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# EB-5 Immigrant Investor Visa

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## Summary

Under the Immigration and Nationality Act (INA), there are five categories of employment-based visas in the permanent immigration system. The EB-5 immigrant investor visa, the fifth employment preference immigrant visa category, was created in 1990 to benefit the U.S. economy through job creation and foreign capital investment. It provides lawful permanent residence (LPR status) to foreign nationals who invest \$1,800,000 or more, or \$900,000 or more in a rural area or an area with high unemployment (referred to as targeted employment areas [TEAs]), in a new commercial enterprise (NCE) in the United States and create or preserve at least 10 jobs. Approximately 10,000 visas annually, 7.1% of all employment-based visas, are allotted to immigrant investors and their family members. The majority (80% in FY2019) of EB-5 visas are issued to investors from Asia, with 46% issued to Chinese-origin investors in FY2019.

The EB-5 visa grants foreign national investors conditional residence status. After approximately two years, the foreign national must apply to remove the conditionality (i.e., adjust to full-LPR status). If the foreign national has met the visa requirements (i.e., invested the required money and created the required jobs), he/she will receive full LPR status. If the foreign national has not met the requirements or does not apply to have the conditional LPR status removed, his or her conditional status is terminated, and, generally, the foreign national is required to leave the United States, or will be placed in removal proceedings.

In 1992, Congress established the Regional Center (Pilot) Program, which created an additional pathway in the EB-5 visa category. Regional centers are “any economic unit, public or private, which [are] involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.” The program allows investors to pool their investment in a regional center to fund a project in a specific geographic area. The Regional Center Program now accounts for nearly all EB-5 visas (96% in FY2019). Unlike the standard EB-5 visa category, which does not expire, funding for the Regional Center Program requires reauthorization. In recent years, funding has been appropriated through a series of continuing resolutions.

A 2019 Department of Homeland Security (DHS) regulation implemented major changes to the EB-5 program, including increases to the minimum investment amounts, changes to the TEA designation process, and allowing petitioners to retain the priority dates of approved EB-5 petitions for subsequent EB-5 petitions. These changes addressed some longstanding concerns about the EB-5 program. Nevertheless, the EB-5 visa continues to be the subject of ongoing policy debates. Proponents contend that providing visas to foreign investors benefits the U.S. economy through economic growth and job creation. Opponents argue that the visa allows wealthy individuals to buy their way into the United States and have highlighted instances of fraud and threats to national security associated with the EB-5 program. Some have moved to eliminate it entirely.

Compared with other immigrant visas, the EB-5 visa presents additional risks of fraud. Such risks are associated with difficulty verifying that investors’ funds are obtained lawfully and with the visa’s potential for large monetary gains, which could motivate individuals to take advantage of investors and make the visa susceptible to the appearance of favoritism. U.S. Citizenship and Immigration Services (USCIS) has reported improvements in fraud detection but also states it is restricted by statutory limitations. EB-5 stakeholders have voiced concerns over the delays in processing EB-5 applications and possible effects on investors and time sensitive projects as well as uncertainty generated by the short-term reauthorizations of the Regional Center Program, the most common pathway for EB-5 visas.

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### December 16, 2021, Update

As the result of a lawsuit filed by the Behring Regional Center (*Behring Regional Center LLC v. Chad Wolf, et al.*), the 2019 EB-5 Immigrant Investor Program Modernization regulation discussed in this report is not currently in effect. In June 2021, the U.S. District Court for the Northern District of California granted plaintiffs' motion for summary judgement and vacated the rule. U.S. Citizenship and Immigration Services (USCIS) appealed the District Court's decision in August 2021. As a result of this ruling, the EB-5 regulations that were in place prior to November 21, 2019, are currently in place. These include required minimum investment amounts of \$1,000,000 or \$500,000 in a Targeted Employment Area (TEA), USCIS permitting high-unemployment TEA designations from state agencies, and not retaining the priority date of an approved I-526 petition.

## Overview

The EB-5 Immigrant Investor Program was created through the Immigration Act of 1990 (P.L. 101-649) and is administered by the Immigrant Investor Program Office (IPO) within U.S. Citizenship and Immigration Services (USCIS). “EB-5” is the fifth of five permanent, employment-based (EB) visa preference categories under the Immigration and Nationality Act (INA).<sup>1</sup> Congress created the EB-5 visa category to attract new foreign capital investment to the United States and generate employment.<sup>2</sup> The program provides individual foreign national investors and their derivatives (i.e., family members)<sup>3</sup> lawful permanent residence (LPR status)<sup>4</sup> in the United States when they invest a specified amount of capital in a new commercial enterprise (NCE) that creates at least 10 jobs.<sup>5</sup>

In general, individuals receiving EB-5 visas are granted a conditional residence status. After approximately two years, they must apply to remove the conditionality from their residency status. If they have met the visa requirements (i.e., invested and sustained the required money and created the required jobs), they receive full LPR status. If a foreign national investor has not met the requirements or does not apply to have the conditional status removed, his or her conditional LPR status is terminated, and, generally, the foreign national is required to leave the United States, or will be placed in removal proceedings.

Some Members of Congress contended during discussions around the creation of the visa that potential immigrants would be “buying their way in” to the United States. Others maintained that the program’s requirements would protect its integrity.<sup>6</sup> The Senate Judiciary Committee report on the originating legislation stated that it “is intended to provide new employment for U.S.

<sup>1</sup> Immigration and Nationality Act (INA) §203(b)(5). For more on the employment preference immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>2</sup> See INA §203(b)(5); 8 U.S.C. §1153(b)(5).

<sup>3</sup> Spouses and children who accompany or later follow qualifying or principal immigrants are referred to as derivative immigrants. For the purposes of EB-5, a derivative refers to spouses and unmarried children less than 21 years of age.

