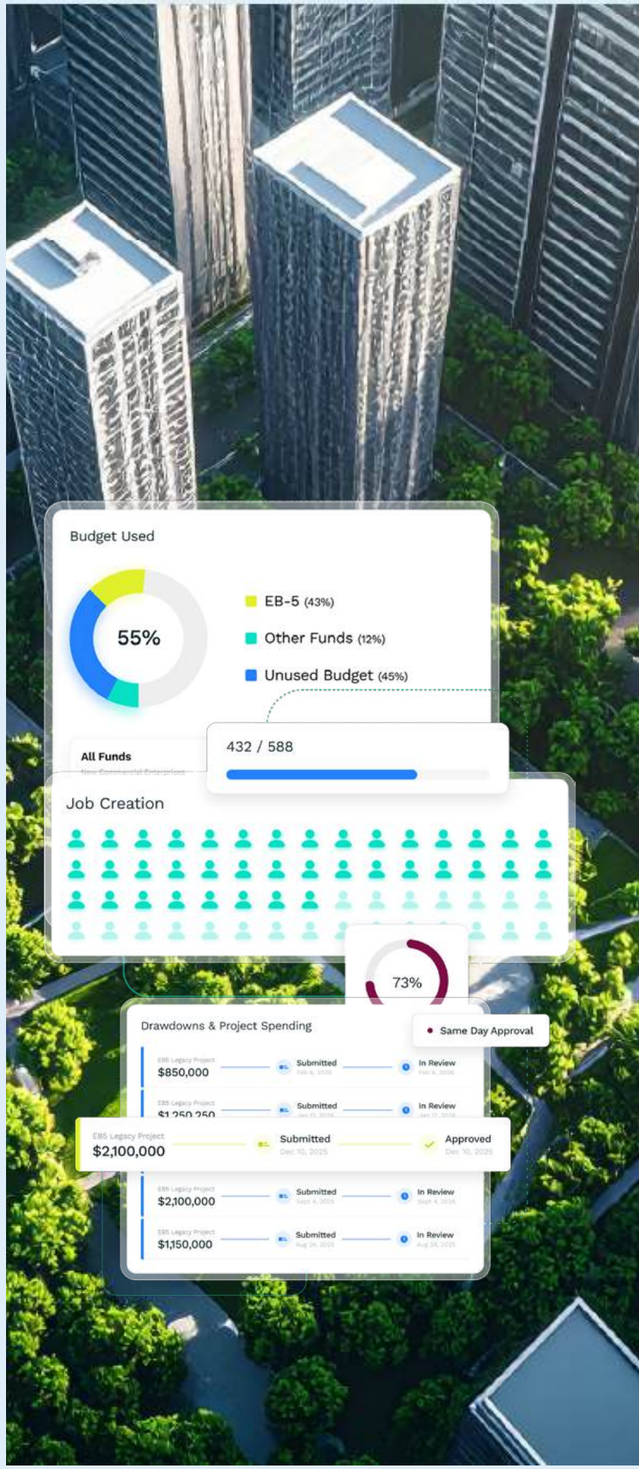

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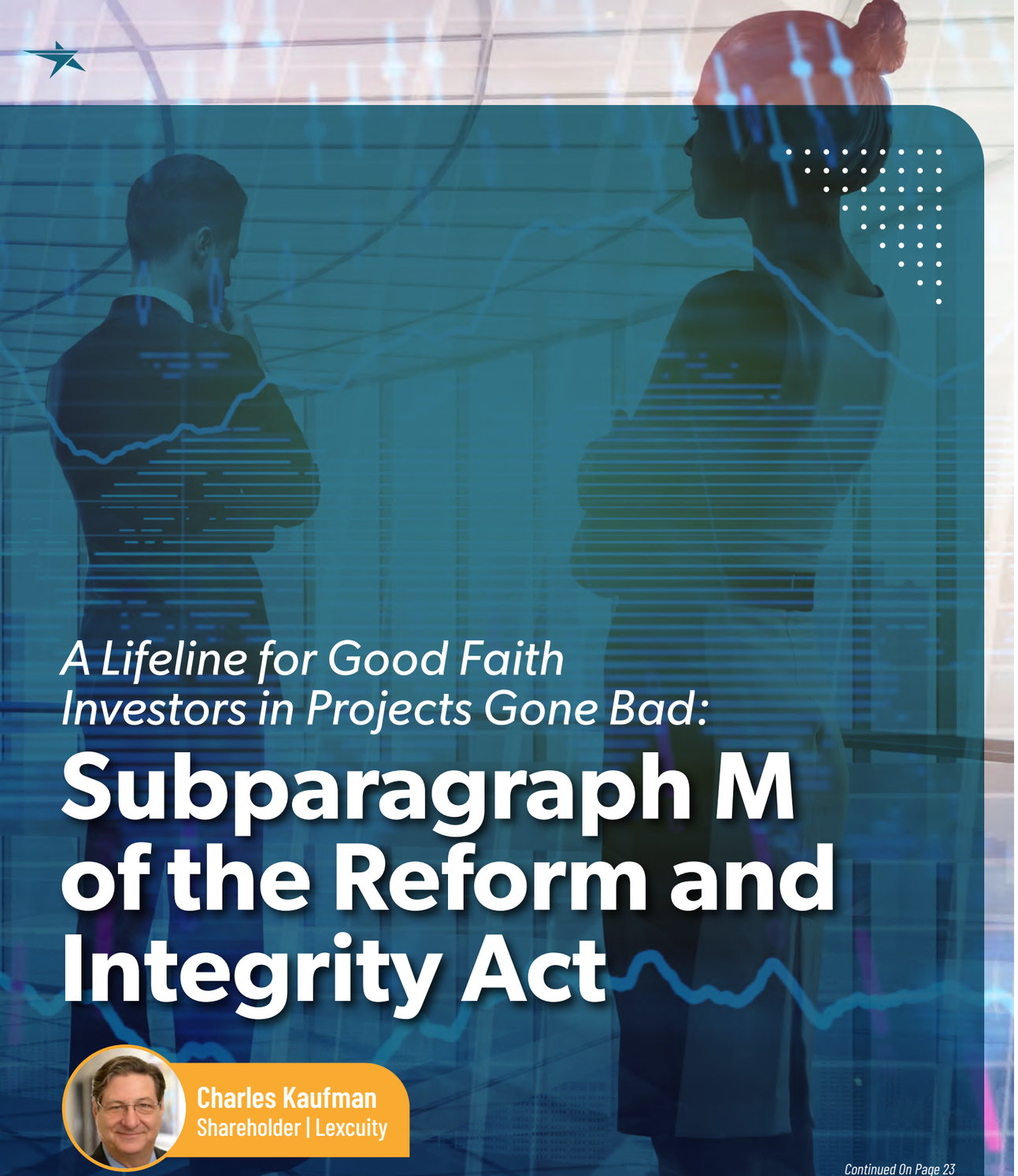

A Lifeline for Good Faith Investors in Projects Gone Bad: Subparagraph M of the Reform and Integrity Act

Charles Kaufman
Shareholder | Lexcuity

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EB-5 investors must make a large, long-term financial commitment built on trust: trust in the project, the USCIS-designated regional center, and the regulatory framework governing the EB-5 program. But what happens when that trust is shaken through no fault of the investor? The EB-5 Reform and Integrity Act of 2022 ("**RIA**") provided an important new safeguard by adding Section 203(b)(5)(M) to the Immigration and Nationality Act. Referred to as "**Subparagraph M**," the provision is designed to protect certain investors caught in exactly that situation. This provision offers a potential lifeline to those the RIA now calls "***Good Faith Investors***."

This article summarizes how Subparagraph M works, to whom it applies, what affected investors must do to preserve their progress toward U.S. residency, and how EB-5 project sponsors can accommodate this new class of investors in their projects.

WHO ARE "GOOD FAITH INVESTORS"?

A "Good Faith Investor" is someone who made a legitimate EB-5 investment, and who filed an appropriate and otherwise qualified petition (Form I-526 or I-526E), but later faces disqualification because of USCIS action against the project entities or regional center.

Specifically, this can occur in the following cases:

- USCIS terminates the regional center sponsoring the investment; or
- USCIS "debars" (disqualifies) the new commercial enterprise (NCE) or job-creating entity (JCE) for non-compliance with EB-5 Program rules.

In these cases, investors may be at risk of having their petitions denied or even losing previously granted conditional permanent resident status, not because of anything the investor did wrong, but because of issues with the project or regional center.

While this problem is not new to the EB-5 Program, and USCIS has always had the flexibility to avoid harm to blameless investors in projects that fail for regulatory reasons, Subparagraph M was enacted to provide a specific statutory remedy for this unfair outcome. Because the RIA also greatly increases the compliance requirements for regional centers and applies new rules to EB-5 project entities, the number of investors who will need this remedy has also increased. In particular, a recent surge in regional center terminations has left many investors seeking new projects to preserve their hard-won benefits under the EB-5 Program.

WHAT PROTECTION DOES SUBPARAGRAPH M PROVIDE?

Subparagraph M allows investors to preserve their immigration status despite a regional center termination or an NCE or JCE debarment. In general, it provides that, if the investor takes specific corrective steps within a defined period:

- An otherwise valid EB-5 petition may remain valid, and
- Conditional permanent resident status may continue

However, this protection is not automatic. Investors must act quickly to preserve eligibility under the statutory deadlines.

WHAT PROTECTION DOES SUBPARAGRAPH M *NOT* PROVIDE?

Subparagraph M is not a remedy for the simple business failure of a project or a project's failure to generate sufficient jobs for investors to successfully petition to remove conditions to permanent U.S. residency. Only the specified agency actions – regional center termination or debarment of the NCE or JCE - enable an investor to preserve the viability of a previous petition under Subchapter M. In many cases, failure of an EB-5 project will have involved actions that may have violated the EB-5 Program's statute or regulations. However, while some investors in failed projects have tried to ask USCIS to debar their NCE or JCE to open a pathway for Regulation M when USCIS has not taken regulatory action under its own initiative, to date no success has been reported for such efforts.

THE 180-DAY RULE: A CRITICAL DEADLINE

Once USCIS notifies an investor that a project's regional center has been terminated or a key project entity has been debarred, a 180-day clock begins to run.

If the investor does nothing within that period, USCIS will terminate the pending or approved petition, along with any previously granted conditional permanent residency. An investor living in the U.S. under conditional permanent residency who lacks another legal basis to remain in the U.S. would be subject to deportation. This makes timely action essential.

WHAT ACTION MUST A GOOD FAITH INVESTOR TAKE?

To preserve eligibility, a Good Faith Investor must take specific action depending on the type of problem affecting the original investment.

If the Regional Center Has Been Terminated. In this scenario, the investor has two paths forward:

- The entire existing project may associate with a new regional center that is in good standing with USCIS, even if that regional center's territory lies outside the original

Continued On Page 24

geographic area. If completed within the 180-day period, this will make further investment by the investor unnecessary.

- The investor may make a new investment (“**New Qualifying Investment**”) in a different EB-5 project.

  If the NCE or JCE Is Debarred. In this scenario, the investor must:

- Associate with a new commercial enterprise in good standing with USCIS, and

- Invest additional capital, but only to the extent necessary to meet the remaining job creation requirements (an “**Additional Qualifying Investment**”).

HOW MUCH TO REINVEST

The amount of additional or new investment depends on when the original petition was filed and whether USCIS has acted to terminate the regional center or to debar a project entity.

- ***Pre-March 15, 2022 investors***
  Investors may proceed based on a total investment at the old minimum amount of $500,000 (assuming investment in a Targeted Employment Area), either through a new investment or by topping up to meet job creation requirements.

- ***Post-March 15, 2022 investors***
  An investor will need to ensure total qualifying investment reaches the minimum amount applicable at the time of I-526E submission (currently $800,000 for investment in a Targeted Employment Area), through a new investment or by topping up to meet job creation requirements.

For investors whose previous project’s NCE or JCE has been debarred after partial job creation, the statute does not specify how the required topping-up investment for creation of remaining jobs will be calculated, and there is little existing experience with debarment cases . It seems likely that the Additional Qualifying Investment would be calculated on a proportional basis: the fraction of the ten required jobs that remain uncreated, times the minimum investment amount. For example, a pre-March 15, 2022 investor at $500,000, whose debarred project yielded six (60%) of the required 10 jobs, would need to make an Additional Qualifying Investment of 40% times $500,000, or $200,000.

Based on reported experience with past disqualified projects, USCIS may provide case-specific guidance on required additional investments in the debarment notice sent to investors. If not, and if USCIS does not publish general guidance on calculation of Additional Qualifying Investments, Good Faith Investors in debarred projects may find that they need to invest additional funds when USCIS reviews their amended petitions.

NCEs that accept Good Faith Investors are free to require a higher investment amount – for example, to require an $800,000 investment even if Subchapter M requires only a New Qualifying Investment of $500,000. However, as more projects position themselves to accommodate Good Faith Investors, those who fail to accommodate lower minimum investment amounts will find themselves at a severe competitive disadvantage.

REQUIRED SUBMISSION: AMENDING THE PETITION

To qualify under Subparagraph M, the investor must submit an amendment to the pending immigration petition by the 180-day deadline. Subparagraph M requires USCIS to allow investors to amend their petitions to document the action qualifying the investor for continued petition validity and authorization under Subparagraph M. The amendment should be prepared by qualified immigration counsel.

WHAT ABOUT RECOVERING THE ORIGINAL INVESTMENT?

In many cases, investors have a right to recover part or all of their original investment from a project that is disqualified from the EB-5 Program for non-compliance. That recovery could be applied to a New Qualifying Investment or Additional Qualifying Investment. However, recovery may never occur or may be delayed for several reasons:

- Recovery depends on the specific terms of the original investment documents.

- Recovery may involve separate legal or financial processes.

- The project entities may not have funds to repay investors, especially if debarment has resulted from fraud or malfeasance.

The Good Faith Investor’s requirement to make a new investment within 180 days is unrelated to any recovery of the original investment. Investors should not assume recovery will occur, and the likely success of any such effort should be evaluated separately.

Following the recent surge in regional center terminations, some investors quickly received full repayment of their original investments, which they could use to make New Qualifying Investments. However, many others have risked the full amount of a New Qualifying Investment while hoping to recover the sunk cost of their previous EB-5 investments. For those in the latter category, only the investor can say whether the benefit of preserving pending immigration benefits is worth the risk of making a second investment without certainty the first will be repaid. For investors facing the alternatives of a total $1,000,000 investment to preserve an existing petition (an original $500,000 and an equal New Qualifying Investment), or re-starting the EB-5 process with a minimum new investment of $800,000, or abandoning EB-5, the risk-reward calculus likely weighs in favor of making the New Qualifying Investment. That is especially true for investors who may already have obtained conditional permanent residency for themselves and their family members.

