IIUSA
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IIUSA: CHARTING THE FUTURE OF EB-5

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Bridging the Gap: Bridge Financing, the Proposed EB-5 Rule, and a Workable Middle Path

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Artificial Intelligence and the EB-5 Ecosystem: Adaptation, Responsibility, and the Future of Professional Value

The EB-5 Infrastructure Set-Aside: A Statutory Incentive Without Guidance

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Message from THE CHAIR

Dear Readers,

Few seasons in recent memory have asked as much of the EB-5 community as this one. In the span of a few months, our industry absorbed a sweeping proposed rule, a final fee rule, the September 30 grandfathering deadline, and a renewed push on Capitol Hill to secure the program's long-term future. Through all of it, IIUSA's members did what they do best: They showed up, did the work, and made the case for a program that builds American projects and creates American jobs.

The State of EB-5
EB-5 demand remains strong, though USCIS data shows slowing adjudications, rising denials, and growing petition backlogs. With the September 2026 grandfathering deadline behind us, the industry shifts its focus to adapting to a new a new investment amount coming in January 2027. Meanwhile, the October Visa Bulletin brought welcome progress for investors, and an inflation-based increase in minimum investment amounts approaches in January 2027.
Long-term program stability remains IIUSA's top priority. Following nearly 50 congressional meetings in September, our advocacy efforts continue to focus on securing reauthorization through 2032, ensuring EB-5 remains a reliable tool for investment and economic development.

Advocacy at Work: IIUSA and the Rulemaking Agenda
The July 2, 2026 Notice of Proposed Rulemaking. DHS published its long-awaited proposed rule implementing the EB-5 Reform and Integrity Act. IIUSA answered with more than 150 pages of formal comments, filed before the August 31 deadline. The submission was built by member working groups and supported by member-supplied data. I was proud to be a team leader of one of the working groups and you can read more about this effort within these pages.

I want to thank every member who contributed. It was, as our staff aptly called it, a Herculean group effort.

The EB-5 fee rule. Since DHS proposed steep fee increases in October 2025, IIUSA pressed the agency to reconsider. The final rule, issued in late September, reflects that engagement. The I-526 filing fee was set at $7,615, down from the $9,625 originally proposed, with regional center investors paying $7,850. Fees still rise, and the new schedule takes effect November 30, 2026, but the reduction is a real win for investors and for the program.

USCIS Policy Memorandum PM-602-0199. Following the May 21, 2026 policy memorandum, IIUSA issued a statement raising concerns about its consistency with the statutory framework Congress enacted. Of particular concern are the adjustment-of-status provisions in INA §§ 245(n) and 245(k), on which many EB-5 petitioners rely. IIUSA continues to engage policymakers on this issue.

In This Issue
This edition explores some of the most pressing issues facing the EB-5 industry, from proposed regulatory changes to evolving legal and financial considerations. Contributors examine key themes emerging from public comments on the NPRM, including areas of industry consensus and disagreement. Other articles explore the anticipated 2027 investment amount adjustment, the often-overlooked tax implications of phantom income for EB-5 investors, and the potential securities law liabilities regional centers face despite compliance with USCIS requirements. Together, these articles offer timely analysis and practical insights into the regulatory, financial, and legal challenges shaping the industry's future.

I am grateful to each of our authors for sharing their expertise, and to the members of the editorial committee for the care they bring to every issue.

The months ahead will bring a final rule, a reauthorization debate, and continued pressure on adjudications. IIUSA will be at the table for each of them. I encourage every reader to join that work, whether through a working group, a visit to Capitol Hill, or an article for these pages.

Thank you for reading, and for your commitment to a strong, well-regulated EB-5 program.

Sincerely,

Osvaldo (Ozzie) Torres
IIUSA Editorial Committee Chair |
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HOW IIUSA MOBILIZED THE EB-5 INDUSTRY

The 2026 NPRM Comment Process Demonstrated The Value of a Coordinated Industry Voice

Aaron Grau
Executive Director | IIUSA

Ashley Sanislo Casey
Director of Operations | IIUSA

Continued On Page 7

The strongest associations bring together people and organizations that share an industry but do not always share the same experiences, priorities, or points of view. Successful associations create a trusted process through which those perspectives can be shared, heard, and shaped into a credible common voice. IIUSA demonstrated that value when it mobilized the EB-5 industry to respond to perhaps the most consequential proposal the Regional Center Program has faced.

On August 31, 2026, Invest in the USA (IIUSA) submitted the final portion of more than 150 pages of comments on the Department of Homeland Security's notice of proposed rulemaking (NPRM) , or proposed regulations, for the EB-5 Immigrant Investor Program. The comments were the product of two months of members' coordinated work. The effort showed why IIUSA is the voice of the EB-5 industry and a gold standard for what an association can contribute to the industry it serves.

UNDERSTANDING THE NPRM

A Notice of Proposed Rulemaking, commonly called an NPRM, is the formal document a federal agency publishes when it proposes to create or change regulations. After proposed language appears in the Federal Register, the public may submit legal analysis, operational experience, data, and recommended revisions during a comment period. The agency reviews that record before deciding whether to revise the proposal and issue a final rule. For a regulated industry, this is a critical opportunity to explain how proposed language would work in practice and identify consequences the agency may not have anticipated.

The EB-5 NPRM published on July 2, 2026, was unusually broad. At 358 pages, it proposed regulations implementing the EB-5 Reform and Integrity Act of 2022 and addressed nearly every part of the Regional Center Program. Comments were due August 31, giving the industry about 60 days to assess the proposal and develop recommendations. No single segment of the industry had all the knowledge needed to do that work.

IIUSA COMMENT DEVELOPMENT PROCESS

IIUSA mobilized immediately. Under the leadership of Public Policy Committee Chair Lulu Gordon, more than 45 professionals joined the effort, including immigration, corporate, and securities attorneys; regional center owners and operators; banks and other financial service providers; economists; business plan writers; broker-dealers; and specialists with knowledge of the issues raised by the NPRM.

IIUSA organized the review into 11 working groups, each led by professionals experienced in its assigned area:

- The definition and scope of a person involved
- The definition and scope of an affiliated job-creating entity
- Bona fides, biometrics, and attestation requirements
- Sanctions, enforcement, and proportionality
- Promoter regulation
- Securities law compliance
- Fraud, misrepresentation, deceit, and criminal misuse
- Targeted employment areas, job creation, and economic methodology
- National interest determinations and pre-RIA obligations
- Capital, investment, and infrastructure
- Removal of conditions and the I-829 process

The groups met multiple times and collaborated through shared electronic documents. They identified the provisions at issue, developed initial positions, and tested those positions against the statute, existing program requirements, and the experience of practitioners who would apply the regulations. They then drafted and revised language so each comment explained the provision, IIUSA's concern, its likely effect, and the recommended solution.

The structure allowed each group to examine its issues in depth while contributing to a complete response. Participants with different expertise challenged assumptions and strengthened the analysis. IIUSA also sought data and additional input from members so the comments reflected operating experience from across the industry.

Lulu Gordon, of EB5 Capital, coordinated the work across all 11 groups, preventing overlap and conflict and maintaining a consistent approach throughout the submission. Working-group leaders, IIUSA officers, staff, and policy leadership reviewed the developing drafts, followed by review from IIUSA's Board of Directors.

IIUSA submitted the comments in four tranches totaling more than 150 pages. Although they covered a wide range of subjects, each comment followed a uniform format that helped USCIS identify the provision at issue, understand the concern, review the evidence, and consider IIUSA's recommended language. The result was a large but clear and direct submission.

RECOGNIZING THE CONTRIBUTORS

IIUSA is especially grateful to Lulu Gordon and her team at EB5 Capital for their leadership, judgment, and time. Lulu served as the effort's chief strategist, coordinating the working groups, reconciling different perspectives, and ensuring that the final comments reflected IIUSA's priorities without diminishing each group's specialized work.

IIUSA also thanks the working-group leaders, every member of the NPRM subcommittee, and the many other members who contributed analysis, data, operating experience, drafting, and review. Participants devoted time during a short comment period while meeting the demands of their organizations and clients. IIUSA's Board, officers, staff, and policy leadership provided the oversight needed to complete the submission.

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THE INDUSTRY VOICE IN ACTION

The importance of the effort extends beyond the number of pages submitted. USCIS received comments informed by people who work with the EB-5 program from professional vantage points. Regional centers, attorneys, financial professionals, economists, business plan writers, broker-dealers, and other practitioners did not approach every question from the same position. Their participation enabled IIUSA to identify agreement, address differing views, and present a response that reflected the industry as a whole.

That is the value of a strong association: it gives disparate voices a forum and turns their knowledge into a credible common voice. IIUSA created that forum, organized the work, and ensured that the industry's experience reached policymakers while the rule was still under review. In doing so, IIUSA again demonstrated why it is the leader of the EB-5 industry and a gold standard for associations serving industries and professions.

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THE ARCHITECTURE OF INTEGRITY

Designing a Final Rule that Promotes Program Compliance and Success

Lulu Gordon, Esq.
General Counsel | EB5 Capital

Continued On Page 10

On July 2, the Department of Homeland Security published its proposed rule implementing the EB-5 Reform and Integrity Act. The proposal filled 358 pages of the Federal Register. As chair of the regulations subcommittee responsible for IIUSA's comments, I began organizing the response five days later. IIUSA filed its final tranche of comments on August 31.

No one person could read 358 pages of regulatory text and preamble closely enough to address every issue. More than forty-five IIUSA members joined the effort, including regional center operators, immigration and securities counsel, economists, fund administrators, and developers. Eleven working groups reviewed the proposal by subject matter. Each group used the same format: the provision at issue, the concern, the practical impact and supporting evidence, and a recommendation with proposed regulatory language. Together, the groups produced roughly 120 drafts.

The work was collaborative and iterative. Many participants served on more than one group, and groups working on overlapping subjects consulted one another. A smaller team of IIUSA officers and advisers then revised and combined the drafts, removed duplication, refined the proposed language, and checked the comments for consistency. The process continued through the filing deadline.

WHAT THE REVIEW REVEALED

The comments exposed more than isolated drafting problems. Viewed together, they revealed a rule that, as drafted, fails four basic tests:

- **Achievable Compliance**. Does the party responsible for compliance actually control the conduct at issue, or could an investor or regional center be penalized for someone else's acts or omissions?
- **Clarity.** Can a regulated party determine what compliance requires, including when a deadline begins and what conduct is material?
- **Proportionality.** Does the consequence fit the violation?
- **Due process.** Will the non-compliant party receive notice and a meaningful opportunity to correct a mistake or omission before an adverse decision becomes final?

Clarifying individual provisions will not cure this. Read together, the provisions reflect an enforcement posture that treats the possibility of misconduct as the agency's organizing principle.

This approach appears institutional, not ill-willed. EB-5 is an investment program housed within an immigration agency whose daily work centers on adjudicating eligibility, detecting fraud, and protecting national security. An agency built to find violations will naturally view a program in terms of the violations it might produce. The familiar saying about hammers and nails may be unkind, but it captures the risk. A hammer belongs in a builder's toolkit. When enforcement becomes the primary tool, every provision becomes an occasion to use it, and ordinary business events begin to look like potential threats.

Congress has entrusted EB-5 to USCIS, and the agency's enforcement mission is essential to the program's credibility. The challenge is to balance that mission with the program's purpose of attracting investment and creating jobs. The preamble reflects much of that balance; the regulatory text does not yet carry it through.

THE LIMITS OF AGENCY REACH

The proposed rule also reaches beyond the people and conduct Congress placed within USCIS's field of responsibility. The statute defines a "person involved" by reference to substantive authority over the pooling, investment, release, or use of EB-5 funds. Although it identifies roles in which that authority may exist, the use of "may be" makes function, rather than title, the governing test. The bona fides requirements apply to regional centers, new commercial enterprises, and affiliated job-creating entities. An unaffiliated job-creating entity may be required to provide attestations and biometrics only when there is a reasonable basis to believe it is out of compliance. The source-of-funds obligation applies to the investor's own capital. Those limits are part of the statute's design, not an oversight.

The proposed rule steps outside that field at nearly every turn. It changes "may be" to "is," making title dispositive and function irrelevant. It adds limited partners, whose defining legal characteristic is their lack of control. An "input or oversight" standard pulls in agents, fiduciaries, and representatives, and could sweep in an attorney who reviewed loan documents but had no authority to direct the transaction. It deletes "affiliated," extending the regime to every job-creating entity, and removes the reasonable-basis requirement for unaffiliated entities. It also expands the source-of-funds inquiry from the investor's capital to "all capital" provided to the job-creating entity.

The source-of-funds change is the starkest example. An investor who fully documented the source of the investment could be held responsible for the source of a construction lender's money, even though the investor has no right to obtain the lender's records. A large job-creating entity, such as a public company or nonprofit hospital system, could face attestations and fingerprinting requirements for every board member, officer, owner, and "manager," a term the rule does not define, even when only a few people have any connection to an EB-5 loan.

The lenders, institutional investors, and tax-credit funds that provide the rest of a project's capital already operate under anti-money-laundering regimes administered by federal banking regulators, FinCEN, securities regulators, and state agencies. Congress directed USCIS to examine immigrant investors' funds, and USCIS is equipped to do so. Requiring USCIS to verify the entire capital stack would duplicate other regulators' work while placing the burden on the investor, the party least able to obtain the necessary records.

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The Architecture of Integrity | Designing a Final Rule that Promotes Program Compliance and Success

THE COST OF MAXIMUM ENFORCEMENT

The enforcement posture is not confined to the proposed rule. On August 5, during the comment period, USCIS announced a policy change that "restored officers' full discretion to deny a benefit request" without first issuing a Request for Evidence or Notice of Intent to Deny when a filing failed to establish eligibility or omitted required initial evidence. USCIS said the change would help restore integrity, make it more difficult to file "frivolous benefit requests" and "placeholder" applications, and prevent petitioners from exploiting the system.

Some filings may warrant that description. A Request for Evidence, however, is not a loophole. It is the step through which an honest petitioner learns what the adjudicator found missing and has an opportunity to provide it. An investor who has put at least $800,000 at risk, plus filing, administrative, and other fees, deserves that opportunity. As does a regional center whose project application runs hundreds of pages and carries a filing fee in tens of thousands of dollars, where a denial can cause an avalanche of harm and the administrative appeals process moves slowly leaving every associated investor petition at risk in the meantime.

The new policy applies to petitions already pending. It follows the same blueprint as the proposed rule: no opportunity to correct, consequences set at the maximum, and integrity cited as the reason.

AN INTEGRITY FRAMEWORK FOR A WORKABLE FINAL RULE

IIUSA's comments ask USCIS to build four principles into the final rule.

- **Achievable obligations.** Regulate actors and conduct within USCIS's statutory authority. Requirements should be commercially reasonable, use the least intrusive means necessary to achieve compliance, and not impose strict liability for third-party conduct.
- **Clear standards.** State the obligation and identify when each deadline begins so regulated parties can build reliable compliance programs.
- **Proportionate sanctions**. Explain how a penalty relates to the violation. Provide intermediate measures before termination, require knowledge or materiality before imposing the most severe sanctions, and implement the graduated approach described in the preamble.
- **Due process**. Give affected parties notice of the basis for an adverse finding and a meaningful opportunity to respond before the decision becomes final. Stay penalties and preserve immigration status while a timely appeal is pending.

This framework would leave USCIS with the tools it needs to address actual misconduct while making its decisions more predictable and more likely to withstand scrutiny. We want a well-regulated program, not a less regulated one.

INTEGRITY IS STRUCTURAL

Integrity is a personal quality: knowing the right thing and doing it. A program cannot have integrity in that sense because a program has no character. When we speak of program integrity, we should mean what an engineer means by a bridge's integrity. The structure is sound, its parts hold together, and it bears the load for which it was built without buckling under unintended consequences. Program integrity is a property of design.

The EB-5 program's integrity therefore depends on two structural elements. First, compliance must be achievable for those trying to comply. When honest operators know the rules, can meet them, and may correct good-faith mistakes, compliance becomes the ordinary result of competent administration. A rule that produces violations by good actors is unsound, regardless of how many bad actors it catches.

Second, the decision-maker must operate within meaningful constraints. Notice, defined standards, proportionate consequences, and independent review keep judgment, however well-intentioned, anchored to facts rather than the pressures of the moment. Those constraints are what make the result trustworthy.

Enforcement is necessary to a sound program, but it is not the whole of program integrity. A sanction imposed under a clear rule after a fair process is more likely to endure, deter misconduct, and be accepted by the industry as legitimate. A sanction imposed without warning under an unforeseeable standard, or applied retroactively, is more likely to invite challenge or to deter participation altogether.

The EB-5 Reform and Integrity Act requires parties to exhaust administrative remedies before a court may review these determinations. For a long stretch, the agency's own process is the only process there is, which makes its quality that much more important. I recommend that Congress revisit the timing of judicial review. In the meantime, the final rule can and should provide the safeguards that judicial review would otherwise supply.

The industry members who came together to draft IIUSA's comments want a sound, fair, workable program, a rule they can understand and rely on. IIUSA offered its comments, supporting data, and proposed regulatory text in that spirit. The comment period has closed, but the dialogue has not. I remain optimistic that USCIS will adopt a final rule that encourages both compliance and success. That would reflect integrity in the fullest sense of the word, and I believe it is within reach.

WITH GRATITUDE

IIUSA's comment submission was a true team effort. I am grateful to the more than forty-five subcommittee members and working group leaders; our advisers, Ron Klasko, Jessica DiNisi, and Suzanne Lazicki; and the IIUSA officers, board members, and staff who contributed throughout the process. I also thank my EB5 Capital colleagues Brian Ostar and Mariana Gomez, who brought our company's perspective to IIUSA's work and helped carry EB5 Capital's own comments through filing. Finally, I am deeply grateful to my extraordinary lieutenant, Daniela Grisi, EB5 Capital's Vice President of Operations, for her organizational skill and tireless energy. **We did it.**

FROM EXCEPTION TO ROUTINE

EB-5 Regional Center Audits One Year Later

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In the Fall 2025 issue of the Regional Center Business Journal, the authors described regional center (RC) audits under the EB-5 Reform and Integrity Act of 2022 (RIA) as a high-stakes compliance mechanism whose process remained "uneven, opaque, and at times detached from the very purpose it purports to serve."[1] That article asked whether audits were serving their purpose, what a completed audit signals, how post-RIA standards apply to pre-RIA conduct, and what finality an audit closure carries.

One year later, the landscape looks markedly different. RC audits have become a recurring and central feature of EB-5 operations. Audits are now among the most consequential compliance events a regional center will face, and how the industry navigates them will shape the program's credibility for years to come.

This article draws on the authors' experience, as outside immigration counsel and in-house counsel, across multiple successive audit rounds over the past year. It considers what has matured in the U.S. Citizenship and Immigration Services (USCIS) audit process, how the scope of requests has deepened, which questions remain open, and what regional centers should do now.

I. FROM EXCEPTION TO ROUTINE: THE AUDIT UPTICK

The RIA directs USCIS to audit every approved regional center at least once every five years.[2] USCIS announced its audit program in April 2024 and adopted Generally Accepted Government Auditing Standards (GAGAS) to govern it.[3] Since then, the pace has accelerated considerably.

One indicator is the audit numbering itself. Audit reference numbers appear to run sequentially. In the authors' observation, notices issued in early 2025 carried numbers in the 20s, while notices issued in the fall of 2026 had passed 140. If that reading is correct, USCIS has initiated more than 100 RC audits in roughly 18 months. USCIS has also begun giving regional centers informal advance notice of upcoming audits, a practical acknowledgment that it is auditing many regional centers at once and that assembling documentation takes time.

Over the past year, the authors have worked through successive audit rounds, each covering several affiliated regional centers, with the next round often signaled as the prior one closed. The five-year mandate is, in practice, being met well ahead of schedule.

WHY AUDITS MATTER

The stakes justify the attention. Failure to consent to an audit, or a deliberate attempt to impede one, will result in termination of an RC's designation, and audit results may be used to determine an RC's continued eligibility.[4] More broadly, audits are a visible measure of program integrity at a time when the industry is preparing for reauthorization of the Regional Center Program beyond September 30, 2027. A well-functioning audit process benefits compliant operators by distinguishing them from those who are not.

II. WHAT HAS MATURED

USCIS deserves credit for the progress of the past year. In the authors' experience, the audit process has become noticeably more structured and more collaborative.

Regional centers now often receive an informal notice of intent to audit before the official notification arrives, together with a preview of the expected document request. That lead time is valuable, since it allows records to be gathered before the formal clock starts. The official notification letter and document request are followed by an entrance conference, at which the audit team walks through the audit's objectives, scope, and methodology under GAGAS, the anticipated schedule, and points of contact. Audits close with an exit conference and a written closeout notice. The sequence is now familiar enough that regional centers can plan around it.

The period under review is also better defined. Entrance conferences identify the lookback period. The statute's recordkeeping provision looks to records maintained after the RIA took effect on May 14, 2022, but in the authors' experience that has not narrowed requests as much as regional centers might expect: auditors continue to request substantial documentation relating to pre-RIA NCEs and long-standing regional centers.[5]

USCIS has shown reasonable flexibility. Well-supported extension requests have been granted, and the agency has expressed a preference for rolling production over a single large submission. Where an operator manages several regional centers under common governance, auditors have drawn on what they learned about internal controls in a prior audit and focused on confirming that nothing material has changed, which saves time on both sides. Throughout, communications with the audit team have been courteous, responsive, and constructive.

In the authors' experience, the cycle from official notice to closeout has taken roughly two to three months.

III. REQUESTS ARE GOING DEEPER

If the process has become more predictable, the substance has become more demanding. The arc of document requests over the past year runs from who you are to how your controls actually work.

[1] Jessica A. DeNisi & Mine Ekim, EB-5 Regional Center Audits: A Practical Review and Advocacy Roadmap, IIUSA Regional Center Business Journal, Volume 14, No. 2 (November 2025).
[2] INA § 203(b)(5)(E)(vii)(II), 8 U.S.C. § 1153(b)(5)(E)(vii)(II); EB-5 Reform and Integrity Act of 2022, Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. BB, 136 Stat. 49, 1070 (2022) [hereinafter RIA].
[3] U.S. Citizenship and Immigration Services, EB-5 Regional Center Audits, https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits; U.S. Citizenship and Immigration Services, USCIS Announces Information Regarding EB-5 Regional Center Audits (April 9, 2024), https://content.govdelivery.com/accounts/USDHSCIS/bulletins/3955c53; U.S. Government Accountability Office, Government Auditing Standards: 2018 Revision (Technical Update April 2021), GAO-21-368G, https://www.gao.gov/products/gao-21-368g.
[4] INA § 203(b)(5)(E)(vii)(III); U.S. Citizenship and Immigration Services, USCIS Announces Information Regarding EB-5 Regional Center Audits, supra note 3.
[5] See INA § 203(b)(5)(E)(vii)(I). The RIA took effect on May 14, 2022, 60 days after its enactment on March 15, 2022.

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Earlier requests centered on organization and governance: principals and their roles, management and consultants, ownership and structure, history, litigation, marketing strategies, investor-tracking databases, and related regional centers. More recent requests go considerably further.

Flow of funds is a good example. Rather than a description of how capital moves, auditors now ask for a sample investment traced through every account it touches, from the investor's deposit, through the new commercial enterprise (NCE) and any intermediate lending or holding entities, to the job-creating entity (JCE), supported by bank statements and disbursement schedules. Document requests may also identify specific petitioners by receipt number and ask the regional center to walk through each one's onboarding, fund flow, recordkeeping, and compliance reporting. Some requests call for investor-level data tables by NCE showing investment start date, sustainment start date, original investment, and current capital balance and, for projects with an approved Form I-956F, the promoter named on Form I-956K and whether the investor subscribed under Regulation D or Regulation S.

Fund administration has become a consistent theme. Auditors ask how each NCE satisfies the statutory requirement, whether through a third-party fund administrator, through the annual independent financial audit alternative, or because the requirement does not apply, as may be the case for certain pre-RIA NCEs[6]. Regional centers should be prepared to state and support their position NCE by NCE. Requests have also sought a description of the due diligence performed by the individual who certifies the annual Form I-956G.

The focus on people and relationships has sharpened as well. Auditors have asked about the functions of each affiliated entity that is neither an RC nor an NCE, and about agreements with service providers related to the principals of the RC or NCE. For regional centers that changed ownership, requests reach back to the original organization, the acquisition, and the executed acquisition agreement. Internal controls over the hiring, background screening, and ongoing monitoring of executive and management personnel are now tested with documentation for specific positions.

Two features of this evolution stand out. First, the reach now extends beyond the regional center itself, to records held by JCEs, developers, and third-party service providers, which the RC must obtain on someone else's timeline. Second, the requests increasingly test whether controls operate in practice, not simply whether written policies exist. That shift resembles the approach of securities examinations and underscores the value of the published audit framework the authors called for last year. The sustained focus on fund flow, fund administration, and promoter relationships tracks the RIA's own integrity priorities, and may signal where USCIS sees risk and where scrutiny may intensify, in future audits and potentially adjudications.

IV. INSIDE THE SITE VISIT

Site visits are now a standard component of the audit, conducted either in person at the regional center's offices or as a live virtual session. Both formats remain common, and the structure is broadly similar in each.

Sessions typically open with internal controls, covering governance, systems, promoter engagement, investor screening, flow of funds, and marketing oversight, including whether anything has changed since a prior audit. From there, auditors ask the regional center to walk through its investor-management and document-management systems and to open the files of sample investors, including identity and screening records, subscription documents, side letters and fee disclosures, wire confirmations, and immigration filings. Auditors capture what is shown and typically request copies afterward.

Auditors may also ask to verify an event on the spot, such as a return of capital or a redeployment, so source records, and not only system summaries, should be within reach during the session. Familiarity with EB-5 mechanics such as redeployment, sustainment, and multi-entity lending structures can vary, and regional centers should be ready to explain these concepts clearly and consistently. Additional requests generally follow by email shortly after the session, often with short turnaround times. Questions raised in discussion matter too and in the authors' experience, topics explored orally in one audit have tended to resurface as formal document requests in the next.

Recording of audit sessions has become routine. Regional centers may request a copy for their own recordkeeping and should retain it with the audit file.

Virtual sessions bring their own practical considerations. Screen-sharing and screen capture slow the pace, and sessions can extend into an additional day. Regional centers should rehearse their walkthroughs, test their technology in advance, and confirm what has been captured before moving on.

V. PRACTICAL CONSIDERATIONS

Several features of the current process are worth planning for, and the first is volume. A single round covering several affiliated regional centers can require producing well over a thousand files, organized by RC and by item number, each accompanied by a counsel cover letter.

Timing is closely related. Where a request spans multiple NCEs, several fiscal years, or historical records, including pre-RIA records maintained across separate sets of books, regional centers should request a modest, well-justified extension early and offer to produce on a rolling basis. In the authors' experience, USCIS has been receptive to such requests.

Document requests can also differ from one regional center to the next, even within the same round, in item numbering, wording, and scope. Some items overlap, and some ask for records that do not exist for a particular RC, such as one with no active NCEs. A clear, item-by-item response, with a short statement where an item does not apply, keeps the record clean. Occasionally a notice will contain a typographical error, such as an incorrect reference number or entity name; the better practice is to note the correction respectfully in the cover letter rather than ignore it.

Finally, audits require producing personally identifiable information at scale. Regional centers should use secure, access-controlled transmission, limit link duration, confirm receipt, and document what was produced and when.

VI. REVISITING THE 2025 QUESTIONS

Several of the concerns raised last year have been addressed, at least in part. The process is more structured, and advance notice is common. The treatment of pre-RIA records, however, remains a live issue. As noted above, requests continue to reach deep into pre-RIA NCEs and their history.

Other questions remain open. Closeout notices are brief. They confirm that the audit has concluded and that no further action is requested for now, while leaving room for future inquiries. Regional centers still lack clarity on whether, and how, a closed audit may be revisited. No written audit summary accompanies closure, even when there are no adverse findings, which leaves regional centers with little insight into what was reviewed and how it was assessed. It also remains unclear whether information obtained in an audit informs the adjudication of other filings, such as Forms I-956G, I-956F, I-526E, or I-829. And there is still no public audit manual or checklist comparable to the examination materials published by securities regulators.

The authors are not aware of any termination or sanction resulting from an RC audit to date, although USCIS does not publish audit outcomes. Termination is mandated where a regional center fails to consent to, or deliberately impedes, an audit, and sanctions target conduct such as knowingly submitting materially untrue information or a willful, undisclosed, and material deviation from a filed business plan.[7] A regional center that cooperates and can document what it represented is unlikely to present those issues.

The caution expressed last year also still holds: a completed audit is not an endorsement. Regional centers should describe audit completion factually and avoid suggesting that it represents approval of a project or of the RC's operations.