<sup>4</sup> An LPR is a foreign national who has been admitted to live permanently in the United States and possibly to become a citizen when those requirements are met.

<sup>5</sup> Under certain circumstances, the preservation of existing jobs can count towards the job creation. 8 C.F.R. 204.6(j)(4)(ii).

<sup>6</sup> For debate on this issue, see 136 *Congressional Record* S7768-75 (July 12, 1990).

workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals.”<sup>7</sup>

In 1992, Congress created the Regional Center Program,<sup>8</sup> an additional pathway for foreign national investors to obtain an EB-5 visa. By investing through a regional center, foreign national investors are subject to different requirements pertaining to the measure of job creation, and are unlikely to be involved in the management of the commercial enterprise. Unlike the standard EB-5 visa category, which does not expire, the Regional Center Program is temporary and is currently authorized through June 30, 2021. Although it is temporary, the Regional Center Program has become the primary pathway for EB-5 investors since 2008 and now accounts for nearly all EB-5 investments.

Typically, there are 140,000 total employment-based visas made available each fiscal year, with 7.1% of that total (approximately 10,000) allocated to EB-5 investors and their derivatives. However, 261,500 employment-based visas have been allocated for FY2021<sup>9</sup>—an all-time high<sup>10</sup>—18,567 of which would be allocated to EB-5. Of the EB-5 visas, Congress has specifically allocated 3,000 visas for entrepreneurs investing in targeted employment areas (TEA) and 3,000 for those participating in the Regional Center Program each year.<sup>11</sup>

A 2019 Department of Homeland Security (DHS) federal regulation made the most substantive modifications to the EB-5 program since the Regional Center Program was introduced. The EB-5 Immigrant Investor Program Modernization regulation made three major changes to the program (also see the “EB-5 Immigrant Investor Program Modernization” section):

1. For the first time, DHS increased the minimum required investment amounts for EB-5 projects, which had been unchanged since 1990, from \$1,000,000 to \$1,800,000 for non-TEA projects and from \$500,000 to \$900,000 for investments in TEAs. In addition, the regulation sets a schedule for adjustments for inflation every five years, starting from the November 21, 2019 effective date.
2. The regulation changed the process by which TEAs are determined, making DHS exclusively responsible for determining which geographies may qualify as high unemployment areas and removing states’ authority to do so.
3. The regulation allows petitioners to retain the priority dates of EB-5 petitions approved for classification for subsequent EB-5 petitions.<sup>12</sup>

Some of these changes—particularly, the first two—have been met with objection from industry stakeholders.<sup>13</sup>

<sup>7</sup> S.Rept.101-55, p. 21.

<sup>8</sup> As enacted in 1992 (P.L. 102-395 §610), the program was known as the Regional Center Pilot Program. In recent reauthorizations, it has been referred to as the Regional Center Program.

<sup>9</sup> U.S. Department of State, *Visa Bulletin for October 2020*, [https://travel.state.gov/content/dam/visas/Bulletins/visabulletin\\_\\_october2020.pdf](https://travel.state.gov/content/dam/visas/Bulletins/visabulletin__october2020.pdf).

<sup>10</sup> This surplus is the result of unused family-based visas in 2020, which, under the INA, are reallocated to the employment preference category in the next fiscal year.

<sup>11</sup> INA §203(b)(5) and §203 note. Note that a regional center’s defined area may be in a TEA, so the set asides are not mutually exclusive.

<sup>12</sup> Department of Homeland Security, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35750, July 24, 2019.

<sup>13</sup> *Ibid.*

Although this recent federal regulatory action has addressed some of the concerns about the EB-5 program, there are additional concerns that Congress may consider. For example, some Members have frequently raised concerns about fraud in the program,<sup>14</sup> including possible national security concerns.<sup>15</sup> Thus, Congress may choose to evaluate the oversight of the EB-5 category and the fraud detection mechanisms used during EB-5 adjudications, and the authority delegated to USCIS to sanction or terminate regional centers based on evidence of fraud or national security risks.

The temporary nature of the Regional Center Program has also been a concern among lawmakers and stakeholders. The program has been by far the most common pathway for investors obtaining EB-5 visas for more than a decade. Nevertheless, it is technically a pilot program that must be periodically reauthorized by Congress, leading to uncertainty and unpredictability (currently, the program is authorized through June 30, 2021). Other issues include processing delays and the need for more data collection.

This report begins with a discussion of the EB-5 visa's requirements and an overview of the Regional Center Program. It then provides information on the EB-5 application (petition) process, admissions, economic impacts of the visa, and summarizes the EB-5 Immigrant Investor Program Modernization regulation. Next, the report reviews policy issues surrounding the visa and the Regional Center Program, including application processing, fraud and security risks, data collection, and implications of the Coronavirus Disease 2019 (COVID-19) pandemic. As of the date of this report, aside from reauthorization of the Regional Center Program, Congress has not passed legislation related to the EB-5 program. At the conclusion of the report, the **Appendix** provides tables of acronyms and forms referenced throughout the report.

## EB-5 Investor Program Requirements

EB-5 visa requirements for foreign investors include the investment of capital into a new commercial enterprise and resulting job creation. Currently, investors have two available pathways to gain lawful permanent resident (LPR) status through the EB-5 visa: the standard visa and the Regional Center Program. As noted earlier, the overwhelming majority of investors invest through the Regional Center Program.<sup>16</sup> Both pathways require the same amount of capital to be invested and minimum number of jobs to be created.

Minimum investment amounts, for either the standard pathway or the Regional Center Program, depend on whether investors choose to invest in a TEA. Most investors choose to invest in TEAs, which have minimum investments that are 50% lower than the standard pathway. The standard pathway typically is the only one in which some investors choose not to invest in a TEA—nearly all Regional Center Program investments are made in TEAs. Other differences between the two pathways include the measure of job creation and the role of the investor in the enterprise.