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IMPORTANT UNCERTAINTIES

While Subparagraph M provides meaningful relief, uncertainties in its application remain, including the following:

- USCIS has discretion to determine who qualifies as a Good Faith Investor and approve or disapprove the amended petition.

- Regulations and formal guidance are still evolving, meaning future interpretations could impose additional requirements or limitations.

- Experience in application of Subparagraph M remains limited, especially with respect to debarment actions.

PRACTICAL CONSIDERATIONS FOR INVESTORS

If you have received notice that your project’s regional center has been terminated, or that a project NCE or JCE has been debarred, consider the following steps:

- Review all communications from USCIS and your existing project carefully.

- Make note of the 180-day deadline, which runs from the date of the notification.

- Examine your original investment documents, which may govern your rights to information, withdrawal, or recovery. If the project sponsors do not provide a clear timetable on repayment, consult with counsel (if possible, jointly with your fellow investors) on your ability to pursue recovery and likelihood of success.

- Consult your immigration counsel immediately. Timing and strategy are critical to preserving your immigration benefits under Subparagraph M.

- Evaluate replacement investment options carefully. Not all EB-5 opportunities are equal, and suitability depends on your personal immigration and financial situation.

  - Look for EB-5 projects whose documentation provides for the different needs of Good Faith Investors and that have supporting materials for your required petition amendment.
  - Look for EB-5 projects that have already obtained I-956F approval (project approval).
  - Look for projects that have already created sufficient jobs, especially if your I-829 petition deadline is approaching. Good Faith Investors will need job allocations sooner than will ordinary EB-5 investors.
  - Any new or additional investment must still meet EB-5 compliance standards

- If your project’s regional center has been terminated, promptly request information on whether the project sponsors are arranging for a new regional center, and monitor progress in any such efforts. If the project sponsors have not secured a new regional center within the 180-day period, you will need to have made your own New Qualifying Investment by the end of the same period. You cannot wait until the deadline to know if the project sponsor’s efforts to secure a new regional center have been successful.

- Consider tax and source-of-funds implications for any new investment you make. (Fortunately, investing returned funds from a disqualified project that have already passed source-of-funds review will not need re-evaluation.)

PRACTICAL CONSIDERATIONS FOR PROJECT SPONSORS

Good Faith Investors represent a substantial new group of potential, highly motivated investors. Sponsors who want to accept these new investors must take steps to accommodate them in their offering documents, transaction documents and investment procedures, including the following:

- The private placement memorandum must describe the investment path for Good Faith Investors, including their typically reduced minimum investment and different immigration law requirements.

- Existing EB-5 offerings that do not yet accommodate Good Faith Investors, but wish to, will need to supplement and modify their offering documents and transaction documents, and submit the revised documents to USCIS in an amendment to the I-956F petition for project approval. In consultation with immigration counsel, care should be taken to avoid a material modification that could trigger withdrawal of the original approval and re-consideration of the I-956F petition.

  - In particular, while Subparagraph M directs USCIS to allow amendment of a business plan, the facts underlying the amendment must not be deemed “material change.”

- Offering documents (PPM or PPM supplement) should include the risk factors related to accepting Good Faith Investors. These include the uncertainties described above. In addition, if a project does not expect a large job-creation surplus, accepting Good Faith Investors risks reducing the total amount of offering proceeds because each Good Faith Investor may be allocated 10 jobs while investing less than the current minimum amount of $800,000 (in a Targeted Employment Area).

- The NCE Operating Agreement or Limited Partnership Agreement may need to be amended to accommodate lesser investment amounts.

- If your project receives investments in escrow, the escrow agreement will need to be modified to provide for different investment amounts. Because some escrow agents may have difficulty allowing flexibility in the amount of investment, consider not escrowing investments from Good Faith Investors.

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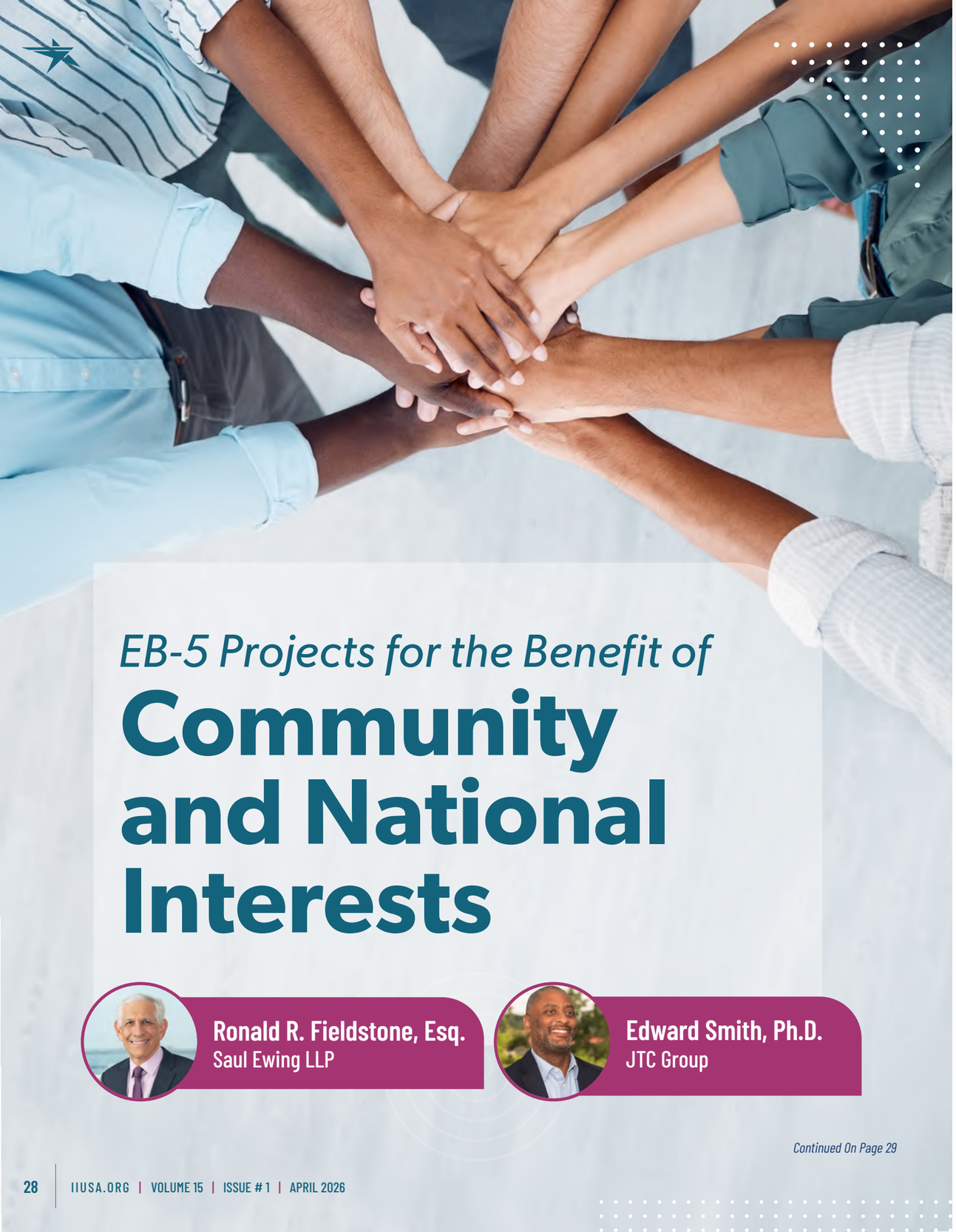
- If you are supplementing a PPM or other disclosure documents to provide for Good Faith Investors, include disclosure of any other material developments in the project that should be disclosed to all investors going forward. (For example, has construction been completed or delayed?) To avoid selective disclosure, make sure new ordinary investors and Good Faith Investors receive the same information about the project before they invest.

- Be mindful of the urgency faced by Good Faith Investors who must meet the 180-day deadline.

FINAL THOUGHTS

Subparagraph M represents an important development in the EB-5 Program. It offers additional peace of mind to investors who can avoid losing their pathway to permanent U.S. residency in circumstances beyond their control. It also provides a new potential source of investment for compliant projects maintaining good standing under current EB-5 Program rules. Nevertheless, Good Faith Investors may face additional risks, including a larger than expected total investment if they cannot recover funds from the original project. Project sponsors as well must undertake additional requirements if they seek to attract Good Faith Investors. The RIA's increased compliance requirements and regulatory scrutiny on regional centers and project sponsors will likely increase the value of Subparagraph M in the future.



EB-5 Projects for the Benefit of

Community and National Interests

Ronald R. Fieldstone, Esq.
Saul Ewing LLP

Edward Smith, Ph.D.
JTC Group

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The EB-5 Program was established by Congress in 1990 as a response to globalization and deindustrialization, with a goal of creating jobs and attracting foreign investment in communities nationwide. A key component of the EB-5 Program is the attraction of immigrant entrepreneurs to finance job-creating projects in exchange for immigration benefits. The vast majority of EB-5 investments occurs in targeted employment areas, which are defined as high unemployment areas (areas with an unemployment rate of at least 150% of the national average), or rural areas. Rural areas are defined as any area other than an area within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) or outside of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

Designed to be a driver of economic impact, EB-5 investments have been catalysts for community revitalization, entrepreneurship, and small business growth in both urban and rural communities nationwide, while also generating billions of dollars of additional revenue nationwide. Additionally, EB-5 immigrant investors become US taxpayers, and add to the economic base of the country via their job-creating investments.

With EB-5 investment as a catalyzing capital source, impact-oriented developers have constructed projects with community and national benefits supporting economic development and national strategic objectives nationwide.

It is noteworthy that the Federal Opportunity Zone Program was made permanent under the new tax bill adopted by Congress, with new rules and regulations becoming effective January 1, 2027. This program has received non-partisan support. Accordingly, this is an example of why the EB-5 Program should receive permanent authorization.

Recent examples of projects leveraging EB-5 investments demonstrate the role the EB-5 Program can play in the expansion and promotion of clean energy and supply chain independence, the improvement of critical aviation infrastructure, improvements to air quality and energy (and reducing congestion) through the creation of intermodal ports to distribute freight, and for supporting national health improvement initiatives through the development of rehabilitation facilities. Given their role in supporting national interests, projects like these are eligible for EB-5 expedited processing, which ultimately accelerates the flow of positive social, economic and environmental impacts to communities across the country. Below are some examples of the types of projects that are now being funded with investments made possible through the EB-5 Program.

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EXPANSION OF CLEAN ENERGY CRITICAL MINERAL EXTRACTION FACILITIES

The EB-5 Program is playing a key role in the expansion of clean energy resources in the United States such as the extraction of lithium, a critical mineral asset used in products such as electric vehicles, energy storage and consumer electronics. According to a 2021 analysis by US Department of Energy's "National Blueprint for Lithium Batteries 2021-2030," securing access to domestic lithium will further support the growth of battery manufacturing and battery energy storage, while reducing our dependence on lithium from foreign competition. State and federal incentives, such as the Advanced Energy Project Tax Credit, and the Minerals Exploration Tax Credit can also be obtained for this type of project.

IMPROVEMENTS TO CRITICAL INFRASTRUCTURE

EB-5 investments are also being used to improve critical infrastructure around the United States. A recent example is the redevelopment of a "reliever airport" in Southern California. Reliever airports perform a vital role of reducing congestion and improving access at commercial airports. These types of reliever airports can also support international trade when located in strategic geographic areas. The EB-5 Program is able to attract private capital to supplement the development of public airfields or airport assets, which acts as a driver for economic development in underinvested, underutilized transportation infrastructure around the United States.

These types of public infrastructure EB-5 projects offer a rare opportunity to advance America's economic and security interests simultaneously. In certain cases, these projects can also assist border and customs immigration personnel at the Mexican border by establishing strategically located joint base points for U.S. security agencies, thereby supporting the national effort to interdict illegal drug activity.

IMPROVEMENTS TO FREIGHT DISTRIBUTION

EB-5 Investments are also contributing to the expansion of freight operations across America. These projects are designed to enhance rail access and support multimodal freight operations that link inland ports and rail facilities for transport of goods throughout the country.

These projects also expand freight and industrial capacity while improving long-term supply-chain resilience. By enabling a modal shift from long-haul trucking to rail, developing freight facilities that link to inland ports to rail transport hubs reduces highway congestion, emissions, and transportation costs for regional industries. These projects also alleviate pressure on coastal ports by creating inland distribution hubs for goods moving through coasted gateways. In addition, freight distribution projects also support new industrial building projects, container storage yards and rail infrastructure improvements throughout the surrounding areas where these projects are located.

REHABILITATION FACILITIES

Rehabilitation facilities are critically important to the efforts of national, state and local governments to combat drug addiction, including opioid usage, alcohol addition and other similar heath issues. Robert F Kennedy Jr., Secretary of Health and Human Services, recently published the following statement: "As a result of the continued consequences of the opioid crisis affecting our nation, ... do hereby renew the determination...that an opioid public health emergency exists nationwide." Managing this problem requires tremendous resources, and EB-5 investments have provided an important source of financing for new rehabilitation facilities throughout the nation. Medicaid, Medicare and the Department of Justice (re: reduction of crime) support these programs.

In order to be most effective, drug rehabilitation projects should include nursing homes, drug rehabilitation centers and other similar services to provide the necessary care to patients. A detailed provision of health care services being provided requires a multidisciplinary approach and advance treatments to be undertaken. Funding the construction of the facilities, developing the programs, and sourcing the teams to implement the programs faces many challenges.

With the help of EB-5 investment funds, a recovery center can build a team of highly qualified professionals from various fields of mental health and addiction treatment. This team includes psychiatrists, psychologists, licensed therapists, counselors, and addiction specialists, each bringing a wealth of experience and specialized skills. The patients served by these facilities have access to treatments including detoxification,

Continued On Page 31

residential treatment, outpatient programs and after-care services.
A recovery centerwill typically provide patients with the following care:

- **Detoxification**: Safely managing withdrawal symptoms under medical supervision.
- **Residential Treatment**: Providing intensive care and support in a live-in facility.
- **Outpatient Programs**: Allowing patients to receive treatment while living at home.
- **Aftercare Services**: Supporting long-term recovery and preventing relapse.

Overall, these projects are not just a business but a vital resource for individuals and families dealing with substance abuse and behavioral health issues.