VII. WHAT REGIONAL CENTERS SHOULD DO NOW

Given the frequency and depth of current audits, preparation is no longer optional. Based on their experience, the authors recommend the following:

1. Assume an audit is coming. Maintain a standing audit file for each regional center and each NCE, rather than assembling one after the notice arrives.
2. Keep fund-flow evidence at the account level. For every investor, be able to trace the deposit through each account it passes, with bank statements and disbursement schedules. Secure contractual rights to obtain JCE and developer records promptly.
3. Document your fund administration position for each NCE. Whether through a fund administrator, the annual independent audit alternative, or inapplicability, have the basis and supporting documents ready.
4. Keep core narratives current. Responses on structure, history, principals, policies and procedures, data governance, and due diligence can be maintained as living documents and kept consistent across affiliated regional centers.
5. Track the requests. Build a cross-reference matrix that maps each item across document requests, so that variations are caught and responses stay consistent.
6. Prepare your team. Before a site visit, brief everyone involved: respond to what is asked, keep a log of everything shown, escalate uncertainty rather than guess, maintain a professional and cooperative tone, and verify any follow-up information before it is shared.
7. Rehearse the walkthroughs. Practice navigating investor files, database records, and fund-flow evidence, and confirm that source documents are accessible during the session.
8. Coordinate counsel early. Close coordination between in-house and outside immigration counsel on scope, cover letters, and any corrections helps balance full cooperation with preserving the RC's legal position.
9. Protect sensitive data. Use secure, time-limited transmission methods, confirm receipt, and record what was produced.
10. Manage the timeline. Request modest extensions early where warranted, and produce on a rolling basis when possible.

CONCLUSION: AUDITS AS THE NEW NORMAL

Regional center audits have moved from exception to routine. The stakes are significant, the frequency is rising, and the scope is deepening. At the same time, USCIS has made real progress toward a structured, predictable, and professional process, and that progress deserves recognition.

The past year also shows what makes the process work. Audits have gone most smoothly where regional centers arrived organized, answered what was asked, and raised questions early, and where the audit team, in turn, communicated scope and timing clearly. That cooperation serves both sides: USCIS obtains the information it needs more efficiently, and regional centers spend less time reconstructing records under deadline. As audit volume grows, the industry has a shared interest in building on that foundation through trade association engagement, stakeholder sessions, and practical feedback channels, so that lessons learned in one audit inform the next.

With that in mind, the authors respectfully offer several suggestions for the next phase: a published audit framework or public Q&A; brief written closeout summaries, even where no adverse findings are made; clarity on the finality of closed audits and on how audit information is shared within USCIS; guidance on the secure transmission and retention of sensitive records; and greater consistency across document requests issued in the same round.

Investors also have a stake in this evolution. For an investor whose path to permanent residence depends on a regional center's continued designation, a well-run audit, and a regional center prepared for one, is a quiet but meaningful form of protection. Regional centers that communicate openly with investors about their compliance programs, without overstating what an audit outcome means, will strengthen that trust.

For regional centers, the message is straightforward: treat audit readiness as an ongoing discipline, not a one-time project. Operators who do so will be well positioned to demonstrate the integrity the RIA was designed to promote, and to strengthen the program's credibility as reauthorization approaches.

The authors expect the audit program to keep evolving and look forward to revisiting these observations as the process matures.

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[6] INA § 203(b)(5)(Q)(iv)–(v).

[7] INA § 203(b)(5)(E)(vii)(III), (G)(iii)(I)–(II).

EB-5 INVESTMENT AMOUNT IN 2027

$937,500, $900,000, or $850,000?

Adam Greene
Executive Vice President - EB-5 | Peachtree Group

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SHORT ANSWER:

The minimum EB-5 investment is $800,000 for targeted employment area (TEA) and infrastructure projects and $1,050,000 for all other "standard" projects. Both amounts will increase automatically for inflation on January 1, 2027. Depending on how U.S. Citizenship and Immigration Services (USCIS) reads the law, the new TEA amount will most likely be $937,500, $900,000, $862,500, or $850,000, and the new amount for standard projects will mostly likely be $1,250,000, $1,200,000, or $1,150,000. USCIS has not yet published the official figures.

For months, I told anyone who would listen that the TEA amount would rise to $937,500 in 2027. I thought it was black letter law. Two recent USCIS publications changed my mind. Here is what we know, what we do not, and why.

HOW THE RIA INFLATION ADJUSTMENT WORKS

The EB-5 Reform and Integrity Act of 2022 (RIA) set the current amounts in March 2022: $1,050,000 for a standard project and $800,000 for a project in a targeted employment area (a rural or high-unemployment area) or a qualifying infrastructure project. The RIA requires these amounts to be adjusted automatically on January 1, 2027, and every five years thereafter, for petitions filed on or after each adjustment date.

The standard amount is adjusted by the "cumulative annual percentage change" in the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) between January 1, 2022, and the date of adjustment, and rounded down to the nearest $50,000. The TEA and infrastructure amount is then set at 75% of the adjusted standard amount. The Secretary of Homeland Security publishes the new amounts in the Federal Register.

THE LITERAL CALCULATION: $937,500

The most literal reading compares the CPI-U in effect on January 1, 2022 (the December 2021 index, 278.802) with the most recent index before the adjustment. The September 2026 index, released by the Bureau of Labor Statistics on October 14, 2026, is 336.940, a 20.9% increase. That takes $1,050,000 to about $1,269,000, which rounds down to $1,250,000. Seventy-five percent of $1,250,000 is $937,500.

Under this method, the standard amount is essentially locked in: prices would have to fall about 1.5% before year-end to drop it to $1,200,000, or rise to about 2.5% to push it to $1,300,000.

WILL USCIS ROUND THE TEA AMOUNT DOWN TO $900,000?

On July 2, 2026, USCIS published a notice of proposed rulemaking (NPRM) to implement the RIA. The NPRM's preamble says USCIS will take 75% of the standard amount and then also round that figure down to the nearest $50,000. That second round-down turns $937,500 into $900,000.

The proposed regulatory text, which is what would actually become binding, does not say that. It rounds down the standard amount but says only that the TEA amount will equal 75% of the standard amount. By contrast, the new high employment area tier in the same section is expressly "rounded up to the nearest $50,000," so USCIS knows how to write a rounding instruction when it wants one.

To be fair, the statute's rounding sentence, although it appears in the provision describing the standard amount, refers to "qualifying investment amounts" in the plural. USCIS may be relying on that language to round the TEA and infrastructure amount as well, even though the separate provision requiring the 75% calculation is silent on rounding.

WHAT DOES "CUMULATIVE ANNUAL PERCENTAGE CHANGE" MEAN?

The phrase could mean the change from a starting month to an ending month, or the change between periodic averages. USCIS recently used averages to measure inflation in another EB-5 rule, which raises the possibility it will do the same here.

In its October 2025 proposed EB-5 fee rule, USCIS considered three methods for adjusting EB-5 Integrity Fund fees for inflation (90 FR 48532, nn. 56–60):

- **Half-year averages:** first half of 2022 (288.347) to first half of 2024 (312.145), an 8.25% increase. USCIS proposed this method because it avoids month-to-month swings.
- **Month to month**: March 2022 (287.504) to November 2024 (315.493), a 9.74% increase.
- **June to June:** June 2022 (296.311) to June 2024 (314.175), a 6.03% increase, mirroring how Congress directed USCIS to adjust premium processing fees.

In the final EB-5 fee rule published September 30, 2026, USCIS raised Integrity Fund fees by 10%, which matches the change from the full-year 2022 average CPI-U (292.655) to the full-year 2025 average (321.943). Averaging matters because inflation ran hot during 2022; averaging over that year raises the starting point and shrinks the cumulative increase.

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2027 Amounts Under Each Method

Inflation method	CPI-U increase	Standard amount	TEA / infrastructure amount
Start to end month (Dec 2021 to Sep 2026)	20.9%	$1,250,000	$937,500 ($900,000 if rounded down)
Half-year averages (H1 2022 to H1 2026)	14.7%	$1,200,000	$900,000
June to June (2022 to 2026)	12.7%	$1,150,000	$862,500 ($850,000 if rounded down)
Annual averages (2022 to 2025)	10.0%	$1,150,000	$862,500 ($850,000 if rounded down)

Source: Peachtree Group calculations using unadjusted CPI-U (series CUUR0000SA0) from the Bureau of Labor Statistics.

Substituting the 2026 annual average would not change the annual-average result unless prices jump sharply in the last three months of the year, and that average will not be published until mid-January 2027, after the adjustment date.

OUTLOOK

The 2027 TEA amount could be $937,500, $900,000, $862,500, or $850,000. The NPRM says USCIS will decide when it finalizes the rule whether to include the adjusted amounts for petitions filed on or after January 1, 2027. As of October 14, 2026, USCIS has not published the adjusted amounts in the Federal Register.

Our view is that the TEA amount is unlikely to fall below $900,000, and we believe much of the industry shares that view. We do not believe Congress intended an averaging method that removes a large part of the inflation it was trying to capture. But I was surprised once already.

What is certain is that under every method we evaluated, the TEA amount rises by at least $50,000, and possibly by as much as $137,500. Investors who want to lock in the $800,000 amount should file before January 1, 2027, which is now less than three months away.

BEFORE THE LETTER ARRIVES

What USCIS is Looking For in a Regional Center Audit

Michelle Tavares
CFE, CAMS, CFCS, PI

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The letter comes from the Immigrant Investor Program Office. It asks you to confirm you got it and to name a point of contact. A questionnaire and a document request are not far behind, and as far as USCIS is concerned, the audit started the day that letter was dated.[1]

If I were sitting across from you that morning, I would not ask whether you had done anything wrong. I would ask something narrower and less comfortable. Does the regional center you described to USCIS still exist? And can you prove it? Does the organization on paper still match the one in operation?

A piece about audits can read like a list of ways to get in trouble, so let me explain where I am coming from. I believe that government at its best is about stewardship and accountability. The EB-5 program is one of the rare spaces where that idea and the American dream end up in the same file. When it works, it builds things, puts people to work, and gives families a new start here.

I spent years at IPO as an adjudicator and compliance officer. Leaving IPO in 2025 was hard precisely because I believed in that work. I still do. Every regional center that can prove it is doing its part makes the program stronger. Every one that cannot weakens it for all of us.

THE I-956 IS A SET OF PROMISES

A designation application tells USCIS who you are, where you plan to operate, who is involved, and how the proposed investment will benefit the economy. It also needs to explain how you will keep tabs on the associated new commercial enterprises (NCEs) and job-creating entities (JCEs), and how you will keep the regional center in compliance.[2] "We have good people" is reassuring. It is not a monitoring policy.

The I-956, I-956F, and I-956G tell different parts of the regional center's story: designation, offering and project, and annual reporting.[3] My concern was whether those parts still agreed. They should not require separate explanations of who was in charge.

THE DESK ON THE OTHER SIDE OF THE FILE

The audit and adjudication functions had different responsibilities, but they were not strangers. The Audit Team and the Regional Center Adjudications Branch both sat within the Compliance Division. During audit preparation, adjudication officers worked with auditors, economists, and compliance officers.[4] It was truly a joint effort to ensure compliance with the program.

In those preparation meetings, my question was always: Did what we could verify match what the regional center had told us? I wanted to understand what the auditor tested, what the records showed, and what remained unexplained. An audit finding informs the eligibility decision.

The recordkeeping rule is straightforward: keep the documents behind your annual statements and investor petitions, including the relevant NCE and JCE records. Keep them for five years, counting from the end of the federal fiscal year in which the transaction happened. The audit covers those five years of records and where investor money went.[5] A former employee's inbox is not a long-term storage strategy. Neither is "I think the old administrator has it," or another one that did not go over well, "We could not recreate or reconcile the records." And yes, that happened.

TWO AUDITS, DIFFERENT QUESTIONS

An independent financial audit and a USCIS regional center audit are not a two-for-one deal. An NCE can qualify for a waiver from the fund-administrator requirement by commissioning a qualifying annual independent financial audit, but that does not satisfy the regional center's USCIS audit requirement.[6] One does not waive the other.

USCIS uses Generally Accepted Government Auditing Standards, known as GAGAS or the Yellow Book, to check compliance and the information it receives.[7] It is not light reading, and no one has ever recommended it as a beach read. I would gently suggest letting counsel read that part rather than sacrificing your weekend. They may not thank you, but at least someone will know where the bookmarks belong.

A performance audit is not simply a financial-statement opinion you can frame. Think of its findings as answers to four questions: What should have happened? What actually happened? Why was there a difference? And why does it matter? Auditors develop those elements where relevant and review them as a whole when determining the audit results. "Well, we are not sure why this happened" is not an answer that reflects well. If there is a break in the compliance controls, there needs to be evidence of accountability and responsibility on the part of the regional center.

Start with what is required, then look at what your filings and policies said you would do about it. My view: the explanation matters, but it needs evidence too. "We changed

'2Kate Kalmykov, USCIS Continues EB-5 Regional Center Audits Under the Reform and Integrity Act, EB-5 Insights (Oct. 29, 2025), https://www.eb5insights.com/2025/10/29/uscis-continues-eb-5-regional-center-audits-under-the-reform-and-integrity-act/.
[2] EB-5 statutory requirements for regional center designation and compliance policies, 8 U.S.C. § 1153(b)(5)(E)(iii), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153; USCIS, Instructions for Form I-956, Application for Regional Center Designation, https://www.uscis.gov/sites/default/files/document/forms/i-956instr.pdf.
[3] USCIS Policy Manual, Regional Center Applications, https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-5; Form I-956, https://www.uscis.gov/i-956; Form I-956G instructions, https://www.uscis.gov/sites/default/files/document/forms/i-956ginstr.pdf.
[4] USCIS, EB-5 National Stakeholder Engagement (Oct. 19, 2022), https://www.uscis.gov/sites/default/files/document/data/National%20Engagement-EB-5%20Immigrant%20Investor%20Program.pdf.
[5] EB-5 statutory requirements for record retention, audit frequency, and audit scope, 8 U.S.C. § 1153(b)(5)(E)(vii)(I)–(II), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.
[6] EB-5 statutory provisions on the qualifying annual independent financial audit and the separate USCIS regional center audit. The financial audit must meet the specified auditing standards and be provided to DHS and all NCE investors, 8 U.S.C. § 1153(b)(5)(E)(vii)(II), (Q)(v)(II), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.
[7] USCIS, EB-5 Regional Center Audits, https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits; USCIS, USCIS Announces Information Regarding EB-5 Regional Center Audits (Apr. 9, 2024), https://content.govdelivery.com/accounts/USDHSCIS/bulletins/3955c53.

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Before the Letter Arrives: What USCIS is Looking For in a Regional Center Audit

administrators" may explain missing escrow records. It does not establish where the money went. A perfectly reasonable explanation can still be short one bank statement.

WHERE THE APPLICATION AND THE AUDIT PART WAYS

In preparing for an audit, the adjudicator and auditor would meet to review the entire regional center file. The discussion involved a lot of caffeine and a review of the past five years of submissions. In my experience, there are four common ways the I-956 or I-956G starts to deviate from reality.

The first is who is actually running the place. Was there a significant change to ownership, structure, or management? USCIS generally needs notice before it happens. My first question was always: When was the notice filed? Then came the second most important question: Were they qualified? The statute looks at who has real authority over the relevant EB-5 funding decisions, not just the title on a business card.[8] Calling someone an "advisor" does not answer the question if they are now the person approving the money.

The second is whether the controls ever ran. Writing a monitoring policy is the easy part. Auditors check whether those safeguards actually work.[9] I wanted to see evidence that someone carried them out: sign-offs, review memos, records of problems being raised and resolved. A policy manual cannot tell anyone whether it was ever opened, followed, or enforced. Show IPO how it was done. What matters here is evidence of how the controls worked in practice and how employees were trained to follow them.

The third is whether the job numbers have support. USCIS needs credible estimates, produced by sound economic and statistical methods that can be explained. As an adjudicator, I really enjoyed seeing receipts and financial records supporting the spending figures used in an economic model.[10] My practical concern was the connection between the model and the records underneath it. The ledger is not in a negotiating mood.

The fourth is the money. The annual statement (Form I-956G) accounts for investor capital and reports specified fees and their recipients. Its accuracy certification is based on what the signer knows after completing the required due diligence.[11] Those figures need support beyond the spreadsheet carried forward since 2021, edited by four people, two since departed, with a color-coding system whose meaning left with them. A discrepancy calls for reconciliation, not a contest over which document looks more official.

Missing proof and proof of a false statement are not the same finding. That distinction matters to both fairness and good adjudication. My concern is that a regional center can leave an accurate representation unsupported simply because nobody can connect it to the records.

TWO EXAMPLES WORTH SITTING WITH

Imagine a regional center that is ready to celebrate. The project is funded and hiring! But before you can truly enjoy your free time again, remember that the I-956 described quarterly compliance reviews. The compliance officer responsible left in year two. Quarterly reviews became annual, then more of an intention. Meanwhile, the NCE-to-JCE transfer is supported by a memo describing a wire, which is not the same thing as the wire. Where a fund administrator is required, that independent party must monitor transfers, serve as an account co-signer, and approve transfers in writing or electronically before they happen.[12] That is an active job, not an honorary title.

Suppose every dollar went where it should. But the regional center the auditor finds is not quite the one the adjudicator approved, and the file that lands in front of both of them looks assembled, because it was.

Now take a reporting mismatch. An internal schedule shows $5 million transferred to the JCE by year-end. The bank records support $4.75 million; the remaining $250,000 stayed in escrow until the next reporting period. Nothing in this hypothetical went missing. The schedule simply got ahead of the bank, which is rarely a useful accounting technique.

From my side of the file, "it all got there eventually" would not have resolved what was true on the reporting date. I would have wanted the escrow record, the transfer dates, and a reconciliation explaining the difference. That does not, by itself, establish fraud. It establishes that the number needs work.

WHY THE DISTINCTION MATTERS TO INVESTORS

A project can make money and still need to prove it met the EB-5 investment and job-creation requirements.[13] As an adjudicator, I still needed the evidence to match, however profitable the project. A finished building deserves more than a photograph in the file.

The reverse deserves equal care. A troubled project or a regional center losing its designation does not mean every investor's case is lost. The statute includes protections that may allow qualifying investors who acted in good faith to keep pursuing their cases, depending on what happened and whether they meet the requirements.[14] Supporting the program means being precise about risk, not making it sound inevitable.

WHAT READINESS MEANS

Readiness is detailed work, and it cannot reliably be rushed. It is also a practical way to protect investors, projects, and the credibility of the program.

[8] EB-5 statutory provisions addressing persons involved with regional centers, NCEs, and JCEs, including substantive authority over funding decisions, 8 U.S.C. § 1153(b)(5)(H)(i), (ii), (v), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.
[9] USCIS, EB-5 Regional Center Audits, supra note 7.
[10] USCIS Policy Manual, Regional Center Applications, https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-5; Eligibility Requirements, https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2 (including expenditure-input examples in its pre-RIA evidence discussion). EB-5 statutory provisions on the binding effect of project approval and its exceptions, 8 U.S.C. § 1153(b)(5)(F)(ii), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.
[11] EB-5 statutory annual-statement and certification requirements, 8 U.S.C. § 1153(b)(5)(G)(i)(V)–(VI), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153; USCIS, Instructions for Form I-956G, Regional Center Annual Statement, https://www.uscis.gov/sites/default/files/document/forms/i-956ginstr.pdf.
[12] EB-5 statutory fund-administration requirements and exceptions, 8 U.S.C. § 1153(b)(5)(Q)(iv)–(v), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.
[13] USCIS Policy Manual, Eligibility Requirements (capital investment and job creation), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2; Regional Center Applications (project job creation and economic analysis), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-5.
[14] USCIS, EB-5 Questions and Answers, discussion of continuing eligibility after termination or debarment, https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers; EB-5 statutory protections for qualifying good-faith investors, 8 U.S.C. § 1153(b)(5)(M), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.

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It starts with reading your approved I-956 the way I used to, as a list of commitments, and asking honestly whether each one is still true. It means knowing which changes should have triggered a notice and did not. It means making sure your five-year record is indexed, not just kept somewhere. Retention is a storage unit. Indexing is a map. That index has to reach records your affiliates hold, too, and access is easier to negotiate before a deadline than during one, when you learn how responsive your JCE really feels like being.

Refusing an audit or deliberately getting in its way is certainly frowned upon, so much so that the statute requires USCIS to terminate the regional center's designation.[15] Other findings generally do not carry a penalty by themselves, but the violations behind them can. Depending on severity, the consequences can include fines, suspension, permanent exclusion from the program, or loss of designation. This is not a guaranteed three-strikes policy. And fines under the annual-statement rules cannot come out of investors' capital.[16] Adverse findings need a response. Obstruction is a decision to stop being a regional center.

WHERE THIS IS HEADING

DHS's July 2, 2026, proposed rule estimates 24 hours of work to respond to the audit-related information request. That is a paperwork estimate, not a promise that the audit ends in a day or a deadline for answering it.[17] I will leave that number next to the experience of anyone who has assembled five years of records from three entities. Good luck with your weekend plans.

Whatever happens to the proposed rule, the audit requirement is already law. An approved I-956 belongs in the operating conversation, not just in a frame.

I do not see that as a threat. Oversight is part of what keeps this program open and trusted, and the regional centers that treat compliance as part of the mission are the ones the rest of the industry gets judged by.

The letter is coming. What is still open is whether the regional center it finds is the one you described. For most of you, I suspect it will be. The work is making sure you can show it.

[15] EB-5 statutory consequences for refusing or deliberately impeding an audit, 8 U.S.C. § 1153(b)(5)(E)(vii)(III), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153; USCIS, EB-5 Regional Center Audits, supra note 7.
[16] USCIS, EB-5 Regional Center Audits, supra note 7; EB-5 statutory sanctions under the annual-statement provisions, including restrictions on using investor capital for fines, 8 U.S.C. § 1153(b)(5)(G)(iii)(I)–(II), https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid:USC-prelim-title8-section1153.
[17] DHS, Employment-Based Fifth Preference Immigrant Investor Program, 91 Fed. Reg. 40,676, 40,755, 40,777 (July 2, 2026) (proposed rule) (24-hour estimated burden per compliance-review response), https://www.govinfo.gov/content/pkg/FR-2026-07-02/pdf/2026-13392.pdf.

BRIDGING THE GAP

Bridge Financing, the Proposed EB-5 Rule, and a Workable Middle Path

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SUMMARY.

DHS's July 2, 2026 proposed rule would bar EB-5 investors from claiming jobs funded by any financing later repaid with EB-5 capital, ending the bridge-financing policy USCIS has applied since 2013. This article explains why the program depends on interim capital and proposes a "Qualified Interim Financing" safe harbor that addresses DHS's concerns without a ban. The views expressed are the author's own. This article is for general informational purposes and is not legal advice.

INTRODUCTION

DHS's July 2, 2026 proposed rule implementing the EB-5 Reform and Integrity Act of 2022 (RIA)[2] mostly codifies existing policy.[3] One sentence breaks sharply from it: "Jobs attributable to any financing repaid with EB-5 investment capital may not be claimed as jobs created by such EB-5 investment capital."[4] That would end job-creation credit for bridge financing, which USCIS has permitted since 2013. One practitioner called it "[t]he biggest bombshell" in the proposal.[5] Comments closed August 31, 2026, and DHS must now decide what the final rule says. This article explains why the program depends on bridge financing, what current projects show, and how DHS can address real abuses without a categorical ban.

II. WHY EB-5 NEEDS BRIDGE FINANCING

Under the Policy Manual, a developer may use "interim, temporary, or bridge financing, in the form of either debt or equity," start the project, and later replace that financing with EB-5 capital while still receiving credit for the resulting jobs. The replacement generally "should have been contemplated prior to acquiring the original temporary financing," or the original financing must at least have been short-term.[6] The policy grew out of adjudication, including the AAO's 2011 Victorville decision, which faulted EB-5 refinancing of an existing project that had not been planned at the outset.[7]

Bridge financing is needed because the EB-5 process cannot deliver capital on a construction schedule:

- **Project approval comes first**. Regional center investor petitions depend on an approved Form I-956F project application.[8] Reported approval times have ranged from about three months to more than a year.[9]
- **Petitions now wait on the project decision**. Since March 30, 2026, USCIS assigns I-526E petitions for review only after deciding the associated I-956F.[10]
- **Investors use escrow.** The Proposed Rule accepts escrow pending petition approval, so capital often reaches the project months after subscription.[11]
- **Raises are sequential.** A $60 million tranche means 75 separate investors, source-of-funds files, and transfers, sold through Regulation S and Regulation D offerings.
- **Lenders will not close with a gap**. Construction lenders require a fully funded budget, and USCIS expects a closed capital stack at the I-956F stage. As IIUSA explained, interim financing that holds the EB-5 tranche's place is what reconciles the two.[12]

Without interim capital, a sponsor must either delay construction until the full raise clears escrow or ask investors to fund a project that has not closed its financing. Neither serves investors.

III. WHAT CURRENT PROJECTS SHOW

More than 18,000 EB-5 investments were made from April 2022 through March 2026, representing over $14 billion at the $800,000 minimum.[13] We reviewed public materials for a sample of projects approved or marketed in 2025–26. The sample is illustrative only, and none of the sponsors' pages uses the word "bridge." What follows records timing and capital-stack facts as the sponsors disclose them.[14]

The sample tells a consistent story. Civitas's Summit project in rural Avon, Colorado, reports "Construction Underway," with $76.8 million of EB-5 capital in a $132.87 million capitalization (about 58 percent). LCR's Tower at Convergence in Oklahoma City is "largely completed," with tenants occupying, and EB-5 provides $55.2 million of a $151.6 million cost (about 36 percent). EB5AN reports that its Spring Haven community had already spent $117.9 million by July 2025 and has created "100% of Required Jobs." Peachtree's Homewood Suites at Sugar Mountain, North Carolina, a $30.4 million EB-5 senior loan, is "Currently Under Construction." U.S. Immigration Fund's Alpine 93/40 in Whitefish, Montana, started construction in June 2025 and was more than 59 percent complete when its I-956F was approved a year later. CMB's student-housing project, The Ellis, topped out about one month after its I-956F approval.

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[2] Pub. L. No. 117-103, div. BB, 136 Stat. 1070 (2022).
[3] EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB-5 Program; Automatic Revocation of Petitions for Immigrant Classification, 91 Fed. Reg. 40,676 (proposed July 2, 2026) (DHS Docket No. USCIS-2026-0100) [hereinafter Proposed Rule].
[4] Proposed Rule, 91 Fed. Reg. at 40,782 (proposed 8 C.F.R. § 204.407(e)(1)).
[5] Robert C. Divine, EB-5 NPRM Analysis of Changes: Member Perspective from Robert C. Divine, IIUSA (July 2, 2026), https://iiusa.org/eb-5-nprm-analysis-of-changes-member-perspective-from-robert-c-divine/.
[6] EUSCIS Policy Manual, pt. G, ch. 2(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2; see USCIS Policy Memorandum PM-602-0083, EB-5 Adjudications Policy (May 30, 2013).
[7] Kristal Ozmun & Adam Schaye, A Tide Change in EB-5 Bridge Financing Policy, EB5Investors Mag. (Apr. 23, 2018), https://www.eb5investors.com/magazine/article/a-tide-change-in-eb-5-bridge-financing-policy.
[8] INA § 204(a)(1)(H), 8 U.S.C. § 1154(a)(1)(H).
[9] See Some I-956F Approvals Take 3–5 Months: January–April 2026, EB5Investors.com (Apr. 9, 2026), https://www.eb5investors.com/blog/i-956f-approvals-accelerate-as-some-eb-5-project-timelines-drop-to-3-5-months/; Latest I-956F EB-5 Project Approvals Average 6 Months, EB5Investors.com (Aug. 21, 2026), https://www.eb5investors.com/blog/latest-i-956f-eb-5-project-approvals-average-6-months/.
[10] USCIS, EB-5 Questions and Answers ("Inventory Management") (Feb. 25, 2026), as quoted in Suzanne Lazicki, New Inventory Management Announcement for Form I-526/I-526E, EB-5 Updates (Feb. 26, 2026), https://blog.lucidtext.com/2026/02/26/new-inventory-management-announcement-for-form-i-526-i-526e-visa-usage-approach/.
[11] Proposed Rule, 91 Fed. Reg. at 40,706.
[12] Comments of Invest In the USA (IIUSA), DHS Docket No. USCIS-2026-0100 (Aug. 30, 2026), https://iiusa.org/wp-content/uploads/2026/09/IIUSA-DHS-NPRM-Full-Comments.pdf [hereinafter IIUSA Comments].
[13] Suzanne Lazicki, FY2026 Q2 EB-5 Processing Data, EB-5 Updates (Aug. 4, 2026), https://blog.lucidtext.com/2026/08/04/fy2026-q2-eb-5-processing-data-i-526-i-526e-i-829-i-956f/.
[14] Sources: Civitas Capital Group, Civitas Avon, LP, https://www.civitascapital.com/investments/civitas-avon-lp; LCR Capital Partners, The Tower at Convergence, https://www.lcrcapital.com/projects-funds/the-tower-at-convergence/; EB5AN, Spring Haven, https://eb5visainvestments.com/project/spring-haven-loan/; Peachtree Group, Homewood Suites Sugar Mountain, https://www.peachtreegroup.com/eb5-project/homewood-suites-sugar-mountain; Press Release, U.S. Immigration Fund, Alpine 93/40 Rural EB-5 Project Receives USCIS I-956F Approval (June 16, 2026), https://visaeb-5.com/alpine-93-40-rural-eb5-project-i956f-approval/; CMB Regional Centers, CMB Regional Centers Marks Topping Out of The Ellis (July 2026), https://www.cmbeb5visa.com/group-96-the-ellis-topping-out-construction-milestone/ (all last visited Sept. 22, 2026). Percentages are the author's calculations. This discussion does not state whether any project used bridge financing and is not an evaluation of any offering.