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<sup>14</sup> U.S. Government Accountability Office (GAO), *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*, GAO-15-696, August 2015.

<sup>15</sup> Prepared Statement by Senator Chuck Grassley, Senate Judiciary Committee Chairman, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018. <https://www.judiciary.senate.gov/grassley-statement-at-hearing-on-citizenship-for-sale-oversight-of-the-eb-5-investor-visa-program>

<sup>16</sup> In FY2019, approximately 96% of investors entered through the Regional Center Program.

## Investment of Capital

Currently, to qualify for the EB-5 visa, petitioners must invest in an NCE a minimum of \$1,800,000, or \$900,000 in a TEA. After previously remaining unchanged since 1990 (at \$1,000,000 or \$500,000 in a TEA), the 2019 EB-5 modernization regulation requires that these amounts be adjusted for inflation, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), every five years.<sup>17</sup> The entire investment must be *at risk* for the purpose of generating a return.<sup>18</sup>

### What is a targeted employment area (TEA)?

A TEA is defined under statute as either a rural area or an area experiencing high unemployment of at least 150% of the national average. *Rural areas* are areas outside Metropolitan Statistical Areas (MSAs), as designated by the Office of Management and Budget, or areas outside of cities and towns with populations of 20,000, based on the most recent decennial census. *High unemployment areas* in which the New Commercial Enterprise (NCE) is principally doing business, may include MSAs, counties within MSAs, counties in which a city or town with a population of 20,000 or more is located, or cities and towns with populations of 20,000 or more that are located outside of MSAs. These geographies must meet the 150% or greater unemployment threshold. High unemployment areas may also include areas based on census tract designations. A 2019 Department of Homeland Security (DHS) rule change removed states' authority to designate high unemployment areas, placing the authority directly with U.S. Citizenship and Immigration Services (USCIS). Under the regulation, a high unemployment area calculation in multiple census tracts must be based on the unemployment rate of the census tract or contiguous census tracts in which the NCE is principally doing business and may also include directly adjacent census tracts. In these cases, the 150% unemployment determination is based on the weighted average for unemployment rates in those tracts.

## A New Commercial Enterprise (NCE)

A commercial enterprise is “any for-profit activity formed for the ongoing conduct of lawful business,” such as a sole proprietorship, partnership, holding company, joint venture, corporation, business trust, or other publicly or privately owned entity.<sup>19</sup> A *new* commercial enterprise is one established after November 29, 1990. If the commercial enterprise was established before November 29, 1990, the immigrant investor’s capital must have been used to expand or restructure/reorganize the enterprise.<sup>20</sup> Applicants are also allowed to invest funds in *troubled businesses*.<sup>21</sup> The immigrant investor must be engaged in the management of the commercial enterprise through policy formation, daily managerial responsibilities, or direct management.<sup>22</sup>

<sup>17</sup> 8 C.F.R. §204.6.

<sup>18</sup> *At risk* means immigrant investors cannot be guaranteed the return of any part of their investment or a rate of return on their investment. There must be a risk of loss and chance for gain. The investor may receive a return on the investment during or after the conditional residence period, as long as before or during the conditional residence period or before required jobs are created the return is not a portion of the principal investment and was not guaranteed to the investor. U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *EB-5 Adjudications Policy*, Policy Memorandum PM-602-0083, Washington, DC, May 30, 2013.

<sup>19</sup> 8 C.F.R. §204.6(e).

<sup>20</sup> For more information, see 8 C.F.R. §204.6(h).

<sup>21</sup> A troubled business is one that has been in existence for at least two years and has experienced a net loss equal to or at least 20% of its net worth in the 12- or 24-month period prior to the immigrant investor’s filing of Form I-526, *Petition by Alien Entrepreneur*. 8 C.F.R. §204.6(e).

<sup>22</sup> According to a USCIS policy memorandum, “if the foreign national investor is a limited partner and the limited partnership agreement provides the investor with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the immigrant investor will be considered sufficiently engaged in the management of the new commercial enterprise.” U.S. Department of Homeland Security, U.S. Citizenship and

## Job Creation

In order to meet the requirements for the EB-5 visa, the foreign national's investment capital in the new commercial enterprise must create a minimum of 10 jobs.<sup>23</sup> The EB-5 visa has three different measures of job creation.

1. If an immigrant invests in a troubled business, directly or through a regional center, he/she can show preservation of jobs for at least two years, in lieu of creating new jobs.<sup>24</sup>
2. Investments made in an NCE in a non-regional center context must create 10 jobs within the NCE. (Such jobs are called direct or payroll jobs.)
3. For NCEs located within a regional center, the 10 new jobs required can be created directly or indirectly (i.e., employees not working directly for the commercial enterprise).<sup>25</sup>

## Regional Center Program

The Regional Center Program was originally authorized in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act in 1992.<sup>26</sup> Since its creation, the program has been reauthorized several times.<sup>27</sup> Since 2015, reauthorization of the Regional Center Program has occurred primarily through short-term continuing resolutions. The program was established as a pilot to achieve the economic growth and job creation goals of the immigrant investor statute<sup>28</sup> by encouraging immigrants to invest in commercial enterprises located within public or private economic units known as *regional centers*. In order to receive investment from foreign nationals wishing to obtain EB-5 status, a regional center must be designated as such by USCIS. Regional centers are intended to provide a coordinated focus of foreign investment on a particular project or projects by pooling investments across multiple investors<sup>29</sup> (see section entitled “What is a Regional Center?” for a detailed discussion).