MINING PROJECTS

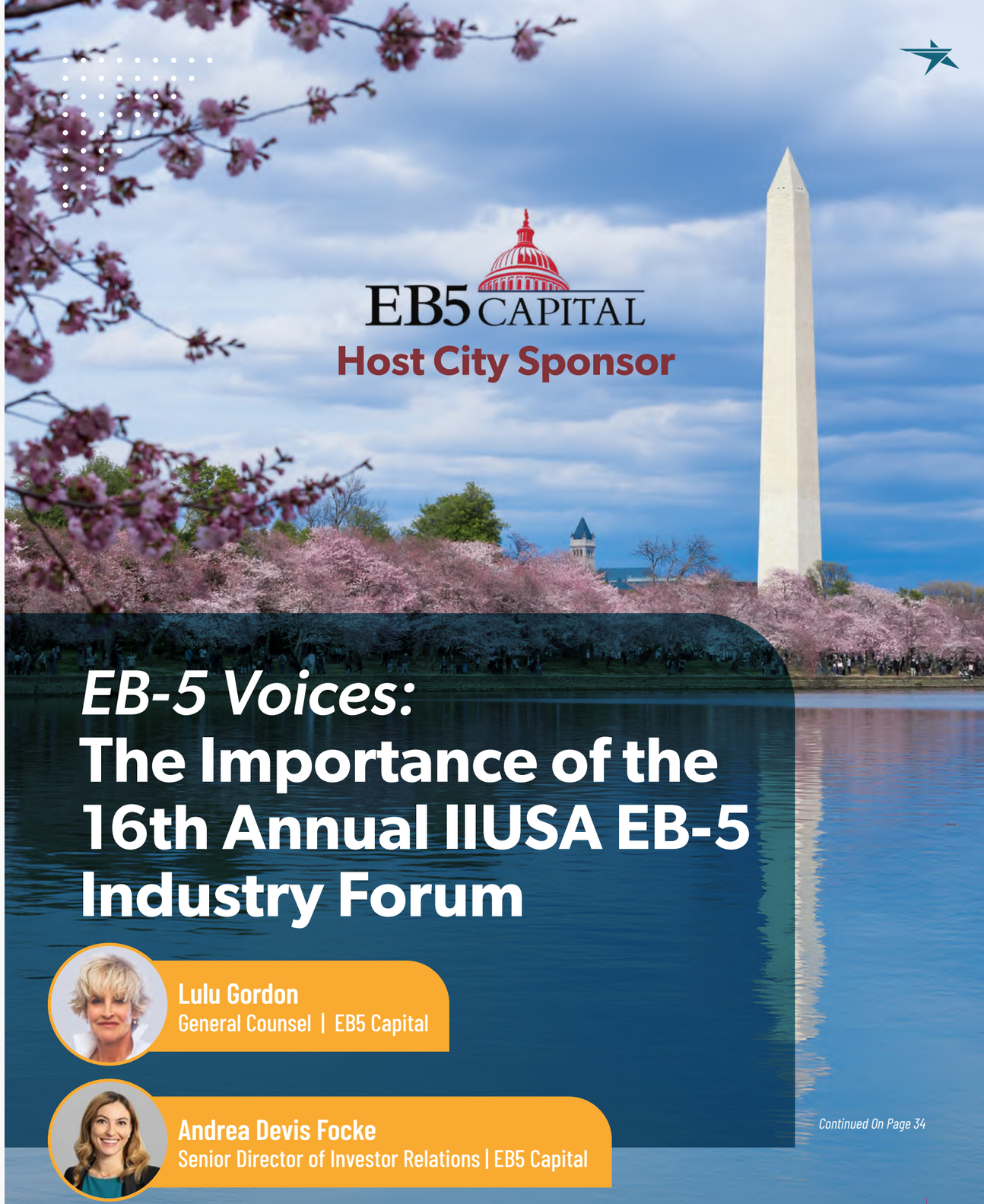
EB-5 funds are also providing an important source of funding for development of mining facilities for production of critical materials needed to support both commercial and infrastructure developments. Mining projects are being created for the production of limestone aggregate and other building products that are utilized in the construction of many public and private facilities, including roads and bridges, rail, airports and public utilities including water and sewer systems. Mining projects support both the local economy and other geographic areas that use these products in their own construction projects.

EXPEDITED PROCESSING AND CONCLUSION

The EB-5 Program has suffered in recent years because of processing delays and a demand from EB-5 visa applicants that far outweighs the supply of available visas. Despite these challenges, the EB-5 Program has been and continues to be a driver of positive economic, social, and environmental impacts across the country. Projects like the ones described in this article are not only bringing catalytic change to the communities they serve, but also supporting national interests.
This makes these types of projects eligible to apply for EB-5 expedited processing, which drives more EB-5 applicants to invest in these projects. Factors to be included in an expedited request include the following:

a. project description;
b. project location;
c. project support which would include a detailed description of the unique services being provided; and
d. references to publications that support the need for expedited processing as being in the material interest.

As the EB-5 investment community seeks solutions for the rapidly approaching September 30, 2026 expiration date for I-526E adjudication assurance, as well as the September 30, 2027 expiration date for the entire Regional Center Program, it is essential for the EB-5 industry to promote not just projects that create jobs for the local community and support the local economy, but also highlight the projects that have much broader impacts on US infrastructure and national interests. Further emphasis on the wide-range of benefits from EB-5 investments could prove instrumental to the future of the EB-5 Program.



EB-5 Voices: The Importance of the 16th Annual IIUSA EB-5 Industry Forum

Lulu Gordon
General Counsel | EB5 Capital

Andrea Devis Focke
Senior Director of Investor Relations | EB5 Capital

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Founded in 2005, Invest in the USA (IIUSA) is the national, membership-based nonprofit trade association for the EB-5 Regional Center Program. Each year, the IIUSA EB-5 Industry Forum brings together stakeholders from around the world for three days of education, networking, and advocacy. This year, EB5 Capital is especially proud to serve as the **Host City Sponsor** for IIUSA's Annual Forum in our nation's capital, taking place April 29 – May 1, 2026. Washington, D.C., is home to key policymakers and a dynamic EB-5 investment landscape, making it a fitting location for the industry to gather at this pivotal moment.

Lulu Gordon, General Counsel at EB5 Capital, is an active leader in the EB-5 community. As a member of the **IIUSA Board of Directors and Political Action Committee Board**, and co-chair of IIUSA's Public Policy Committee, she is deeply engaged in shaping the industry's advocacy efforts. Lulu recently spoke with **Andrea Devis Focke**, Senior Director of Investor Relations at EB5 Capital and **co-chair of IIUSA's Membership & Investor Market Development Committee**, to discuss the significance of this year's forum and the broader priorities of the EB-5 industry.

Andrea: Why did IIUSA decide to hold this year's IIUSA EB-5 Industry Forum in Washington, D.C.?

Lulu: With the upcoming **September 30 expiration of the grandfathering protections under the EB-5 Reform and Integrity Act of 2022 (RIA)**, and the broader sunset of the RIA in 2027, this is a critical moment for the industry. It is more important than ever for stakeholders to come together to focus on advocacy, education, and the consolidation of reliable data demonstrating the program's impact.

Hosting the forum in Washington, D.C. allows us to highlight how the EB-5 program—along with projects supported by EB5 Capital—has contributed to transformative development in the city and across the country. There is an urgent need to address the early expiration of investor grandfathering protections and to work toward **permanent or long-term program reauthorization**.

For these reasons, it is more important than ever for all stakeholders to come together and speak with **a unified voice** about the value of the EB-5 program.

Andrea: You, along with other members of the IIUSA Board of Directors, have been at the forefront of educating and building support on Capitol Hill to ensure the continued success of the EB-5 industry. Could you provide a brief overview of IIUSA's advocacy efforts?

Lulu: Since the EB-5 Reform and Integrity Act (RIA) was enacted in 2022, IIUSA's leadership has organized regular **Capitol Hill "Fly-Ins"** to meet directly with members of Congress and their staff. These meetings focus on educating policymakers about the economic impact EB-5 projects have generated in communities across the country and addressing implementation challenges that affect the program's effectiveness.

Although the EB-5 industry is relatively small, its economic impact is significant. Since its inception, EB-5 has attracted **more than $60 billion in foreign direct investment** and supported the creation of **over 3 million American jobs**.

The RIA's visa set-asides and priority processing for rural investment are helping direct capital and meaningful economic benefits to the communities most in need, and at no cost to the **American taxpayer**. EB5 Capital's 18 high-unemployment developments in Washington, D.C., and our numerous rural projects demonstrate how EB-5 can support both urban revitalization and rural economic growth. IIUSA's regional center members have funded hundreds of impactful projects all across the country.

To fully realize the program's potential, the industry needs **certainty, transparency, and fairness in program administration**. Through ongoing engagement with policymakers, IIUSA continues to advocate for these principles and for the long-term stability of the EB-5 program.

Andrea: What makes it valuable for members of the EB-5 industry to support and become members of IIUSA?

Lulu: At a time when the program's future depends on strong advocacy and clear communication with policymakers, IIUSA is uniquely positioned to serve as our collective voice.

Through IIUSA, members have the opportunity to participate directly in advocacy efforts, contribute to policy discussions, and help shape the long-term future of the EB-5 program. The organization also provides a valuable platform for collaboration among regional centers, developers, attorneys, service providers, and other stakeholders who share a common goal: ensuring that the EB-5 program continues to drive job creation and economic development across the United States.

Equally important, IIUSA plays a critical role in educating policymakers and the public about the program's impact. The data, research, and coordinated advocacy efforts led by IIUSA have helped demonstrate that EB-5 is a powerful economic development tool that delivers meaningful benefits to American communities. For anyone invested in the long-term success and credibility of the EB-5 program, supporting and participating in IIUSA is among the most effective ways to strengthen and sustain our industry.

The RIA Grandfathering Provision:

Planning for September 30, 2026

Jessica DeNisi
Partner | Klasko Immigration Law Partners

Brief History of EB-5 Regional Center Lapses

Since its inception in 1992, Congress has repeatedly extended the EB-5 Regional Center program through short-term reauthorizations, often tied to omnibus appropriations legislation. Although these extensions generally occurred before expiration, Congress did not reauthorize the program prior to its June 30, 2021, sunset, resulting in an extended lapse lasting until March 15, 2022.

During that period, U.S. Citizenship and Immigration Services ("USCIS") suspended adjudication of regional center–based immigrant petitions. Investors with pending petitions experienced prolonged delays and, in some cases, collateral immigration consequences.

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THE RIA GRANDFATHERING PROVISION: WHAT IT DOES AND WHAT IT DOES NOT DO

The EB-5 Reform and Integrity Act of 2022 ("RIA")[1] amended section 203(b)(5) of the Immigration and Nationality Act ("INA")[2] and reauthorized the regional center program through September 30, 2027. Within that framework, Congress included a statutory grandfathering provision designed to protect certain investors from the consequences of future program expiration.

In substance, the statute provides that EB-5 immigrant petitions filed on or before September 30, 2026,[3] must continue to be adjudicated notwithstanding the expiration of the regional center program.[4] Although the statute does not use the term "grandfathering," the effect is precisely that: qualifying filings may not be denied solely due to congressional inaction.

This protection is procedural rather than substantive. The grandfathering provision preserves USCIS's authority to adjudicate qualifying petitions and prevents the expiration of the regional center program from serving as a basis to suspend or terminate the allocation of immigrant visas to beneficiaries of approved, timely filed petitions.[5] It does not relax or waive the underlying eligibility requirements of the EB-5 program. Grandfathering does not guarantee approval of a Form I-526E, excuse deficiencies in lawful source or path of funds documentation, eliminate job creation requirements, or insulate investors from project-level or regional center noncompliance issues.

The EB-5 visa set-aside categories created by the RIA -- rural, high-unemployment, and infrastructure[6]-- do not expire on September 30, 2026. They remain part of the statutory EB-5 visa allocation framework. For direct EB-5 investors, these set-asides continue to apply regardless of the status of the regional center program. For regional center investors, access to set-aside visa numbers after September 30, 2026, depends on continued program authorization or qualification under the RIA's grandfathering provision.

THE RIA GRANDFATHERING PROVISION: WHAT REMAINS UNCLEAR

While the RIA's grandfathering provision provides meaningful protection, it does not prescribe every aspect of implementation. The statute directs the Secretary of Homeland Security to continue adjudicating qualifying petitions and prohibits denial or visa allocation suspension based solely on program expiration.[7]

The statute does not, however, detail the operational mechanics of inter-agency coordination between the Department of Homeland Security and the Department of State after September 30, 2027, the treatment of grandfathered cases in the Visa Bulletin, or adjudication of Form I-956F applications.

While timely filed Form I-526E petitions are statutorily protected from program expiration, investors who file based on a pending Form I-956F assume additional practical risk. Although the RIA requires USCIS to continue adjudicating grandfathered investor petitions notwithstanding a future program lapse, the statute does not specify how such petitions must be evaluated if project-level approvals remain pending after September 30, 2027.[8] As a result, while USCIS may not deny a timely filed Form I-526E solely because the regional center program has expired, the absence of an approved Form I-956F could materially affect how the petition is adjudicated on the merits. In keeping with its recent inventory management announcement, it would make sense for USCIS to continue to adjudicate those I-956F applications that are the subject of pending I-526E petitions filed before October 1, 2026, giving full and proper effect to the grandfathering provisions, but no one can predict what USCIS will do. Investors filing near the September 30, 2026, deadline should therefore understand that reliance on a pending Form I-956F introduces an element of uncertainty, particularly if the 2027 program lapse occurs before project approval is completed.

These uncertainties relate to implementation rather than to the statute's core protection. By expressly preserving adjudicatory authority and visa allocation eligibility, the RIA departs from prior program lapses under which USCIS halted adjudications due to lack of statutory authority.

[1] EB-5 Reform and Integrity Act of 2022, Div. BB, Pub. L. No. 117-103
[2] INA § 203(b)(5), 8 U.S.C. § 1153(b)(5).
[3] INA § 203(b)(5)(S), 8 U.S.C. § 1153(b)(5)(S)
[4] INA § 203(b)(5)(S), 8 U.S.C. § 1153(b)(5)(S).
[5] INA § 203(b)(5)(S)(iii)
[6] See INA § 203(b)(5)(A)–(C), 8 U.S.C. § 1153(b)(5)(A)–(C).
[7] See INA § 203(b)(5)(S), 8 U.S.C. § 1153(b)(5)(S).
[8] See INA § 203(b)(5)(S), 8 U.S.C. § 1153(b)(5)(S); USCIS Policy Manual, Vol. 6, Pt. G (project documentation and job creation requirements)

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The RIA Grandfathering Provision: Planning for September 30, 2026

INVESTOR CONSIDERATIONS AS SEPTEMBER 30, 2026 APPROACHES

As September 30, 2026, approaches, investors and practitioners must balance timing considerations against the substantive requirements of the EB-5 program. Filing earlier may reduce legislative risk, but it does not eliminate adjudicatory risk.