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In each case, construction came before EB-5 capital, and EB-5 was typically a minority or mid-sized tranche, well under the roughly 80 percent loan-to-cost norm DHS cites.[15] Someone else funded the early work. DHS itself acknowledges that projects that have "broken ground and obtained permits to continue construction based on bridge financing are generally more credible."[16]

IV. THE PROPOSED RULE AND ITS PROBLEMS

DHS offers two reasons. First, the RIA changed the statute to require that the enterprise benefit the economy "by creating" jobs (previously "and create"). DHS concedes the change is "not directly addressed in any related legislative history" but reads it to require "a closer nexus."[17] Second, DHS says bridge financing lacks "defined standards," noting that applicants have labeled "loans with maturity up to 10 years or more" as bridge financing.[18] DHS also asked for comment on an alternative: limiting bridge maturity (typical bridges run 12–36 months) and capping the amount as a percentage of project cost.[19]

A ban has four problems.

1. **It is broader than bridge financing**. The text reaches "any financing repaid" with EB-5 capital. Combined with a new "but for" test, it could limit credit to jobs from EB-5-funded spending alone, a result Robert Divine called "the most dangerous implication of the proposal."[20]
2. **It rests on a thin statutory reading**. After Loper Bright, courts decide the best reading of the statute without deference.[21] "By creating" describes causation, not the order in which capital is spent. The statute still allows 90 percent of jobs to be "estimated to be created indirectly" and recognizes investors "actively in the process of investing."[22]
3. **It disregards reliance and alternatives**. An agency reversing a long-held position must explain the change, weigh reliance interests, and consider less drastic options.[23] DHS's own preamble identifies such an option.
4. **It harms investors through adverse selection**. Barring credit would steer EB-5 capital away from third-party-underwritten projects and toward weaker, unbridged ones, "the profile most associated with the fraud losses that prompted the RIA."[24] Rural and infrastructure projects, which Congress favored with reserved visas, would be hit hardest.[25]

DHS's concerns are still real. Bridge financing has been used to refinance finished projects, to recharacterize long-term loans, to cash out insiders at above-market rates, and to credit stale or duplicated jobs through fund flows that are hard to trace.[26] The remedy is a clear standard, not a ban.

V. A MIDDLE PATH: A "QUALIFIED INTERIM FINANCING" SAFE HARBOR

DHS should keep the general nexus rule but add a defined exception. Jobs funded by Qualified Interim Financing (QIF) and later repaid with EB-5 capital would remain creditable if:

1. **Contemplation is documented up front**. Before first funding, a written record shows the financing is temporary and expected to be replaced by EB-5 capital, and the QIF is disclosed in the I-956F.
2. **There is a look-back limit**. Only spending within 12 months before the I-956F filing counts, which excludes refinancing of completed projects.
3. **Replacement happens within 36 months of first funding**, regardless of stated maturity, extended for USCIS delay by up to 12 months. Instruments with terms over 60 months, and stabilized projects, are excluded.[27]
4. **There is a proportional cap.** EB-5 capital used to repay QIF may not exceed 75 percent of total project costlender.
5. **Affiliate bridges carry safeguards**. Repayment is limited to principal plus arm's-length interest, with no fees paid from EB-5 capital, and the sponsor keeps at least 10 percent cash equity after replacement.
6. **Flows are independently traced.** The fund administrator required by the RIA verifies bridge spending and confirms that EB-5 capital went to the job-creating entity and repaid the QIF.[28]
7. **Consequences are proportional.** Noncompliant QIF reduces credited jobs pro rata rather than causing outright denial, consistent with good-faith investor protections.[29]
8. **The rule applies prospectively**, to project applications filed after the effective date.

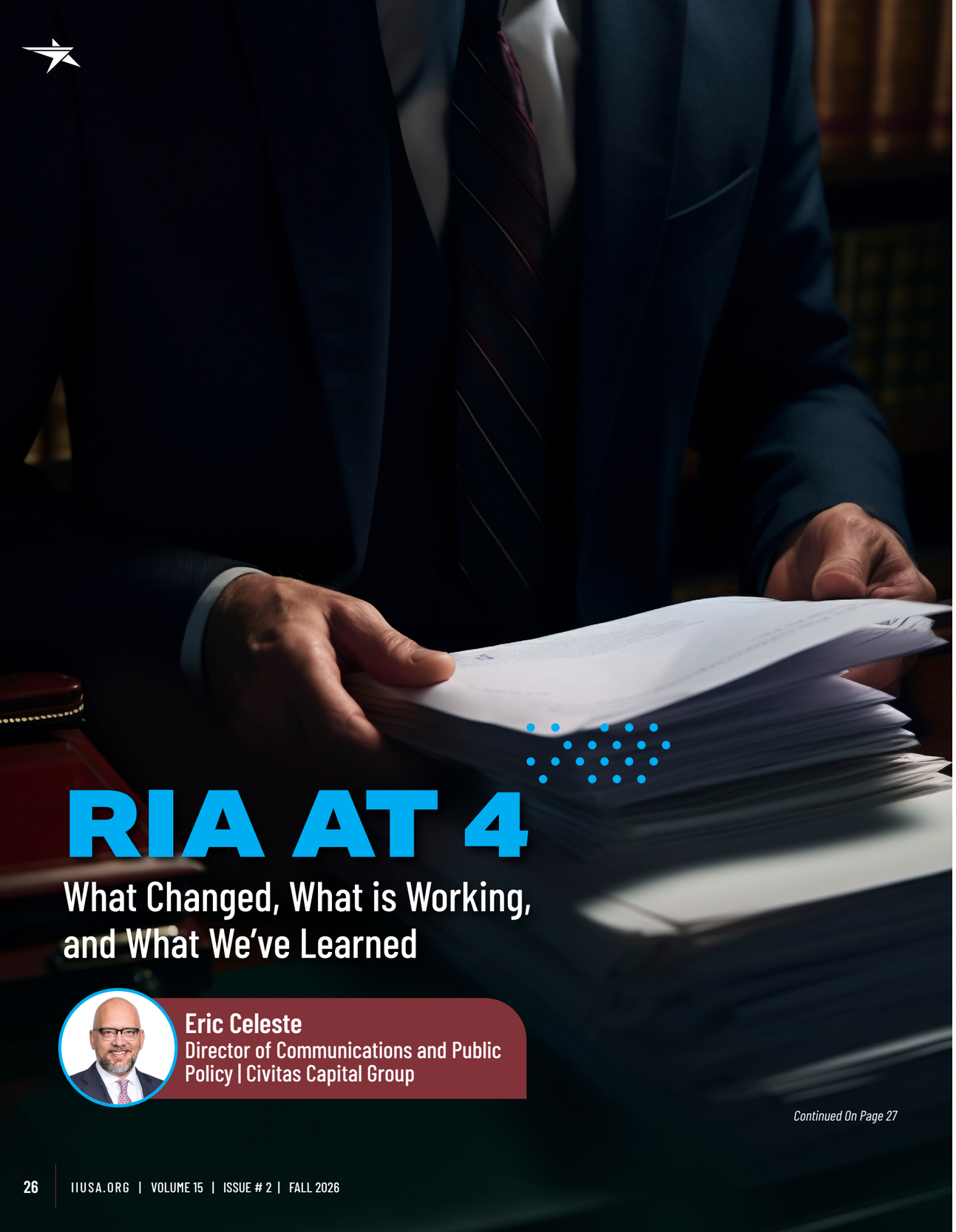
In rule text, the key change would be short:
§ 204.407(e)(1) . . . Jobs attributable to financing repaid with EB-5 investment capital may not be claimed as jobs created by such EB-5 investment capital, except as provided in paragraph (e)(5) of this section [qualified interim financing, incorporating the conditions above].

Each condition answers one of DHS's stated concerns. The 36-month window and the 60-month exclusion address the "ten-year bridge." The bright-line tests supply "defined standards." Contemplation, the look-back limit, and tracing supply the nexus. The cap answers DHS's interest in limiting the amount repaid. It is also the approach DHS invited, and it is far more likely to survive judicial review than a reversal of thirteen years of policy.

VI. CONCLUSION

Bridge financing works because developers need money to start construction while EB-5 funding is still being raised and adjudicated, a process that takes months. The jobs it funds are real, and the EB-5 capital that replaces it was planned from the start. DHS is right that the concept has been stretched. The fix is to define it, limit it, trace it, and disclose it. The final rule should adopt a Qualified Interim Financing safe harbor.

[15] Proposed Rule, 91 Fed. Reg. at 40,708 n.69.
[16] Id. at 40,707.
[17] NA § 203(b)(5)(A)(ii), 8 U.S.C. § 1153(b)(5)(A)(ii); Proposed Rule, 91 Fed. Reg. at 40,707.
[18] Proposed Rule, 91 Fed. Reg. at 40,707.
[19] Id. at 40,707–08 & nn.68–69.
[20] Divine, supra note 4.
[21] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412–13 (2024).
[22] INA § 203(b)(5)(A)(i), (E)(iv)(I), 8 U.S.C. § 1153(b)(5)(A)(i), (E)(iv)(I).
[23] FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009); Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 30–33 (2020).
[24] The EB-5 Industry Responds to DHS's Proposed Elimination of Bridge Financing, EB5Investors.com (Sept. 1, 2026), https://www.eb5investors.com/blog/the-eb-5-industry-responds-to-dhss-proposed-elimination-of-bridge-financing/ (quoting IIUSA Comments, supra note 11).
[25] INA § 203(b)(5)(B)(i), 8 U.S.C. § 1153(b)(5)(B)(i).
[26] See Ozmun & Schaye, supra note 6; Proposed Rule, 91 Fed. Reg. at 40,707.
[27] This window matches the upper end of DHS's own 12–36 month range, Proposed Rule, 91 Fed. Reg. at 40,708 n.68, and IIUSA's proposed replacement period, IIUSA Comments, supra note 11.
[28] INA § 203(b)(5)(Q), 8 U.S.C. § 1153(b)(5)(Q); proposed 8 C.F.R. § 204.425, 91 Fed. Reg. at 40,791.
[29] INA § 203(b)(5)(M), 8 U.S.C. § 1153(b)(5)(M).



RIA AT 4

What Changed, What is Working, and What We've Learned

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George McElwee was confused. It was 2012, and McElwee was looking at a meeting request, the sort he, as a chief of staff on Capitol Hill for a Republican congressman from Pennsylvania, often received. It was the subject of the request that made McElwee scratch his head: "the EB-5 visa program." He'd never heard of it.

McElwee asked his congressman boss if he knew what the program was and if the meeting should take place. The response was immediate and firm: No way.

"He said we don't want to go down that path," McElwee recalls now. His boss said the program, which was just then drawing attention in the media for questionable investment activity by bad actors, was too hot to handle. "He said, 'Let's just not get into that discussion. We're not going to get involved.' And that was it."

Looking back, McElwee, currently the chief lobbyist for Invest in the USA (IIUSA), the nonprofit trade association representing the EB-5 Regional Center Program, smiles when recalling where his career arc has taken him and how the perception of the EB-5 program has improved on Capitol Hill. Now part of his job is to make sure the benefits and improvements in EB-5 are fully understood by as many chiefs of staff he can schedule meetings with.

It's been a long journey. McElwee's boss wasn't being unreasonable. For much of the 2010s, EB-5 made headlines for all the wrong reasons, resulting in (often accurate) allegations of fraud and poor investments, followed by intense congressional and media scrutiny.

"A few bad actors really made it impossible to get our success story heard," says Dan Healy, CEO and co-founder of Civitas Capital Group and a board member of IIUSA. So much so that Congress let the EB-5 program lapse in June 2021. For eight months, USCIS stopped processing regional center petitions altogether.

Thus did we come to the legislative change that not only restarted the program, but revitalized it: the EB-5 Reform and Integrity Act, signed March 15, 2022. With this legislation, Congress reauthorized the program for five years and, in exchange, got the integrity regime the program's critics (including voices within the EB-5 industry itself) had been demanding for a decade: background checks on everyone with a hand in a deal, an annual statement from every regional center, a mandatory audit at least once every five years, third-party fund administration (or annual independent financial audit), and a per-center fee into an Integrity Fund that pays for the oversight. These are highlights from a very long list of what the industry now refers to as the RIA's "integrity measures."

In retrospect, that sounds like a lot of reform. But Senator Chuck Grassley, the law's principal author, wanted two more outcomes with the RIA. He wanted the bad actors gone and EB-5 investments in the areas previously neglected, namely rural America.
To that end, Congress added to the law something no one had tried before. It carved the annual visa supply into reserved categories: 20 percent for rural projects, 10 percent for high-unemployment areas, 2 percent for infrastructure. And it closed the loophole that had let a developer gerrymander a census tract in midtown Manhattan into a "targeted employment area." To incentivize rural development, it also gave priority processing to investors who put their money in projects in qualifying rural communities.

Today, it would be difficult to find someone within the EB-5 industry who would dispute the RIA's success at these two outcomes, specifically accelerating the institutionalization of the industry by largely eliminating fraud, and shifting a large percentage of project dollars from urban to rural locations. As reauthorization of the program looms, the only question worth debating seems to be, did the shift to rural go too far?

THE GROWTH OF RURAL

Alexandra Loveless remembers how tough it once was to find investments for rural projects. Loveless, Principal and Co-Founder of Veras Capital, co-founded the EB-5 Rural Alliance over a decade ago, designed to advocate for EB-5 projects in rural America. She recalls raising funds for an oil and gas project in the Bakken, in western North Dakota, in the early 2010s. One of her competitors for EB-5 investment dollars at the time was the soon-to-be infamous development in Hudson Yards, New York. It was no contest.

"Trying to convince investors to look at dirt in North Dakota versus a shiny skyscraper in Manhattan," she says, "when they were like, 'We've never even heard of North Dakota. We know New York. Everybody knows New York.' "

The most obvious legacy of the RIA is that, four years in, the idea that EB-5 investors wouldn't jump at a rural offering is near laughable. Before the EB-5 Reform and Integrity Act of 2022, rural EB-5 investment came to roughly $354 million across the entire history of the program. That was 12 projects, in seven communities, in seven congressional districts, generating about 25,000 jobs. In the three years after, 6,890 investors put more than $5.5 billion into 108 rural projects, in 97 communities, across 51 congressional districts in 26 states, creating 144,000 jobs, according to USCIS petition data and IIUSA's analysis of more than 400 regional centers.

In fact, total project spending in rural communities, counting EB-5 dollars plus everything pulled in alongside them, went from $2.25 billion to $18.05 billion. Meanwhile, New York's share of the program, fell from 27 percent before the RIA to about 5 percent after.

For investors, this means rural petitions are reaching approval faster, in roughly 10 months, against about 14 months for high-unemployment cases. Rural accounts for 81 percent of all post-RIA investor petitions USCIS has decided, against 16 percent for high unemployment. And approval rates across the regional center program climbed as high as 94 percent in FY2025 before falling to 76 percent in the third quarter of FY2026. Ask the people who moved that money what did it, though, and almost nobody credits the 20 percent set-aside.

PRIORITY PROCESSING: INTENT VS. IMPLEMENTATION

Buried in the RIA is a phrase Congress never defined. Rural petitions get "priority processing." Those two words have

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had more effect on the post-RIA move to rural than any other element of the law, even though there is no standard or no mechanism defined, and no deadline attached to the phrase itself.

"Nobody knew what Congress meant when they wrote priority processing with, you know, two little p's," says Adam Greene, Executive Vice President for EB-5 at Peachtree Group. "It was not defined anywhere, and the Immigration Service had to implement it in some way."

It could have meant almost anything. Greene's example: assign one additional adjudicator to rural petitions than to high-unemployment petitions, and you have arguably satisfied the words on the page. USCIS went considerably further than that. USCIS data obtained under the Freedom of Information Act shows that of the 3,555 post-RIA investor petitions USCIS decided between April 2022 and July 2025, 81 percent were rural and 16 percent were high-unemployment. Not until February 2026 did the agency put the practice in writing, telling petitioners it would clear the rural queue first and turn to everything else "after the Form I-526E rural queue is empty or when we determine we have made decisions on enough petitions from that queue."

The RIA did set out timeframes for how long adjudications should take. Those turned out to be targets rather than mandates, and the agency blew through them; which is what turned a queue position in a rural deal into the most valuable thing in the program.

"If I'm going to be processed in three months rather than four months, doesn't matter," Greene says. Had USCIS hit its own numbers, priority processing would have been a rounding error. Loveless, whose Rural Alliance was influential in the negotiations over what the rural incentives would look like, watched the same thing happen from the sponsor side. "If you can get your petition approved in six months versus 12 to 18 months, why would you not choose the six-month option?" she says. "So, I think that in and of itself has pushed a lot of investors toward rural projects."

So the great rural reallocation of EB-5 capital, the policy achievement at the center of this program's case for itself, is partly the product of an undefined term and an administrative choice about how to read it. Congress wrote the allocation. The queue did the rest.

THE FUTURE OF RURAL PROJECTS

The biggest question four years on is whether the industry incentives for rural investment have gone too far. It's a touchy subject, as everyone acknowledges that the rural incentive has spurred industry growth. But some wonder if the dials could be adjusted in future revisions to re-level the investment playing field.

"I almost, and I want to be careful saying this, but I almost feel like the RIA pushed it a little bit too far to favor rural," Loveless says. "I think the idea was to really even the playing field. The focus of the Rural Alliance was to give investors a reason to look at a rural deal and look at urban deals. And I think now it's really focused on rural."

Jeremy Shackle, Senior Director at EB5 Group, who previously managed an EB-5 consulting practice and regional center affiliation business, puts it less gently. "The rural visa set-aside triggered a stampede to the countryside," he says. "The consequence is a menagerie of projects that are objectively riskier than what is being developed in urban and suburban locations. Several large, reputable firms are out there promoting EB-5 offerings for rural deals they would not have touched five years ago."

Shackle's distinction is worth noting: the RIA improved the quality of sponsors and, in his telling, did the opposite for the quality of projects.

Not everyone accepts the premise. Ron Klasko, Chairman of Klasko Immigration Law Partners and the industry's most-cited practitioner, says, "I don't agree that everything's rural now. I mean, we still see lots and lots of successful projects that are not rural."

Klasko separates the two questions people tend to run together: whether the RIA achieved what Congress intended on rural, which he grants it did, and whether moving money out of cities is a good idea in the first place, about which he is less sure. "I think the main issue is not what I happen to think about that, but whether Congress achieved its goals. And I think they did."

What almost nobody disputes is that the deal mix is lopsided. Greene says he has floated the idea that priority processing could be eliminated, but leave the doubled visa allocation, which he suggests should be incentive enough on its own.

"The very same people I speak to who agree that it's gone too far, when I suggest taking out priority processing, immediately push back and say, well, no, we'll never take that out," he says. "So I don't know what the solution is. While people acknowledge the problem, I don't think people are really prepared to deal with it."

Loveless's test for whether a rural deal is a good one has nothing to do with being rural. It's whether the project fits where it's standing. Fifty luxury condominiums make sense in Vail, Colorado. The same 50 condominiums do not make sense in Grand Forks, North Dakota, where she grew up, because the market isn't there.

Loveless adds that, in her opinion, too much of rural EB-5 has been luxury real estate near ski areas. She points to an energy deal, a manufacturing project, and a few data-center-adjacent deals as evidence the mix is starting to diversify. She discloses that one of the energy deals now in the market is her own.

Civitas's Healy points to some of Civitas's recent rural developments as evidence that at the end of the day, the RIA, via EB-5 funding in rural areas, can sustain a mix of projects.

"For Civitas, the RIA meant rethinking where we invest," Healy says, noting that, since 2022, the firm has financed housing across a range of rural markets, from a downtown multifamily development in Silverthorne, Colorado, to a rural housing project in Fredericksburg, Texas.

"The RIA forced Team Civitas out of our comfort zone," he says. "To compete, we had to find real rural projects that met our underwriting criteria, and that is not easy. The RIA made us completely rethink our business model and our origination focus, and it continues to test us. Rural isn't going anywhere, and we'll keep finding new ways to invest there. That's the policy doing exactly what it's supposed to do."

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PROGRAM IMPROVEMENT

If the primary outcome of the RIA four years in is the move to rural projects, the secondary outcome is raising the bar for professionalism in the industry. "The RIA helped weed out the bad actors," Healy says. "It helped institutionalize the profession in the eyes of many."

Shackle agrees. "The EB-5 industry has been on a path toward professionalization for a long time," he says. "The RIA accelerated it." McElwee stopped himself mid-sentence to get the wording right: the RIA "allowed the professional regional centers to perform at a higher level. I don't want to say that they weren't already professional."

Greene is blunter. The requirements the law imposes, he says, are things any serious operator should have been doing anyway. "It's a shame everyone wasn't doing that before. They damn well should have been. But now it's, you know, in black letter law. Good thing."

Shackle, who still consults for small operators and gets regional center designations approved on the side, says there are still improvements to be made the RIA didn't fix in this area. He says that the bar to getting a designation barely moved. "If you're an 18-year-old with a valid driver's license and no criminal history, you can get approved for a regional center," he says. "There's no real requirement except to not be a bad actor."

What changed is the requirements for staying a regional center. A $20,000 Integrity Fund payment every year for centers with more than 20 investors, $10,000 for smaller ones. An annual statement on Form I-956G. A USCIS audit at least once every five years. Fund administration. Missing the Integrity Fund payment by 90 days. Failing to file the annual statement or pay that fee is the leading cause of post-RIA terminations. Not fraud, but paperwork.

"It used to be a regular headline of the EB-5 industry that this was a fraud-prone program," Klasko says. "And I think that has largely changed." Then the limit: "Projects still go bad, but the RIA can't prevent a project from going bad. It can prevent a bad actor from taking advantage of investors in a large percentage of the cases."

AMERICAN COMMUNITIES: THE REAL EB-5 BENEFICIARIES

That reality is one reason the RIA has helped so dramatically change the EB-5 program's perception in Washington, D.C. The program now gets discussed as an economic development tool rather than simply an immigration program.

"Who is the beneficiary of EB-5?" McElwee asks. People instinctively assume it is the immigrant, and he says it is not. "The immigrant gets a benefit. But the beneficiary is local communities. It's the funds that are coming into it. They're going to build something, they're going to revitalize an area, they're going to create jobs. It's that local economy that's not having to fork out dollars to make that development happen."

The mechanics of making that case are unglamorous: match the project to what the office already knows. A staffer who has never been to Wisconsin won't recognize a plant there, so you show them the Washington waterfront, or the NoMa district north of Massachusetts Avenue, and then tell them how part of it got financed. In one meeting, a California staffer recognized a mixed-use district because she and her husband ate there.

Which is why the number that matters most politically isn't a dollar figure. It's 51, the number of congressional districts where rural EB-5 has put money to work, up from seven. Pre-RIA, rural EB-5 was a rounding error in seven districts. It is now a constituent interest in fifty-one, across 26 states.

Loveless expects the next round of changes to the RIA to be modest, and she wants it that way. A five- or six-year reauthorization with a few additional integrity tweaks, she says, "so that we then can lay a foundation for the next reauthorization to say, okay, now we have a lot of data to look at what's happened since 2022. Where do we need to make tweaks to the program more programmatically overall?"

Which is a long way from a congressman telling his chief of staff not to take the meeting.

4 POSSIBLE FIXES TO THE RIA

Ron Klasko has spent four years watching the RIA operate. Asked what it got wrong or left alone, he named four, and none of them are the complaints the industry usually airs.

- **Source of funds got worse, not better. It is the oldest unsolved problem in EB-5 and the leading ground for denial. The standard is vague enough that USCIS "can require absurd levels of documentation and get away with it," Klasko says. "If anything, it was made worse by the RIA." In practice, investors now produce seven years of tax records, disclose every intermediary, and trace beneficial ownership through foreign entities.**
- **There is no judicial review. "A huge, big deal, and the Immigration Service is taking advantage of it." An agency can deny, delay, send an appeal to the AAO, have it remanded, and effectively keep a case out of federal court, "which allows them to get away with a lot of stuff that's really bad."**
- **National-interest denials are unreviewable. The RIA let USCIS deny a petition as a matter of national interest, discretionary and beyond court review. Klasko says they are showing up regularly: "Basically out of thin air, they just say, well, we don't have to give you a reason, we're denying this in national interest, and you can't get review. I think that's horrible."**
- **Good-faith investor relief has never worked. Congress built a rescue: debar a bad project, and its investors can move their money elsewhere, for less than $800,000, and still get green cards if the jobs are created. Two problems: The statutory language is, in Klasko's word, horrible; and USCIS has virtually debarred no projects. He calls it a clear violation of congressional intent, and the item most likely to be fixed in the next four years.**

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The EB-5 Industry has gone through a significant transformation since the passage of the EB-5 Reform and Integrity Act of 2022 ("RIA"). In 2026, a number of current issues related to both immigration and financial concerns dictate more disclosures in Offering documents used to raise EB-5 Capital. The following issues should be considered in connection with every EB-5 securities offering.

1. BACKGROUND DILIGENCE ON RELEVANT PARTIES, INCLUDING BAD ACTOR AND SECURITIES QUESTIONNAIRES

Before launching an EB-5 offering, the issuer and its principals should be vetted against the "bad actor" disqualification of Rule 506(d). A single covered person — the issuer, its directors, officers, 20% owners, promoters, or any person paid to solicit investors, which in the EB-5 context includes the foreign migration agents — with a disqualifying event within the applicable look-back period will strip the entire offering of its Rule 506 exemption. The exemption is preserved only where the issuer did not know, and in the exercise of reasonable care could not have known, of the disqualification, and reasonable care requires an actual factual inquiry into each covered person. Because covered-person status is tested at the time of each sale, a migration agent who has not yet been identified or retained at the time of a given sale is not yet a covered person as to that sale, and no diligence issue is presented. The obligation attaches once the agent is engaged and, in any event, before that agent begins soliciting investors, so the sponsor should build the diligence into its onboarding of each agent as it is added.

Accordingly, it is a best practice to circulate a bad actor questionnaire and certification to each covered person, coupled with a covenant to notify the issuer of any change in status during the offering, and to corroborate the responses through background and Google and other internet searches.

2. CONSISTENCY OF AND AMONG THE PPM, EB-5 BUSINESS PLAN AND ECONOMIC STUDY

The Private Placement Memorandum ("PPM"), the EB-5 business plan and the economic/job-creation study are prepared by different professionals, but they are read together by both the investors and USCIS, and any inconsistency among them creates exposure on two fronts. On the securities side, the federal anti-fraud provisions apply fully to an exempt private placement, and a material misstatement or omission — including inconsistent job counts, use-of-proceeds figures or financial projections — can support a rescission claim or an enforcement action. On the immigration side, the business plan must be "comprehensive, credible and specific," and USCIS credibility findings turn directly on whether the job-creation projections, the revenue figures that drive them, and the use of proceeds reconcile across the documents. Where the securities-related disclosures are complete and robust, the material risks that remain to be addressed are, in substance, the immigration-compliance risks unique to the EB-5 structure, and those risks should be given corresponding prominence in the risk factors and related disclosure. Finally, the recent availability of AI-based review tools has made it considerably easier to police consistency, both within a single document and across the PPM, business plan and economic study. Such tools can quickly surface divergent figures, defined terms and representations for professional review, although they supplement rather than replace a careful line-by-line reconciliation by counsel and the other professionals.