The Regional Center Program differs from the standard EB-5 visa<sup>30</sup> in three ways (**Table 1**). First, although both pathways require individual investors to create at least 10 jobs, in the regional

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Immigration Services, *EB-5 Adjudications Policy*, Policy Memorandum PM-602-0083, Washington, DC, May 30, 2013; p. 12.

<sup>23</sup> The position must be full-time, meaning at least 35 hours a week, and be held by a qualifying employee (U.S. citizen, LPR, or other work-authorized migrant), meaning an individual legally able to work in the United States. Jobs are also expected to last two years and cannot be intermittent, temporary, seasonal, or transient in nature. 8 C.F.R. §204.6(j)(4).

<sup>24</sup> 8 C.F.R. §204.6(j)(4)(ii).

<sup>25</sup> Indirect jobs are held outside of the NCE but are created as a result of it. For example, they can include persons employed by the producers of materials/inputs for the immigrant investor's enterprise. “Reasonable” economic methodologies must be used to demonstrate indirect job creation. 8 C.F.R. §204.6 (m)(1)(7).

<sup>26</sup> P.L. 102-395 §610 (October 6, 1992).

<sup>27</sup> Section 116 of P.L. 105-119 extended the Regional Center Program's reauthorization from 5 years to 7 years, and Section 402 of P.L. 106-396 further extended it to 10 years. Section 548 of P.L. 108-156 extended the program to FY2008, Section 548 of P.L. 111-83 extended it to FY2012, and Section 1 of P.L. 112-176 extended it through FY2015. Section 131 of P.L. 114-53 extended the program to December 11, 2015; P.L. 114-96 extended it to December 16, 2015; and P.L. 114-100 extended it to December 22, 2015. Division F, Section 575 of P.L. 114-113 extended the program to September 30, 2016.

<sup>28</sup> 8 U.S.C. §1153(b)(5) and 8 U.S.C. §1153 note.

<sup>29</sup> Pooled investments can also include investments from non EB-5 investors, such as U.S. citizens.

<sup>30</sup> *Standard EB-5 visa* refers to investors that obtain an EB-5 visa through the regular EB-5 visa process rather than by

center context indirect job creation<sup>31</sup> may be counted instead of or in addition to direct job creation. Second, unlike with the standard EB-5 visa, foreign nationals investing in a regional center are unlikely to be involved in the management and daily activities of the commercial enterprise. Third, the EB-5 visa category is permanent, while the Regional Center Program is temporary.

**Table I. Comparison of the Two EB-5 Pathways**

Standard EB-5 Visa	Regional Center Program
Required capital investment is \$1.8 million, or \$900,000 in a targeted employment area.	Same.
Foreign national receives conditional LPR status and after approximately two years must apply to have the conditions removed or leave the country.	Same.
To have the conditions removed, the immigrant investor must, among other requirements, show that he/she created or can be expected to create within a reasonable time 10 full-time jobs for U.S. citizens, LPRs, or other work-authorized aliens. Employment must be <i>direct</i> (i.e., employees working for the commercial enterprise). <sup>a</sup>	Same but the employment can be <i>indirect</i> (i.e., employees not working for the commercial enterprise).
Investor <i>tends to be</i> involved in daily operations of enterprise.	Investor <i>tends not to be</i> involved in the daily operation of the enterprise.
Visa category is permanent; does not expire.	Program is temporary; set to expire June 30, 2021.

**Source:** CRS analysis of Immigration and Nationality Act Section 203(b)(5) and Section 610 of P.L. 102-395

Foreign nationals may invest in any of the regional centers currently approved by USCIS to qualify for their conditional LPR status.<sup>32</sup> Investments may be both within a regional center and a TEA. Although a regional center does not have to be in a TEA, almost all foreign nationals applying for EB-5 status invest with regional centers whose defined boundaries constitute a TEA.<sup>33</sup>

## What is a Regional Center?

Regional centers are defined as “any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity,

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investing in a regional center. Individuals using either pathway, the standard EB-5 visa or the Regional Center Program, can obtain an EB-5 visa. USCIS refers to the standard EB-5 visa as the basic EB-5 program.

<sup>31</sup> Indirect job creation refers to jobs a regional center estimates to create indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment.

<sup>32</sup> For a list of approved regional centers, see U.S. Citizenship and Immigration Services, *Immigrant Investor Regional Centers*, <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>. There is no citizenship requirement to file for regional center designation with USCIS.

<sup>33</sup> The Regional Center designation requires that applicants show how their proposed program will focus on a geographic region; promote economic growth through increased export sales, if applicable; promote improved regional productivity; create a minimum of 10 jobs directly or indirectly per investor; increase domestic capital investment; be promoted and publicized to prospective investors; have a positive impact on the regional or national economy through increased household earnings; and generate a greater demand for business services, utilities maintenance and repair, and construction jobs both in and around the center. 8 C.F.R. §204.6(m)(3).

job creation, and increased domestic capital investment.”<sup>34</sup> More simply, the term *regional center* refers to an entity (often a limited partnership or a limited liability corporation) where investment from multiple foreign nationals and non-EB-5 investors (e.g., U.S. citizens) can be pooled to fund a broad range of projects.<sup>35</sup> Regional centers often rely on third-party intermediaries to recruit immigrant investors.<sup>36</sup>

Regional centers can be privately owned, publicly owned (operated by a city, county, state, or economic development agency), or a public-private partnership.<sup>37</sup> There are many different models for regional centers. For example, in the lending model, the NCE is a lending entity that provides loans to those (i.e., U.S. citizens) seeking funding for business activities, such as new construction or expansions of their operations.<sup>38</sup> Regional centers can also use an equity model, where pooled EB-5 investments are used to purchase equity stakes in a project company (i.e., job-creating entity). In addition, regional centers have been created for direct investment to build a variety of projects, such as hotels, a ski resort, convention centers, arenas, and retail and mixed use developments. Certain state<sup>39</sup> and local governments have also established their own regional centers or public-private partnerships (e.g., City of Dallas Regional Center and Philadelphia Authority for Industrial Development).