Lawful source and path of funds documents remain one of the most scrutinized aspects of EB-5 adjudication. Complex funding arrangements often require months of preparation before filing. A rushed filing may increase the likelihood of Requests for Evidence, Notices of Intent to Deny, or denials.

Investors should also consider the consequences of denials occurring after September 30, 2026. While petitions may still be filed through September 30, 2027, under current law, filings made after the grandfathering cutoff remain dependent on continued program authorization through legislation. A denial after the program sunsets may leave limited options absent further Congressional action.

For investors pursuing adjustment of status, a lapse in program authorization could affect the viability of the underlying immigrant petition and the basis for a pending adjustment application if they do not file before the September 2026 grandfathering deadline. Investors may wish to maintain an independent nonimmigrant status as a risk-management strategy.

ALTERNATIVE IMMIGRATION OPTIONS

The approaching grandfathering date also prompts some investors to consider alternative immigration strategies. One option is the direct or "standalone" EB-5 program, which is not dependent on regional center authorization and therefore not subject to the same sunset risk, though it entails direct job creation requirements. Investors should consider that standalone investors receive credit only for actual operational jobs (no construction impacts or other indirect effects) and that historically standalone projects and petitions have tended to fail in meaningfully higher percentages than regional center investments.

Other investors may evaluate nonimmigrant options such as the E-2 treaty investor visa. While the E-2 visa does not lead directly to permanent residence, it may provide lawful status and operational flexibility while longer-term strategies are evaluated.

CONCLUSION

The RIA's grandfathering provision represents a Congressional response to the EB-5 program's history of instability. September 30, 2026, is not a cliff, but an important statutory inflection point. Investors who file on or before that date benefit from reduced legislative risk, while those who file later may still proceed lawfully but with a materially higher risk profile.

In the end, the decision to pursue a green card through the EB-5 immigration process should be driven by project quality, source of funds readiness, immigration status, and individual risk tolerance, not timing alone.

Regional Centers:

Does it Still Make Sense to Rent?

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Renting a regional center has been a common practice for more than 30 years, but is it still a good practice? This article examines an old business model and offers a framework to determine if affiliation is prudent under new regulations.

The advent of the Regional Center Pilot Program in 1992 enabled large-scale investment in real estate development and other construction-based projects. Rather than directly hiring hundreds of regular employees (as imagined when EB-5 was created in 1990), project developers could prove job creation using a statistical method. The effect has been significant foreign investment in the U.S. economy and tens of thousands of new jobs created over more than three decades.

To receive and spend capital in this way, a project developer—or an EB-5 fund manager lending to a project—must do so under a regional center. Prior to enactment of the EB-5 Reform and Integrity Act of 2022 (RIA), a firm that did not have its own regional center could use one owned by a third party without much concern. This arrangement is colloquially referred to as "renting." The RIA imposed strict new regulations that make renting more complicated and much riskier for both regional centers and their sponsored projects.

WHAT EXACTLY IS A REGIONAL CENTER?

A regional center is a designation, or a kind of license, issued by U.S. Citizenship and Immigration Services (USCIS). A designated firm is authorized to participate in the EB-5 program by facilitating the investment of foreign-owned capital into commercial enterprises within the United States. There were 580 approved regional centers as of September 22, 2025. Regional centers, which are mostly private-sector firms but can also be public or public-private organizations, generally fit into one of three broad categories: self-sponsors, fundraisers, and service providers.

- **Self-sponsors** are firms—mostly real estate developers—that have made EB-5 capital part of their long-term financing strategy. They raise money from immigrant investors to finance their own projects. These firms hold one or more designations with geographic areas that match their trade area. Their regional centers typically operate as funding vehicles, not as profit centers.

- **Fundraisers** are the most prevalent in the EB-5 industry. These firms raise capital for the purpose of lending it to others. That is, the fund manager (which owns the regional center) is the lender and the project developer is the borrower.

- **Service providers** offer regional center sponsorship under an "affiliation" model to project developers and fund managers that do not have their own designations. Likewise, some self-sponsors and fundraisers allow others to rent their regional centers. Such transactions are the topic of this article.

These are business models which have emerged in the private sector. USCIS makes no distinction between the types of regional centers.

WHO RENTS AND WHY?

To be clear, "renting" is an informal term. The reality is more complex. The sponsoring regional center provides certain services under what is usually a lengthy contract with one or more entities involved in raising and using EB-5 capital. "Affiliation" is the formal term most frequently used to describe this relationship. The project developer or fund manager is allowed to promote the investment offering, receive and spend the capital, and create jobs under the regional center's license, while the regional center handles reporting to USCIS. One way to think of this is outsourced compliance.

Obtaining a new regional center designation can be costly and slow. The sum of consulting fees and the USCIS filing fee can be upward of $100,000. The upfront cost of affiliation is usually less than this. After submitting the required documentation to USCIS, an applicant could wait one to two years for approval. For project developers or fund managers wanting to raise EB-5 capital quickly, renting is an immediate solution.

As the name suggests, a regional center covers a region of the United States. USCIS may approve a geographic area covering multiple states, but not half the country. A firm that pursues new deals all over the U.S. would have to maintain multiple designations to have nationwide coverage, which can be a costly endeavor. Renting allows greater mobility.

Finally, many firms simply do not want to have their own regional center. The management guru C.K. Prahalad famously theorized that a company should focus on its core competencies and outsource everything else. A project developer, whose expertise is building beautiful new spaces, may reasonably conclude that operating a regional center is not core to its business.

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WHAT HAS CHANGED?

In establishing the Regional Center Pilot Program in 1992, the Congress provided only the thinnest of definitions of what a regional center is and what it must do. Consequently, designated firms were able to operate with limited regulatory oversight for 30 years. One could maintain a license merely by submitting an annual report to USCIS, paying the fee, and not committing fraud.

The RIA established many new requirements for regional centers and gave USCIS greater enforcement authority. Some of these requirements, summarized below, confound the affiliation model.

1. **Bona Fides.** Persons in positions of substantive authority must file Form I-956H, which is a background questionnaire. A regional center must ensure that all persons who are required to file have done so, including those in organizations it does not own or control.

2. **Promotion.** All organizations and individuals involved in promoting EB-5 investments must file Form I-956K. Additionally, fees must be disclosed to investors. Ensuring compliance is especially challenging if the sponsored project raises capital through offshore agents.

3. **Audits**. The RIA requires that USCIS conduct quinquennial audits of every regional center. Many firms operating under an affiliation model have incomplete records of long-completed projects and are struggling to prepare for an audit.

4. **Recordkeeping.** Records must be retained for five years. A regional center must closely monitor each sponsored project to ensure every document is properly stored, organized, and ready for an audit.

5. **Higher Fees.** The RIA mandates an annual contribution to the EB-5 Integrity Fund and authorizes USCIS to increase other fees. Depending on the regional center's pricing model and existing agreements, these fees can have a big impact on its cash flow.

6. **Labor Law Compliance**. Regional centers must ensure sponsored projects' compliance with U.S. labor laws, although USCIS has not yet published any policy guidance regarding specific requirements.

7. **Penalties.** USCIS may impose sanctions such as debarments, fines, suspensions, and terminations for noncompliance by a regional center and persons involved with a regional center and its sponsored projects.

8. **Inexplicably strict rules.** The USCIS Policy Manual states, for example, "USCIS must terminate a regional center's designation if… one of the regional center's new commercial enterprises violates statutory provisions relating to redeployment of funds…" A seemingly innocuous mistake could trigger a forced termination.

WHY IS RENTING RISKIER NOW?

Put simply, a noncompliant act by any project under a regional center is effectively a noncompliant act by every project. A penalty imposed on a regional center, up to and including termination of its designation, could adversely impact every sponsored project and its investors. This has always been true, but now there are many more ways to run afoul of USCIS and more severe consequences for doing so.

Imagine this scenario. XYZ Regional Center sponsors three projects: A, B, and C. Not only do A, B, and C not know each other, they don't know about each other. Project A has an excellent management team and has engaged qualified professionals to advise on fund management and compliance. It does everything right. Project B is careful in handling the EB-5 capital and cooperates fully with XYZ's oversight but pays little attention to the activities of offshore agents promoting its investment offering. Multiple agents and their employees fail to register with USCIS, and one commits what would be considered fraud in the United States. Project C raised capital from the developer's friends and family, all of whom were aware that their money was redeployed to another project. The problem is, XYZ is unaware of the redeployment and that it was done improperly. Compliance failures by Projects B and C, if they result in punitive action by USCIS, will negatively affect Project A and its investors.

USCIS is unconcerned with the three business models described earlier in this article. It does not recognize affiliation as a unique form of sponsorship nor sympathize with its inherent limitations. In the eyes of immigration officials, an arm's length relationship with a sponsored project provides a regional center no excuse in event of noncompliance.

Importantly, a regional center may not assign away its compliance obligations with a contract. While an affiliation agreement will necessarily require a sponsored project to act in accordance with the regulations, the regional center is still responsible if it does not. Not knowing about a project developer's noncompliant activities does not absolve a regional center of its compliance obligations; it is responsible for everything that happens under its license.

HOW CAN A FIRM ASSESS RISK?

A developer, fund manager, or other group considering affiliation should conduct thorough due diligence before entering an agreement with a regional center. Following are seven key areas to look at.

1. **Experience**. When was the firm established? How many projects, past or present, have been sponsored? How much capital has been raised and from how many investors? How much of this activity has occurred following enactment of the RIA?

2. **Compliance History.** Has the regional center been subject to termination or other regulatory actions? How were these matters resolved? Have annual reports to USCIS been timely filed and mandatory fees paid?

3. **Standards**. Given the very high risks described above, it should not be easy to affiliate. Regional centers focused on compliance and minimizing risks for all stakeholders are highly selective. It's not a good sign if a regional center does not require a rigorous underwriting process.

4. **Policies and Procedures.** The RIA requires regional centers to have formal compliance policies. An operator should have a robust policy manual that it strictly follows

5. **Personnel.** Who does the heavy lifting in the back office? EB-5 compliance is labor-intensive. The totality of work required simply cannot be done by the owner and one assistant. A regional center operator should have a full-time compliance officer and a supporting team large enough to handle the firm's business volume.

6. **Cash Flow.** Regional centers' pricing models vary. Nearly all charge a one-time upfront fee for affiliation. Smartly managed regional centers also charge sufficient ongoing fees to cover operating costs in future years. An attractive pricing scheme may, in fact, create risk for projects and investors.

7. **Financial and legal liabilities.** While important for any contract, this is critical for affiliation. Is the regional center and its owners solvent? Are there any contingent liabilities such as pending lawsuits? Are any principals under criminal or administrative investigation? Could any legal action by a third party, including a government agency, cause the regional center to cease operations or have its designation terminated by USCIS?

Ask all these questions and more. An experienced immigration lawyer with expertise in regional center operations can provide guidance.

WHAT IS THE ALTERNATIVE TO RENTING?

Owning.
Ownership of a regional center has important advantages: control, exclusivity, and long-term savings.

1. **Control**. By adopting an ownership model, a project developer makes all decisions regarding activity under the regional center.

2. **Exclusivity.** Much of the risk in the affiliation model comes from having multiple independent (and mutually anonymous) projects sponsored by the same regional center. Ownership enables a firm to limit sponsorship to its own projects, and to be affiliated with others only if it chooses to do so.

3. **Long-term savings.** Renting is expensive, especially when affiliating with a regional center that takes seriously its compliance obligations and employs a professional team. Owning a license can significantly reduce the cost of EB-5 capital over time.

People are often intimidated by the compliance burden of obtaining a regional center designation and the resultant costs. They shouldn't be. A project developer or fund manager that procures the necessary resources to properly manage a single EB-5 investment offering will have done 80 percent of the work to compliantly operate its own regional center.

While less regulated than other kinds of fundraising, managing an EB-5 fund comes with considerable administrative requirements. To operate the fund, an issuer must hire and pay an expert team consisting of employees, consultants, and outside legal counsel. These same professionals can provide advice and services to operate a regional center.

The cost savings can be substantial. Consider the following simplified comparative analysis for a single project with 12 immigrant investors.

- **Renting.** Assume a project developer pays a one-time upfront fee of $50,000, plus an annual fee equal to 1.0% of EB-5 capital, plus $5,000 each year for the project's pro rata share of USCIS fees, for five years. The sum of all fees paid to the regional center for affiliation is $555,000.
- **Owning.** Assume a project developer spends $100,000 to obtain a new regional center designation, $15,000 annually for USCIS fees, and perhaps $50,000 per year for consulting and legal fees (above what would be spent for fund management). The total expenditure over five years is $425,000.

With more than a dozen investors in a project, or with multiple projects, the savings could be much higher. The opposite is also true: a project developer with only a few investors in one project, and no plans to raise EB-5 capital in the future, may find affiliation to be more cost-effective. Keep in mind, this basic comparison does not consider the hard-to-quantify risk premium of renting versus owning.

Firms should fully understand their options and carefully evaluate potential service providers before deciding how to obtain regional center sponsorship. Some will find that renting still makes sense, albeit with extra precautions to mitigate risk. Others will find that owning is a better fit.

USCIS EB-5 Updates:

Policy Shifts, Adjudication Trends, and Industry Implications

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The U.S. Citizenship and Immigration Services (USCIS) plays a central role in administering the EB-5 Immigrant Investor Program (the EB-5 Program), adjudicating petitions and implementing policies enacted by Congress. Since the EB-5 Reform and Integrity Act of 2022 (RIA) took effect, USCIS, particularly through its Immigrant Investor Program Office (IPO), has sought to standardize adjudications, reduce backlogs, and enhance program integrity.

Yet the rapid pace of statutory reform, litigation interventions, and surging investor demand has created operational and policy challenges. This article provides a practice-oriented, up-to-date review of EB-5 policy shifts, adjudication trends, administrative challenges, and their practical implications for investors, regional centers, and practitioners.