3. RULE 506(B) AND RULE 506(C) OFFERINGS AND ACCREDITED INVESTOR STATUS

Nearly all EB-5 offerings are conducted under Rule 506 of Regulation D, and the threshold decision is whether to proceed under Rule 506(b) or Rule 506(c). A Rule 506(b) offering prohibits general solicitation; a Rule 506(c) offering permits general solicitation — a meaningful advantage given the overseas marketing model — but requires that every investor be an accredited investor and that the issuer take "reasonable steps to verify" accredited status.

The high minimum investment required in an EB-5 offering is itself a significant factor in that analysis. In a Latham & Watkins SEC no-action letter issued in 2025, the SEC recognized that where an offering requires a minimum investment high enough that only an accredited investor could reasonably be expected to meet it, the issuer may satisfy the verification requirement by obtaining the investor's written representations that it is accredited and that the investor did not use borrowed funds to make the investment.

4. FILING OF FORM D AND BLUE SKY FILINGS

Because the securities are sold in reliance on Rule 506, the issuer must file a Form D notice with the SEC through EDGAR no later than 15 calendar days after the first sale, including amending it to correct material errors, to reflect changes and annually while the offering continues. While a Form D filing is not technically a condition of the Rule 506 exemption nor generally does any failure to file a Form D in and of itself give rise to rescission rights, the failure to file can result in a Rule 507 disqualification from future Regulation D offerings and is treated by many state regulators as a practical prerequisite, so a timely filing is the prudent course.

At the state level, Rule 506 securities are "covered securities" under the National Securities Markets Improvement Act, so the states are generally preempted from requiring registration although the state "blue sky" laws of a particular State often require a notice filing, a consent to service of process and a filing fee. The notice-filing deadline generally runs from the first sale in each state.

5. SEC RULE 15A-6 AND PROVISIONS RELATED TO REGULATIONS AND SALE

SEC Rule 15a-6 is a regulation under the Securities Exchange Act of 1934 that provides conditional exemptions from U.S. broker-dealer registration for foreign firms. It allows non-U.S. broker-dealers to conduct certain activities such as market research, solicitation of certain clients, and execution of trades with U.S. based investors by partnering with a registered local "chaperone" broker. The rule is complex and requires analysis of specific facts to determine if the conditions for the exemption are met.

Based upon this rule, a U.S. registered broker-dealer would need to be retained by the issuer to intake the investor and receive the fees paid in connection with the sale to the investor. The U.S. broker-dealer would then pay directly to the broker the fees agreed upon between them, which could include a share of the administration fee as well as annual payments.

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6. SUSTAINMENT PERIOD DETERMINATION

For EB-5 investors, the required sustainment period depends first on when the Form I-526 or I-526E was filed. For pre-RIA investors, the investment generally must be sustained throughout the investor's two-year period of conditional permanent residence. Because conditional residence may begin years after petition filing due to visa backlogs, the required investment period can extend well beyond the project's completion of job creation.

For post-RIA investors, USCIS interprets the RIA to require that the investment be "expected to remain invested for not less than 2 years," measured from the date the investor's full qualifying investment is made to the NCE and placed at risk, including when the capital is made available to the JCE. Thus, the sustainment period may end before the investor obtains conditional residence or before the Form I-829 is adjudicated. USCIS's interpretation was challenged in IIUSA v. DHS in the U.S. District Court for the District of Columbia. On July 29, 2025, the court declined to set the guidance aside, finding the dispute premature in light of USCIS's pending rulemaking, and the guidance remains in effect. Until a final rule is issued, sponsors should draft to the current guidance while preserving flexibility to conform to any contrary rule.

Where the investment is made in installments, the period does not begin until the full qualifying amount has been contributed. USCIS has not specified whether the operative date is the NCE's receipt of funds or the JCE's, although it would seem that the funding of the JCE starts the process. Sponsors should therefore record, for each investor, the contribution date, escrow release date, and date of deployment to the JCE.

Offering documents should define the sustainment period as being determined on an investor by investor basis. Some offering documents add conditions beyond USCIS guidance, such as full deployment of capital or creation of the investor's ten jobs. These conditions are conservative but lengthen the required investment holding period, and they should be clearly disclosed in the offering documents. The NCE should also maintain a per-investor tracker of the contribution date, escrow release date, deployment date, and computed sustainment end date. The investor will need to prove these facts at the I-829 stage.

7. SEPTEMBER 30, 2026 ADJUDICATION UNCERTAINTY

Pursuant to the RIA, only investors who filed their I-526E petition before September 30, 2026, are assured that their petitions will be adjudicated. The general expectation among those in the EB-5 industry is that the EB-5 Program will be renewed and petitions filed after September 30, 2026 will be adjudicated. Towards that end, EB-5 industry participants have been lobbying Congress seeking a clean 5-year extension of the EB-5 Program by the end of 2026 or early 2027, depending on when an amendment to the RIA can be attached to a continuing resolution in Congress.

8. FILING FEE INCREASES AND MINIMUM CAPITAL CONTRIBUTION

On September 30, 2026, the Department of Homeland Security (DHS) published a final rule establishing a new fee schedule for the EB-5 Immigrant Investor Program. Implementing provisions of the EB-5 Reform and Integrity Act of 2022, the new fees take effect on November 30, 2026, and apply to all applications filed on or after that date.
The updated fee schedule is as follows:

I-526	$7,615
I-526E	$7,850
I-526E Amendment	$7,775
I-527	$10,330
I-829	$5,000
I-956 Initial	$44,115
I-956 Amendment	$9,835
I-956F	$42,675
I-956G	$2,165
I-956H	$65
I-956K	$2,165

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Regarding the minimum investment amount, the new proposed regulations appear to provide that the minimum investment for a rural or a high unemployment area ("TEA") would be increased to $900,000 based upon the fact that USCIS is rounding down to the nearest $50,000 amount.

With respect to a non-TEA project, the USCIS publication indicates an anticipated increase in the minimum investment to $1,250,000. This is noteworthy since the difference between TEA/rural project and non-TEA project would increase to $350,000 compared to the current difference of $250,000.

While this minimum investment amount adjustment is statutorily set for January 1, 2027, DHS has not yet officially published the definitive final dollar amounts.

9. PARTIAL FUNDING

EB-5 investors sometimes only partially pay their capital contributions at the time their I-526E petitions are filed, and some investors make their capital contributions in installments. This raises issues at both the investor and the project level.

At the investor level, the petitioner must show that the qualifying capital has been invested or is "actively in the process of being invested," and must document the path of funds to show that the investment was made with the investor's own lawfully obtained funds. A mere intent to invest is insufficient; the capital must be irrevocably committed. USCIS scrutinizes installment arrangements on several grounds. Because eligibility is assessed as of filing, later contributions cannot cure a deficient commitment. USCIS also rejects arrangements in which the unpaid balance is unsecured, unenforceable, or deferred to an indefinite future date. In practice, the most reliable approach is to deposit the full amount in escrow or with the NCE at filing.
A payment schedule alone for the balance may invite an RFE. The petition must also document the lawful source and path of funds for the entire amount, not just the first installment. A later installment from a new or undocumented source is a common RFE trigger. At the project level, a partially funded tranche undermines the credibility of the capital stack. USCIS commonly asks for evidence that non-EB-5 financing is committed and how shortfalls will be covered.

10. BRIDGE FINANCING

Because EB-5 capital often arrives more slowly than construction schedules require, many projects begin with bridge or interim financing and later replace it with EB-5 capital. USCIS policy permits this: if the project starts with interim or bridge financing before receiving immigrant investor capital and later replaces that financing with EB-5 capital, the NCE may still receive credit for the resulting job creation. However, the new draft regulations proposed by USCIS in July of 2026 seems to negate the ability to have bridge funding.

Generally, the replacement of temporary or bridge financing with immigrant investor capital should have been contemplated before the original temporary financing was obtained. Even without such prior contemplation, replacement remains permissible if the interim financing was itself contemplated as short-term financing that would later be replaced. By contrast, using EB-5 capital to repay permanent debt, or to return sponsor equity, does not fit within the bridge-financing policy and should not be relied on for job credit or use of EB-5 proceeds.

Bridge loan documents should reflect their temporary nature, including the maturity date and prepayment or takeout provisions. Contemporaneous board or sponsor resolutions should reflect the contemplated EB-5 takeout. The business plan, economic impact analysis, and private placement memorandum should consistently describe the use of EB-5 proceeds to replace the bridge financing. The economic analysis should allocate job creation to the expenditures funded by the replaced financing. From a securities perspective, the PPM should disclose the repayment of bridge debt as a use of proceeds, together with any conflict of interest where the bridge lender is affiliated with the sponsor.

11. CAPITAL STACK COMMITMENTS

USCIS has been taking a much more aggressive position in adjudicating the I-956F application. Accordingly, any financing that is expected to be obtained through a senior loan or C-PACE financing or other source of funds that has not been committed as of the date of filing of the I-956F application should at least be evidenced by a signed Term Sheet filed with the I-956F application.

Adjudicators routinely issue RFEs (and more recently NOIDS) where non-EB-5 sources in the capital stack are supported only by nonbinding letters of intent or unsigned or expired term sheets. Senior loan and C-PACE financing should therefore be documented, at a minimum, by a signed term sheet and preferably by executed loan documents. For C-PACE, the filing should also show that the jurisdiction's program is available to the project and that the senior lender has consented to the real estate assessment that would be made as part of the C-PACE financing. Sponsor equity should be supported by bank statements or evidence of contributions already made. Land contributions should be supported by the deed and a current appraisal. Bridge financing should be supported by executed loan documents and a clear explanation of how EB-5 proceeds will replace the bridge financing.

The business plan should reconcile every source of funds to the sources-and-uses table and the construction budget and should explain how any shortfall or delay will be covered. If financing terms change materially after filing, the sponsor should consider whether an amended I-956F is required. Inconsistencies between the capital stack presented at the I-956F stage and later investor filings are a frequent basis for RFEs or NOIDs.

12. EXECUTED LOAN OR EQUITY AGREEMENT BETWEEN THE NCE AND JCE

Recent I-956F RFEs have treated the absence of executed core agreements as undermining the credibility of the project. USCIS's concern is practical. Without an executed agreement between the NCE and the JCE, there is no enforceable mechanism for EB-5 capital to be made available to the JCE. And a business plan that depends on unsigned financing may not be credible under Matter of Ho. In loan structures, USCIS has recently issued RFEs based on the absence of an executed loan agreement between an NCE and JCE and reliance on term sheets in place of executed documents. In equity structures, USCIS expects an executed equity investment agreement or JCE operating agreement admitting the NCE and setting out the terms of its investment.

Executed documents also matter because later filings are measured against the I-956F. USCIS generally defers to its

I-956F determination when adjudicating related I-526E petitions. If the transaction documents are executed on terms that differ from those presented at the I-956F stage, the difference may be treated as a material change. That can require an amended I-956F and expose investors' petitions to additional scrutiny. Filing executed documents at the outset reduces this risk.

The characterization of the investment must also be consistent across the PPM, the NCE and JCE operating agreements, and the business plan. In one recent RFE, USCIS read PPM language describing "repayment of the EB-5 Investment through the refinancing or sale of the Project" as creating a debt obligation, even though the transaction was structured as equity. Such language invites USCIS to evaluate the investment under the wrong framework and to question whether the capital is truly at risk.

13. UNIQUE RISK FACTORS AND PPM OFFERING RELATED TO BOTH IMMIGRATION AND PROJECT PERFORMANCE

The immigration risks resulting from the factors described above need to be addressed in detail in the PPM. In addition, the PPM should include a detailed description as to project, the completion of the capital stack and dependency on EB-5 financing as a source of funding in order to complete the project, as opposed to relying upon alternative sources of financing to complete the project. A project less reliant on EB-5 funding may help in the feasibility analysis.

14. TEA QUALIFICATION AND TIME FRAME RE: I-956F FILING

Once an I-956F application is filed there is a two-year period where the TEA and rural confirmations would remain intact. Accordingly, two years thereafter, a new TEA report would need to be obtained, and rural qualification would likewise need to be confirmed. This is particularly important given the difference in methods of determining a TEA qualification. Also, it is important that the economist analyze changes in demographics to determine if the particular project is trending to a lower or higher employment rate.

CONCLUSION

All of the uncertainties set forth above are risk factors that require additional disclosure in EB-5 Offering documents.

THE 2026 EB-5 FEE RULE

What Is Changing and What to Watch

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On September 30, 2026, the Department of Homeland Security (DHS) published a final rule resetting the fees for EB-5 filings (the Final Rule).[1] U.S. Citizenship and Immigration Services (USCIS) announced the rule the day before, explaining that it is updating EB-5 fees "to ensure EB-5 fees fully recover the cost of operating the program, meet statutory processing time goals, and support integrity measures such as audits and site visits."[2] The new fees apply to filings postmarked on or after November 30, 2026, and follow a period of uncertainty that began when a federal court stayed the April 2024 EB-5 fee increases.[3]

The Final Rule does more than adjust filing fees. It introduces a new Form I-527, Amendment to Legacy Form I-526, for certain legacy investors, codifies the EB-5 Integrity Fund fees and late-payment penalties, and clarifies when spouses and children must file their own petitions to remove conditions. This article summarizes those changes and highlights the practical points that investors, regional centers, and practitioners should keep in mind as the new schedule approaches.

I. FROM COURT STAY TO FINAL RULE

The EB-5 Reform and Integrity Act of 2022 (RIA) requires DHS to conduct an EB-5-specific fee study and authorizes it to set fees that recover the full cost of administering the program and support statutory processing goals.[4] DHS instead adjusted EB-5 fees in its general fee rule that took effect on April 1, 2024. On November 12, 2025, the U.S. District Court for the District of Colorado stayed those EB-5 fees in Moody v. Noem, concluding that the RIA precluded DHS from adjusting EB-5 fees in that rule.[5] USCIS reverted to the fees in effect before April 1, 2024. In the Final Rule, DHS and USCIS state that they believe the decision is incorrect but have implemented it, and that USCIS is not required to refund the higher 2024 fees.[6]

The Final Rule rests on the EB-5-specific fee study that the RIA requires. The revised USCIS fee study projects annual EB-5 program costs of approximately $105 million against approximately $56.6 million in revenue under the current fees, a gap of approximately $48.4 million. DHS estimates that the new schedule will affect about 16,600 filings each year and increase form fees by about 70.7 percent on a weighted-average basis.[7]

II. THE NEW FEE SCHEDULE

Table 1 compares the fees currently in effect with the fees under the Final Rule.[8]

[1] Department of Homeland Security, U.S. Citizenship and Immigration Services Employment-Based Immigrant Visa, Fifth Preference (EB-5) Fee Rule, 91 Fed. Reg. 61940 (Sept. 30, 2026) (to be codified at 8 C.F.R. pts. 106, 216) [hereinafter Final Rule], https://www.federalregister.gov/d/2026-20016.
[2] U.S. Citizenship and Immigration Services, USCIS Adjusts EB-5 Fees to Cover Program Costs and Strengthen Integrity Measures (Sept. 29, 2026), https://www.uscis.gov/newsroom/alerts/uscis-adjusts-eb-5-fees-to-cover-program-costs-and-strengthen-integrity-measures.
[3] Moody v. Noem, No. 24-cv-00762-CNS, 2025 WL 3157554 (D. Colo. Nov. 12, 2025) (originally filed as Moody v. Mayorkas).
[4] EB-5 Reform and Integrity Act of 2022, Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. BB, § 106(b)-(c), 136 Stat. 49, 1070 (2022); Final Rule, supra note 1, at 61940.
[5] Moody, supra note 3; Final Rule, supra note 1, at 61941, 61944.
[6] Final Rule, supra note 1, at 61956.
[7] Id. at 61941, 61943.
[8] Id. at 61942–61943 (Table 1). The current fees are those USCIS reinstated following the court's November 12, 2025, decision.

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Form	Name	Current Fee	New Fee (November, 30, 2026)	Change
INVESTOR FILING				
I-526E	**Immigrant Petition by Regional Center Investor (initial)***	$3,675	**$7,850**	▲ +$4,175 (+114%)
	EB-5 Integrity Fund fee (per Form I-526E)	$1,000	**$1,100**	▲ +$100 (+10%)
Total due at initial Form I-526E filing		**$4,675**	**$8,950**	▲ +$4,275 (+91%)
I-526E	Immigrant Petition by Regional Center Investor (amendment)	$3,675	**$7,775**	▲ +$4,100 (+112%)
I-526	Immigrant Petition by Standalone Investor*	$3,675	**$7,615**	▲ +$3,940 (+107%)
I-527	Amendment to Legacy Form I-526	None	**$10,330**	*New form*
I-829	**Petition by Investor to Remove Conditions on Permanent Resident Status**	$3,750	**$5,000**	▲ +$1,250 (+33%)
REGIONAL CENTER FILINGS				
I-956	Application for Regional Center Designation (initial)	$17,795	**$44,115**	▲ +$26,320 (+148%)
I-956	Application for Regional Center Designation (amendment)	$17,795	**$9,835**	▼ -$7,960 (-45%)
I-956F	Application for Approval of an Investment in a Commercial Enterprise	$17,795	**$42,675**	▲+$24,880 (+140%)
I-956G	Regional Center Annual Statement	$3,035	**$2,165**	▼ -$870 (-29%)
I-956H	Bona Fides of Persons Involved with Regional Center Program	None	**$65**	*New fee*
I-956K	Registration for Direct and Third-Party Promoters	None	**$2,165**	*New fee*
REGIONAL CENTER INTEGRITY FUND FEES (ANNUAL)				
	Regional centers with 20 or fewer total investors	$10,000	**$11,000**	▲ +$1,000 (+10%)
	Regional centers with more than 20 total investors	$20,000	**$22,000**	▲ +$2,000 (+10%)

* New fee includes the $75 EB-5 technology fee. New fees apply to filings postmarked on or after November 30, 2026. Increases are marked ▲ and decreases ▼.

The Final Rule includes a $75 EB-5 technology fee in the fees for Form I-526, Immigrant Petition by Standalone Investor, and for initial filings of Form I-526E, Immigrant Petition by Regional Center Investor.

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Amendments to Form I-526E do not carry it, which explains why some published summaries cite $7,850 and others cite $7,775.[9] For a regional center investor, the I-526E fee and the EB-5 Integrity Fund fee together rise from $4,675 to $8,950 at initial filing. These fees are paid once per petition. Derivative family members do not file their own Form I-526E, although they may incur separate fees later in the process.

Two features of the schedule stand out:

- First, the final investor fees are lower than both the October 2025 proposal and the fees that applied from April 2024 until the court stay. The final I-526E fee of $7,850 is $1,775 below the $9,625 DHS proposed and well below the 2024 fee of $11,160, and the final $5,000 fee for Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, is $2,860 below the proposal and well below the 2024 fee of $9,525.[10]

- Second, the regional center fees moved in the opposite direction. The fees for initial filings of Form I-956, Application for Regional Center Designation, and Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, are now more than $12,000 above the October 2025 proposal, although they remain below the 2024 levels of $47,695. By contrast, the fees for Form I-956 amendments and for Form I-956G, Regional Center Annual Statement, decrease. DHS explains that it continues to recover the cost of regional center terminations and reaffirmations through the initial Form I-956 and Form I-956F fees, rather than charging a fee at the point of termination.[11]

III. EB-5 INTEGRITY FUND FEES AND LATE-PAYMENT PENALTIES

The Final Rule increases each EB-5 Integrity Fund fee by 10 percent, based on inflation between 2022 and 2025, and codifies the payment and penalty framework in the regulations.[12] The annual regional center fee is due on October 1 of each year: $22,000, or $11,000 for a regional center with 20 or fewer total investors in its new commercial enterprises as of the last day of the preceding fiscal year. No penalty applies to a payment made by October 31. A payment made between November 1 and November 30 carries a penalty of 10 percent of the required fee, and a payment made between December 1 and December 30 carries a penalty of 20 percent. If the fee and any penalty remain unpaid after December 30, USCIS will terminate the regional center's designation. Termination is not immediate, however. USCIS will first issue a notice of intent to terminate and give the regional center an opportunity to show that it paid the correct amount on time, and a termination may be appealed.[13] Because the Final Rule is scheduled to take effect on November 30, 2026, after this year's October 1 payment date, the higher regional center amounts would ordinarily first apply to the annual payment due on October 1, 2027. The Final Rule does not address that transition expressly, however, and regional centers paying late in the current cycle should confirm with counsel how the new provisions apply.

IV. FORM I-527 FOR LEGACY INVESTORS

The new Form I-527 implements a statutory protection for investors who filed their petitions before the RIA was enacted on March 15, 2022. It allows those investors to amend a pending petition when their regional center is terminated or their new commercial enterprise or job-creating entity is debarred, so that they may seek to preserve their eligibility.[14] The final fee is $10,330, higher than the $8,000 DHS proposed. DHS has confirmed that USCIS will not treat a Form I-527 as a new petition, so the investor retains the original priority date, and that there is no penalty for seeking relief. DHS has also stated that it will reconsider the Form I-527 fee when more data become available, and that, under USCIS policy, a legacy investor may generally remain eligible without a Form I-527 if the project is complete or will be completed with sufficient job creation for all investors.[15]

V. FORM I-829 RULES FOR SPOUSES AND CHILDREN

The Final Rule also revises the regulation governing petitions to remove conditions.[16] An investor may include a spouse and children on the investor's Form I-829. If the investor does not include them, each spouse and child must file a separate petition, and may do so at any time during the period when the investor is required to file. The same approach applies to a child who turned 21 or married, and to a former spouse, during the period of conditional residence. If the investor is deceased, or does not file at all, the spouse, former spouse, or children may still seek to remove conditions by establishing eligibility and filing within the period when the investor would have been required to file. For families whose circumstances have changed since the initial petition, these provisions add welcome clarity, and each separate petition carries the new $5,000 fee.

VI. PRACTICAL CONSIDERATIONS

The applicable fee depends on the postmark date of a complete filing, not on the date of the investment. A filing postmarked on or after November 30, 2026, must include the new fees. A filing postmarked before that date pays the current fees, and petitions and applications already filed are not affected by the change. Before filing, the fee should be confirmed against USCIS Form G-1055, Fee Schedule, which has been revised to reflect the new amounts, and against the current edition of the form and its instructions.[17] Because November 29, 2026, falls on a Sunday, the last practical day to postmark a filing at the current fees is Saturday, November 28. With the Thanksgiving holiday falling that same week,

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[9] Final Rule, supra note 1, at 61952; 8 C.F.R. § 106.2(d)(2)(iii) (effective Nov. 30, 2026).
[10] Final Rule, supra note 1, at 61942–61943, 61946 (Tables 1 and 2); Department of Homeland Security, U.S. Citizenship and Immigration Services Employment-Based Immigrant Visa, Fifth Preference (EB-5) Fee Rule, 90 Fed. Reg. 48516, 48517 (proposed Oct. 23, 2025), https://www.federalregister.gov/d/2025-19642.
[11] Final Rule, supra note 1, at 61951.
[12] INA § 203(b)(5)(J), 8 U.S.C. § 1153(b)(5)(J); Final Rule, supra note 1, at 61952.
[13] 8 C.F.R. § 106.2(d)(10) (effective Nov. 30, 2026); Final Rule, supra note 1, at 61985.
[14] INA § 203(b)(5)(M), 8 U.S.C. § 1153(b)(5)(M).
[15] Final Rule, supra note 1, at 61956–61958.
[16] 8 C.F.R. § 216.6(a)(1)(ii) (effective Nov. 30, 2026); Final Rule, supra note 1, at 61985.
[17] Final Rule, supra note 1, at 61941.

many filers will want to file well before then. Investors should not, however, rush an incomplete petition to beat the deadline, because the cost of a deficient filing can far exceed the fee difference. That caution carries more weight under USCIS policy guidance issued in August 2026, which restores officers' discretion to deny a benefit request that lacks required initial evidence without first issuing a Request for Evidence or Notice of Intent to Deny.[18]

Conditional residents whose 90-day filing window for Form I-829 opens before November 30 may file at the current $3,750 fee if the petition is postmarked before that date. Regional centers should budget for the higher fees for initial Form I-956 and Form I-956F filings and should calendar the October 1 Integrity Fund payment to avoid the new penalty tiers. Promoters registering on Form I-956K, Registration for Direct and Third-Party Promoters, will pay a new $2,165 fee. Each person filing Form I-956H, Bona Fides of Persons Involved with Regional Center Program, will pay a new $65 fee.

Investors should also keep a second date in view. Under the RIA, the minimum investment amounts of $800,000 and $1,050,000 are scheduled for their first inflation adjustment on January 1, 2027.[19] USCIS has not yet published the adjusted amounts. The Final Rule does not address that adjustment, but for many investors the change in the required investment will outweigh the change in filing fees.

VII. WHAT TO WATCH

Several developments could still shape how the new schedule operates. First, the Final Rule addresses the possibility of further litigation directly. DHS states that its provisions are severable, so that a court could stay or enjoin a particular fee, such as the Integrity Fund penalties, without affecting the remaining fees.[20] Given the history that led to this rule, stakeholders should follow any legal challenge closely.

Second, the new fees depend heavily on USCIS's workload projections. The revised fee study assumes 8,500 Form I-526E receipts each year in fiscal years 2026 and 2027, up from 3,500 in the proposed rule.[21] If actual filings fall short of that forecast, revenue will fall short as well, and future fee adjustments may follow. DHS has stated that it will continue to monitor the effect of the fees on program participation and processing times.

Third, the Final Rule assumes that Congress will reauthorize the Regional Center Program beyond its current September 30, 2027, expiration.[22] The fee schedule, the Integrity Fund, and the Form I-527 framework all operate within that authorization, and the reauthorization debate will shape the program's cost structure going forward.

CONCLUSION

The Final Rule responds to the court stay with a fee schedule grounded in an EB-5-specific study, as the RIA requires. The Form I-526 and Form I-526E fees are lower than in 2024 but more than double the reinstated fees, while regional centers face significantly higher costs for initial designations and project applications. The Form I-527 and the clarified Form I-829 rules respond to long-standing practical questions for legacy investors and families.

The new fees remain subject to any future litigation or agency action. In the meantime, investors and regional centers should confirm the applicable fee for every filing, plan around both November 30, 2026, and January 1, 2027, and treat the fee schedule as one part of a broader compliance and planning conversation.

[18] Final Rule, supra note 1, at 61952; 8 C.F.R. § 106.2(d)(2)(iii) (effective Nov. 30, 2026).
[19] INA § 203(b)(5)(C), 8 U.S.C. § 1153(b)(5)(C).
[20] Final Rule, supra note 1, at 61945.
[21] Id. at 61947 (Table 3).
[22] Id. at 61940 n.1.

GIFTED VS. BORROWED FUNDS IN EB-5

Where Petitions Break Down

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Whether money invested by an EB-5 investor was a gift or a loan is not simply a labeling exercise. The characterization decides whose financial history USCIS will require, which records must be submitted, and how deep the analysis goes. Since the EB-5 Reform and Integrity Act of 2022 (RIA), both gifted and borrowed funds are expressly permitted, but only if the transfer was made in good faith and not to circumvent limits on permissible sources of capital.[1]

Petitions can falter on transfers that are documented as one thing but behave like the other. Examples include a "gift" with an informal expectation of repayment and a family "loan" with no definable terms. This article covers the current framework, the documentary requirements of each characterization, and practical steps for documenting these transfers.

THE LEGAL FRAMEWORK

Before the RIA. Before the RIA's source-of-funds provisions took effect, neither the statute nor the regulations expressly addressed gifts, although USCIS accepted gifted funds in practice when the lawful source and path of the funds were sufficiently documented. Borrowed funds could likewise qualify as investment capital. Following Zhang v. USCIS, loan proceeds contributed as cash are treated as cash, rather than indebtedness, and therefore need not be secured by the investor's personal assets.[2]

After the RIA. For petitions filed on or after May 14, 2022, the RIA expressly addresses gifted and borrowed funds. Such funds may count toward the minimum investment only if they were gifted or loaned in good faith and were not provided to circumvent restrictions on permissible sources of capital. When investment funds are gifted or borrowed, the petition must also include the statutorily specified source-of-funds records from the donor or, if the lender is not a bank, from the lender.[1]

The statute also excludes loan proceeds secured by unlawfully acquired assets.[3] Separately, the regulations exclude from capital any contribution made in exchange for a note, bond, convertible debt, obligation, or other debt arrangement between the investor and the new commercial enterprise (NCE), and for petitions filed on or after March 15, 2022, the statute does as well. That date reflects the RIA's enactment; the source-of-funds provisions described above apply later, to petitions filed on or after May 14, 2022.[2]

The practical effect is that a gift or a non-bank loan brings a second person's financial history into the petition.

GIFTED FUNDS

A gift shifts the source-of-funds inquiry to the donor. The investor must show the donor's funds were lawfully obtained and submit the donor's tax returns, bank statements, business records, and, in some cases, additional documents. In practice, the donor's narrative must be as complete as an investor's would be. The narrative must explain how the donor earned and accumulated the funds, how they moved through the donor's accounts, and how and when they reached the investor.