Since the inception of the Regional Center Program in 1992, the number of USCIS-approved regional centers has increased substantially across the United States. In FY2007, there were 11 approved regional centers.<sup>40</sup> As of December 2020, there were 674 approved regional centers. However, not all regional centers have received investment from foreign nationals wishing to immigrate under the EB-5 visa category.

The proportion of immigrant investors using regional centers, specifically those in a TEA, has been increasing, especially since FY2007. Since FY2008, immigrants investing in regional centers and their family members (derivatives) have represented by far the largest proportion of EB-5 visas issued and adjustments of status, representing 96% in FY2019. **Figure 1** displays the distribution of EB-5 grantees investing over the past 10 years through (1) the standard program (not in a TEA), (2) the standard program in a TEA, and (3) a regional center. Because nearly all regional center investors invest in a TEA, the figure does not include separate non-TEA and TEA categories for regional centers.

<sup>34</sup> 8 C.F.R. §204.6 (e).

<sup>35</sup> In addition, approximately 20% of those receiving LPR status from an investment under the standard EB-5 category are involved in pooled investments. CRS conversation with staff from USCIS’ Immigrant Investor Program Office, April 8, 2016.

<sup>36</sup> Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014.

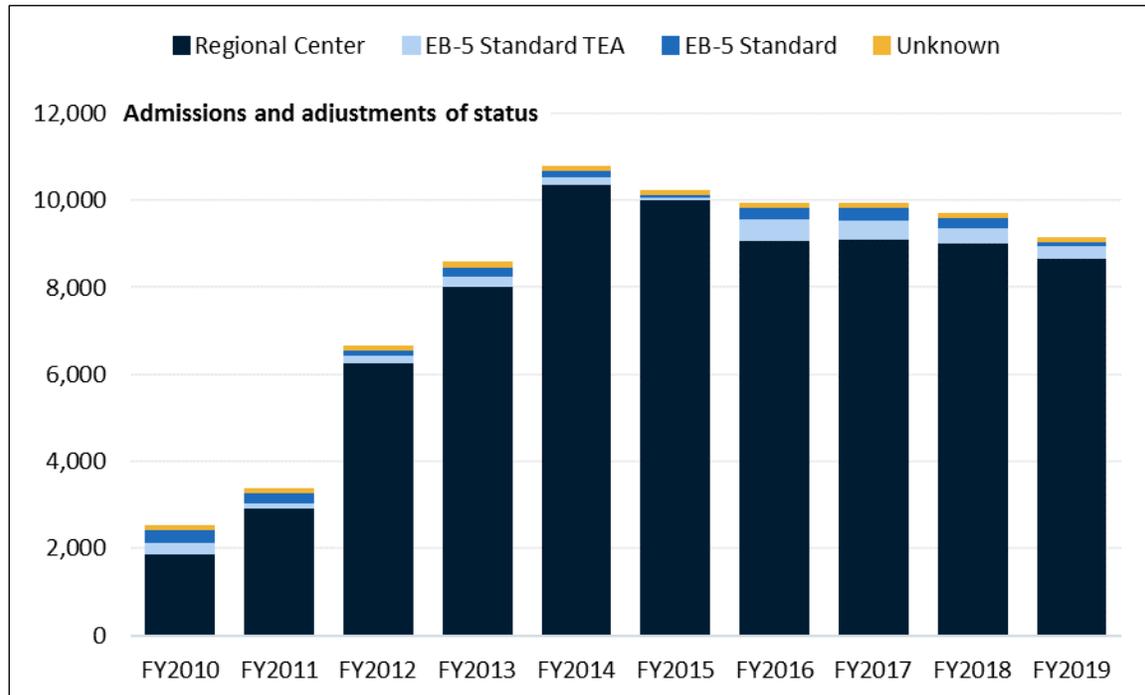
<sup>37</sup> For a discussion of regional center public-private partnerships, see Lazaro Zamora and Theresa Cardinal Brown, *EB-5 Program: Success, Challenges, and Opportunities for States and Localities*, Bipartisan Policy Center, Washington, DC, September 2015.

<sup>38</sup> The growth of and preference for the loan model may be driven by the fact that many investors’ primary motive is to qualify for LPR status and recover their investment. Jeanne Calderon and Gary Friedland, *EB-5 Capital Project Database: Revisited and Expanded*, NYU Stern School of Business, Center for Real Estate Finance Research, New York, NY, March 29, 2016, p. 9.

<sup>39</sup> Currently, there are no active state-run regional centers. USCIS terminated Vermont’s regional center in 2018.

<sup>40</sup> U.S. Citizenship and Immigration Services, *Number of Approved EB5 Regional Centers Fiscal Year(s): 2007 – 2012*, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526\\_I924\\_I829\\_performancedata\\_qtr43.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_I924_I829_performancedata_qtr43.pdf).

**Figure I. Immigrant Investor (EB-5) Admissions and Adjustments of Status, FY2010-FY2019**



**Source:** CRS presentation of data from the U.S. Department of Homeland Security, *Yearbook of Immigration Statistics*, Table 7, multiple fiscal years.

**Notes:** Admissions include principal investors and derivative family members (spouses and children). **EB-5 Standard** represents those receiving EB-5 visa classification on the basis of investment in a non-TEA area that is not associated with a regional center. **EB-5 Standard TEA** represents those who have received EB-5 visa classification through investment in a targeted employment area (TEA) that is not associated with a regional center. **Regional Center** represents those who received EB-5 visa classification based on investment in a regional center in both TEAs and non-TEAs. CRS presents those receiving EB-5 visa classifications based on investment in TEA and non-TEA regional center projects together because the number of visa numbers issued based on investment in non-TEA regional center projects was relatively low. **Unknown** represents admissions whose categories have been withheld by DHS.