I. EB-5 ADJUDICATION LANDSCAPE: IPO'S ROLE AND PRIORITIES

The IPO was created to centralize and professionalize EB-5 adjudications, consolidating expertise in law, finance, economics, and business. It adjudicates regional center petitions (e.g., I-956, I-956F) and investor-level petitions (e.g., I-526E, I-829, legacy I-526). IPO's priorities are shaped by statutory processing goals, integrity mandates, and resource constraints.

Recent operational reforms include direct electronic communications between adjudicator teams and petitioners, accelerated processing pilot programs to shorten adjudication timelines, and enhanced use of subject-matter specialists (e.g., economists for job creation reviews and targeted employment area (TEA) determinations).

Despite these efforts, stakeholders continue to experience uneven adjudication timelines, with some filings taking significantly longer to be adjudicated than others despite having similar profiles. These disparities suggest that IPO's resource allocation and procedural standardization are not yet fully aligned with the statutory objectives.

II. KEY POLICY SHIFTS AFFECTING EB-5 ADJUDICATIONS

RIA Implementation

The RIA fundamentally reshaped the EB-5 Program by introducing enhanced remedies to ensure integrity and compliance, revised investment requirements, and structural reforms designed to strengthen the program's economic impact and anti-fraud framework. Key provisions include: new tools to ensure integrity and compliance (e.g., sanctions, debarment); revised investment thresholds and centralized authority for TEA designations; and mandatory compliance audits, integrity fund contributions, and submission of audited annual statements by regional centers.

USCIS updated its Policy Manual to incorporate these RIA directives. While this guidance provides clarity, practitioners note that adjudicators' interpretations can vary, leading to inconsistent notices across similar filings.

Fee Rule and Regulatory Modernization

In October 2025, the Department of Homeland Security issued a Notice of Proposed Rulemaking (DHS Docket No. USCIS 2025-0139) proposing to rebalance EB-5 filing fees, including reductions from previously increased levels, a new technology fee, and integrity fund fees and penalties, along with a new Form I-527 for legacy investor petitions.[1] The proposed changes were intended to fund EB-5 adjudication costs, support processing goals, and maintain program integrity.

However, the fee landscape shifted following the issuance of a decision in Moody et al. v. Mayorkas et al. (2025). In that case, the United States District Court for the District of Colorado entered an order in November 2025 that halted the April 2024 EB-5 fee increases, finding that USCIS had not completed the statutorily required fee study before implementing higher fees. As a result, EB-5 filing fees reverted to pre-April 2024 levels, and USCIS is required to develop a new fee rule consistent with statutory requirements. As of the date of this article, the final fee rule remains pending and USCIS has not yet issued a finalized version. Stakeholders should continue to monitor developments, as the agency's next steps will determine fee levels, compliance obligations, and resource allocation for IPO adjudications.

These developments highlight the legal and procedural constraints governing USCIS's authority to adjust EB-5 fees and underscore the importance of following the correct procedures when seeking to modernize and update the regulations that pertain to the EB-5 Program. They also create a period of operational uncertainty and planning for IPO, as the agency balances investor cost impacts, resource needs, and compliance with judicial requirements.

As a practical result, the EB-5 industry has faced significant administrative challenges, including investors and regional centers receiving initial receipts reflecting the now-vacated higher fees, followed by corrected receipts showing reduced, court-mandated fees, leading to confusion and additional tracking burdens for filings (such as I-526E, I-829, and I-956G).

III. Adjudication Trends and Challenges

Surge in Adjudications and Backlog Dynamics

Quarterly data analyzed by Invest in the USA (IIUSA) indicate a significant surge in EB-5 adjudication volume, with quarterly approval milestones far exceeding pre-RIA figures (e.g., record I-526E petition approvals in fiscal year 2025, which began on October 1, 2024 and ended on September 30, 2025).[2]

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[1] The official Federal Register notice was published on October 23, 2025: https://www.federalregister.gov/documents/2025/10/23/2025-19642/us-citizenship-and-immigration-services-employment-based-immigrant-visa-fifth-preference-eb-5-fee
[2] IIUSA's Q3 FY2025 report: https://iiusa.org/iiusa-report-uscis-q3-fy2025-data-highlights-record-high-i-526e-approvals-and-continued-growth-of-eb-5-demand/ nt Petition Eligibility Requirements." Policy Manual Volume 6 (Chapter 2). U.S. Citizenship and Immigration Services. State. Gov, https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2

Rural TEA and high-unemployment investment categories have shown strong growth, consistent with RIA's set-aside visa allocations and statutory intent.

Nonetheless, adjudication inconsistencies persist, with some filings adjudicated significantly faster than others that are similar in many respects. Recent FOIA-based analyses suggest resource constraints and internal prioritization decisions continue to impact consistency, highlighting an area where IPO may need further operational refinement.[3]

Effective March 30, 2026, USCIS will transition to a balanced First-In, First-Out (FIFO) approach that prioritizes statutory requirements, sequencing I-526E petitions only after a decision on the associated I-956F, prioritizing rural petitions, and then addressing other post-RIA I-526/E petitions. This updated guidance introduces a guiding principle that processing volume should be tied to "facilitating usage of reserved visas," which is somewhat ambiguous and leaves open questions about how it will differ in practice from the prior visa availability approach.[4]

Heightened Documentation and Evidentiary Scrutiny

USCIS continues to issue Requests for Evidence (RFEs), Notices of Intent to Deny (NOIDs), and Notices of Intent to Revoke (NOIRs) in EB-5 cases at a relatively high rate, reflecting heightened scrutiny of source- and path-of-funds documentation pertaining to complex financing structures, job creation substantiation tied to economic models and TEA calculations, and use of alternative financing instruments such as investor loans or self-directed IRAs. Practitioners note that adjudicators' demands have expanded, creating ambiguity as to what USCIS considers sufficient to satisfy the preponderance of the evidence standard, and that the broadened requirements have contributed to notable inconsistencies across adjudications, creating both unpredictability and operational strain for petitioners and counsel.

Discretionary Review and Expanded Criteria

Recent policy changes in adjudication guidance for all immigration benefits (although not EB-5-specific) broaden the factors officers may consider in discretionary decisions, including perceived national interest assessments and compliance histories. While employment-based cases generally focus on eligibility criteria, EB-5 adjudications may reflect a heightened holistic review in borderline or compliance-related contexts.

IV. Legal and Administrative Oversight

Litigation continues to shape the EB-5 Program. Beyond the fee rollback, industry challenges over sustainment requirements, source- and path-of-funds requirements, and guidance interpretation illustrate the complex interplay between policy, law, and implementation.

The Administrative Appeals Office (AAO) remains a key mechanism for resolving disputes and setting precedents, yet appeals can be time-consuming and costly, adding uncertainty and additional expenses for investors and regional centers.

V. Future Outlook

Finalization of Policy and Regulatory Reforms

The anticipated finalization of USCIS's EB-5 adjudications policy memorandum and a revised fee rule consistent with statutory mandates will be pivotal for future adjudication consistency and resource planning. Stakeholder engagement during these processes is essential to ensure greater consistency in adjudication, alignment of resources with statutory processing mandates, and transparent and predictable compliance expectations.

Enhanced Data and Fraud Risk Tracking

The Government Accountability Office (GAO) recommendations on fraud and national security monitoring have prompted IPO to implement additional case-level data collection and analytics measures. While these steps may support future trend analysis and oversight, it remains unclear how they will impact adjudication consistency or the frequency of notices (such as RFEs, NOIDs, or NOIRs) in practice.

Investor and Practitioner Preparedness

Given evolving documentation expectations and increasingly complex compliance frameworks, and in order to navigate the heightened scrutiny, investors and practitioners must prepare petitions with meticulous source- and path-of-funds evidence, clear and fully supportable legal analyses, and robust economic substantiation.

The EB-5 industry is also bracing for a significant surge in filings ahead of the September 30, 2026 grandfathering deadline. Under the RIA, any investor who files an I-526E petition on or before that date is grandfathered – meaning that even if the EB-5 Regional Center Program is not reauthorized after 2027, those petitions must still be adjudicated under current law.[5] Industry participants widely anticipate this deadline will produce a concentrated wave of new filings, as investors move to secure legal certainty before changes take effect. For IPO, this surge will intensify existing backlog pressures, strain adjudication resources, and compound the processing inconsistencies, making practitioner preparedness and petition quality more critical than ever.

CONCLUSION

Decision-making at IPO reflects a program in transition: more structured, integrity-focused, and procedurally anchored than ever before. Yet challenges remain: inconsistent adjudication timelines, evolving and sometimes ambiguous evidentiary expectations, and administrative burdens from policy shifts and fee reversals.

While IPO has made measurable progress, addressing these operational gaps and improving transparency will be critical for the EB-5 Program to fully realize the objectives envisioned by the RIA. Continued stakeholder engagement, data transparency, and collaborative refinement are essential for restoring predictability and confidence among investors and regional centers in 2026 and beyond.

[3] IIUSA Data Dashboard: https://iiusa.org/eb5-visa-data-dashboard/
[4] USCIS EB-5 Questions and Answers page: https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers (last reviewed/updated: 02/25/2026)
[5] INA § 203(b)(5)(S); see also EB-5 Reform and Integrity Act of 2022, div. BB of the Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 49, 1070 (March 15, 2022).

How the EB-5 Reform and Integrity

Act Has Reshaped Capital Formation

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Since the passage of the EB-5 Reform and Integrity Act of 2022 (RIA), the industry has largely focused on new filing requirements and expanded compliance obligations. However, the RIA has had a more practical effect: it has changed how market participants share risk and accountability across the EB-5 ecosystem.

In the post-RIA environment, capital formation increasingly emphasizes disciplined processes, clear disclosures, and closer attention to investor suitability.

Project sponsors must more carefully examine their offerings before going to market, as they now face closer scrutiny and must manage investor expectations over extended time horizons.

These changes reflect the cumulative impact of increased regulatory oversight, longer adjudication timelines in a transparent global capital environment. At the same time, EB-5 investors have become more sophisticated and attentive to both immigration outcomes and capital risk.

How participants raise, vet, and deploy capital directly influences which projects successfully secure funding. The RIA has brought these mechanics into clearer view, raising the bar for how offerings are structured and reviewed. Understanding these changes is essential for regional centers and developers seeking greater clarity and predictability in the post-RIA environment.

I. EXPANDING ACCOUNTABILITY IN POST-RIA OVERSIGHT

Many view the RIA as merely imposing additional oversight on a regulated program. More fundamentally, the RIA redistributed accountability among market participants.

Under earlier frameworks, compliance often relied on generalized disclosures. Sponsors and promoters emphasized broad risk disclosures, placing limited focus on investor comprehension or the realism of project assumptions.

The post-RIA reality is different. Developers face expanded reporting obligations; regional centers carry enhanced supervisory duties; and foreign migration agents operating in connection with U.S. offerings face heightened scrutiny under applicable U.S. securities laws. There is now a greater emphasis on clarity and investor understanding. Participants must communicate material risks and their potential impact, elevating the importance of structured diligence and suitability review, particularly for offerings that rely on Regulation S.

As accountability has broadened across the EB-5 ecosystem, market participants have naturally sought ways to manage their responsibilities more effectively.

II. CAPITAL FLOW AND THE ROLE OF REGULATED INTERMEDIARIES

As risk allocation has shifted, capital formation has followed a predictable path. Capital increasingly gravitates toward intermediaries capable of imposing process discipline, conducting structured diligence, and operating within defined supervisory frameworks.

This shift is less about marketing reach and more about risk management.

For registered broker-dealers participating in EB-5 offerings, Regulation Best Interest (Reg BI) has reinforced the need to align the investor profile with project risk, capital structure, and the quality of disclosures. In practice, this has widened the gap between projects that attract investor interest and projects that can move forward.

That distinction is not merely semantic. A financeable project can withstand structured review and due diligence across multiple factors, including capital stack integrity, timeline realism, job creation methodology, and disclosure coherence. These elements are now evaluated together rather than in isolation. Weaknesses in one area can affect the overall assessment, even when investor demand exists.

As a result, capital formation has become more iterative. Project sponsors often refine transaction details through multiple rounds of review before being introduced to investors. While this process can extend time to market, it also reduces the likelihood of downstream issues driven by misaligned expectations or incomplete disclosure.

Oversight Mechanisms: Fund Administrators and Audits

Another significant development shaping post-RIA capital formation is the expanded role of independent financial oversight mechanisms mandated by statute.

Section 203(b)(5)(Q) of the RIA amended the Immigration and Nationality Act to require that new commercial enterprises either engage a third-party fund administrator or undergo annual independent financial audits. This requirement reflects a broader policy objective: oversight of EB-5 capital is no longer limited to disclosure alone.

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The RIA introduces two distinct oversight pathways: (i) retrospective verification through independent financial audits and (ii) proactive monitoring using third-party fund administrators.

Where a fund administrator is engaged, the statute requires that the fund administrator monitor the flow of funds and, in most cases, act as a co-signatory on escrow and operating accounts, with authority over disbursements. In practice, this function complements the role of escrow agents, who typically oversee the inbound phase of investor funds. Fund administrators, by contrast, provide oversight during the outbound phase, after capital leaves escrow and enters the project.

While some service providers can offer both escrow and fund administration functions, the statute requires a fund administrator to serve as a co-signatory on operating accounts. For projects that choose not to use a fund administrator, the RIA permits annual independent audits as the alternative compliance path. Audits are retrospective in nature, while fund administration introduces proactive controls designed to prevent improper disbursements before they occur. In practice, some market participants can choose to employ both forms of oversight, using audits to provide additional retrospective verification alongside ongoing fund administration. Although not mandated by the RIA, this approach reflects a broader trend toward layered oversight in response to longer investment timelines and heightened sensitivity to capital preservation.

Impact on Capital Structures and Market Discipline

Beyond compliance, these oversight mechanisms have had a secondary effect on capital formation practices. Fund administrators, escrow agents, and auditors who work across multiple EB-5 transactions develop visibility into capital structures across the market. Over time, this visibility allows them to identify outlier capital stacks that may present heightened risk to investors, such as excessive leverage or minimal developer equity.

While securities counsel appropriately disclose these risks in offering documents, financial oversight professionals play a different role. By conditioning or authorizing the movement of funds, they introduce an additional layer of discipline that reinforces transparency and consistency. As a result, capital structures have gradually become more standardized and more conservative, benefiting investors while also strengthening overall market integrity.

Investor Behavior and Issuer Response

Investor behavior reinforces these dynamics. Many EB-5 investors now evaluate opportunities alongside other global residence and investment options. As adjudication timelines lengthen and capital becomes less liquid, investors place greater weight on governance, oversight, and the credibility of the parties involved.