The next question is whether the gift is genuine. The statute's good-faith and anti-circumvention language gives USCIS a textual basis to probe gifts that look engineered.[1] One pattern that invites scrutiny is an expectation of repayment, such as a gift letter disclaiming repayment that is contradicted by later transfers from the investor back to the donor.

Stacked transactions also draw scrutiny. A stacked transaction occurs when a donor borrows money and then gifts the proceeds to the investor. The loan becomes part of the donor's source-of-funds story, and the collateral and lender may need to be documented.

To withstand review, a gift must be complete before the petition is filed. The donor must have permanently given up control of the funds, and the documents must show the full sequence from the donor to the investor.

BORROWED FUNDS

For years, USCIS treated invested loan proceeds as indebtedness, requiring the investor to show the loan was secured by the investor's own assets.[2] The D.C. Circuit rejected that reading in Zhang v. USCIS, holding that loan proceeds are cash. USCIS has since revised its policy to match.[2]

Zhang removed the requirement that the investor's own assets secure the loan. It did not end scrutiny of the loan, however, including whether the proceeds were lawfully acquired. USCIS still asks four questions about a loan used as investment capital.

The first is whether the lender is a bank. If it is not, the RIA requires the lender's tax returns, bank statements, and business records, at a minimum. As a result, a loan from a parent, a relative's company, or a friend carries the same disclosure burden as a gift.

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The second is whether any collateral was lawfully obtained. The statute excludes proceeds of loans secured by unlawfully acquired assets,[3] so the purchase of the collateral must be documented.

The third is whether the loan is real. A loan with no written terms, no interest, no repayment schedule, or no realistic means of repayment invites recharacterization as a disguised gift.

The fourth is whether the NCE is on both sides of the transaction. A loan secured by NCE assets, or a debt arrangement between the investor and the NCE, is not qualifying capital.[2]

PRACTICAL RECOMMENDATIONS

The documentary burden differs by characterization.

A gift requires the donor's tax returns, bank statements, and business records, and the core questions are the donor's lawful source of funds, donative intent, and the absence of any repayment obligation.

A bank loan ordinarily requires the loan documents and the investor's own records; the focus shifts to the lawful acquisition of any collateral, the investor's liability, and the loan's use-of-proceeds terms.

A loan from anyone other than a bank requires the lender to produce the same records a donor would, along with evidence of arm's-length terms and the investor's capacity to repay.

Settling the characterization before funds move is important because it tells the investor and the donor or lender up front what must be documented. If those requirements cannot be met, the investor can turn to other sources of funds before time and money are committed.

The next step is to document the path of the funds. The file should include the gift letter or loan agreement, bank statements, tax returns, business records, and any additional records needed, along with the investor's own bank statements, all consistent with the characterization. A loan should carry written terms, an interest rate, a maturity date, and evidence of the investor's capacity to repay, and its use-of-proceeds clause should not restrict investment use. A gift should involve no repayment and should come from a donor whose resources plainly support the amount. The petitioner must establish each of these points by a preponderance of the evidence.[4]

A loan forgiven after filing, or a gift partially returned, invites questions about good faith. Such questions can arise after the Form I-526 or I-526E is filed, including through a request for evidence.

Because investors abroad sometimes rely on family and friends to send funds to the United States, anyone who transfers funds on the investor's behalf should be identified, and the investor's ownership of the funds should be documented.[1]

CONCLUSION

The RIA settled that gifts and loans are permissible EB-5 capital. It did not settle the harder question in any given file: what the transfer actually was. Since Zhang, the own-assets collateral requirement no longer drives loan cases. The weight now falls on good faith, on the lawful source of the donor's or lender's funds, and on records that tell a consistent and accurate story.

Practice takeaway: Settle whether a transfer is a gift or a loan before the funds move, and build the file to match that label. For a gift, collect the donor's records and a gift letter. For a loan, put written terms in place and, if the lender is not a bank, obtain the lender's records. In either case, confirm that no later repayment, forgiveness, or side arrangement contradicts the label.

[1] INA § 203(b)(5)(L), 8 U.S.C. § 1153(b)(5)(L), added by the EB-5 Reform and Integrity Act of 2022, Pub. L. No. 117-103, div. BB (Mar. 15, 2022); see especially INA § 203(b)(5)(L)(iii)(I)–(II); 6 USCIS Policy Manual G.2(A)(4); USCIS, Policy Alert PA-2022-23, EB-5 Reform and Integrity Act of 2022 (Oct. 6, 2022).
[2] INA § 203(b)(5)(D)(ii)(III)(bb), (dd), 8 U.S.C. § 1153(b)(5)(D)(ii)(III)(bb), (dd); 8 C.F.R. § 204.6(e); Zhang v. USCIS, 978 F.3d 1314, 1319–22 (D.C. Cir. 2020) (holding that loan proceeds invested as cash constitute cash, rather than indebtedness, for purposes of the regulatory definition of capital); 6 USCIS Policy Manual G.2(A)(2); USCIS, Policy Alert PA-2021-15, Immigrant Investors and Investment of Loan Proceeds (July 22, 2021); cf. Matter of Izummi, 22 I&N Dec. 169, 183–88 (Assoc. Comm'r 1998).
[3] INA § 203(b)(5)(D)(ii)(III)(aa), 8 U.S.C. § 1153(b)(5)(D)(ii)(III)(aa) (excluding from the definition of capital "assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets").
[4] Matter of Chawathe, 25 I&N Dec. 369, 375–76 (AAO 2010).

PHANTOM INCOME

A Tax Guide for EB-5 Investors and Regional Centers

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Tax planning remains one of the most overlooked aspects of the EB-5 process, despite its direct effect on investor outcomes and on regional center compliance. Most of the time, investors' attention goes to the source of funds, job creation methodology, and green card timelines. The tax implications of the investment structure often come up later, typically during the first filing season after closing.

In the spring after a project's first full year, an EB-5 investor receives a Schedule K-1. This document reports a share of the New Commercial Enterprise's (NCE) income beside the investor's name. In many cases, no cash will be distributed during that year while the project is in the construction and development process, despite the K-1 reporting of interest income, which increases the capital account and creates a taxable event. While many NCE investments are loans, this investment will generate interest income, which is treated as ordinary income. The reason behind this lies in how the NCE was organized under terms set in the operating agreement before the investor subscribed. Since the regional center or its affiliate selected that structure, it is generally the first party the investor asks for clarification.

PASS-THROUGH TAXATION AND THE ALLOCATION-DISTRIBUTION GAP

Nearly all NCEs are organized as limited liability companies (LLCs) or limited partnerships (LPs), and the default classification of these entities is pass-through treatment for federal income tax purposes. This means that any income, loss, deduction, and credit are not taxed at the entity level. Instead, they are allocated to members or partners according to the terms of the operating agreement in the form K-1, and each investor reports an allocated share on a personal return.

The consequence is that taxation follows allocation rather than distribution. An investor is taxed on the share of income assigned to that investor for the year, whether or not the NCE distributed any corresponding cash. An allocation is the investor's proportional share of the entity's financial activity, ordinarily fixed by ownership percentage, and it is taxable whether or not any money moves. A distribution, however, is the separate event of whether the entity actually pays cash or property to the investor. When the allocation exceeds the distribution, the difference results in a tax liability on earnings that were never received, commonly described as phantom income.

For instance, take an investor with an $800,000 investment in an NCE at a 1% interest rate. In Year 1, the NCE allocates $8,000 of interest income to the investor (1% of $800,000), but distributes no cash to any member if the project hasn't begun to receive any cash flow through construction. The investor receives a K-1 reporting $8,000 of income and owes federal income tax on it despite receiving $0 in cash distributions. This is phantom income in its simplest form, creating a very real tax liability on income that was never actually received.

One thing worth noting is that nothing in this mechanism depends on whether the project performs badly. A profitable project that retains its cash produces the same result as a struggling one, and a larger allocation along with it.

THREE ENTITY STRUCTURES THAT DRIVE PHANTOM INCOME

How large the shortfall grows and how long it persists follows from three decisions made when the entity was assembled. The first is whether the NCE lends the investors' capital or invests it. The second is whether returns are paid currently or merely accrue. The third is whether the governing agreement requires the entity to distribute cash for taxes.

The first choice determines the timetable on which income arises at all. Under the loan model, the NCE lends the pooled capital to the Job Creating Entity (JCE) in exchange for a promissory note, with interest accruing according to the terms of the note rather than when the project can afford to make payments. A note that begins accruing interest at closing therefore produces allocable income in the first year, while construction is still underway. Under an equity model, however, the NCE holds an ownership interest in the JCE instead, and the income or loss passed through to investors depends on the project's actual operating results rather than on a fixed contractual rate. This can benefit the investor early in the investment, because start-up losses may pass through as well, subject to limitations that apply at the investor level. In later years, depreciation and other non-cash items can move the income or loss reported to the investor away from the cash the project generated, in either direction. Either way, the loan and equity models can both allocate income to an investor who has received no cash. The loan model typically does this early through accrued interest, while the equity model typically does it later, through operating results and depreciation.

The second choice is whether returns accrue or are paid currently. Deferred payment terms are common, particularly during construction, when a project has no revenue from which to service a loan or fund a preferred return. Where interest or preferred return accrues but is not paid, the NCE may nonetheless recognize the income as it accrues and allocate it to investors in the year of accrual, depending on the entity's accounting method and the terms of the note. Deferred-payment arrangements can also raise questions about the timing of income recognition that warrant review with tax counsel when the documents are drafted. The practical effect is straightforward: the years in which a project is least able to distribute cash may be the years in which investors are allocated income.

The third choice is whether the operating agreement or limited partnership agreement provides for tax distributions. A tax distribution provision obligates the entity to distribute cash sufficient to fund members' tax liability on allocated income. Where such a provision is absent, investors satisfy the liability from other resources. Where one exists, its practical value depends on its terms, including whether it is mandatory

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or discretionary, whether it is capped, and whether it is subject to senior lender covenants or other restrictions on distributions. This is the most direct lever available to an NCE, and the one most often left unexamined.

WITHHOLDING ON INCOME THE INVESTOR HAS NOT RECEIVED

For nonresident investors, the same divergence between allocation and distribution creates a further problem for the NCE itself. Most NCEs are taxed as partnerships, and a partnership with foreign partners must withhold tax on income effectively connected with a US trade or business (currently 37% for individual foreign partners and 21% for corporate ones). That withholding is calculated on each investor's allocation for the year, so an NCE can end up owing the IRS real money on an investor's behalf even in a year when that investor received no cash at all.

The applicable rate depends on how the income is classified. Income that isn't effectively connected with a US trade or business falls under a different tax regime and is generally subject to withholding at a 30% rate. Because the difference between a 30% and a 37% withholding rate is substantial, it's worth getting this classification right rather than guessing. That's a determination the NCE must make with its own tax counsel and not by assuming that another EB-5 program's documents got it right. Once an NCE's activities are determined to constitute a US trade or business, that determination applies across the board, meaning every foreign investor in the entity is treated the same way regardless of their individual involvement.

The stakes for getting this wrong sit with the entity rather than the investor. If an NCE fails to withhold the amount it owes, it can be held liable for that tax itself along with penalties and interest. In a year with no cash to distribute, that liability still comes due, which is why treating withholding as a budgeted cost of running the NCE serves everyone better than encountering it as a surprise.

FILING OBLIGATIONS AND PRACTICAL STEPS FOR INVESTORS

While an investor remains a nonresident for US tax purposes, residency itself is not always obvious. Some investors may become US tax residents before receiving their green cards under the substantial presence test, which generally requires at least 31 days of US presence in the current year and 183 days counted across a weighted three-year formula. An investor spending significant time in the US on another visa while an EB-5 petition is pending should not assume nonresident status just because the green card hasn't arrived yet.

While nonresident status holds, most investors file Form 1040NR to report their allocated share. One exception is that if the only US-source income is NCE interest and the correct amount has already been withheld, no return may be required at all since the withholding can fully satisfy the tax liability. This is a matter that should be confirmed with a qualified tax preparer rather than assumed.

State and local tax treatment of EB-5 phantom income can diverge significantly from federal law, adding in additional layers of taxation. Many states like California, New York, and New Jersey impose income tax on both residents and nonresidents. A nonresident investor may escape federal phantom income tax but still face state phantom income taxation, especially in states that tax unrelated business taxable income (UBTI) of pass-through entities.

Two administrative steps keep everything else on track. An investor without a Social Security number will need an Individual Taxpayer Identification Number (ITIN), since the NCE cannot withhold or report without one. An investor from a treaty country may qualify for a reduced withholding rate, or none at all, but only after filing the appropriate IRS certification with the NCE. Neither step is difficult, but both must happen before the first distribution or accrual, not after.

The NCE's authority to retain cash and allocate income regardless of distributions typically comes from provisions in the Private Placement Memorandum (PPM) covering distribution discretion, cash reserves, and reinvestment. These provisions are usually broad, and once the offering is open, an individual investor is not in a position to negotiate them. Reading them closely before subscribing does not change what the NCE is permitted to do, but it does mean the first K-1 reporting income with no cash behind it will not come as a surprise.

Finally, withheld tax isn't lost money. The K-1 reflects both the income allocated and the tax already withheld on the investor's behalf, which is credited against the eventual liability and may be refundable if it exceeds what's owed. An investor who sees a tax bill on a K-1 in a year with no distribution can reasonably assume the worst, while some or all of it may already have been paid.

THE TRANSITION TO US TAX RESIDENCE

An investor's position changes on becoming a US tax resident. An individual who is a lawful permanent resident at any time during the calendar year meets the green card test and is treated as a resident alien for federal income tax purposes. A resident is taxed on worldwide income, not solely on income from US sources.

The change matters on both sides of the relationship. For the investor, the tax implications can extend well beyond the NCE allocation that prompted the first questions, making the analysis one for a licensed adviser rather than with the regional center. For the NCE, a partner's change in status alters the entity's withholding obligations and requires that the change be documented and reflected in the entity's records. Neither adjustment is automatic, and neither is well served by being discovered at filing season.

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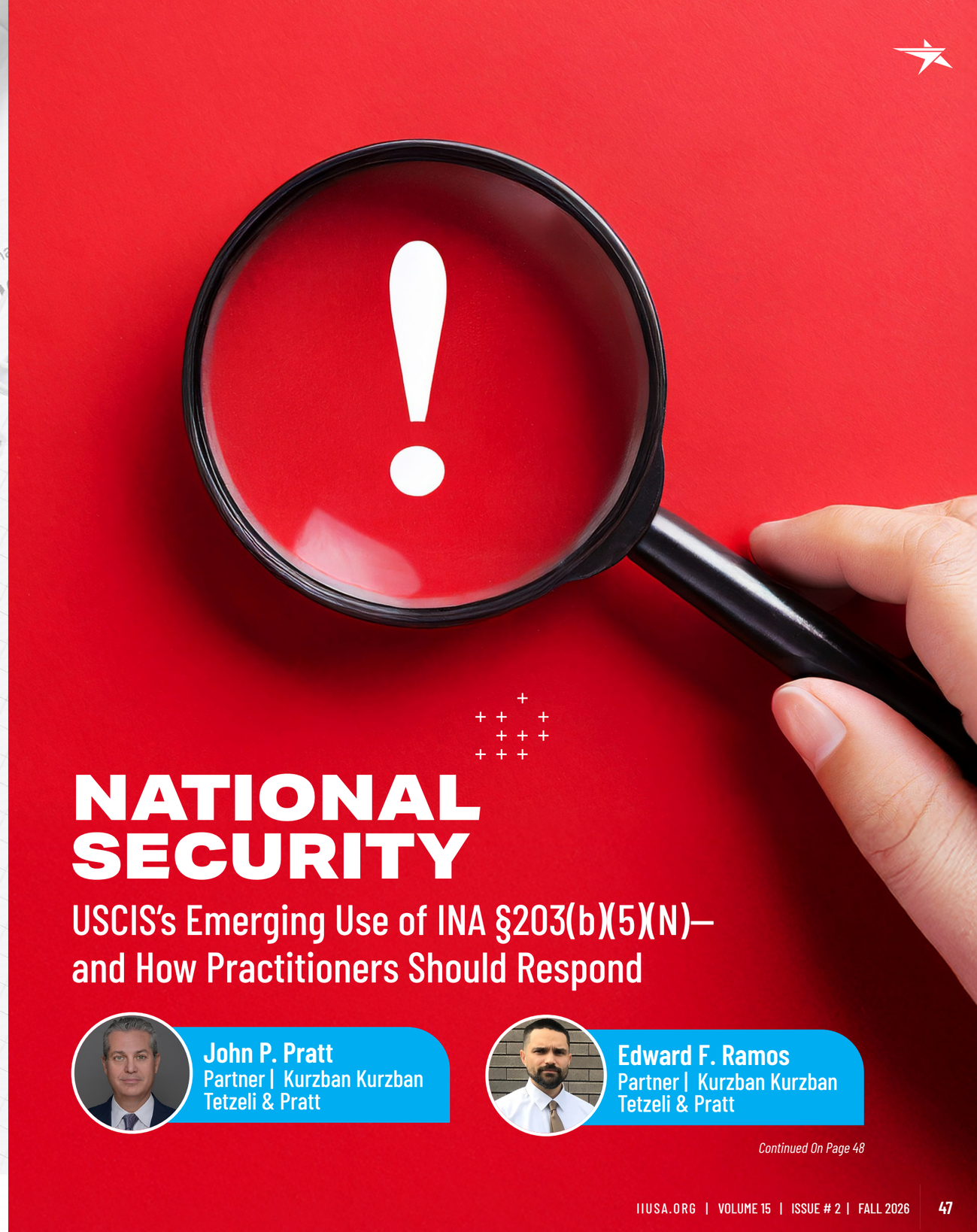
IN PRACTICE

Phantom income may surprise investors, but the factors that give rise to it are identifiable well in advance. They come down to the NCE's decisions of whether it lends or invests, whether returns accrue or get paid, and whether the operating agreement requires cash to go out when taxes come due. These choices determine how far allocated income will diverge from distributed cash, and for how long.

Regional centers can address this directly. Withholding can be budgeted as a routine cost rather than arising as an unplanned demand for cash. A workable tax distribution provision can be built into the documents at drafting, when it's easy to add, rather than after closing, when it isn't. And offering materials can explain the allocation-distribution gap before the first Schedule K-1 arrives, so investors aren't hearing about it for the first time from a tax preparer.

For investors, the same information is useful earlier rather than later. US tax exposure starts with how the investment is structured, and it expands once US tax residency begins. Understanding both before immigrating gives an investor more options than finding out after the fact.



NATIONAL SECURITY

USCIS's Emerging Use of INA §203(b)(5)(N)— and How Practitioners Should Respond

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Many EB-5 investors chose the United States for an uncomplicated reason: to build new lives in a country whose freedom, stability, and rule of law promised a better future. They invested substantial capital, endured years of immigration processing, and moved their families here, only to find themselves caught in widening geopolitical struggles. In the EB-5 arena, this has manifested itself through the enhanced vetting of immigrants under INA §203(b)(5)(N), a provision enacted in 2022. The provision authorizes the Department of Homeland Security (DHS) to deny or revoke an EB-5 benefit when it determines that approval would be contrary to the national interest for reasons relating to public safety or national security.

Despite the provision's title, these cases rarely begin with espionage or sabotage. Instead, in practice, USCIS often fastens onto matters far more mundane—ordinary biographical lines; a degree from a university that later fell out of favor; an accounting or compliance job at a company sanction years after departure; a relative's government employment; or a household registration term (wrongly) translated as "cadre." The agency embeds these facts within sweeping accounts of military-civil fusion, allowing institutional suspicion to migrate to the individual investor. The distinction between country and person disappears, turning a resume into a threat without evidence of classified access, unlawful transfers, or foreign direction.

How we got here—and how practitioners should respond—is the subject of this article.

A BROAD POWER WITHOUT A DISCERNIBLE ADJUDICATIVE TEST

The EB-5 Reform and Integrity Act of 2022 ("RIA") added INA §203(b)(5)(N), which directs DHS to deny or revoke an EB-5 petition, application, or benefit if the Secretary determines, "in the Secretary's discretion," that its approval is "contrary to the national interest of the United States for reasons relating to threats to public safety or national security."[1] That authority reaches previously approved investor I-526 petitions, I-829 petitions, project applications, and documents evidencing conditional permanent resident status.

Congress paired this breadth with no instruction. Section N does not define what constitutes a "threat," require specific intent, establish temporal rules, or set a clear burden of proof. While the USCIS Policy Manual bars "arbitrary, inconsistent, or dependent on intangible or imagined circumstances,"[2] disciplined evidentiary attention remains the primary safeguard and restraint on arbitrary decision-making.

The new provision entered a statutory scheme that was hardly indifferent to national security. The INA already addresses espionage, sabotage, export-control violations, terrorism, adverse foreign-policy consequences, and affiliation with Communist or other totalitarian parties, generally through defined grounds with defined elements and, in some instances, express exceptions. Corresponding deportability provisions apply after admission, and other sections authorize petition revocation, rescission, and termination of conditional residence.[3]

Section N's innovation was thus not the discovery of national security, but the creation of a freestanding EB-5 authority capable of operating when the evidence does not satisfy one of those established grounds. Indeed, DHS candidly acknowledged the point its July 2026 proposed EB-5 rule: before the RIA, USCIS "could not directly act" on security concerns "without a related statutory basis for ineligibility or termination."[4] The proposed rule (which remains only a proposal) would use the traditional security grounds as a guide while treating Section N as broader; it identifies acting on behalf of an authoritarian government and present or past Communist or totalitarian-party affiliation among the possible considerations, and it would reach pre-RIA filings where USCIS finds that a threat arose or continued after enactment.[5] The supposed statutory gap, in other words, arose when USCIS had concerns but lacked a ground that the evidence could establish. Section N is filling that gap by dispensing with much of the discipline and standards previously supplied by defined statutory and regulatory inadmissibility or deportability elements.

FROM INSTITUTIONAL HISTORY TO INDIVIDUAL THREAT

In cases invoking Section N, USCIS's implicit methodology typically starts with a biographical fact, gathers sweeping institutional data on the associated entity, and infers that the investor acquired corresponding knowledge or allegiance across decades. However, statutory conclusions require real connective tissue. General corporate data does not prove that an accountant encountered sensitive work, nor does a spouse's ministry position establish an investor's allegiance.

Even where USCIS accurately describes the investor's past, it must still explain why that history establishes a current or future threat to the United States. This question is especially pressing at the I-829 stage, when an investor may have lived here for years, raised a family here, and long since severed meaningful professional, political, or institutional ties to their native country. Employment that ended twenty years ago or Party membership that has been dormant for decades requires an account of what allegedly persists: sensitive knowledge that remains useful, access that remains available, an obligation that remains operative, or a relationship through which the investor might act.

All too often, USCIS supplies no such account, treating the historical association as though it establishes a continuing risk unless the investor can somehow prove otherwise. The resulting analysis is careless in precisely the respect that should matter most to a national-security determination:

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[1] INA §203(b)(5)(N)(i)–(ii), 8 U.S.C. §1153(b)(5)(N)(i)–(ii); Pub. L. No. 117-103, div. BB, §103(b)(1), 136 Stat. 1070, 1095–97 (2022).
[2] 6 USCIS-PM G.8(B).
[3] See INA §§205, 212(a)(3), 216A(b), 237(a)(4), 246; 8 U.S.C. §§1155, 1182(a)(3), 1186b(b), 1227(a)(4), 1256.
[4] EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB-5 Program; Automatic Revocation of Petitions for Immigrant Classification, 91 Fed. Reg. 40,676, 40,699–700 (July 2, 2026) (proposed rule).
[5] Id. at 40,700, 40,797–98; proposed 8 C.F.R. §204.432.

National Security: USCIS's Emerging Use of INA §203(b)(5)(N)—and How Practitioners Should Respond

whether the supposed threat actually exists today. For investors who have spent years building their lives in the United States, the agency's failure to examine that question allows an increasingly remote past to overshadow everything that has happened since.

At times, the problem lies even further upstream because the premise itself is unreliable. Foreign terms are translated without regard to their historical or bureaucratic meaning; a loose translation of the word "cadre" becomes proof of Party leadership; related companies with similar English names are treated as interchangeable; or a present-day description of an institution is projected backward across decades of history. A long RFE or NOID can create an illusion of corroboration, but a government report, corporate profile, translated record, and news article do not become cumulative evidence if they concern different entities, periods, or meanings of the operative term.

USCIS also sometimes braids Section N together with source-of-funds, credibility, or INA § 203(b)(5)(O) allegations. An omitted position becomes both a disclosure problem and supposed concealment of a dangerous affiliation, or a transfer requiring further tracing becomes evidence of foreign-government direction. But an inconsistency may require an explanation without proving a security threat, just as a gap in financial tracing may require additional records without proving state control. The phrase "national security" does not relieve USCIS of identifying what each fact proves, what remains inference, and how the inference bears on the person before it.

BUILDING THE REBUTTAL—AND THE RECORD

Responding to a Section N RFE, NOID, or Denial requires following USCIS's inferential chain rather than offering generalized character assurances. Some general tips for practitioners include:

- **Expose evidentiary gaps**: Identify the source, isolate what it actually establishes, and highlight the missing link between the investor's actual duties and institutional activities.
- **Correct objective errors**: Establish exact dates, accurate translations, correct corporate entities, and proper chronology through primary records.
- **Contextualize true facts**: Detail actual coursework, the true nature of past Party membership (if any), or specific departmental duties within a sanctioned enterprise.
- **Anchor the present timeline**: Submit a unified timeline and declarations proving the complete absence of current access, ongoing obligations, or active relationships.
- **Leverage expert evidence**: Use qualified experts to explain foreign terminology, corporate structures, or political practices without vouching for the ultimate legal result.

LEGACY I-829 CASES AND THE PROBLEM OF RETROACTIVITY

For many legacy investors, Section N did not exist when they invested, obtained I-526 approval, entered as conditional residents, completed the sustainment period, and even filed the I-829 petition. Congress enacted the RIA on March 15, 2022, and Section N took effect sixty days later.[6] When USCIS invokes that new ground to terminate status principally because of employment, education, or political associations completed years earlier, retroactivity is not an ancillary lawyer's objection. It addresses whether the new law may do the work USCIS has assigned to it.

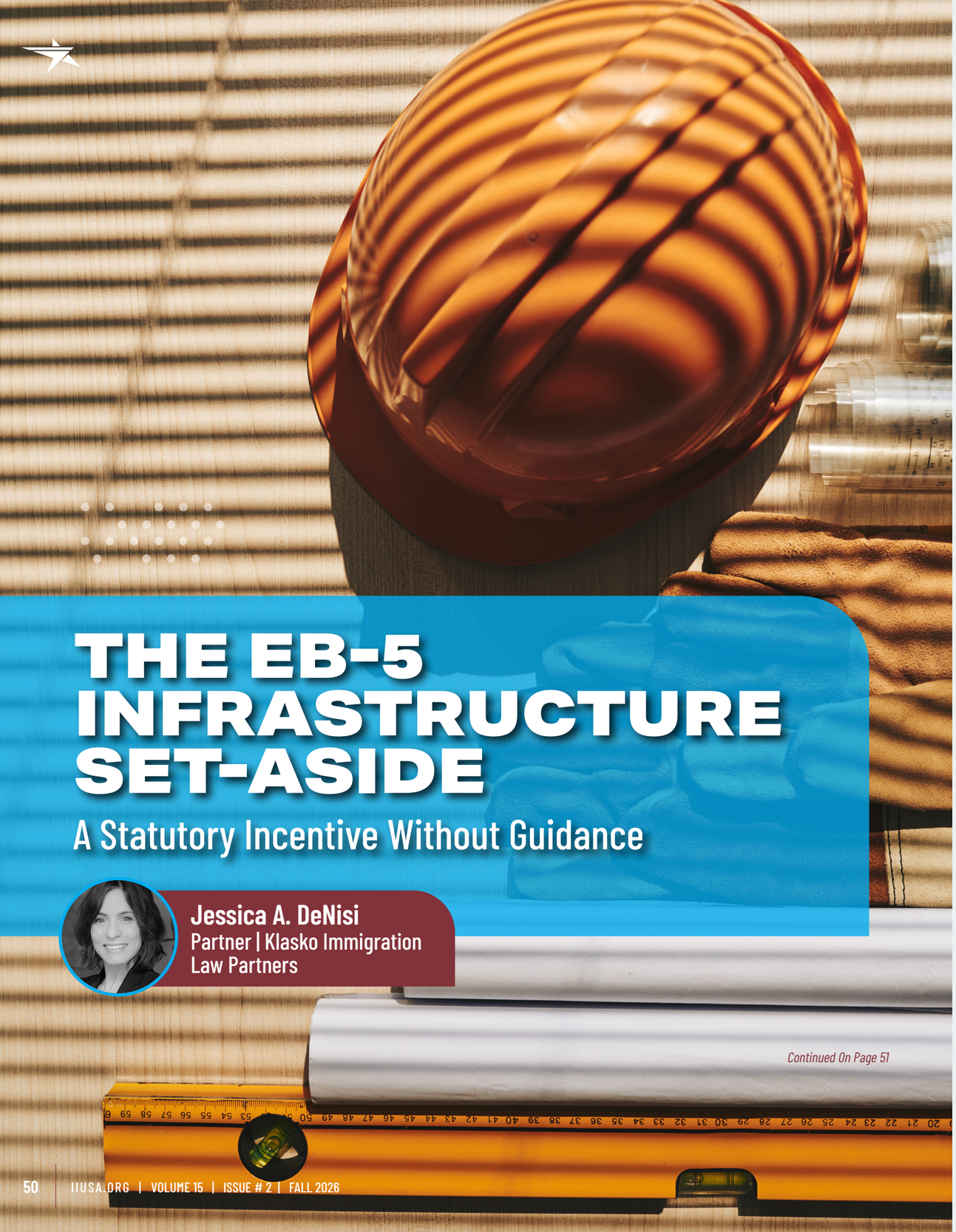
Under Landgraf v. USI Film Products, a court first asks whether Congress clearly prescribed a new law's temporal reach and, if not, whether applying it would attach new legal consequences to completed events.[7] Section N expressly mentions I-829 petitions and documents evidencing conditional residence, but it does not expressly state that its new ground applies to status obtained through pre-RIA investments and petitions. Elsewhere, Congress protected beneficiaries of pre-RIA I-526 petitions from separate RIA amendments to INA §216A. That savings clause confirms that Congress recognized the reliance interests of legacy investors and knew how to address them expressly.[8]

The argument is strongest where the investor completed every material act before the RIA. In that setting, a long-ended job or political affiliation is not merely an antecedent fact considered under an unchanged rule; it is being given a new, status-terminating consequence. Chang v. United States offers the closest EB-5 analogy. Although Chang did not decide this precise statutory question, the Ninth Circuit rejected an effort to treat I-829 adjudication as an ab initio reconsideration after investors had relied on approved plans and performed their part, reasoning that the government could not rewrite the substantive requirements after performance.[9] An I-829 response should therefore press the retroactivity objection fully while defeating the security theory on the facts.