Each year, regional centers must apply for re-certification by USCIS and provide evidence of promoting economic growth to remain eligible for the EB-5 program. In 2017, USCIS began conducting compliance reviews to verify the information provided in regional centers' initial applications (Form I-924) and annual certifications (Form I-924A) by reviewing records and evidence, performing site inspections, and interviewing personnel.<sup>41</sup>

USCIS may terminate a regional center's participation in the EB-5 program if it fails to submit required information to USCIS or fails to demonstrate that it continues to promote economic growth.<sup>42</sup> After receiving a Notice of Intent to Terminate from USCIS, regional centers have 30 days to submit evidence opposing the ground(s) alleged in the notice. During this period, the regional center may continue to operate. If the designation is terminated, USCIS will provide a Notice of Termination. Terminated regional centers may appeal decisions but may not solicit,

<sup>41</sup> "USCIS Launches EB-5 Regional Center Audit Program," *Thomson Reuters Practical Law Labor & Employment* (blog), March 22, 2017, [https://content.next.westlaw.com/Document/Ia8a7571c0e4511e798dc8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)](https://content.next.westlaw.com/Document/Ia8a7571c0e4511e798dc8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=(sc.Default)).

<sup>42</sup> 8 C.F.R. §204.6(m)(6).

generate, or promote investors or investments while their cases are under appeal. Investors with conditional LPR status who have invested in a new commercial enterprise associated with a regional center that USCIS has removed from the program may still demonstrate compliance with EB-5 program requirements to maintain their status.

As of December 2020, USCIS listed 532 regional centers terminated from their participation in the EB-5 program since 2008.<sup>43</sup> Seventy-three percent of those centers were terminated since FY2018. A USCIS analysis of regional center terminations in 2017 showed that about 58% were terminated for failing to promote economic growth, 40% were terminated for failing to file the required I-924A, and two regional centers elected to withdraw from the program.<sup>44</sup>

In 2017, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) regarding regulatory changes it was considering for the Regional Center Program.<sup>45</sup> The ANPRM sought public comment on improving the regional center designations process, a requirement for centers to file exemplar project requests, “continued participation” requirements to maintain designations, and termination processes. An Notice of Proposed Rulemaking (NPRM) has not yet been published in the *Federal Register*.

## The EB-5 Petition Process

The EB-5 petition process, which is largely administered by the USCIS Immigrant Investor Program Office, requires various steps before an individual can obtain full (i.e., unconditional) LPR status.

The first step of the process is filing USCIS Form I-526, *Immigrant Petition by Alien Investor* and paying the \$3,675 filing fee. The petitioner must prove that he/she meets the requirements for EB-5 classification, including that the capital being invested came from a legitimate source, and that he/she has presented a valid business plan or showed that the investment will go to a USCIS-certified regional center.

I-526 petition receipts increased substantially between 2010 and 2015, growing more than six-fold. The program grew in the wake of the 2008 financial crisis, which increased demand for EB-5 capital as an alternative funding source, particularly for real estate development projects.<sup>46</sup> Filings remained high through FY2017, and then dropped substantially in FY2018 and FY2019. (Figure 2.) Some observers have associated the decrease with the growing backlog of pending EB-5 petitions.<sup>47</sup>

<sup>43</sup> For a list of terminated regional centers, see U.S. Citizenship and Immigration Services, *Terminated Regional Centers*, <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process/terminated-regional-centers>.

<sup>44</sup> Responses to Questions for the Record by L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018. [https://www.judiciary.senate.gov/imo/media/doc/Cissna%20Responses%20to%20QFRs%20\(Public\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Cissna%20Responses%20to%20QFRs%20(Public).pdf).

<sup>45</sup> Department of Homeland Security, *The EB-5 Immigrant Investor Regional Center*, at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1615-AC11>.

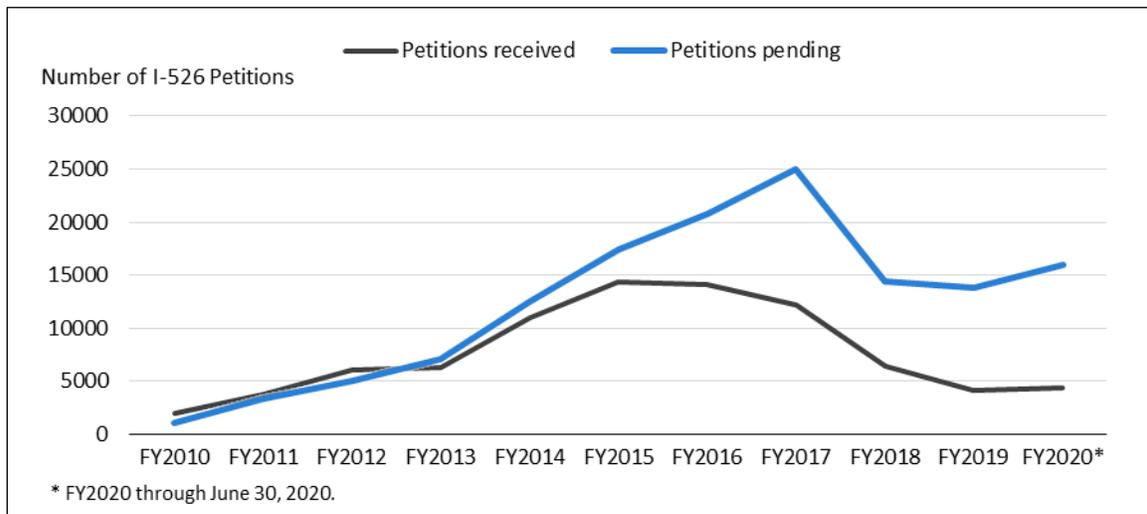
<sup>46</sup> Testimony of Jeanne Calderon, NYU Stern School of Business Clinical Associate Professor, in U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2016, at <https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-Wstate-CalderonJ-20160211.pdf>.