Issuer behavior has evolved in response. Developers and regional centers increasingly engage regulated intermediaries earlier in the structuring process, assisting in project evaluation and refinement before market entry. This approach tends to produce offerings that better align with investor expectations over extended time horizons.

The result is a more selective capital formation environment: fewer projects reach active fundraising stages, but those that do can withstand scrutiny throughout the investment life cycle.

Investor Profile Shifts and Their Impact on Capital Formation

Recent changes introduced by the RIA have also influenced EB-5 capital formation by reshaping who participates in the program and how investors engage with the market. Provisions such as concurrent filing and visa set-asides for some project categories have expanded access for non-immigrant visa holders already present in the United States. As long as visa availability remains open, these investors can pursue EB-5 while filing for adjustment of status, employment authorization, and travel permission, which has increased participation among specific investor profiles.

In practice, this has led to greater interest from investors, such as students and professionals on temporary visas. These investors often approach EB-5 with a higher degree of familiarity with U.S. regulatory systems and greater expectations around process, documentation, and comparability. As a result, their participation has further accelerated demand for structured intermediation and consistent review standards.

These shifts have also diversified how investors enter the EB-5 marketplace. In some cases, investors conduct independent research and identify projects before engaging with intermediaries. Others rely on international referral networks outside traditional advisory channels. In both scenarios, intermediaries actively verify eligibility, confirm compliance requirements, and ensure the selected investment satisfies program criteria.

The increased participation of these investor groups has, in turn, heightened attention to how investment options are presented and evaluated. Some capital formation models concentrate investor sourcing and project selection within a single organizational framework, while others separate sourcing from evaluation and oversight. These structural differences influence how investors assess choice, independence, and comparability, particularly in a market where timelines are longer, and capital remains at risk for extended periods.

As investor profiles continue to evolve, these dynamics place additional emphasis on clarity of roles and consistency of process. They also help explain why capital formation increasingly favors structures that accommodate investor sophistication, regulatory

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expectations, and longer investment horizons, without relying on informal or relationship-driven decision-making.

III. FROM LEGACY DISTRIBUTION MODELS TO STRUCTURED OVERSIGHT

These changes have also reshaped traditional distribution models.

Historically, networks of overseas migration agents and third-party promoters raised a significant portion of EB-5 capital, focusing primarily on investor sourcing. While effective at generating interest, these models often operated with limited integration into offering structuring, suitability analysis, or supervisory oversight.

In the post-RIA environment, such arrangements have become more challenging to sustain. As disclosure expectations expand and accountability increases, reliance on distribution channels that lack consistent oversight introduces additional risk for issuers and regional centers.

At the same time, investors have become more cautious. Distribution reach alone is no longer sufficient to maintain confidence. Extended timelines, heightened sources of funds scrutiny, and reduced liquidity have led investors to place greater emphasis on governance and process quality.

What has emerged is not an abrupt displacement, but a gradual recalibration. Global intermediary networks continue to play a significant role in identifying eligible investors. Successful models, however, increasingly separate investor sourcing from project evaluation and capital oversight, integrating overseas reach with regulated diligence and clearly defined accountability.

Another factor contributing to this recalibration is how firms present investment options to prospective investors. In some distribution models, longstanding sponsor relationships tightly link investor sourcing and project selection, which naturally narrows the range of offerings presented. Other models separate sourcing from evaluation, allowing investors to consider multiple projects that have undergone standardized diligence and review under consistent frameworks. As investors become more sophisticated and timelines lengthen, these structural differences increasingly shape expectations around choice, comparability, and decision-making, and, in turn, influence capital formation outcomes.

Where that integration is absent, capital formation becomes more fragile. Over time, distribution models that cannot adapt to these expectations risk becoming increasingly peripheral.

IV. PRACTICAL IMPLICATIONS FOR MARKET PARTICIPANTS

For developers, these shifts highlight the importance of incorporating capital formation considerations earlier in project planning. Decisions related to structure, disclosure, and assumptions increasingly shape a project's ability to move forward in today's environment.
For regional centers, the post-RIA framework elevates governance, documentation, and supervisory consistency. The ability to demonstrate disciplined oversight across projects and investor communications has become a meaningful differentiator.

For investors, the evolving framework underscores the importance of understanding not only the underlying project but also the processes and oversight structures that govern capital deployment and ongoing compliance.

More broadly, these developments highlight the importance of alignment across the EB-5 ecosystem. Capital formation outcomes increasingly depend on how well developers, regional centers, intermediaries, and promoters understand their respective roles and responsibilities. Misalignment at any stage can introduce friction, delay fundraising efforts, or elevate regulatory risk.

Across all participants, the common theme is a shift away from volume-driven fundraising toward discipline-driven capital formation.

CONCLUSION

The RIA has reshaped the program in ways that extend beyond compliance mechanics. By reallocating risk and accountability, it has altered how market participants make capital formation decisions and which projects eventually reach the market.

These changes reflect a broader maturation of the EB-5 ecosystem. As regulatory expectations increase and global capital mobility becomes more constrained, capital formation practices increasingly favor transparency, robust governance, and disciplined processes.

Understanding these dynamics is essential for market participants seeking to navigate the post-RIA environment and align their practices with evolving investor and regulatory expectations.

Emerging Issues, Trends, and Considerations for

Preparing I-956 and I-956F Applications in the Final Years of the RIA

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1. ISSUES AND TRENDS FOR SUCCESSFUL PREPARATION OF I-956 APPLICATIONS

As many stakeholders have observed, USCIS has recently been more accommodating with granting broader geographic designations so long as a regional center operator can establish the reasonableness of their requested geography, including the types of projects they want to sponsor, and its ability to both oversee and raise capital for those projects.

On one hand, this is a welcome development. It reflects both the economic and practical realities facing regional center operators today. Until very recently, it would cost north of $100,000 in filing fees alone to secure approval for a new Regional Center and file an I-956F application for a new offering. USCIS recognizes that broader geographic designations are both practical and necessary to ensure that the EB-5 industry can effectively underwrite and structure EB-5 projects in rural or otherwise non-traditional areas.

At the same time, stakeholders should be aware that USCIS takes its oversight duties seriously. The agency understandably wants more specific information regarding (1) the principals behind a Regional Center; and (2) how a Regional Center operator or group will be able to effectively oversee, manage, and raise capital for projects all across a broad geographic area, especially given USCIS's ongoing multi-year effort to eliminate dormant or ineffective shell regional centers.

Over the past year, we have seen USCIS issue Requests for Evidence seeking more concrete evidence and more detailed operational plan beyond the traditional "Regional Center Operations Manuals." In particular, USCIS increasingly wants confirmation that operators will have the personnel, resources, third party vendors, advisors, and experience necessary to oversee projects effectively, including experience of development outside the EB-5 industry.

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In these situations, whether the principals are seasoned EB-5 participants or new entrants to the industry, it is critical to provide concrete evidence of past successful projects, businesses, or investment activities they have overseen, built, managed, or capitalized. For example, a developer may be "new" to EB-5 financing, but if that developer has spent more than a decade successfully developing and managing real estate projects across a state, overseeing teams of legal, design, and other professionals, raising capital from private or public sources, and successfully selling/refinancing a project, those are precisely the kinds of skills and experience that should be highlighted to demonstrate that the principals can be trusted with a regional center designation.

As a proactive measure, it is often worthwhile to include evidence from the operator's historical portfolio along with examples of the types of projects the regional center intends to sponsor in the states for which designation is being sought. For example, if a sponsor seeks a multi-state designation because it focuses on developing a specific asset class – such as select-service hotels that it can repeatedly finance, build, operate profitably – it should submit evidence not only of its prior portfolio, but also of hotel management agreements, term sheets, and prospective projects in the states included within the requested designation.

2. CONSIDERATIONS FOR STRUCTURING AND PREPARING I-956F APPLICATIONS FOR INFRASTRUCTURE PROJECTS

From our experience, while high-quality infrastructure projects can be difficult to source, they present uniquely attractive opportunities for Regional Centers or NCEs that are able to properly negotiate and structure them. Infrastructure projects are inherently aligned with public policy objectives and can deliver meaningful community benefits through well-executed public-private partnerships. At the same time, investors are increasingly drawn to infrastructure offerings as a potential hedge against retrogression in the rural and high-unemployment reserved visa categories.

Although infrastructure projects are conceptually appealing, one of the most significant practical hurdles is satisfying the "but-for" requirement. In theory, government entities are receptive to EB-5 capital as a supplemental financing source that benefits their communities. In practice, however, that receptiveness rarely translates into the level of formal support that EB-5 projects require.

Government agencies are often reluctant to serve as a sponsoring agency, act as a formal point of contact for USCIS purposes, and/or provide written attestations confirming the essential role of EB-5 capital. As a result, stakeholders should avoid moving forward prematurely without clearly defining the scope of government involvement. The absence of documented support can materially weaken the viability of an infrastructure classification.

Government as JCE?

Although the RIA contemplates the possibility of a government agency as the JCE, this scenario is rare in practice. Government agencies operate within strict statutory mandates and resource constraints, and typically lack both the incentive and operational flexibility to assume a developer-like role within an EB-5 structure

Accordingly, Regional Centers and NCEs pursuing infrastructure projects must take primary responsibility for structuring the transaction, coordinating with public agencies, securing documented buy-in and cooperation, and bridging the gap between public objectives and private financing.

The Anatomy of a Public/Private Partnership

A well-structured infrastructure project requires a highly detailed and credible narrative that clearly articulates:

1. **The Public Need**: a compelling explanation of the infrastructure deficiency or urgency driving the project
2. **Defined Roles and Responsibilities:** clear delineation of the roles of the NCE, JCE, and each government entity involved.
3. **Government Oversight and Control:** evidence demonstrating that the project is subject to meaningful government supervision, standards, and enforcement mechanisms.
4. **Integration of EB-5 Capital**: a well-supported explanation of how EB-5 financing fits into- and is necessary for- the overall capital stack.

For example, we recently advised on multiple I-956F infrastructure projects for new Veteran Affairs medical facilities across the United States. We presented USCIS with a detailed narrative explaining:

- **The systemic challenges faced by the Department of Veterans Affairs, including aging infrastructure, insufficient capacity, and outdated medical facilities.**
- **The federal government's designation of these projects as urgent priorities, supported by formal Requests for Proposals (RFPs)**
- **The role of private developers in constructing facilities in strict compliance with government specifications and timelines.**

Critically, we demonstrated that:

- **The VA retained substantial control and oversight throughout the development and construction process.**
- **The agency had contractual authority to terminate or withdraw if project requirements were not met.**
- **The projects were supported by multiple letters from local, state, and federal stakeholders confirming the urgent public need.**

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By tying together, the RFP framework, government oversight, and documented public necessity, we were able to present a cohesive and compelling case for infrastructure classification.

3. ISSUES AND CONSIDERATIONS FOR STRUCTURING EB-5 OFFERINGS CONSIDERING THE SEPTEMBER 30, 2026, GRANDFATHERING DEADLINE AND BEYOND

The approach to structuring EB-5 offerings as we near-and move beyond-the September 30, 2026, grandfathering deadline presents one of the most complex strategic questions currently facing the industry.

It is inherently difficult to forecast market risk appetite post September 30, 2026. On one hand, a significant portion of industry stakeholders – regional centers, issuers, agents, and investors – operate under the assumption that the EB-5 program will ultimately be extended. On the other hand, the final year of the RIA introduces a non-trivial risk that, in a worst-case scenario, the program could lapse due to unforeseen political or legislative developments.

While there is general optimism regarding program continuity, market participants are already grappling with how to responsibly allocate risk in offerings that extend beyond the grandfather period.

From a securities perspective, disclosure obligations will necessarily become more robust and more nuanced. Offering documents will need to clearly articulate: the uncertainty surrounding program reauthorization, the potential immigration consequences if the program is not extended, the limitations of available investor protections.

We do not envy securities counsel tasked with drafting these disclosures. However, market sentiment suggests that stakeholders are not retreating – they are instead actively seeking workable structures that allow capital formation to continue with appropriate safeguards.

For the EB-5 industry to ethically and effectively raise capital in the period leading up to -and potentially following - the September 30, 2026, deadline, stakeholders must confront difficult questions and adopt more balanced risk-sharing frameworks.

The traditional allocation of risk – where investors bear a disproportionate share – may become less tenable in this environment. Instead, we expect to see increased alignment among regional centers, NCEs and project sponsors, migration agents, and investors.

Emerging Structuring Approaches for Consideration

Although the precise structure will vary by sponsor and project, several practical approaches are already being discussed and, in some cases, implemented:

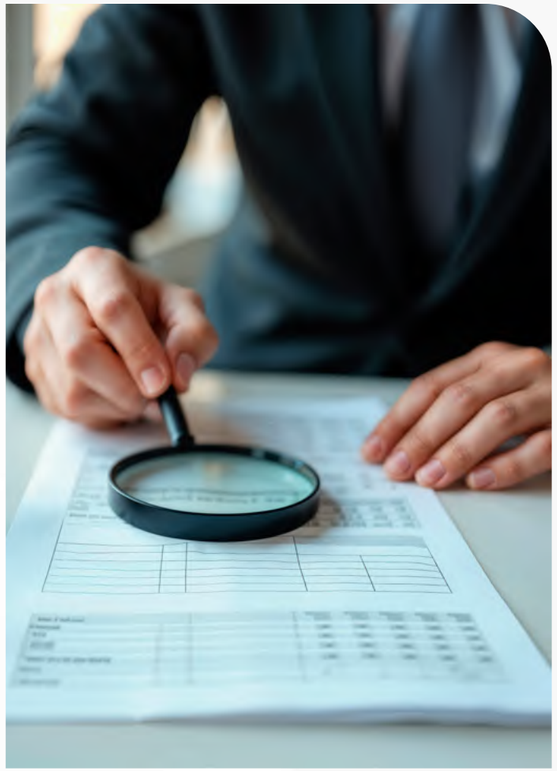
Escrow-Based Capital Deployment: Sponsors may agree to hold all or a portion of EB-5 capital in escrow pending greater clarity on program reauthorization. This approach can help mitigate investor risk while preserving deal momentum.