* * *

The families caught in these cases came to America trusting that their futures would be judged on their own conduct. When USCIS substitutes generalized institutional suspicions for individualized evidence, investors become collateral damage. As the lawyers representing these families, we have the tools to expose factual errors, supply the context USCIS omitted, use expert evidence to test its assumptions, and challenge the retroactive application of a law enacted after our clients built their lives around the rules the government gave them. Our clients chose a country in which governmental power was supposed to answer to evidence and law. We owe them a determined fight to hold the government to that promise.

[6] Pub. L. No. 117-103, div. BB, §103(b)(2), 136 Stat. at 1100.
[7] Landgraf v. USI Film Products, 511 U.S. 244, 265, 269–70, 280 (1994).
[8] SPub. L. No. 117-103, div. BB, §104(b)(2)(B), 136 Stat. at 1103. That provision governs §104's amendments to INA §216A; it does not expressly grandfather §203(b)(5)(N), enacted through §103.
[9] Chang v. United States, 327 F.3d 911, 927–30 (9th Cir. 2003). Its holding against changed substantive I-829 criteria applied the agency-retroactivity framework of Montgomery Ward & Co. v. FTC, 691 F.2d 1322 (9th Cir. 1982). The court separately applied Landgraf to a statutory issue. Chang, 327 F.3d at 919–20.



THE EB-5 INFRASTRUCTURE SET-ASIDE

A Statutory Incentive Without Guidance

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The EB-5 Reform and Integrity Act of 2022 ("RIA") created, for the first time, a dedicated pathway for EB-5 capital to finance public infrastructure.[1] Investors in a qualifying infrastructure project may invest $800,000 rather than $1,050,000, and two percent of the EB-5 visas available each year are reserved for them.[2]

More than four years after enactment, the infrastructure set-aside appears to remain among the least-used features of the RIA. Roads, water systems, utilities, and transit are the kind of long-lived, job-intensive assets the EB-5 program was designed to support, and the need for them is real. The obstacle is legal uncertainty. Congress defined an infrastructure project in a single sentence, and U.S. Citizenship and Immigration Services ("USCIS") has provided little guidance on how that sentence should be applied.

ONE SENTENCE, FOUR REQUIREMENTS

The entire legal framework for EB-5 infrastructure projects rests on one definition in INA § 203(b)(5)(D)(iv):

> The term "infrastructure project" means a capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the regional center program described in subparagraph (E) from alien investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project.[3]

Read closely, the sentence contains four requirements:

1. A capital investment project in a filed or approved business plan.

2. Administration by a governmental entity, with federal, state, and local agencies and authorities offered as examples.

3. The governmental entity as the job-creating entity, contracting with a regional center or new commercial enterprise to receive EB-5 capital under the regional center program, which places infrastructure projects squarely within that program.

4. A public works project, which the capital must finance by maintaining, improving, or constructing it.

In addition, the statute directs the Secretary of Homeland Security to determine whether a specific capital investment project meets the definition.[4]

LIMITED GUIDANCE FROM USCIS

USCIS guidance on infrastructure projects can be summarized quickly, because there is very little of it. The Policy Manual devotes a short subsection to the topic. It restates the statutory elements, confirms that the reduced investment amount is available only to regional center investors, and notes that USCIS decides infrastructure status during adjudication of Form I-956F.[5] It does not explain any of the elements it restates.

The proposed rule published in July 2026 offered the first real opportunity to fill the gap.[6] It lists "defining infrastructure projects" among its major provisions, but the proposed regulatory text largely restates the statutory definition. Its principal substantive change is to add tribal agencies and authorities to the governmental entities that may qualify. The preamble also identifies sectors that the Department of Homeland Security ("DHS") "generally expects" to qualify, but it does not explain how the statutory elements apply to projects in those sectors. Tellingly, DHS also asks the public to comment on "the types of projects that may meet the definition of an infrastructure project." That request suggests that the agency has not yet decided where the lines are.

As a result, the terms that matter most remain undefined:

- **Governmental entity**. Is a special district, a public authority, a community development authority, a utility district, or an economic development corporation a "governmental entity"? What about an instrumentality created for a single project?
- **Administered by**. Does administration require ownership, day-to-day operation, or control of funds? Or is meaningful oversight of budgets, disbursements, construction, and acceptance enough?
- **Is the job-creating entity**. Must the government be the sole job-creating entity, or may it act together with a private developer?
- **Public works**. Is the term defined by federal law, by the law of the state where the project sits, by public ownership, or by public use?

THE NARROW READING AND ITS PROBLEM

Read as narrowly as possible, the statute describes a project that a government agency owns, operates, and administers, and for which that agency itself borrows the EB-5 capital and directly creates the jobs. A project built that way would almost certainly qualify, and sponsors can take comfort in that.

The difficulty is that many public projects are not built that way. Public borrowing can be restricted by constitutional and statutory debt limits, voter-approval requirements,

[1] EB-5 Reform and Integrity Act of 2022, Pub. L. No. 117-103, div. BB, 136 Stat. 49 (2022).
[2] INA § 203(b)(5)(C)(ii), 8 U.S.C. § 1153(b)(5)(C)(ii); INA § 203(b)(5)(B)(i)(I)(cc), 8 U.S.C. § 1153(b)(5)(B)(i)(I)(cc).
[3] INA § 203(b)(5)(D)(iv), 8 U.S.C. § 1153(b)(5)(D)(iv).
[4] INA § 203(b)(5)(B)(iii)(I), 8 U.S.C. § 1153(b)(5)(B)(iii)(I).
[5] USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2, § A.6 (Infrastructure Projects).
[6] EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB-5 Program; Automatic Revocation of Petitions for Immigrant Classification, 91 Fed. Reg. 40,676 (proposed July 2, 2026).

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procurement rules, and existing bond covenants. Public agencies may not be equipped, or willing, to sit across the table from a new commercial enterprise as a borrower on a private loan raised from foreign investors.

There is good reason to think Congress did not intend the set-aside to reach only a narrow set of projects. Congress reserved a share of every year's EB-5 visas for infrastructure investors and lowered their investment threshold. It would be anomalous for Congress to create a benefit that few projects could use. Moreover, roads, water and sewer lines, stormwater systems, and public parks are routinely built by private parties under agreements with public bodies and then dedicated to and accepted by those public bodies. The tools include development agreements, public-private partnerships, and special districts that issue bonds secured by assessments or tax increment. They also include master development agreements in which a public authority sets the scope, approves the budget, and controls the release of funds.

These arrangements fit the statutory text better than a narrow reading suggests. The statute requires that the project be administered by a governmental entity. It does not say the project must be owned, built, or operated by one. In ordinary usage, administering a project means directing and overseeing it. That includes approving its scope and budget, controlling how money is spent, reviewing or approving draws, inspecting the work, accepting the finished improvements, and stepping in if the work stalls. A government that does those or similar things administers the project, even when a private developer does the work on the ground.

The statute also requires that the governmental entity be "the job-creating entity." Regional center job creation is measured through economically and statistically valid methodologies applied to project expenditures, most of which flow to contractors.[7] A governmental entity that contracts for EB-5 capital and directs how it is spent on public works is creating jobs in the way governments often do. Nothing in the text suggests the governmental entity must do so alone. A joint job-creating entity, in which the public body administers the public works and a private partner builds them, is consistent with both the language and the purpose of the provision.

DISCLOSING DESIGNATION RISK

Until USCIS provides clear guidance, the infrastructure designation carries a risk that should be disclosed to investors. DHS, through USCIS, decides whether a project qualifies, and USCIS makes that decision when it adjudicates the Form I-956F. An investor who subscribes at the reduced investment amount, or who is counting on a reserved visa, therefore cannot know at the time of investment that the designation will be confirmed. That uncertainty is greatest when investors file Form I-526E petitions while the I-956F is still pending. Accordingly, the offering documents submitted with the Form I-956F should describe this risk plainly. They should explain what happens to an investor if USCIS concludes that the project is not an infrastructure project, including the effect on the required investment amount and on access to the reserved visa category, and whether the project is located in a targeted employment area that would independently support the reduced investment amount. For investors from countries with long visa backlogs, losing access to the set-aside may matter as much as the investment amount itself.

CONCLUSION

Congress provided for EB-5 capital to help build public infrastructure, and it wrote a definition that, read with common sense, accommodates the way public infrastructure is often built. Projects wholly owned and run by government should qualify, but they are likely to remain rare. In practice, the set-aside will depend largely on projects governed by development agreements, public-private partnerships, and joint ventures in which a public body truly administers the work. Those structures can qualify under the statute as written, and they should. Until USCIS says so plainly, sponsors who want to build will have to work from the statute itself, with careful documents, honest disclosure, and a public partner willing to take an active role.

[7] See INA § 203(b)(5)(E)(v)(I), 8 U.S.C. § 1153(b)(5)(E)(v)(I).

THE GREEN CARD IS ONLY HALF THE PLAN

Why Tax and Estate Planning Need to Move on the Same Timeline as the Petition

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Every EB-5 case runs on a clock:

- **Source of funds has to be documented;**
- **The petition has to be filed;**
- **The capital has to be at risk; and**
- **Everyone involved is watching the calendar for I-526E and I-829 approvals.**

It's a lot to manage, and it's understandable that the immigration and capital-raising side of the process absorbs most of the attention.

But there's a **second clock running** in parallel that gets far less attention, and it's arguably just as unforgiving. It's the window for pre-immigration tax and estate planning, and once it closes, **it closes for good**. Families who get the visa right but miss this window often find out the hard way, sometimes years later, when a tax bill or an estate planning gap surfaces that could have been avoided entirely.

This isn't a knock on the immigration side of the industry. It's a case for treating financial planning as a parallel workstream from inception, not as an afterthought that commences upon green card issuance.

A WINDOW THAT CLOSES AT RESIDENCY

The moment someone meets the Green Card Test, he or she becomes a U.S. tax resident and is taxed in the same manner as a citizen: on worldwide income, with all the reporting obligations that comes with it. Everything that happens before that date is **planning** and everything after is **compliance**.

A few of the opportunities only exist **before** residency:

- Basis step-up on appreciated foreign assets, so future U.S. capital gains tax is calculated from a current value rather than an original purchase price from decades ago.
- Restructuring or unwinding foreign mutual funds and pooled investments before they become Passive Foreign Investment Companies in the eyes of the IRS, a designation that can turn a modest foreign holding into a genuinely punishing tax result.
- Funding trusts while the client is still a nonresident, which opens planning options that are simply unavailable once residency begins.
- Equalizing estates between spouses when one may become a U.S. person before the other, so the family isn't caught off guard by subsequent mismatched exemptions.

None of this requires exotic planning but it does require time, and time is exactly what runs out the day residency starts. A family that engages a cross-border advisor during the petition stage has real options. The same family six months after receiving a green card is choosing among a much shorter list of options.

THE K-1 NOBODY WARNED THEM ABOUT

Here's a compliance gap that's specific to the EB-5 population and catches hundreds of people by surprise every year. An EB-5 investment made through a regional center is typically structured as a partnership interest, which means the investor receives a Schedule K-1, not a 1099.

For a first-time filer, especially one self-filing or using a preparer accustomed to simple returns, this is an easy thing to miss entirely. The investor doesn't necessarily think of their EB-5 capital as something that generates an annual reporting obligation. It's easy to assume the investment is dormant until it's returned. It isn't, and the IRS doesn't treat it that way.

The fix is straightforward once someone knows to look for it. The problem is that a lot of investors don't know to look, and by the time it surfaces, they may be dealing with amended returns and penalties rather than a routine filing.

THE ESTATE TAX CLIFF NON-CITIZEN SPOUSES DON'T SEE COMING

One more example worth flagging, because it's concrete and it tends to land with clients in a way that abstract tax discussion doesn't. U.S. estate tax law treats a non-citizen spouse very differently from a citizen spouse. **There's no unlimited marital deduction, and without a citizen spouse, there's no portability of the deceased spouse's unused exemption**.

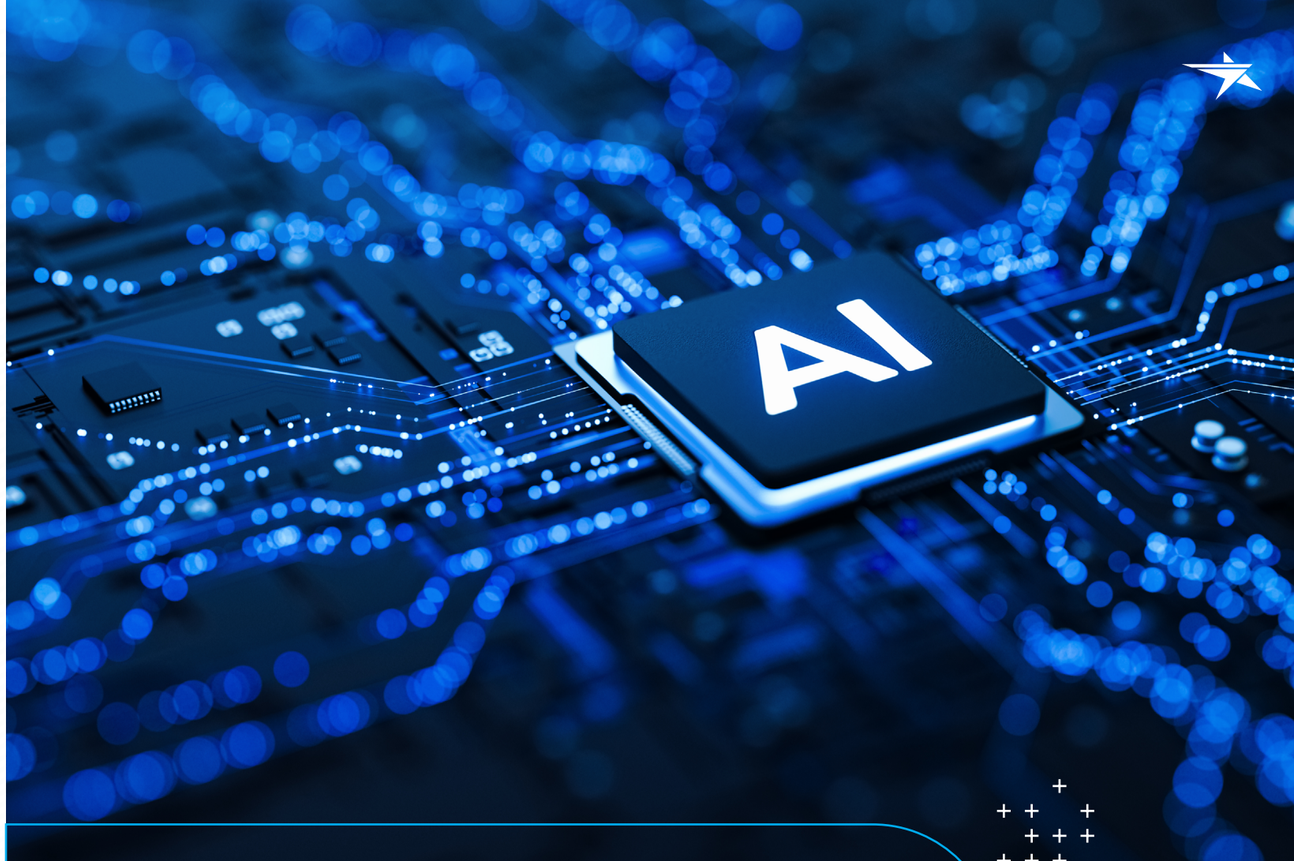
Without planning, that gap can turn what a family assumed was a non-issue into a real estate tax exposure. As an example, a Qualified Domestic Trust can bridge it, but only if it's put in place with enough lead time to actually work, not drafted in a hurry after the fact.

It's a small piece of a much larger picture, but it illustrates the broader point well. These aren't hypothetical edge cases. They're common fact patterns for exactly the families this industry serves, and they're entirely addressable when someone is looking for them early enough.

COORDINATED, NOT SEQUENTIAL

None of this is a criticism of how EB-5 professionals do their jobs. Immigration counsel, regional centers, and securities counsel are, rightly, focused on getting the case approved. But an approved petition and a sound financial plan are two different outcomes and treating them as sequential rather than parallel is where families lose ground.

The investors who come through the EB-5 process most well-equipped are the ones whose immigration counsel and financial advisors are talking to each other from the start, not comparing notes after the fact. That coordination doesn't need to be complicated. It mostly needs to start early enough to matter.



ARTIFICIAL INTELLIGENCE AND THE EB-5 ECOSYSTEM

Adaptation, Responsibility, and the Future of Professional Value

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Artificial intelligence (AI) is everywhere right now, and the conversation around it tends toward extremes. Ask one person, and they will tell you it is the most transformative technology since the arrival of the internet. Ask another, and it is an existential threat that will hollow out entire professions. In EB-5, the question lands close to home. Immigration attorneys, broker-dealers, regional centers, fund administrators, escrow agents, migration agents, consultants, investors, practically everyone is wondering some version of the same thing: Is AI coming for my job?

I do not think so. But I also do not think the question is quite right.

During my decades on Wall Street and now in the EB-5 industry, I have witnessed several waves of technological innovation. We all anticipated that each wave would significantly transform how professionals perform their work. While each brought disruption, none eliminated the need for expertise. Instead, they changed the definition of expertise and where professionals created value.

The more interesting question is what we choose to do next. Every major technological shift in modern history has changed where professional value comes from, not whether it exists. The people who adapted became more productive. The ones who dug in and waited it out generally fell behind. There is no reason AI will be any different.

AI will automate many repetitive tasks that currently fill professional hours. That is not a threat, but an opportunity: increased capacity and bandwidth. Freed from lower-value tasks, professionals can spend more time on the things that actually matter: judgment, relationships, strategic thinking, and accountability. AI will not make expertise obsolete. It will make it easier to distinguish genuine expertise from the mere possession of information. It will also raise the bar for everyone.

That distinction is especially important in EB-5. The program touches immigration law, securities regulations, project finance, compliance, due diligence, investor relations, and ongoing reporting. No technology can fully replicate that level of complexity.

WE HAVE BEEN HERE BEFORE

The fear of technology disrupting everything is not new. When the internet went mainstream, the predictions were bleak. Retail would collapse. Traditional business models would disappear. Unemployment would surge. That is not what happened. New industries emerged. Small businesses found customers they never could have reached before. Entrepreneurship expanded rather than contracted.

Video conferencing tells a similar story. Before it became routine, companies spent enormous amounts on travel to have face-to-face meetings. Reducing that need did not diminish business activity. It made business activity more efficient. Geography stopped being a limiting factor. People gained access to opportunities that once depended heavily on location or substantial financial resources.

AI is the next step in that evolution. Like the internet, it puts capabilities in the hands of people who previously lacked access to them. Like virtual communication, it reduces time spent on routine tasks, allowing professionals to focus on work that creates greater value.

The calculator is worth considering here as well. When it arrived, there was genuine concern that people would lose the ability to perform arithmetic. Instead, it eliminated the drudgery of manual calculation and allowed engineers, scientists, and financial professionals to devote their energy to more complex problems. Education gradually shifted away from memorizing formulas toward understanding them well enough to apply them in new ways.

AI is likely to push us in the same direction. The professionals who thrive will be those who understand how to use these tools effectively, not simply those who have access to the information these tools provide.

Information is getting cheap. The ability to do something useful with it is not.

AI may narrow the gap between access to information and access to expertise. It does not eliminate the distinction between information and wisdom.

TECHNOLOGY AS A TOOL: THE RESPONSIBILITY OF CHOICE

Whenever I think about how to frame AI for clients or colleagues, I keep coming back to two analogies that I find genuinely useful.

The first is rain. Technological progress is going to continue whether any of us likes it or not. We have about as much influence over that as we do over the weather. Rain itself can be beneficial. In measured quantities, it sustains crops, fills reservoirs, and supports ecosystems. Communities build infrastructure specifically to capture and benefit from it.

But unmanaged water is also destructive. Floods wipe out communities. Hurricanes and tsunamis devastate lives and infrastructure. The water itself is not the variable. Preparation and management are.

That is where we stand with AI. We are not going to stop it. Our responsibility is to prepare thoughtfully, establish appropriate safeguards, and figure out how to use it well.

The second analogy is medicine or exercise. This one is different because it involves genuine choice. Properly prescribed medicine can heal. Exercise, done appropriately, strengthens us. Used recklessly, either can cause harm. The difference lies in the judgment behind its use.

Professionals retain meaningful control over how they bring AI into their practices. We decide which tools to adopt, where human oversight remains non-negotiable, and which applications carry risks that are not yet worth taking.

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The challenge in EB-5 is therefore twofold: adapting to technological changes already underway, while making deliberate and sound decisions about how these tools become integrated into work that affects people's money, immigration status, and futures.

GOVERNANCE, ACCOUNTABILITY, AND RESPONSIBLE ADOPTION

The debate about whether to use AI in EB-5 professional practice is largely over. Almost everyone is using AI. The better question is how, not whether.

Every firm should be asking several practical questions. What information can appropriately enter AI systems, and what absolutely cannot? What should a proper review process look like for work product assisted by AI? What cybersecurity protections should we implement? Where should human review and approval remain mandatory, regardless of what the technology suggests?

These are not abstract questions in EB-5. The fund source documentation contains some of the most sensitive financial information imaginable, including tax returns, business records, and asset histories. Offering materials carry securities law implications. Regional centers and service providers maintain extensive investor data.

Improper use of AI involving confidential information is not a hypothetical risk.

There is also something worth noting about how mistakes are perceived when AI is involved. Society often appears more forgiving of human error than of errors associated with AI-assisted processes. Whether that is fair is debatable. However, it reinforces an important principle. AI may support professional judgment, but it cannot replace it. Responsibility ultimately remains with the professional using the tool.

In practical terms, immigration attorneys remain responsible for the quality of their filings. Broker-dealers remain accountable for their due diligence and regulatory obligations. Regional centers remain responsible for compliance and investor communications. Fund administrators own the disbursement authorizations they issue. Escrow agents remain responsible for safeguarding investor funds and releasing them only with proper authorization.

Source of funds review and investor due diligence, among the most sensitive and consequential work in EB-5, represent areas where the risks of AI over-reliance are especially high and where human judgment must remain firmly in the lead.

AI can make these professionals more efficient.

It cannot relieve them of responsibility.

As information becomes more widely accessible, the judgment required to interpret that information correctly becomes more valuable, not less.

HOW AI WILL CHANGE EB-5 ROLES

Immigration attorneys get some of the most obvious immediate benefits. AI reduces the administrative burden by organizing documentation, translating records, identifying missing information, and preparing initial drafts. The substantive work, however, remains demanding. Knowing which facts matter to an adjudicator, framing a complicated source of funds narrative persuasively, and identifying issues likely to trigger an RFE before they arise still require a seasoned eye. Those are precisely the aspects of the process that cannot simply be prompted away.

The result will not be fewer immigration attorneys.

It will be more efficient ones.

Broker-dealers are likely to find that investors arrive at conversations better prepared than they did in the past. In my experience, this is a positive development. Better-informed investors ask better questions and often make better decisions.

That said, information is not advice.

The experienced advisor remains the person who identifies risks buried deep within an offering memorandum, challenges assumptions that might otherwise go unquestioned, and recognizes structural concerns that become apparent only through experience. The value proposition shifts, but it does not disappear.

Regional centers, fund administrators, and escrow agents operate in a regulatory environment that continues to grow more complex. AI tools that improve disclosure processes, identify reporting anomalies earlier, and streamline investor communications can provide substantial benefits.

The same principle applies here as elsewhere in the industry: AI may assist the process, but the professional remains accountable for the final work product.

Investors benefit from all of this as well. Better tools, more accessible information, and more sophisticated questions contribute to a healthier ecosystem. However, being informed about EB-5 is not the same as understanding it. Immigration law, securities considerations, job creation methodologies, and compliance obligations take years to master.

Using AI to bypass experienced guidance in a program as complex as EB-5 is a risk that is not worth taking.

WHAT THIS MEANS FOR THE INDUSTRY

The honest bottom line is that AI will make it harder to be mediocre.

Routine work becomes automated. Basic information becomes increasingly accessible. If a professional's value depended primarily on possessing information that clients could not easily obtain elsewhere, that value proposition would weaken.

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What remains, and arguably becomes more valuable, is judgment, experience, accountability, and the willingness to provide advice that clients may not always want to hear.

Clients and investors will expect more: faster responses, sharper analysis, and clearer communication. Professionals who use these tools thoughtfully will deliver those outcomes. Those who ignore them may find it increasingly difficult to keep pace.

In my own practice, I initially approached AI cautiously. Like many professionals, I was concerned that clients and colleagues might judge mistakes made with AI assistance more harshly than ordinary human errors. Over time, however, I found that these tools significantly improved efficiency. Tasks that once consumed hours can often be completed in a fraction of the time, allowing more attention to be devoted to analysis, judgment, and client service.

What has not changed, and has arguably become even more important, is the human judgment that sits behind all of it.

The goal is not to adopt every tool that becomes available, nor is it to delegate important decisions to a machine. It is to integrate AI responsibly, protect confidential information, maintain meaningful human oversight, and uphold the standards that make the EB-5 industry function.

CONCLUSION

EB-5 investors are not going to stop needing guidance. The program is too complex, the stakes are too high, and the combination of immigration and investment risk is too specialized for individuals to navigate successfully on their own, regardless of the tools available to them.

Experienced professionals are not going anywhere. The investor is not going anywhere either.

What will change is how professionals deliver value and what clients expect in return.

The advantage goes to professionals who understand what AI can do, what it cannot, and who use it in the service of their clients rather than in place of their own judgment.

For those committed to excellence, this should not appear as a threat but rather as an opportunity.

AI will not replace experienced professionals in EB-5.

It will make clear which ones deserve the title.

OVERSIGHT AS LIABILITY

SEC Enforcement and Investor Litigation Post EB-5 Reform and Integrity Act of 2022

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ntroduction

The EB-5 Reform and Integrity Act of 2022 ("RIA"), enacted as Division BB of the Consolidated Appropriations Act of 2022, Pub. L. 117-103 (Mar. 15, 2022), is the most significant statutory overhaul of the EB-5 Immigrant Investor Program since 1990. Its separate account requirement for investor funds, USCIS debarment authority over regional center principals, promoter compensation disclosure mandate, enhanced business plan certification requirements, and new regional center reauthorization framework collectively address structural fraud vulnerabilities the program exhibited across three decades of enforcement history.