<sup>47</sup> EB-5 Affiliate Network, “EB-5 Program Processing Statistics,” *EB5 Affiliate Network* (blog), January 25, 2020, <https://eb5affiliatenetwork.com/eb-5-program-processing-statistics/>.

I-526 filings from FY2020 reflect an expected surge prior to the November 2019 implementation of increased required investment amounts (see “EB-5 Immigrant Investor Program Modernization”) followed by a decline in filings.<sup>48</sup> USCIS received 4,254 petitions in the first quarter of FY2020; subsequently, I-526 receipts dropped to 21 in the second quarter and 40 in the third quarter.<sup>49</sup> In addition to increases to the minimum investment amounts, reduced I-526 filings during FY2020 may also be associated with impacts from the COVID-19 pandemic (see the “COVID-19 and the EB-5 Program” section) and long wait times for investors from certain countries (see the “Application and Petition Processing” section).<sup>50</sup>

USCIS experienced a growing backlog of pending I-526 petitions through FY2017 (**Figure 2**), which then declined after the Immigrant Investor Program Office (IPO) restructured and hired more personnel (see the “Fraud and Security Risks” section). Pending petitions increased again between 2019 and 2020. In the third quarter of FY2020, there were 15,955 pending I-526 petitions.

**Figure 2. Form I-526 Petitions (Applications) Received and Pending, FY2008-FY2020**



**Source:** CRS analysis of data from the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Performance Reporting Tool, queried January 2020, TRK 5607

**Note:** FY2020 data through third quarter

Once USCIS approves the I-526, the foreign national must obtain a visa from the Department of State (DOS) to enter the United States if they are not currently in the country, or adjust status<sup>51</sup> to

<sup>48</sup> Daniel M. Kowalski, “Expert Predicts ‘Surge’ Then ‘Decline’ Due to EB-5 Investor Visa Rule Changes,” *LexisNexis Immigration Law*, July 25, 2019, <https://www.lexisnexis.com/legalnewsroom/immigration/b/outsidenews/posts/expert-predicts-surge-then-decline-due-to-eb-5-investor-visa-rule-changes>.

<sup>49</sup> Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, Performance Reporting Tool, queried 08/2020, TRK 6358.

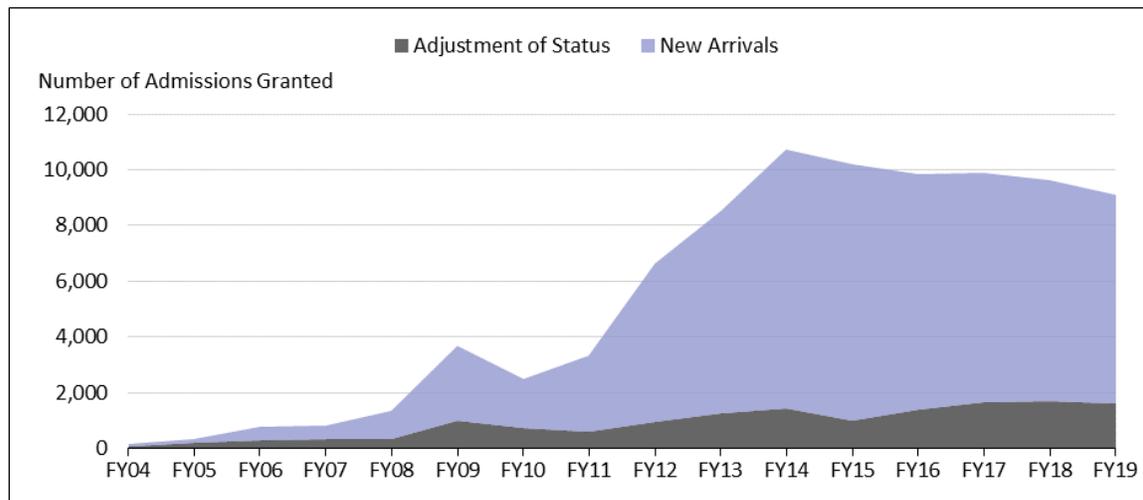
<sup>50</sup> Suzanne Lazicki, “FY2020 Q3 Processing Data,” *EB-5 Updates* (blog), November 17, 2020, <https://blog.lucidtext.com/2020/11/17/fy2020-q3-processing-data/>.

<sup>51</sup> “Adjustment of status is the process by which an eligible individual already in the United States can get permanent resident status (a green card) without having to return to their home country to complete visa processing.” U.S. Citizenship and Immigration Services, *Adjustment of Status*, <https://uscis.gov/green-card/green-card-processes-and-procedures/adjustment-of-status>.

conditional permanent residency with USCIS if they are.<sup>52</sup> Individuals not in the United States file Form DS-260 *Immigrant Visa Electronic Application* with DOS and individuals within the United States file Form I-485 *Application to Register Permanent Residence or Adjust Status* with USCIS. At this stage, DOS and USCIS also check that the foreign national is not inadmissible under the grounds of inadmissibility of the Immigration and Nationality Act (INA).<sup>53</sup> Those who adjust status within the United States receive their conditional residence once the I-485 is approved. Those who receive a visa from DOS receive their conditional residence once they are admitted into the United States.

In FY2004, the number of EB-5 visas granted to new arrivals (60) and the number granted to those who adjusted their status (69) were roughly equal. This ratio has shifted as the growth in visas granted to new arrivals outpaced the number granted to those who adjusted their status, as seen in **Figure 3**. In FY2019 visas issued to new arrivals accounted for 82% of EB-5 admissions. Most EB-5 petitioners, therefore, must have their visas processed abroad through a U.S. consulate or embassy.