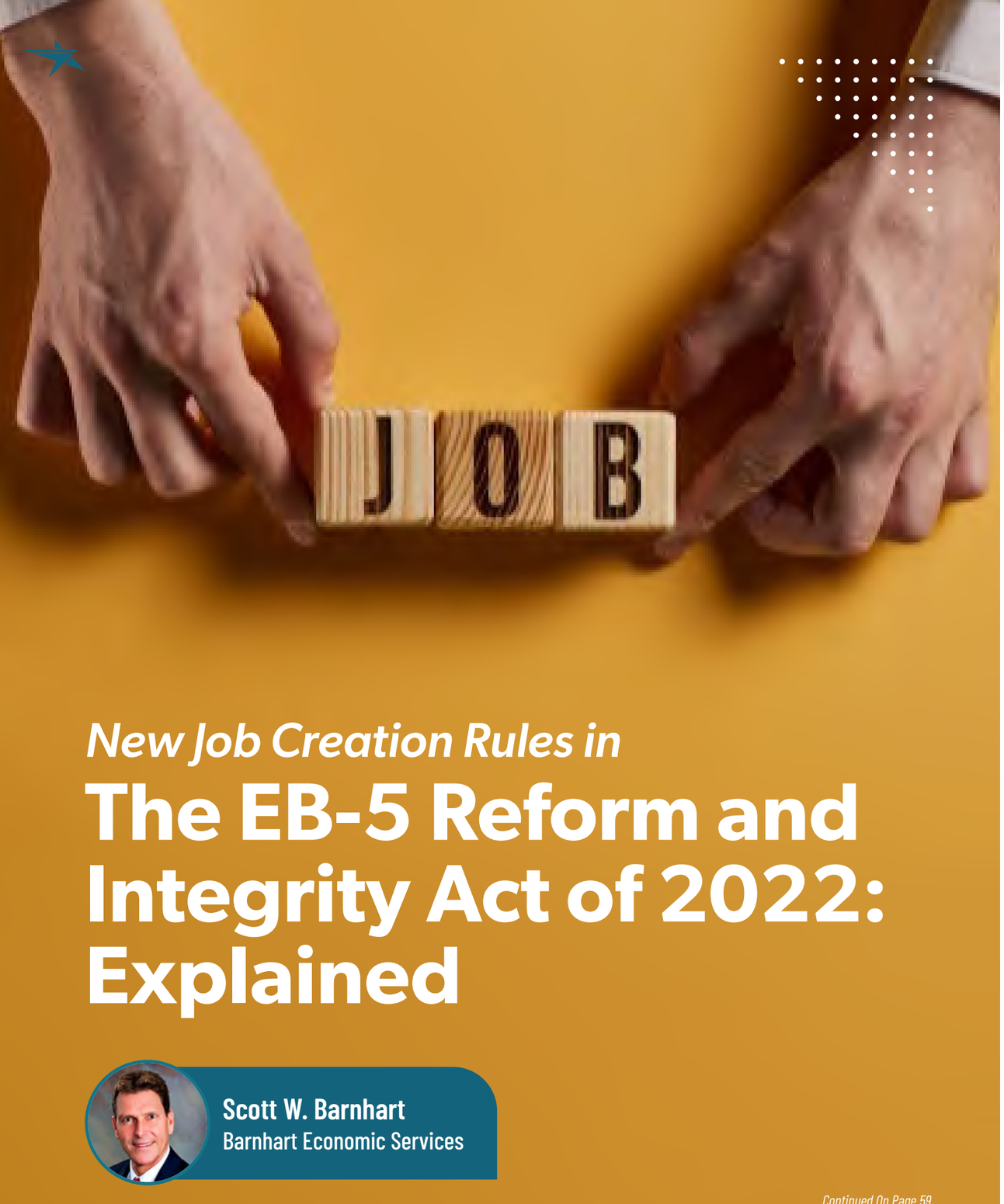
Phased or Conditional Capital Calls: Rather than requiring full upfront funding, offerings may incorporate staged capital contributions tied to predefined triggers such as visa availability, legislative developments, or project milestones.

Flexible Fee Structures: legal, administrative, and offering-related fees may be structured with deferred or contingent payment mechanisms, aligning costs with future outcomes or milestones.

The period leading up to September 30, 2026, should be viewed as a transitional phase rather than an endpoint. The industry is unlikely to halt; instead, as it has always done, it will adapt through more sophisticated structuring, clearer disclosures, and a rebalancing of risk across stakeholders.

Ultimately, those regional centers and sponsors that are transparent, flexible, and proactive in addressing these risks will be best positioned to maintain confidence and continue raising capital in an uncertain environment.





New Job Creation Rules in

The EB-5 Reform and Integrity Act of 2022: Explained

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The EB-5 Reform and Integrity Act of 2022 (RIA) implemented several new job-creation rules that continue to cause confusion for some in the EB-5 community. One of the most significant changes in the law was to allow projects to count a portion of the direct jobs created for projects with a construction period of less than 24 months, which is a significant change from the prior law where projects with construction less than 24 months could not count any direct jobs. The RIA allows the project to count direct jobs based on the ratio of the time the project takes in months divided by 24 applied to the original calculated direct job number. The law also places limits on the percentage of total jobs allowed for indirect/induced job creation, 90% for projects with construction in excess of 24 months duration and 75% for those lasting less than 24 months. It should be noted that these new rules are aimed specifically at job-creation estimated with economic models such as IMPLAN or RIMS for regional center projects and do not apply to direct (stand-alone) EB-5 projects.

The job creation rules in the RIA are contained in full text in the following three subparagraphs to let the reader understand the job creation language of the RIA followed by my interpretation and examples:

INA 203(b)(5)(e)(IV) INDIRECT JOB CREATION.- (I) IN GENERAL.- The Secretary of Homeland Security shall permit aliens seeking admission under this subparagraph to satisfy only up to 90 percent of the requirement under subparagraph (A)(ii) with jobs that are estimated to be created indirectly through investment under this paragraph in accordance with this subparagraph. An employee of the new commercial enterprise or job-creating entity may be considered to hold a job that has been directly created.

INA 203(b)(5)(e)(IV)(II) CONSTRUCTION ACTIVITY LASTING LESS THAN 2 YEARS.- If the jobs estimated to be created by construction activity lasting less than 2 years, the Secretary shall permit aliens seeking admission under this subparagraph to satisfy only up to 75 percent of the requirement under subparagraph (A)(ii) with jobs that are estimated to be created indirectly through investment under this paragraph in accordance with this subparagraph.

INA 203(b)(5)(e)(V)(II)(cc) CONSTRUCTION ACTIVITY JOBS.- If the number of direct jobs estimated to be created has been determined by an economically and statistically valid methodology, and such direct jobs are created by construction activity lasting less than 2 years, the number of such jobs that may be considered direct jobs for purposes of clause (iv) shall be calculated by multiplying the total number of such jobs estimated to be created by the fraction of the 2-year period that the construction activity lasts.

As an example of the application of the RIA rules, Table 1 contains the impact results from the construction/development and operations (rental activities) for a hypothetical rental condominium project in Florida using the IMPLAN software. The results were generated using a total of $7.85 million (M) of various construction expenditures including single family residential construction and $1.5M of rental income. The results indicate that there are 61 direct construction jobs and 60 indirect and induced jobs (14+46) for a total of 121 total construction jobs, and 16 total jobs from rental (operations) income for a total of 137 total jobs for the project. With 137 total jobs, a maximum of 13 EB-5 investors could be recruited, allowing $10.40 M to be raised if the project were located in a Targeted Employment Area (TEA); however, it is obvious that a project cannot raise more EB-5 capital than the project's outlay of $7.85 M.

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Table 1 Results for Construction and Operations of a Small Multifamily Residential Condominium in the State of Florida

Activity	Impact Type	Employment	Labor Income	Value Added	Output
Construction/Development 2026-2027	Direct Effect	61	$3,062,665	$3,586,487	$7,380,498
	Indirect Effect	14	$646,653	$1,147,526	$2,142,841
	Induced Effect	46	$2,275,070	$3,944,917	$6,442,637
	Total Effect	**121**	**$5,984,388**	**$8,678,930**	**$15,965.97** [7]
Incremental Rental Income 2028-2029	Direct Effect	3	$60,872	$1,371,433	$1,484,037
	Indirect Effect	1	$30,168	$43,967	$93,069
	Induced Effect	12	$601,018	$991,030	$1,589,768
	Total Effect	**16**	**$692,058**	**$2,406,431**	**$3,166,874**
Total		**137**	**$6,676,446**	**$11,085.36** [1]	**$19,132.85** [1]
Maximum Potential EB-5 Investors		13			
Maximum Potential EB-5 Capital		$10,400,000			

The following three points provide my interpretation of the RIA rules related to job creation, utilizing the results from the example project above:

1) Rule One: Indirect + Induced jobs in regional center projects cannot count for more than 90% of the total job count. My assumption is the 90% is a maximum limit applied to indirect and induced jobs from both activities (construction and operations) in Table 1. This requires one to sum both the indirect and induced effects for construction (14+46=60) and rental income (1+12=13) resulting in a total project indirect and induced job count of 73 jobs. Dividing this figure by the total project job figure, i.e., (73/137) results in a total of 53% indirect and induced jobs in this project, which is less than the 90% cited in the RIA (and so resulting in no additional changes to the job creation estimates based on the RIA limits - a typical result for EB-5 projects).

2) Rule Two: If the construction period of a project lasts less than 24 months, indirect and induced jobs cannot count for more than 75% of the total job count. Using the same calculations above, the limit of 75% is not exceeded (again is typical of EB-5 project work where the 75% limit is not often reached). However, this can change when the next rule is considered, which limits the number of direct jobs that can be created in projects with a construction period of less than 24 months.

3) Rule Three: If the construction period of a project lasts less than 24 months, the direct job count must be reduced by multiplying the original construction direct job count by the fraction of the 24-month period that the construction activity lasts, i.e., the number of months of the construction period divided by 24. Note that I assume that this direct job reduction applies to construction jobs only as that is what is cited in the RIA (and does not apply to operational activities). This example demonstrates how to adjust the direct job count when construction is less than 24 months, and how this adjustment to direct jobs may cause further indirect job reductions because of Rule Two.

If the construction time period for the project in Table 1 is below 24 months, say to 12 months, the ratio of construction months to 24 is .5=12/24, and the new direct construction job count declines from 61 jobs to 31 (61*.5) (with rounding). Thus, the new total project job count is 107 (31+14+46+16). In this case the new percentage of indirect plus induced jobs to total jobs is 68% (14+46+1+12)/107, which causes no further calculations because the ratio is still below 75% and so not in conflict with Rule Two.

If the construction time period is now reduced to 6 months making the construction time ratio .25=6/24, the new construction direct job count is 15 (61*.25) with the new project direct job count at 18 (15+3), and the new total job count is 91 jobs (15+14+46+16). In this case the indirect and induced jobs to total jobs is 80% (14+46+1+12)/91, in conflict with the 75% limit in Rule Two. In this case, one now needs to reduce the indirect/induced job count to get the job ratio back to 75%. Given that the limiting ratio of indirect to total jobs is 75% this implies that the total job count must be four times the new direct project job count or 18*4=72 total jobs. At this point we have 18 project direct jobs and 54 indirect and induced, such that we are right at the 75% threshold of 54/72=.75.

In sum, the total job count with no construction time period restrictions started at 137 for a hypothetical 24-month construction time period, then fell to 107 total jobs for a hypothetical 12-month construction time period. When analyzing an even shorter construction time-period (a 6-month example) the job creation fell to 91 total jobs after the direct job adjustment, and finally arriving at 72 total jobs after the additional indirect job change to account for the 75% rule.

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SUMMARY

While for most EB-5 projects, the RIA job creation rules described in this article do not result in any job creation reductions, it is important to understand how the rules work and interact in practice. The examples demonstrated an application of all three rules, explaining how to apply them, and calculating the various ratios based on the language cited in the RIA.

Travel Bans, Visa Holds, and USCIS Delays: What EB-5 Investors Need to Know in 2026

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The period from mid-December 2025 through mid-January 2026 witnessed an unprecedented cascade of immigration restrictions affecting nationals of dozens of countries. Through a combination of presidential proclamations, Department of State directives, and U.S. Citizenship and Immigration Services (USCIS) administrative holds, the federal government implemented sweeping measures that have altered the landscape for foreign nationals seeking entry to or benefits within the United States. For the EB-5 investor community - particularly those with pending Form I-485 applications for adjustment of status - these developments have generated considerable uncertainty about the security of their immigration pathway and the viability of their long-term plans.

EB-5 investors with pending I-485 applications occupy a distinct legal position. Unlike individuals applying for immigrant visas at U.S. consulates abroad, adjustment applicants are already within the United States, have filed applications for permanent residence with USCIS, and in many cases maintain valid nonimmigrant status or employment authorization derived from their pending petitions. While the recent restrictions do present tangible challenges - particularly regarding international travel, employment authorization renewals, and the treatment of derivative beneficiaries - they do not automatically invalidate pending applications or eliminate the statutory pathway to permanent residence established by Congress through the EB-5 program.

This article explains what these changes mean for EB-5 investors and how to navigate them.

1. THE CRITICAL DISTINCTION: VISA ISSUANCE VS. BENEFIT ADJUDICATION

Much of the anxiety stems from confusion between restrictions on entry into the United States and actions affecting applications filed by individuals already inside the country. Media coverage often blends these together, leading EB-5 investors to worry that a travel ban will automatically derail a pending I-485. In practice, the system is divided: the Department of State controls visa issuance abroad, while USCIS adjudicates immigration benefits within the United States.

USCIS, under the Department of Homeland Security, adjudicates applications for individuals already present in the United States. For EB-5 investors, the key application is Form I-485, which allows them to transition to lawful permanent resident status without leaving the country. USCIS also adjudicates related applications such as employment authorization (EAD) and advance parole.

As a result, recent restrictions affecting visa issuance abroad do not directly apply to EB-5 investors with pending I-485 applications. The more relevant issue is how USCIS is handling those pending applications and related benefits.

2. OVERVIEW OF THE RESTRICTIONS

The recent restrictions fall into three categories, each with different implications for EB-5 investors.
First, presidential proclamations have expanded travel restrictions affecting nationals of certain countries. These measures focus on entry into the United States and do not invalidate pending I-485 applications. However, they create significant risks for international travel. An investor who departs the United States may be unable to return, even with advance parole, depending on how the restrictions are applied at the port of entry.

Second, the Department of State has suspended or paused visa issuance for certain countries. These measures primarily affect individuals applying for visas abroad. For EB-5 investors with pending I-485 applications inside the United States, these actions do not directly control USCIS adjudication, though they may become relevant if an investor leaves the country and needs to obtain a visa to return.

Third, and most importantly, USCIS has implemented administrative holds on certain pending benefit applications. These holds affect Form I-485, employment authorization (I-765), and advance parole (I-131). A hold means that USCIS pauses adjudication - applications are not approved or denied during the hold period. The duration of the hold remains uncertain, but it represents a delay rather than a termination of the underlying immigration pathway.