The reforms are real and the improvements to program integrity are material. But the RIA operates on the immigration program framework; it does not amend the Securities Act of 1933, the Securities Exchange Act of 1934, or the Investment Advisers Act of 1940. Regional centers that satisfy every USCIS compliance obligation remain fully subject to the federal anti-fraud provisions and to private investor litigation under those statutes and applicable state blue sky laws. The theories of liability that drove the pre-RIA enforcement record — misappropriation through commingling and diversion of investor funds, material misrepresentation regarding use of proceeds, and unregistered broker-dealer activity in the distribution network — remain available to the SEC and to private plaintiffs without modification.

This article examines what the enforcement record reveals about recurring liability patterns, how the RIA's integrity provisions interact with the securities law compliance framework, and what the resulting landscape requires of securities counsel advising regional centers, NCEs, and investors.

II. SECURITIES LAW FRAMEWORK FOR EB-5 OFFERINGS

EB-5 investments are securities. The SEC has consistently treated NCE interests — whether structured as limited partnership interests, LLC membership interests, or promissory notes — as investment contracts under SEC v. W.J. Howey Co., 328 U.S. 293 (1946): investors contribute money to a common enterprise with an expectation of profit derived from the efforts of the regional center and developer. EB-5 offerings are made under two co-equal exemption frameworks. Regulation S governs offers and sales to non-U.S. persons in offshore transactions, and has historically been the dominant exemption given the predominantly foreign national investor base — principally from China, Vietnam, South Korea, and, increasingly, India. Regulation D, Rule 506(c) — which permits general solicitation to verified accredited investors — has become the prevailing domestic exemption, driven by the growth of the U.S.-resident Indian H-1B population pursuing EB-5 as a path to permanent residence. Reliance on either exemption is an exemption from Securities Act registration only; neither provides shelter from the anti-fraud provisions of Securities Act Section 17(a) or Exchange Act Section 10(b) and Rule 10b-5. An offering properly exempt from registration but containing a material misstatement or omission is subject to full SEC enforcement and private plaintiff liability.

The investment adviser overlay is also significant. Entities that provide individualized investment advice to prospective EB-5 investors regarding project selection — including overseas migration agents and domestic consultants who steer clients toward particular offerings — may qualify as investment advisers under the Investment Advisers Act of 1940, triggering independent registration obligations and a fiduciary duty that the undisclosed receipt of referral fees from regional centers directly violates.

III. THE RIA'S INTEGRITY PROVISIONS AND THEIR SECURITIES LAW INTERACTION

Separate Account Requirement. The RIA requires NCEs to maintain EB-5 investor capital in a separate account, segregated from the regional center's general operating funds and from other project accounts. This requirement does not restrict the release of funds to the JCE; investor capital may be transferred to the JCE in the ordinary course without USCIS adjudication as a release condition. The separate account requirement is nonetheless a meaningful integrity measure: segregated accounts are materially easier to trace and audit, facilitate the work of receivers in enforcement proceedings, and create a documentary record that supports both SEC investigation and criminal prosecution. The requirement does not prevent diversion after release to the JCE. Rather, it substantially complicates concealment of misappropriation at the point of initial fund handling — precisely where pre-RIA frauds most commonly began.

I-526E Filing Sequencing and the Behring Settlement. The RIA introduced a sequencing requirement: investors generally may not file Form I-526E until the regional center's Form I-956F application has received a USCIS file receipt acknowledgment, or ten days have elapsed from I-956F filing, whichever occurs first. This framework emerged from litigation; the RIA as initially implemented required I-956F approval before investors could file, effectively freezing petition rights during the adjudication backlog. In Behring Regional Center LLC v. Mayorkas, No. 3:22-cv-02487 (N.D. Cal. 2022), the court issued preliminary injunctive relief, and the subsequent settlement established the current receipt-or-ten-day standard. Offering documents must accurately describe this timeline; misrepresentation of when investors may file I-526E is a material omission.

Promoter Compensation Disclosure. The RIA prohibits immigration-contingent compensation unless it is disclosed in the offering documents. This codifies a long-standing SEC anti-fraud disclosure obligation but does not resolve the broker-dealer registration question. As established in In the Matter of Ireeco, LLC, Exchange Act Release No. 73290 (Oct. 3, 2014), persons receiving transaction-based compensation for EB-5 investor placement are broker-dealers under Exchange Act Section 15(a) regardless of characterization. The RIA requires disclosure of the compensation; it does not exempt the recipient from registration.

USCIS Debarment and Inter-Agency Coordination. The RIA grants USCIS authority to debar regional center principals for fraud or material misrepresentation, parallel to SEC industry bars. Both regimes frequently share a common factual predicate but operate independently. USCIS adjudicates I-526E petitions based on business plan compliance without reviewing PPMs; the SEC reviews Form D filings without access to USCIS compliance records. A regional center that maintains USCIS compliance while operating a securities offering containing material misstatements is USCIS-compliant and SEC-

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actionable. The RIA recognized this structural gap without fully closing it.

IV. THE ENFORCEMENT RECORD

While the post-RIA enforcement docket is not voluminous — reflecting the typical two-to-four-year investigative lag and the disruption caused by mass USCIS regional center terminations under the reauthorization process — the SEC has brought verified EB-5 enforcement actions in 2023 and 2024. Together with foundational pre-RIA cases whose proceedings extend into the post-RIA period, these actions define the liability theories governing the EB-5 enforcement landscape.

A. Jay Peak — SEC v. Quiros and Stenger, No. 5:16-cv-00125 (D. Vt. 2016)
The Jay Peak matter remains the defining large-scale EB-5 enforcement action. The SEC alleged that Ariel Quiros and William Stenger raised approximately $200 million from roughly 700 investors for Vermont resort development projects, then misappropriated approximately $50 million in a Ponzi-like structure, in violation of Securities Act Section 17(a) and Exchange Act Section 10(b)/Rule 10b-5. A permanent receiver was appointed; civil settlements and criminal guilty pleas followed; receivership distribution proceedings have continued into the post-RIA period. Jay Peak is the paradigm case for the commingling-and-diversion pattern: funds were pooled across multiple project entities and diverted while USCIS filings and investor communications contemporaneously misrepresented project status. The case also illustrates the inadequacy of USCIS-only oversight: the Vermont projects accumulated USCIS approvals while the underlying financial structure was fraudulent throughout, underscoring that USCIS adjudication provides no assurance against securities fraud.

B. Use-of-Proceeds Fraud — SEC v. Dargey, No. 2:15-cv-01350 (W.D. Wash. 2015); SEC v. Sethi, No. 1:13-cv-00982 (N.D. Ill. 2013)
Path America and the Chicago Convention Center matter define two recurring EB-5 fraud variants. In Path America, the SEC alleged that Lobsang Dargey diverted approximately $17.6 million of the $68 million raised for Seattle-area development to unrelated investments and personal use; Dargey was permanently enjoined and ordered to disgorge proceeds. In Sethi, the SEC alleged that Anshoo Sethi solicited $145 million using offering documents that fabricated governmental permits and construction status; a preliminary injunction and asset freeze were granted and Sethi subsequently settled. Together these cases establish the two principal variants of use-of-proceeds fraud: diversion of funds after receipt, and misrepresentation of project readiness to induce investment. Both apply with equal force post-RIA, and the Sethi fabricated-permit variant maps directly onto the enhanced I-956F business plan certification requirements — a false certification to USCIS is simultaneously a misrepresentation to investors.

C. Unregistered Intermediaries — In the Matter of Ireeco, Exchange Act Release No. 73290 (Oct. 3, 2014)
In Ireeco, the SEC found that the respondent acted as an unregistered broker-dealer by soliciting EB-5 investors and receiving transaction-based compensation, in violation of Exchange Act Section 15(a). Ireeco established the controlling principle for the overseas migration agent ecosystem: transaction-based compensation for EB-5 investor placement constitutes broker-dealer activity requiring registration, regardless of how the recipient characterizes its services. Regional centers distributing through unregistered intermediaries assume independent enforcement exposure and face potential control person liability under Exchange Act Section 20(a) for the intermediary's conduct.

D. Post-RIA: SEC v. Ahmed, et al., No. 23-civ-10210 (S.D.N.Y. filed Nov. 21, 2023)
In the first significant post-RIA EB-5 enforcement action, Litigation Release No. 25897, the SEC charged Nadim Ahmed, NuRide Transportation Group, LLC, and NYC Green Transportation Group, LLC with fraud in securities offerings raising more than $66 million from over 100 EB-5 investors. The complaint alleges that Ahmed falsely represented that NYC Green — the designated NCE — would operate a qualifying transportation business and that management had contributed $11 million when, in fact, NuRide, not NYC Green, held key revenue contracts, and investor proceeds were misapplied. Ahmed also allegedly used one investor's funds to pay a portion of a prior SEC settlement. The SEC additionally charged an immigration attorney and the law firm with selling unregistered securities — conduct extending through November 2022, into the post-RIA period. The complaint charges Ahmed, NYC Green, and NuRide under Securities Act Section 17(a) and Exchange Act Section 10(b)/Rule 10b-5, and the remaining defendants under Securities Act Sections 5(a) and 5(c). A parallel criminal proceeding in the Southern District of New York was dismissed without prejudice in January 2026 at the government's request. Notably, USCIS had approved over 74 NuRide investor petitions before the SEC complaint was filed, and subsequent petition denials cited the SEC action — a concrete illustration of the dual-regulator gap.

E. Post-RIA: SEC v. Azarmehr, et al., No. 2:24-cv-00707-JCM-MDC (D. Nev. filed Apr. 11, 2024)
In April 2024, through Litigation Release No. 25975, the SEC charged Lixin Azarmehr, JL Real Estate Development Corporation, Nevada Skilled Nursing Lender, LLC, and Nevada Skilled Nursing Development, LLC with EB-5 offering fraud. The SEC alleged that Azarmehr diverted approximately $10 million raised for the construction of three Las Vegas skilled nursing facilities to an unrelated real estate venture, pledging EB-5 funds as brokerage collateral where they were unavailable for their promised use. On September 24, 2025, the court entered final judgment against all defendants, Litigation Release No. 26412, permanently enjoining them, imposing a ten-year bar from any EB-5 offering, and ordering a $75,000 civil penalty. Azarmehr is a fully post-RIA action — complaint and judgment both entered after the RIA's enactment — confirming that the use-of-proceeds misrepresentation theory and the SEC's willingness to pursue EB-5 offering fraud are unchanged.

V. COMMON THEMES ACROSS THE ENFORCEMENT RECORD

Four structural patterns recur with sufficient consistency to define the compliance risk framework in the post-RIA environment.

Commingling and Diversion. In every major enforcement action, investor harm resulted from the commingling of EB-5 capital with other accounts and its subsequent diversion to undisclosed uses, including personal expenditures, unrelated

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business ventures, or obligations to earlier investors. The RIA's separate account requirement directly addresses the commingling predicate, making diversion more difficult to execute and materially easier to detect and trace in enforcement proceedings. This is a genuine structural improvement. It does not, however, prevent diversion of funds after they have been properly released to the JCE, nor does it substitute for independent oversight of fund deployment within the project structure.

Use-of-Proceeds Misrepresentation. The material misstatement at the center of every EB-5 fraud case — including the post-RIA Azarmehr action — is the use-of-proceeds representation. This obligation extends through the offering period: material changes in how proceeds are deployed require investor notification and, where necessary, PPM amendment. Failure to update is an independent securities violation.

Unregistered Broker-Dealer Activity. Overseas migration agents and domestic finders receiving transaction-based compensation are broker-dealers under Exchange Act Section 15(a). The Ahmed case reinforces this: the immigration attorney and the firm faced registration charges for their solicitation role. Regional centers that use unregistered intermediaries may face direct enforcement exposure and potential control person liability under Section 20(a).

The Dual-Regulator Gap. USCIS business plan approval is not a defense to securities fraud, and the two regulatory frameworks do not produce consistent outcomes. Ahmed illustrates this acutely: USCIS had approved over 74 NuRide investor petitions while the underlying offering was, according to the SEC, fraudulent throughout — and subsequent denials cited the SEC complaint as a basis. Investors who fear that reporting fraud to the SEC will jeopardize their immigration petitions face a structural disincentive to reporting misconduct, potentially allowing harm to continue and delaying SEC action. The RIA's inter-agency coordination provisions recognized this dynamic without resolving it.

VI. IMPLICATIONS FOR SECURITIES COUNSEL

Four concrete obligations follow from the post-RIA enforcement record. First, the disclosure obligation is ongoing: the duty to correct material misstatements arises when counsel learns a prior disclosure is false or misleading. Construction financing defaults, permit denials, cost overruns, or adverse regulatory developments require timely investor notification and, where appropriate, PPM amendment, rather than delayed disclosure pending USCIS compliance deadlines.

Second, the separate account structure requires affirmative counsel review at the transactional drafting stage, not as a post-closing compliance checkbox. Counsel should confirm that the designated account is genuinely segregated from all operator funds, that account signatories and access controls are clearly documented, and that offering documents accurately describe the account structure and the conditions under which funds will be released to the JCE. Because the RIA imposes no statutory restriction on the timing of fund release, any representation in the offering documents that implies a restriction — such as language suggesting funds are held until project approval — must be carefully reviewed for accuracy. Overstating restrictions on the release of funds may itself constitute a material misstatement.

Third, every person in the distribution chain receiving transaction-based compensation must be analyzed for broker-dealer registration before capital is raised. Ahmed confirms this analysis extends to legal professionals. Where registration is required and absent, the offering is made through unlawful means regardless of the investment's merits, and the regional center faces independent liability for the unregistered intermediary's conduct.

Fourth, USCIS I-956F representations and PPM disclosures must be aligned and cross-reviewed by both immigration counsel and securities counsel working from a shared factual record. A factual misrepresentation that supports USCIS debarment may simultaneously support an SEC enforcement action and a private investor fraud claim under Rule 10b-5. Material inconsistencies between what is certified to USCIS and what is disclosed to investors generate independent exposure under both frameworks. This alignment obligation extends to the I-526E filing timeline: offering documents that describe the petition filing process must accurately reflect the Behring receipt-or-ten-day sequencing standard, including the dependence of that right on the regional center's own I-956F filing status.

VII. CONCLUSION

The RIA's integrity provisions address documented structural vulnerabilities in the EB-5 program, and the improvements to program integrity are genuine. The separate account requirement, promoter compensation disclosure mandate, and USCIS debarment authority each target mechanisms through which pre-RIA fraud was operationalized. The post-RIA enforcement record — including the 2023 Ahmed action and the 2024 Azarmehr action with its 2025 final judgment — confirms that the SEC's enforcement commitment and the liability theories developed over the pre-RIA record are fully operative.

The RIA did not amend the securities laws. The anti-fraud provisions of the Securities Act and Exchange Act apply with the same force post-RIA as before, and the structural conditions that generate EB-5 fraud — information asymmetry between operators and investors, an exemptive offering framework without mandatory pre-filing review, and an unregulated overseas intermediary distribution ecosystem — remain present. The investigative pipeline suggests that additional post-RIA enforcement actions will become public as the typical two-to-four-year investigative cycle unfolds. For securities counsel in this practice area, the post-RIA environment adds compliance obligations without reducing pre-existing ones. The RIA raised the floor. It did not lower the ceiling.

THE CASE FOR LONG-TERM EB-5 RENEWAL

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For almost 35 years, one of the federal government's most productive economic development programs has operated on a countdown clock. The EB-5 Regional Center Program is renewed for only a few years at a time (often three- or five-year terms), and each deadline raises the possibility that it won't be renewed at all. The threat is not hypothetical. In June 2021, the program stopped for nine months. Projects stalled, investors waited, and capital sat idle until Congress acted. It's an odd way to run a job creation program that works.

The program annually supports about 253,000 American jobs and generates roughly $2 billion a year in federal tax revenue ($0.9 billion from businesses and $1.1 billion in personal income tax), according to a 2025 Fourth Economy study cited by IIUSA. It accomplishes this without a dollar of taxpayer funds.

Admittedly, the program has taken some reputational hits over the years. A handful of highly publicized fraud cases led to Congress passing the EB-5 Reform and Integrity Act (RIA) in 2022, a sweeping overhaul that added transparency, accountability and oversight.

This past July, the Department of Homeland Security (DHS) published more than 350 pages of proposed rules. A program that is getting a comprehensive rulebook deserves a permanent statutory home. The industry's immediate priority is the next reauthorization, and it should be. However, when the program comes up for renewal in 2032, Congress should establish a long-term renewal and perhaps even a permanent reauthorization.

EB-5 DEVELOPMENT CAPITAL TRANSFORMS URBAN HIGH UNEMPLOYMENT AND RURAL COMMUNITIES

Since the RIA took effect, EB-5 has brought about $16 billion of investment and 400,000 jobs to American communities, according to IIUSA. In a typical year, roughly 3,300 investors put about $2.7 billion of EB-5 capital into U.S. projects. That capital anchors about $11.5 billion in total private investment and generates $18.7 billion in taxable wages.

The bigger change resulting from the RIA is where that money goes. The RIA reserved 20 percent of available visas for rural projects along with priority processing, 10 percent for high-unemployment areas, and 2 percent for infrastructure. Those incentives worked. Rural EB-5 investment grew from about $354 million before the RIA to $7.6 billion after it, and total spending on those rural projects grew from $2.25 billion to more than $20 billion. More than 9,500 investors have backed approximately 105 rural projects in 97 communities across 26 states, associated with about 144,000 jobs.

That is what democratization looks like in practice. Before 2022, only a sliver of EB-5 capital reached rural America. In the first 18 months after the RIA, 63 percent of investors chose high-unemployment projects and 32 percent chose rural ones, according to IIUSA data. Today, filings are split nearly evenly, roughly 51 percent high-unemployment and 49 percent rural. The program no longer serves a handful of big cities; it now reaches communities in every corner of the country, and it builds a wide range of projects.

Four sectors show the range: manufacturing, healthcare and human services, housing, and infrastructure and logistics. In each one, a rural project and an urban project are doing similar work in very different places.

Manufacturing. In rural Bulloch County, Georgia, EB-5 is financing a 282,500-square-foot plant that makes bumpers and other components for the electric and hybrid vehicles built at Hyundai's nearby metaplant. The project is expected to support 2,230 jobs and add $644 million in regional output. Just-in-sequence manufacturing requires parts to reach the assembly line within hours, so most of those jobs will be with local suppliers. In Victorville, California, where the project's census tract has 14.9 percent unemployment, an established jerky maker is using EB-5 capital to expand into pet food manufacturing, a project expected to support about 740 jobs.

Healthcare and human services. A substance-use treatment facility in rural Ladoga, Indiana, is adding detox beds the region lacks; the nearest alternatives are 60 to 90 minutes away. It primarily serves Medicaid patients, who often wait for care. This can transform lives, increase earnings and productivity, rebuild families, and strengthen communities. In Cincinnati, an existing hotel in a census tract with 26.2 percent unemployment, about five times the national rate, is becoming a 171-bed assisted living and post-acute care center. It will offer Alzheimer's care, brain and spinal injury rehabilitation, and an urgent care clinic, and 101 of its beds are reserved for Medicaid residents.

Housing. A housing shortage looks different in a small town than in a big city and EB-5 is addressing both. In Chadron and Ogallala, Nebraska, it is financing 78 apartments in two towns that have added essentially no new rental housing in a decade, where rents keep rising and vacancy runs as low as two percent. On Mother Gaston Boulevard in Brooklyn, where the census tract's unemployment rate is 23.4 percent, EB-5 capital is helping build 62 apartments, 15 of them affordable, above 20,000 square feet of retail space. Together, the two projects are expected to support more than 800 jobs.

Infrastructure and logistics. In the Texas Hill Country, EB-5 capital is paired with federal and state broadband grants to bring fiber internet to more than 8,400 unserved rural homes and businesses across nine counties. High-speed internet improves access to education and online degrees, telehealth and counseling services, and remote employment. At Detroit Metro Airport, EB-5 is helping finance a $423 million air cargo facility for FedEx, a project expected to support 3,120 jobs, according to IIUSA. The facility doubles FedEx's package-sorting capacity at the airport, and airport officials say it signals to companies weighing a move or expansion that the region can handle all its air cargo needs.

It would be more difficult, if not impossible, to build these projects without the EB-5 program.

THE HIDDEN COSTS OF WAITING FOR EB-5 REAUTHORIZATION

Since 1992, the EB-5 program has been extended roughly 35 times, typically in three-year terms until 2015. Between 2015 and 2021, extensions were tied to government spending bills, in stopgaps of a year or less. When the program's authorization lapsed from June 2021 to March 2022, USCIS couldn't approve regional center petitions and pending cases froze. Projects that had counted on EB-5 capital had to find bridge financing, slow down, or stop.

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Today, 71 rural projects are in the market raising capital. Together they represent about $4.4 billion of investment and more than 91,000 jobs, according to IIUSA. High-unemployment projects account for roughly half of all EB-5 filings since the RIA, so the full pipeline at risk is likely about twice that and every project in it depends on the program's reauthorization before the next deadline.

The risk exposure starts long before the deadline arrives. A regional center can't promise a developer that capital will keep arriving past a sunset date. Some developers respond by waiting for reauthorization. When groundbreaking is delayed, the housing, plant, or clinic arrives later than it should, assuming it is built at all.

Deadlines also distort the flow of capital. Instead of a steady inflow, the market gets peaks and valleys tied to legislative dates. Investors rush to file before a cutoff and rushed petitions are weaker petitions. Qualified investors get denied because of deficiencies in a hastily prepared filing. That is a loss for the investor, the project, and the program's credibility. A long-term authorization (or even a permanent program) would give regional centers time to build lasting relationships with overseas capital sources instead of sprinting from one deadline to the next.

HOW EB-5 ASSURANCE AND PREDICTABILITY INFLUENCES ECONOMIC DEVELOPMENT

A long-term authorization wouldn't freeze the program's economics. Investment minimums and fees will still adjust for inflation on their regular schedule. What goes away is the question of whether the program will exist, and with it a risk that investors and developers now price into every deal. Remove that risk and sponsors gain longer marketing runways, which could make EB-5 capital easier and cheaper to raise.

Regional development agencies would feel the difference, too. A county economic development office can build EB-5 into a ten-year strategy only if it trusts the program will still be there. The ripple effects follow with repeat investments in the same communities, local contractors and suppliers who can count on steady work, and a tax base that grows instead of spiking around deadlines.

Still, there is an argument that renewal deadlines force action. A potential sunset gives the industry a reason to engage with lawmakers and Congress a reason to act. In fact, the RIA came out of a reauthorization negotiation. However, deadlines aren't the only way reform happens. Permanent programs are amended all the time. The industry has made significant relationships with lawmakers over the years that it can continue to call on when program adjustments are needed.

A long-term authorization or program permanence frees the EB-5 industry and Congress to focus their attention on improving the program (e.g., securing more visas, age-out relief, implementing a USCIS advisory committee, etc.) instead of debating whether it should exist at all.

THE INDUSTRY IS READY FOR LONG-TERM PREDICTABILITY

A long-term or permanent EB-5 Regional Center Program needs oversight that runs every day, not only when a deadline forces a review. The fair question is whether EB-5 has that. Increasingly, it does.

The statutory guardrails are in place. The RIA provides for fund administration and separate EB-5 bank accounts, five-year audits, site visits, background checks on regional center principals, and strong sanctions for violations. Market practice has evolved to incorporate these rules and safeguards.

Oversight works only if it follows how EB-5 capital actually moves. For example, the money doesn't arrive in one lump and disappear into a project. It moves in stages, from escrow release to drawdowns into the job-creating entity, then to repayment, and sometimes redeployment. Each stage is a point where capital can be verified or where it can go astray. Operational awareness means watching every stage and getting ahead of potential issues.

Fund administration is the function that makes that oversight continuous. An independent administrator checks each release and drawdown against the offering documents and the project budget, traces capital to the investor and the project, and keeps records that are ready for an audit or a site visit at any time. That is the oversight a permanent program needs, and it already exists.

The natural worry is that heavier compliance favors large players. The market says otherwise. Smaller regional centers and first-time developers are closing successful raises. Fund administration costs little relative to the capital it protects, and many regional centers take on third-party projects while keeping oversight in-house. The additional compliance guardrails have not been a barrier to entry for smaller players, which supports the democratization of projects in high unemployment and rural areas that need the capital the most.

The economic results are documented. The rulebook is being written, and the guardrails exist. What's missing is the certainty that would let all of it compound.

None of this means skipping the next step. Reauthorization comes first, and the industry should support it. The next five years should be used to show how the reforms are working, to collaborate with regulators to establish workable final rules, and build the record that makes 2032 the year Congress makes the Regional Center Program a truly long-term reality, if not permanent.

ENDNOTES

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CanAm, rural broadband offering: https://www.canamenterprises.com/projects/current-eb-5-offering/

FROM STATUTE TO RULE

What the NPRM Comment Record Says About Where EB-5 Stands

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Four years separate the EB-5 Reform and Integrity Act of 2022 (RIA)[1] from the Department of Homeland Security's (DHS) first comprehensive attempt to implement it by regulation. On July 2, 2026, DHS published a Notice of Proposed Rulemaking (NPRM), EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB-5 Program; Automatic Revocation of Petitions for Immigrant Classification, 91 Fed. Reg. 40,676 (DHS Docket No. USCIS-2026-0100).[2] The comment period closed on August 31, 2026. In the intervening four years, the industry operated under a statute, a Policy Manual, a set of forms, and an accumulating body of adjudication practice, but not under a rule.

The NPRM therefore does two things at once. It codifies practices the industry has lived with since 2022, and it proposes departures from that practice that the statute did not obviously require. The comment record is the industry's collective reaction to both. This article reads that record not for the merits of any single provision, but for what it reveals: where commenters converged, where they split, which voices appeared that usually do not, and what was left unsaid. Read that way, the docket is a reasonably candid statement of what practitioners and investors actually care about four years into the RIA era.

I. THE RECORD ITSELF

The docket lists 463 published comments.[3] Roughly half were filed anonymously. Of the named submissions, only about fifty came from institutions: trade associations, regional centers and issuers, law firms, fund administrators, broker-dealers, and economists. The remainder, several hundred, were individuals, most self-evidently EB-5 investors, some saying so in the title of the submission. Regulations.gov flagged only a couple of entries as duplicate mass-mail submissions, which suggests that the remaining comments were written individually rather than generated by a campaign.

That composition is the first observation. The industry chose consolidation; investors chose volume. Invest in the USA (IIUSA) organized eleven working groups and more than forty-five contributors to produce over 150 pages of comments,[4] and the American Immigration Lawyers Association (AILA)[5] and the American Immigrant Investor Alliance (AIIA)[6] each filed comprehensive letters. A number of regional centers and service providers, including the authors' own firms, filed separately as well. But the raw count belongs to investors, and the two populations did not prioritize the same provisions.

A note on method: we reviewed the full docket listing, read the principal institutional submissions (IIUSA, AILA, AIIA, and a selection of other filings), and sampled individual comments across the docket. The observations below are qualitative and approximate, and they are ours alone.

II. WHERE THE RECORD CONVERGED

Four provisions drew aligned comment from every constituency.

The first is bridge financing. Proposed 8 CFR 204.407(e)(1) would deny job-creation credit for financing repaid with EB-5 capital, relying on the RIA's substitution of "by" for "and" in INA 203(b)(5)(A)(ii). IIUSA observed that the preamble concedes the legislative history is silent on that change and that the proposal upsets more than a decade of settled policy dating to the May 30, 2013, policy memorandum (PM-602-0083).[7] AILA proposed a bridge-term cap and a percentage-of-cost cap as less restrictive alternatives.[8] AIIA listed bridge financing among its six priorities.[9] And individual investors, in letters that otherwise said nothing about project finance, asked DHS to apply any change prospectively only. When a project finance question generates unprompted comment from individual investors, it has stopped being a technical issue.

The second is the definition of "person involved" at proposed 8 CFR 204.401. IIUSA, AILA, and AIIA each argued that converting the statute's functional test (substantive authority over EB-5 capital) into a status-based test that reaches limited partners by title alone exceeds the statute and, as IIUSA put it, contradicts the NPRM's own statement that the RIA "permits a largely passive investment."[10] The cascading Form I-956H and biometrics burden that follows was the practical concern; the statutory-authority argument was the legal one.

The third is source of funds for non-EB-5 capital. Proposed 8 CFR 204.407(c)(4) would require that the source of all capital invested in the new commercial enterprise or provided to the job-creating entity be identified, documented, and lawful. Commenters from IIUSA to AILA to individual business plan writers made the same point from different angles: an individual investor has no contractual or practical ability to document a construction lender's balance sheet, and INA 203(b)(5)(L) places the burden on the investor's own capital.