3. PRACTICAL IMPLICATIONS FOR EB-5 INVESTORS

The USCIS benefit hold, combined with travel restrictions and evolving enforcement practices, creates several practical considerations for EB-5 investors.

International Travel and Advance Parole

International travel presents the most significant risk. Although many EB-5 investors rely on advance parole to travel while their I-485 is pending, the interaction between advance parole and current travel restrictions is uncertain.

An investor who departs the United States may face difficulty reentering, even with valid documentation. Customs and Border Protection retains discretion at ports of entry, and there is a risk of being denied admission. This could effectively strand the investor abroad and disrupt the adjustment process.

Dual nationals may have more flexibility if traveling on a passport from a non-restricted country, but this does not eliminate risk.

Employment Authorization and EAD Renewals

Many EB-5 investors rely on employment authorization while their I-485 applications are pending. Under current USCIS policy, EAD renewals may also be subject to the benefit hold.

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While timely renewal filings can provide temporary extensions of employment authorization, those extensions are limited. If USCIS does not adjudicate the renewal before the extension expires, the applicant may experience a gap in work authorization.

Derivative Beneficiaries: Spouses and Children
EB-5 investors often include spouses and children as derivative beneficiaries. The impact of current policies on families may vary depending on nationality and case-specific factors, though clear guidance remains limited.

Delays may also raise concerns for children approaching age 21. While the Child Status Protection Act provides some protection, extended processing times can still create uncertainty.

Nationality Considerations

These policies generally apply based on nationality rather than residence. Dual citizens may have more flexibility for travel, but they may still experience delays in USCIS adjudication.

4. PRACTICAL GUIDANCE FOR EB-5 INVESTORS

Although the current restrictions create uncertainty, there are practical steps investors can take.

First, it is important not to panic. A USCIS hold is not a denial. The I-485 remains pending, and the EB-5 pathway to permanent residence remains intact. These measures affect timing, not eligibility.

Second, investors should avoid international travel unless necessary. The risk of being unable to reenter the United States is real and can significantly disrupt the immigration process.

Third, investors should file EAD and advance parole renewals as early as possible. Early filing helps maximize the likelihood of maintaining continuity during processing delays.

Fourth, investors should maintain full compliance with EB-5 program requirements, including keeping capital at risk and ensuring job creation obligations are met. They should also remain compliant with any underlying immigration status.

Fifth, documentation should be carefully maintained. Copies of all filings, receipts, approvals, and travel records should be preserved in case of future review.

Finally, because these policies involve a degree of agency discretion, individualized legal advice is essential. Each investor's circumstances will affect how these restrictions apply.

5. STABILITY DESPITE POLICY SHIFTS

The current restrictions are significant and introduce real challenges, particularly around travel, employment authorization, and processing timelines. However, it is important to maintain perspective.

A USCIS hold is not a denial. EB-5 investors with pending I-485 applications remain in a strong position: they are already in the United States, have made their investments, and have established a legal pathway to permanent residence.

The EB-5 program has historically operated within a dynamic policy environment, and while current restrictions may slow progress and require more careful planning, they do not eliminate the pathway itself.

With patience, careful compliance, and experienced legal guidance, investors can navigate this period and remain on track toward permanent residence.

EB-5 Program Frequently Asked Questions:

A Valuable Resource for the EB-5 Industry

Ashley Sanislo Casey
Director of Operations | IIUSA

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In August 2025, 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 diligent 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 at iiusa.org/faqs

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Partial Capital Investment in EB-5 Petitions:

Legal Standards and Adjudicatory Considerations

Vivian Zhu
WR Immigration

In light of anticipated EB-5 visa backlogs and currency restrictions in certain countries, partial investment has become a practical consideration – and increasingly common practice – for EB-5 investors. Many investors require additional time to assemble the full investment amount but wish to file their I-526 petitions promptly in order to secure an earlier priority date. While the statutory and regulatory framework allows a petitioner to qualify by demonstrating that he or she has invested or is actively in the process of investing the required capital, USCIS adjudication increasingly centers on whether the petitioner satisfied all eligibility requirements at the time of filing. This article discusses recent adjudication trends by USCIS on this funding mechanism which, despite the increased immigration risk, will likely become more common as the September 30, 2026 grandfathering deadline gets closer.

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LEGAL FRAMEWORK

Under INA § 203(b)(5) and 8 C.F.R. § 204.6, an EB-5 petitioner must demonstrate that he or she has:

1. Invested, or
2. Is actively in the process of investing

The requisite amount of capital in a new commercial enterprise (NCE).

The USCIS Policy Manual (Vol. 6, Part G) further provides:

> *"The immigrant investor is required to invest his or her own capital. The petitioner must document the path of the funds to establish that the investment was made, or is actively in the process of being made, with the immigrant investor's own funds."*

In addition, INA § 203(b)(5)(L) and the implementing regulations require that a petitioner establish eligibility at the time the benefit request is filed and remain eligible through adjudication.

8 C.F.R. § 103.2(b)(1) states:

> *"A petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions."*

The "eligibility at filing" principle is reinforced by longstanding precedent:

- **Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971) — A petition cannot be approved based on facts that come into existence after filing.**
- **Matter of Izummi, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) — A petitioner may not make material changes to a petition already filed to cure deficiencies.**

Accordingly, the central issue in partial investment cases is whether a petition can satisfy the "actively in the process of investing" standard where the full statutory capital has not yet been transferred to the NCE at the time of filing. Such cases must also be analyzed through the lens of the "eligibility at the time of filing" doctrine, which has become an increasingly common basis for denial in I-526 adjudications.

THE "ACTIVELY IN THE PROCESS OF INVESTING" STANDARD

The regulations do not explicitly require that the full amount of capital be transferred prior to filing, or when the full amount must be transferred to the NCE for Form I-526E approval. Historically, USCIS has recognized installment-based contributions where the petitioner has made a present commitment of capital and has demonstrated ownership and lawful source of the entire required investment amount.

However, recent adjudicatory trends reflect heightened scrutiny of cases in which:

- **Only a portion of the capital has been transferred at the time of I-526E filing;**
- **The remaining balance is not contractually obligated; or**
- **The petition was filed without documentation establishing the lawful source of the full investment amount.**

The critical inquiry is whether the petitioner has undertaken an irrevocable commitment sufficient to satisfy the statutory concept of "investment," even if the final transfer remains pending.

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Notably, even where only a portion of the capital has been transferred, the petitioner must establish eligibility at the time of filing. This means that the petitioner should document the lawful source of the full EB-5 investment amount at filing and, preferably, demonstrate possession or control of the remaining capital, even if those funds have not yet been transferred to the NCE. Failure to document the full capital amount – even if not yet transferred – creates significant risk of denial for failure to meet the minimum investment requirement.

In addition, USCIS will examine whether the investor is legally bound to complete the capital contribution. Relevant documentation may include a promissory note or installment schedule with enforceable payment terms agreed upon between the investor and the NCE. USCIS has also denied Form I-526s, sometimes even without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID), when the balance of investment is past due and the immigrant investor has not yet notified USCIS of the full investment through an "interfiling".

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STRATEGIC CONSIDERATIONS

In short, partial investment is permissible but must be carefully and strategically structured. When deciding whether to proceed with a partial investment – and how much to remit in the initial wire – the investor should consider:

- **The amount of the initial investment relative to the total required capital;**
- **Whether the source of the remaining capital is secured, and if not, whether alternative sources are available;**
- **Whether any alternative source differs materially from the originally planned source and whether it should be disclosed in the initial I-526E filing;**
- **The anticipated timeline for completing the remaining capital contribution;**
- **If the remaining investment cannot be completed within the agreed timeline, whether the NCE would be willing to grant an extension and under what terms.**

Each of these factors may increase the likelihood of RFEs or NOIDs if not properly addressed at the time of filing.

Consider the following two scenarios, each resulting in materially different I-526 adjudication risk outcomes:

(1) Scenario One

The EB-5 investor obtained her investment capital through a bank loan in China, secured by her real property as collateral. Prior to filing her I-526 petition, the lending bank had already disbursed the full loan amount into her personal bank account in China. Due to China's foreign exchange restrictions, the investor required approximately two to three months to transfer the funds out of Mainland China. Because each individual is subject to a $50,000 annual foreign exchange quota, she utilized multiple facilitators to convert RMB to USD and remit the funds abroad. Before filing the I-526 petition, she successfully transferred $100,000 through two facilitators and wired that amount to the NCE as her initial capital contribution. In her petition, she disclosed that the full investment capital derived from the secured bank loan and explained that she anticipated completing the remaining transfers within approximately three months once the funds were fully remitted from China.

(2) Scenario Two

The EB-5 investor resides and works in the United States. He made an initial EB-5 investment of $300,000 using accumulated U.S. employment income and filed his I-526 petition. In the petition, he indicated that the remaining investment capital would be sourced from the anticipated sale of his real property in Canada, which had been listed for sale but had not yet been sold at the time of filing.

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In the first scenario, the case appears significantly more defensible. At the time of filing:

- **The investor had already secured and received the full loan proceeds;**
- **The funds were under her ownership and control;**
- **The only impediment to full transfer was foreign exchange logistics;**
- **The source of the entire investment was documented and fixed.**

Thus, the investor could credibly demonstrate eligibility at the time of filing, including ownership and control of the full investment capital, with completion dependent merely on administrative transfer timing.

In contrast, the second scenario presents greater adjudicatory risk. At the time of filing:

- **The remaining capital did not yet exist in liquid form;**
- **The property had not been sold;**
- **The sale was speculative and contingent;**
- **The lawful source and path of the remaining funds could not yet be documented.**

If the property sale is delayed, falls through, or the source-of-funds documentation is not completed and submitted before adjudication, USCIS may determine that the petitioner failed to establish eligibility at the time of filing under INA § 203(b)(5)(L) and 8 C.F.R. § 103.2(b)(1). Even if the sale is eventually completed, post-filing liquidation of the property may be viewed as a new set of facts arising after filing, potentially implicating Matter of Katigbak and Matter of Izummi.

The critical distinction between the two scenarios is whether the petitioner had ownership and control of the full investment capital at the time of filing; and a fixed and documented source of funds at filing.

Where capital is already secured and merely awaiting transfer, the case is generally more defensible. Where capital depends on a future contingent event (e.g., sale of property), the case carries heightened denial risk under the "eligibility at filing" doctrine.

INITIAL EVIDENCE REQUIREMENTS AND DISCRETIONARY DENIAL

Under 8 C.F.R. § 103.2(b)(8)(ii):

"If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS, in its discretion, may deny the benefit request for lack of initial evidence or for ineligibility, or request that the missing initial evidence be submitted within a specified period of time."

In addition, 8 C.F.R. § 103.2(a)(1) incorporates form instructions into the regulatory framework. As a result, failure to comply with the Form I-526 instructions may independently support denial, even if the statutory elements might otherwise be met.

The Form I-526 instructions explicitly require submission of evidence demonstrating that the capital invested—or actively in the process of being invested—was obtained through lawful means. Required documentation includes, where applicable:

- **Foreign business registration records;**
- **Tax returns filed within the last seven years (in or outside the United States);**
- **Evidence of other sources of capital;**
- **Certified copies of judgments;**
- **Evidence of pending governmental administrative, civil, or criminal actions within the past 15 years;**

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- **Documentation relating to private civil actions involving monetary judgments;**
- **Identification of any person who transferred capital on the petitioner's behalf;**
- **Documentation from donors or non-bank lenders, if funds were gifted or borrowed.**

Failure to submit required initial evidence at the time of filing may result in denial on independent regulatory grounds, even apart from any substantive eligibility deficiencies.

In partial capital cases, the "eligibility at filing" doctrine presents elevated risk where the petition is filed without key documentation – such as complete seven-year tax return coverage, required business registration records, or other mandatory initial evidence. In such circumstances, USCIS may determine that the petitioner was not eligible at the time of filing due to noncompliance with mandatory evidentiary requirements.

Although USCIS retains discretion to issue an RFE, adjudicators may deny outright.

Moreover, subsequent transfers of funds or restructuring of the investment may be deemed impermissible "material changes" under Matter of Izummi. USCIS may conclude that the petitioner failed to satisfy INA § 203(b)(5) at the time of filing and that post-filing corrective actions cannot cure the deficiency.

Accordingly, partial capital cases must be structured not only to satisfy the "actively in the process of investing" standard, but also to withstand procedural scrutiny under the initial evidence and eligibility-at-filing doctrines.

CONCLUSION

Partial capital investment in EB-5 petitions is legally permissible, but it is not procedurally forgiving.

The decisive questions in partial investment cases are therefore not merely whether the remaining funds will eventually be transferred, but whether, at the time of filing, the investor:

- **Had ownership and control of the full required capital;**
- **Had a fixed, documented, and lawful source for the entire investment amount;**
- **Had undertaken an irrevocable commitment sufficient to meet the statutory concept of "investment"; and**
- **Submitted all required initial evidence as mandated by regulation and form instructions.**

Where the full capital is already secured and documented, and only logistical transfer remains outstanding, the petition may be defensible under the "actively in the process of investing" standard. Conversely, where the remaining capital depends on speculative future events – such as the sale of property or uncertain financing – the petition faces heightened vulnerability under the eligibility-at-filing doctrine and relevant precedent, including Matter of Katigbak and Matter of Izummi.

In the current post-RIA adjudicatory climate, partial investment cases demand rigorous pre-filing analysis, complete source-of-funds documentation for the full statutory amount, and careful alignment between contractual commitments and regulatory requirements. Strategic timing, comprehensive evidentiary preparation, and disciplined structuring are essential.

Ultimately, partial investment is not inherently defective, but it is structurally sensitive. Success depends less on the percentage of capital initially transferred and more on whether the petition, as filed, presents a complete and legally sufficient eligibility record capable of withstanding both substantive and procedural scrutiny.

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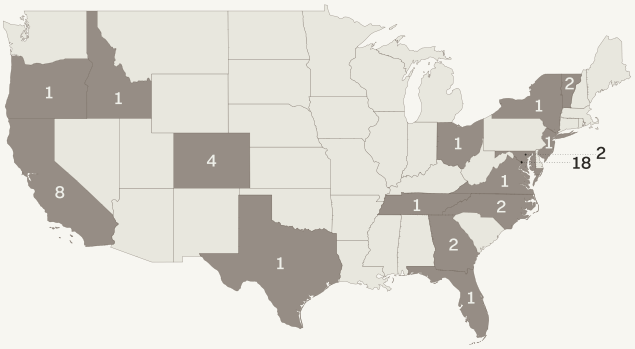

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