The fourth is the effective date. Nearly every institutional comment and many individual comments asked that the rule

[1] Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. BB, 136 Stat. 49, 1070 (2022) [hereinafter RIA]. The RIA was enacted on March 15, 2022.
[2] EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB-5 Program; Automatic Revocation of Petitions for Immigrant Classification, 91 Fed. Reg. 40,676 (proposed July 2, 2026) (to be codified at 8 CFR parts 204 and 216), https://www.federalregister.gov/documents/2026/07/02/2026-13392 [hereinafter NPRM].
[3] Regulations.gov, Docket No. USCIS-2026-0100, https://www.regulations.gov/docket/USCIS-2026-0100/comments (last visited October 8, 2026). The comment count, the share of anonymous submissions, and the characterization of submitters are the authors' own tabulation of the public docket as of that date and should be treated as approximate.
[4] Press Release, Invest in the USA, IIUSA Submits Comprehensive Comments on DHS EB-5 Notice of Proposed Rulemaking (September 1, 2026), https://iiusa.org/press-release-invest-in-the-usa-iiusa-submits-comprehensive-comments-on-dhs-eb-5-notice-of-proposed-rulemaking/; Invest in the USA, Comments on DHS Docket No. USCIS-2026-0100 (August 2026), https://iiusa.org/wp-content/uploads/2026/09/IIUSA-DHS-NPRM-Full-Comments.pdf [hereinafter IIUSA Comments].
[5] American Immigration Lawyers Association, Comment on DHS Docket No. USCIS-2026-0100, AILA Doc. No. 26083104 (August 31, 2026), https://www.aila.org/advocacy-tools/aila-submits-comment-on-the-eb-5-reform-and-integrity-act-of-2022-nprm [hereinafter AILA Comments].
[6] American Immigrant Investor Alliance, Comment on DHS Docket No. USCIS-2026-0100, Comment ID USCIS-2026-0100-0198 (August 2026), https://www.regulations.gov/comment/USCIS-2026-0100-0198 [hereinafter AIIA Comments]; see also American Immigrant Investor Alliance, Investor-First Comment on New Proposed EB-5 Rules (September 13, 2026), https://goaiia.org/blog/investor-first-comment-on-new-proposed-eb5-rules/.
[7] IIUSA Comments, supra note 4 (bridge financing); see U.S. Citizenship & Immigration Services, Policy Memorandum PM-602-0083, EB-5 Adjudications Policy (May 30, 2013), the substance of which now appears in 6 USCIS Policy Manual, pt. G, ch. 2.
[8] AILA Comments, supra note 5 (proposing that job-creation credit be preserved where the bridge term does not exceed three years and the bridge financing does not exceed seventy percent of total project costs).
[9] AIIA Comments, supra note 6.
[10] NPRM, supra note 2, at 40,708; IIUSA Comments, supra note 4 (definition of "person involved").

Continued On Page 52

not reach petitions and project applications already on file. AILA devoted a section to transition and grandfathering; AIIA made the effective date one of its six topics; investors with pending I-526E petitions wrote to ask that pending cases keep current Policy Manual treatment.

III. WHERE IT SPLIT

The more revealing provisions are those on which the docket did not speak with one voice. These are particularly dangerous because history tells us that where industry stakeholders are divided, the decision makers – legislators and regulators alike – have refused to act. This has even contributed to clean reauthorizations that missed an opportunity to improve the program, and to temporary lapses of the program altogether.

The clearest is the sustainment period and redeployment. In the individual comments we sampled, the most common theme was the two-year sustainment clock: investors asked that it run from the release of capital to the new commercial enterprise, that it not be stretched by draw timing outside their control, and that redeployment not be forced on them after the period ends. The institutional comments approached the same provisions from the opposite direction. AILA argued that the NPRM's three-month default for redeployment at proposed 8 CFR 204.426(b) is commercially unrealistic, and could force issuers to redeploy funds without the time to adequately underwrite the opportunities, emphasizing that twelve months is the practical minimum.[11] The EB-5 Rural Alliance made the same twelve-month argument and asked that mandatory regional center termination, which the NPRM would impose automatically when a new commercial enterprise fails to redeploy on time, be reserved for the conduct Congress specified in INA 203(b)(5)(F)(v)(I).[12]

The proposed $1,400,000 investment threshold for high-employment areas at proposed 8 CFR 204.407(b)(3) drew opposition from AILA on the ground that it lacks a statutory basis, but we did not observe the same intensity from regional centers, most of which now raise capital almost exclusively in targeted employment areas. Silence here may reflect indifference rather than agreement.

On the issue of fund administration, a slight divergence can be attributed to position within the industry: one fund administrator commented that the audit alternative should be more comprehensive (which would narrow the margin of the cost to engage in an audit versus incorporating fund administration oversight), while some regional center commenters asked for audits to be less burdensome. There was general support for the fund administration concept as an anti-fraud/integrity measure, and several comments asking for clarity on the implementation of separate accounts and cosignatory practices. Any disagreement centers on how fund administration works in practice and the requirement's particulars, not its existence.

IV. OUTLIERS AND SILENCES

Several submissions came from constituencies rarely seen in an EB-5 docket. The Pennsylvania Turnpike Commission filed on the definition of "infrastructure project,"[13] a reminder that the RIA's infrastructure set-aside was written for public bodies that have, so far, largely not used it.[14] The U.S. Chamber of Commerce, The Real Estate Roundtable, the National Association of Realtors® (NAR), and the American Hotel & Lodging Association (AHLA) filed as well, which places EB-5 in the mainstream business-policy conversation in a way it was not before the RIA. Suzanne Lazicki, a business plan writer and the author of the widely read EB-5 Updates blog,[15] filed with a focus on the standalone direct program, a segment of the program that has few institutional advocates, addressing the multi-investor source-of-funds provision, the timing of job creation, and material change.

The most interesting outliers are a set of anonymous comments, plainly drafted with counsel-level precision, asking DHS to clarify that a good-faith investor whose at-risk capital was lost through fraud, receivership, or regional center termination should not be required to invest the statutory minimum a second time to preserve eligibility under INA 203(b)(5)(M). The proposed rule does not address the question. The comments proposed regulatory text. That someone with that level of sophistication chose anonymity says something about the population the RIA's good-faith investor protections were written for.

The silences are equally instructive. The NPRM's title includes "Automatic Revocation of Petitions for Immigrant Classification," yet among the institutional submissions we reviewed, that provision drew almost no attention. Third-party promoter registration under Form I-956K appeared in AIIA's priorities and in IIUSA's subject list but generated little independent comment. And the mandatory audit,[16] integrity fund, and annual statement provisions, which dominated industry conversation in 2023 and 2024, drew comment mainly where the NPRM would add to them, as in AILA's objection to the duplicative annual statement content at proposed 8 CFR 204.418(b)(3), rather than on the requirements themselves. Four years in, those provisions appear to be settled.

Targeted employment area methodology also drew less division than one might expect: AILA and IIUSA both argued for preserving the Census Share methodology, which pairs American Community Survey census-tract data with more current Local Area Unemployment Statistics county unemployment data, as an alternative to American Community Survey data alone.[17]

[11] AILA Comments, supra note 5 (recommending a default redeployment period of not less than twelve months from the return of capital to the new commercial enterprise, while retaining the case-by-case exception for circumstances warranting more time).
[12] Comment of the EB-5 Rural Alliance, Comment ID USCIS-2026-0100-0431 (August 2026), https://www.regulations.gov/comment/USCIS-2026-0100-0431.
[13] Comment of the Pennsylvania Turnpike Commission, Comment ID USCIS-2026-0100-0200 (August 2026), https://www.regulations.gov/comment/USCIS-2026-0100-0200.
[14] See JTC Group, Why Aren't There More EB-5 Infrastructure Projects? (July 16, 2025), https://www.jtcgroup.com/insights/why-arent-there-more-eb-5-infrastructure-projects/.
[15] Comment of Suzanne Lazicki, Lucid Professional Writing, Comment ID USCIS-2026-0100-0432 (August 2026), https://www.regulations.gov/comment/USCIS-2026-0100-0432.
[16] See JTC Group, USCIS Regional Center Audits Have Started – Here's What We Know (July 2, 2024), https://www.jtcgroup.com/insights/eb5-uscis-regional-center-audits-started/.
[17] AILA Comments, supra note 5; IIUSA Comments, supra note 4 (targeted employment areas, high unemployment).

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V. WHAT THE RECORD SAYS ABOUT PRIORITIES

Three patterns emerge.

First, the industry's energy went to reliance interests, not new rights. The provisions that drew the most institutional comment were the ones where the NPRM would reverse practice the industry has built on: bridge financing since 2013, the functional "person involved" test since 2022, biometrics reuse since 2022, and deference to prior source-of-funds determinations at the I-829 stage. IIUSA's comments repeatedly invoked the principle from FCC v. Fox Television Stations that an agency changing position must acknowledge that it is doing so and give good reasons.[18] The industry, in other words, is asking to keep what it has, not to be given something new.

Second, the investor voice is now a distinct constituency with its own priorities. The RIA created the good-faith investor protections in INA 203(b)(5)(M) and the set-aside categories that reshaped demand. The comment record shows investors, especially those from backlogged countries, engaging directly with the regulatory text on sustainment, priority-date retention, and grandfathering. Regional centers and counsel should assume that this constituency will be heard in the final rule, and that its interests will need to be accounted for as they consider how they will operate in a post-regulations era.

Third, the integrity architecture itself is no longer contested. No commenter we reviewed asked DHS to conduct fewer background checks, drop audits, or lower the fund administration requirement. IIUSA said so expressly.[19] The dispute is about scope, frequency, proportionality, and process, which is the dispute of an industry that has accepted the framework and is now arguing about how it can be complied with and administered.

CONCLUSION: THE GAP BETWEEN PROMISE AND IMPLEMENTATION

It is worth pausing on how much the RIA itself accomplished.[20] It ended a nearly nine-month lapse in the Regional Center Program, wrote that program into the Immigration and Nationality Act for the first time, and gave the industry a multi-year authorization after years of short-term extensions. It created the rural, high-unemployment, and infrastructure set-aside categories that redirected capital toward the projects Congress prioritized and, through concurrent adjustment of status filing, made EB-5 a practical option for investors already in the United States. It replaced an ad hoc integrity regime with a statutory one: fund administration, annual statements, regional center audits, the EB-5 Integrity Fund, and bona fides vetting of the people who control investor capital. And it wrote good-faith investor protections into the statute for the first time. The results are undeniable considering the record number of I-526E approvals in fiscal year 2025 and the filing surge leading into the September 30, 2026, grandfathering deadline.[21] Whatever its friction points, the RIA gave the program a foundation and sophistication it had lacked for thirty years.

The RIA promised an EB-5 program that was more secure for investors, more accountable for regional centers, and more predictable for everyone. The NPRM goes a long way toward delivering that by codifying four years of practice. Where the record pushes back, it is largely where the proposed rule goes beyond the statute, reverses settled practice without explanation, or reaches parties who cannot control the conduct being regulated.

A final rule that closes the gap would restore the functional test for "person involved," preserve bridge-financing credit within a defined replacement window, confine third-party source-of-funds obligations to what an investor can reasonably be expected to document, codify deference at the I-829 stage, state the transition rules expressly, and address the sustainment and redeployment provisions in a way that balances the priorities of the investors and issuers. The comment record has given DHS a reasonably clear map. It is also an unusually broad one. DHS received 849 comments on the 2017 EB-5 modernization proposal, roughly 560 of them from mass-mail campaigns and about 290 unique submissions. The 2026 docket is smaller in raw count but contains substantially more individually written submissions, from trade associations, investors, public agencies, and national business groups alike, a measure of how many sectors now have a stake in the program. Whether the final rule reflects that map will tell the industry how much the four years since the RIA actually changed.

[18] CFCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009); see IIUSA Comments, supra note 4 (definition of "person involved").
[19] IIUSA Comments, supra note 4 (bona fides and biometrics) ("IIUSA does not ask DHS to conduct fewer background checks. . . . The request concerns frequency, reuse, and collection methods.").
[20] See JTC Group, How the RIA Improved EB-5 (December 15, 2025), https://www.jtcgroup.com/insights/ria-improved-eb-5/.
[21] See Steven C. Reingold, Rohit Kapuria & Mine Ekim, USCIS EB-5 Updates: Policy Shifts, Adjudication Trends, and Industry Implications, IIUSA Regional Center Business Journal, Volume 15, No. 1 (April 2026) (discussing record I-526E approvals in fiscal year 2025 and the anticipated pre-deadline filing surge); RIA, supra note 1 (providing that petitions filed on or before September 30, 2026, continue to be adjudicated notwithstanding any lapse of the Regional Center Program).
[22] EB-5 Immigrant Investor Program Modernization, 84 Fed. Reg. 35,750, 35,757 (July 24, 2019) (reporting 849 comments on the 2017 proposed rule, approximately 560 from mass-mailing campaigns and 290 unique submissions), https://www.federalregister.gov/documents/2019/07/24/2019-15000.

DECIPHERING THE FY2026 I-526E STATISTICS

What the Latest USCIS & IIUSA Data Reveals About EB-5 Investor Demand and Adjudication Trends

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

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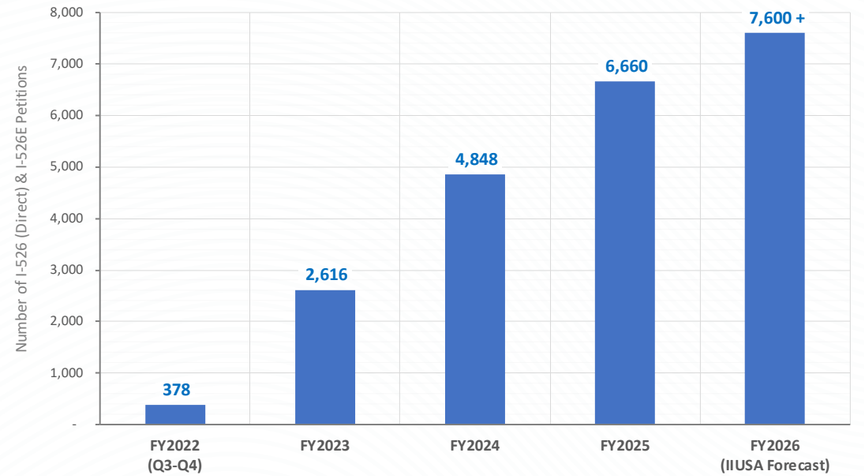
The September 30, 2026 grandfathering protection deadline for the EB-5 Reform and Integrity Act's (RIA) and the upcoming adjustment to the minimum investment amounts made fiscal year (FY) 2026 a pivotal period for the EB-5 industry. This article examines the latest Form I-526E and I-526 statistics published by U.S. Citizenship and Immigration Services (USCIS) for FY2026 and incorporates the exclusive data shared by IIUSA member regional centers to identify the current trends shaping the EB-5 market.

EB-5 Investor Demand in FY2026 Positioned to Reach a Post-RIA Record High

Figure 1: Number of Form I-526E & I-526 Filed by Fiscal Year (USCIS Data & IIUSA Forecast)



Source: USCIS & IIUSA Member Regional Centers Data

Prepared by: IIUSA

View more data on I-526/E Data Dashboard: http://iiusa.org/i526data/

According to USCIS, 5,224 Form I-526E and I-526 petitions were received during the first three quarters of FY2026, between October 1, 2025, and June 30, 2026. Although USCIS has not yet published its fourth-quarter statistics, IIUSA's preliminary forecast, based on data shared by member regional centers, suggests that more than 7,600 EB-5 investor petitions may have been filed during FY2026, potentially generating more than $6 billion in EB-5 investment capital. As illustrated in Figure 1, FY2026 is projected to be a record-breaking year for EB-5, with the industry seeing the highest level of investor demand and the largest number of petition filings since the RIA was implemented.

Based on anecdotal conversations with IIUSA members, the September 30 deadline for the RIA's grandfathering provision appears to have been the most significant driver of increased demand, while the upcoming adjustment to the minimum investment amounts also played a major role.

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India and China Tied as the Largest EB-5 Investor Markets in FY2026

Table 1: Form I-526E & I-526 Filed by Investor's Country of Birth

Data Range: April 1, 2022 - June 30, 2026

I-526E & I-526	*Beneficiary Country of Birth*						
Fiscal Year	China	India	Rest of the World	Taiwan	South Korea	Vietnam	**Grand Total**
2022	144	75	70	34	32	23	**378**
2023	1,419	433	453	177	54	81	**2,617**
2024	2,542	879	1,067	196	100	118	**4,902**
2025	3,114	1,902	953	202	280	207	**6,658**
2026	1,970	1,977	674	187	220	174	**5,202**
Grand Total	**9,189**	**5,266**	**3,217**	**796**	**686**	**603**	**19,757**

Source: USCIS & (FY2026 data from Q1 to Q3 only)
Prepared by: IIUSA
View more data on I-526/E Data Dashboard: http://iiusa.org/i526data/

China and India remained the two largest EB-5 investor markets during the first three quarters of FY2026, with nearly identical filing volumes. Between October 1, 2025, and June 30, 2026, Indian investors filed 1,977 petitions, comparing to 1,970 petitions filed by Chinese investors. Together, these two markets accounted for approximately 76% of all petitions filed by investors during this period worldwide.

In FY2026, the growth of the Indian EB-5 market was particularly significant. During the first three quarters of FY2026 alone, the number of petitions filed by Indian investors had already surpassed the total number filed during all of FY2025 (see Table 1). Based on data shared by IIUSA regional center members, we forecast that the number of I-526E petitions filed by Indian nationals would reach an all-time high and India would overtake China and become the largest investor market in the past fiscal year.

In contrast, the total number of petition filings from Chinese investors are projected to be lower in FY2026 than in FY2025. In addition, Chinese new regulations governing the local migration agency industry,[1] which took effect in September 2026, could slow down the market, although their actual impact remains to be seen.

Beyond China and India, Taiwan, South Korea, and Vietnam remained important EB-5 markets in FY2026. South Korea demonstrated strong investor demand, with 220 petitions filed during the first three quarters of FY2026, compared with 280 petitions during all of FY2025. Taiwan and Vietnam, meanwhile, continued to generate stable investor filings, accounting for 187 and 174 petitions, respectively, during the first three quarters of FY2026.

[1] AXinhua News Agency, "China Unveils Regulation on Exit, Entry Administration," The State Council of the People's Republic of China, July 31, 2026. https://english.www.gov.cn/policies/latestreleases/202607/31/content_WS6a6c93d6c6d00ca5f9a0c82a.html"

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The Gap Between Rural and HUA Filings Narrowed in FY2026

Table 2: Form I-526E & I-526 Filed by Project Category and by Investor's Country of Birth, FY2026 Q1-Q3

Data Range: October 1, 2025 - June 30, 2026

Beneficiary Country of Birth	HUA	Rural	Rural & HUA	Infrastructure	Unreserved	Unknown	**Country Total**
China	586	1,163	140	0	5	76	**1,970**
India	636	1,083	201	0	9	48	**1,977**
Rest of the World	282	288	47	0	36	21	**674**
South Korea	86	34	17	0	0	83	**220**
Taiwan	163	17	5	0	1	1	**187**
Vietnam	94	53	14	0	5	8	**174**
Grand Total	**1,847**	**2,638**	**424**	**0**	**56**	**237**	**5,202**
Category %	***36%***	***51%***	***8%***	***0%***	***1%***	***5%***	***100%***

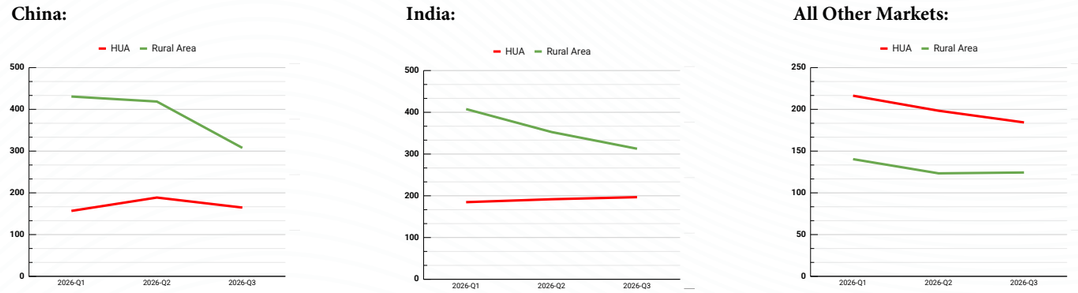
Source: USCIS & (FY2026 data from Q1 to Q3 only)
Prepared by: IIUSA

The latest USCIS data also revealed important differences in project category preferences across major EB-5 investor markets. During the first three quarters of FY2026, rural projects continued to account for the largest share of filings among Chinese and Indian investors, while investors from other markets, particularly Taiwan, South Korea, and Vietnam, generally demonstrated stronger demand for high unemployment area (HUA) projects.

However, a closer examination of quarterly filing trends during the first three quarters of FY2026 reveals that the gap between rural and HUA filings has narrowed considerably in the two largest EB-5 investor markets: China and India. As illustrated in Figure 3, Chinese investors filed approximately 430 petitions associated with rural projects in Q1 FY2026, compared with 150 petitions associated with HUA projects, a difference of 280 cases. By Q3, this gap had narrowed to just 150 petitions.

A similar trend was observed among Indian investors, where the gap between rural and HUA filings narrowed from 220 petitions in Q1 to 120 petitions in Q3. In addition, rural filings among Indian investors declined from Q1 to Q3, while filings associated with HUA projects increased slightly over the same period (see Figure 3).

Figure 3: Quarterly Filing Trends by Investor COB & Project Category, FY2026 Only



Source: USCIS & (FY2026 data from Q1 to Q3 only)
Prepared by: IIUSA
View more data on I-526/E Data Dashboard: http://iiusa.org/i526data/

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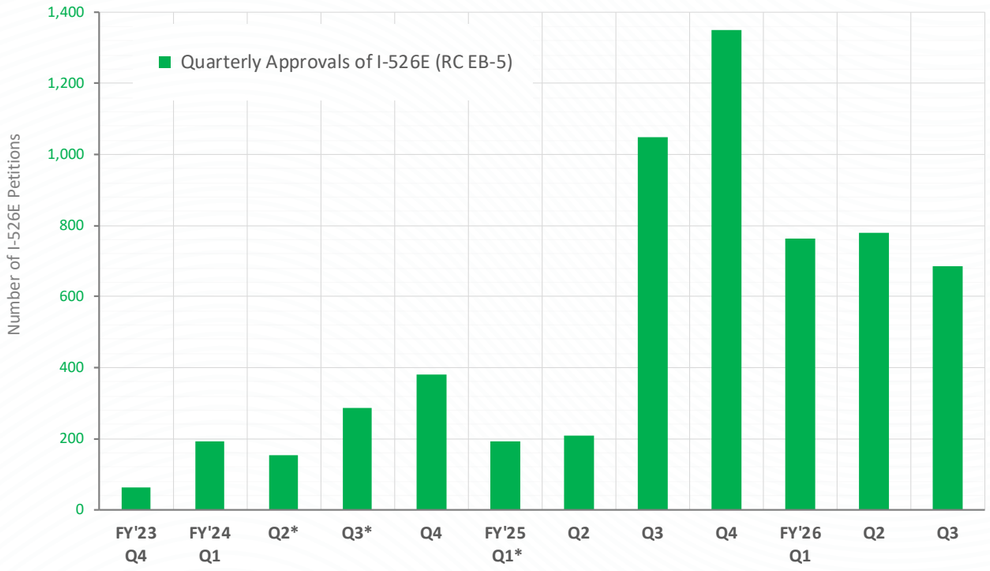
I-526E Approvals Slowed in FY2026 as Denial Rates Rose

While EB-5 investor demand continued to grow, the pace of Form I-526E adjudications slowed significantly during FY2026, creating a widening gap between new petition filings and case approvals.

Following a substantial increase in adjudication activity during the second half of FY2025, I-526E approvals reached a quarterly peak of approximately 1,350 cases in Q4 FY2025. However, approval volumes declined sharply in FY2026 and remained well below that peak during the first three quarters. According to USCIS, only 687 I-526E petitions were approved in Q3 FY2026, representing a decline of approximately 49% from the Q4 FY2025 peak.

Figure 4: Number of Form I-526E Approvals by Quarter



Source: USCIS & IIUSA Member Regional Centers Data

Prepared by: IIUSA

View more data on I-526/E Data Dashboard: http://iiusa.org/i526data/

In addition to the slowdown in adjudication volumes, the declining approval rate for Form I-526E petitions represents another concerning development in FY2026. As illustrated in Figure 5, the I-526E approval rate declined from approximately 94% in FY2025 to 81% in Q1 FY2026, 80% in Q2, and 76% in Q3. In Q3 FY2026 alone, USCIS approved 687 I-526E petitions and denied 217, resulting in an approval rate of approximately 76% and a denial rate of 24%.

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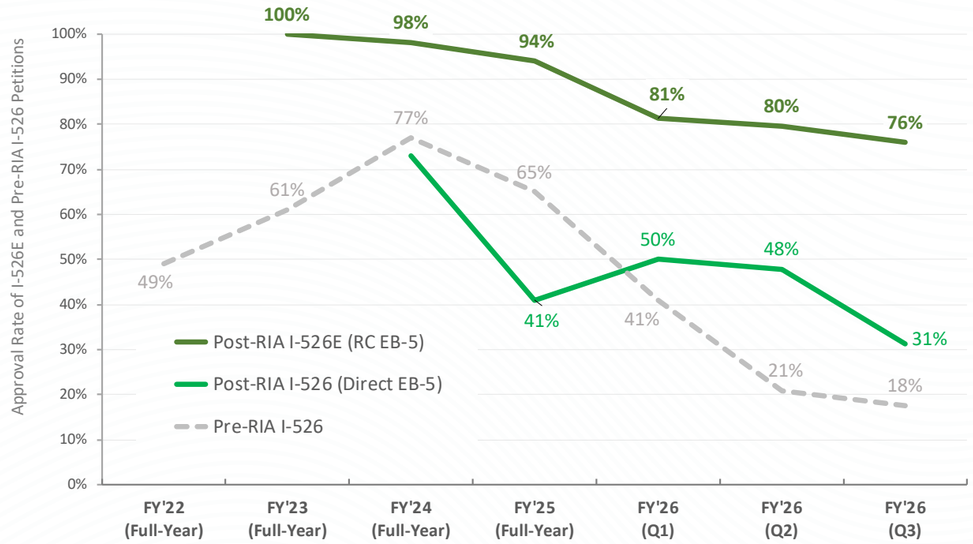
Figure 5: Approval Rates for I-526E, Direct EB-5 I-526, and Pre-RIA I-526 Petitions



Source: USCIS

Prepared by: IIUSA

View more data on I-526/E Data Dashboard: http://iiusa.org/i526data/

However, IIUSA members have also reported that their investors' petitions that were initially denied by USCIS were ultimately approved following appeals to the Administrative Appeals Office (AAO). These subsequent approvals may not be reflected in the quarterly statistics for the periods in which the original denials occurred. Depending on how USCIS records and reports these outcomes, the more accurate approval rates may be reflected in subsequent statistical releases, including year-end data.

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IIUSA'S DATA-SHARING INITIATIVE: IMPROVING TRANSPARENCY INTO EB-5 PROCESSING TIMES

One of the most significant gaps in USCIS's publicly available quarterly statistics is the lack of detailed processing time data distinguishing between rural and HUA I-526E petitions. To address this information gap, IIUSA has launched an industry data-sharing initiative to collect and analyze anonymized, case-level information on I-526E and I-956F processing.

To date, 17 IIUSA members representing 135 regional centers have participated in this initiative, contributing anonymized case-status information to support a more comprehensive understanding of USCIS processing trends.
The initiative is designed to provide the EB-5 industry with more detailed and reliable information on petition adjudication timelines, including potential differences between rural and HUA cases. These insights will help improve industry transparency, support data-driven policy discussions, and provide investors and EB-5 stakeholders with a clearer understanding of processing trends.

IIUSA plans to publish a separate, in-depth report presenting findings from this important initiative. In the meantime, we extend our sincere appreciation to the following IIUSA member regional center operators for their contributions and continued commitment to improving data transparency in the EB-5 industry:

- **American Life, Inc**
- **Atlantic American Partners**
- **CanAm Enterprises**
- **Civitas Capital Partners**
- **CMB Regional Centers**
- **EB5 Capital**
- **EB5 Coast to Coast**
- **EB5 United**
- **Extell**
- **FirstPathway Partners**
- **Green Card Fund**
- **HomeFed**
- **Houston EB5**
- **LCP Group**
- **Manhattan Regional Center**
- **Peachtree**
- **Pine State Regional Center**

If you would like to learn more about IIUSA's data-sharing initiative, please email Lee Li, IIUSA Director of Policy Research and Data Analytics for more details: lee.li@iiusa.org.