**Figure 3. EB-5 Admissions Granted to New Arrivals or through Adjustment of Status, FY2004-FY2019**



**Source:** CRS presentation of data from the U.S. Department of Homeland Security, *Yearbook of Immigration Statistics*, Table 7, multiple years.

**Notes:** **New Arrivals** refers to individuals who obtained an EB-5 visa from DOS outside the United States.

**Adjustment of Status** refers to individuals who applied for an EB-5 visa number from within the United States and adjusted their status with USCIS.

An investor can petition to remove the conditional status after approximately two years by filing Form I-829 *Petition by Investor to Remove Conditions on Permanent Resident Status*.<sup>54</sup> Form I-

<sup>52</sup> A visa must be available for the foreign national to apply for the visa or to adjust to conditional permanent residence status—immigrant visas for employment-based immigrant preference categories are numerically limited, so they are not always immediately available.

<sup>53</sup> The grounds of inadmissibility include criminal, national security, health, and indigence grounds as well as past violations of immigration law. INA §212(a). See also CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

<sup>54</sup> The I-829 form instructions state that an investor can petition to remove the conditions within the 90-day period immediately preceding the second anniversary of obtaining his/her conditional permanent resident status.

829 requires a \$3,750 filing fee and \$85 biometric fee.<sup>55</sup> If the I-829 is approved, the conditionality on the residency of the immigrant investor and his/her derivative family members is removed.<sup>56</sup> A 2019 DHS regulation clarified that derivative family members who were not included on the principal investor's I-829 must file their own forms to remove conditions on their permanent residence.<sup>57</sup> If the investor did not meet the requirements to adjust to full LPR status, the investor (and their family members who immigrated together) must depart from the United States or adjust to another immigration status. USCIS will issue a notice-to-appear (NTA)<sup>58</sup> to foreign nationals who do not apply to have the conditional status removed or who are denied adjustment to full LPR status.

The number of I-829 petitions received annually by USCIS grew from 391 in FY2008 to 3,756 in FY2018. As with forms I-526, there has been a substantial increase in the number of pending I-829 petitions. At the end of the third quarter of FY2020, there were 10,332 pending I-829 petitions to remove conditions on permanent residence status.<sup>59</sup>

## EB-5 Admissions

Each year, approximately 10,000 EB-5 visas are available for investors and their derivative family members, who include spouses and unmarried children under age 21.<sup>60</sup> From FY2003 to FY2005, the number of EB-5 visas issued grew five-fold (from 64 to 346), and then increased by seven-fold by FY2010 (to 2,480). After being underutilized during its first 18 years, the program has grown in popularity since 2008, when U.S. financial crisis reduced the availability of commercial lending funds and made EB-5 an attractive alternative funding source.<sup>61</sup> Annual EB-5 admissions rose above 10,000 for the first time in FY2014 and again in FY2015, and remained just under 10,000 during FY2016, FY2017, FY2018, and FY2019 (**Figure 1**).

Because the allotment for EB-5 visas includes derivative family members, the total number of immigrants admitted through the investor visa program does not reflect the actual number of investors. On average, individual immigrant investors (principal investors) account for slightly more than one-third of all those granted EB-5 visas.<sup>62</sup> Between FY2010 and FY2019, each investor had approximately two relatives granted conditional LPR status along with them.

<sup>55</sup> Under 8 CFR 103.17, "DHS may charge a fee to collect biometric information, to provide biometric collection services, to conduct required national security and criminal history background checks, to verify an individual's identity, and to store and maintain this biometric information for reuse to support other benefit requests." During a biometric services appointment, USCIS captures fingerprints, photographs, and signatures from I-829 applicants.

<sup>56</sup> U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Process*, June 25, 2014, <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process>.

<sup>57</sup> 8 C.F.R. §216.6.

<sup>58</sup> This document starts the removal process.

<sup>59</sup> Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, Performance Reporting Tool, queried August 2020, TRK 6358.

<sup>60</sup> Derivatives are counted against the numerical limit for the category.

<sup>61</sup> Department of Homeland Security, "EB-5 Immigrant Investor Program Modernization," 84 *Federal Register* 35762, July 24, 2019; and Testimony of Jeanne Calderon, NYU Stern School of Business Clinical Associate Professor, in U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2016, at <https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-Wstate-CalderonJ-20160211.pdf>.

<sup>62</sup> CRS calculation using data from the U.S. Department of Homeland Security Office of Immigration Statistics, *Yearbook of Immigration Statistics*; multiple years.

**Table 2. EB-5 Visas Issued and Adjustments of Status by Country**  
Top 10 Countries: FY2019, FY2014, and FY2009

	FY2019			FY2014			FY2009		
	Country	Visas	% of Total EB-5 Visas	Country	Visas	% of Total EB-5 Visas	Country	Visas	% of Total EB-5 Visas
1	China	4,327	46%	China	9,128	85%	China	1,979	47%
2	India	760	8%	South Korea	225	2%	South Korea	903	21%
3	Vietnam	716	8%	Mexico	129	1%	Great Britain & N. Ireland	324	8%
4	South Korea	695	7%	Taiwan	126	1%	Taiwan	170	4%
5	Brazil	496	5%	Vietnam	121	1%	Canada	85	2%
6	Taiwan	432	5%	Russia	100	0.9%	Japan	84	2%
7	Venezuela	172	2%	India	96	0.9%	India	72	2%
8	Hong Kong	167	2%	Venezuela	96	0.9%	Russia	60	1%
9	Mexico	138	1%	Iran	76	0.7%	Netherlands	38	0.9%
10	South Africa	120	1%	Canada	52	0.5%	Mexico	33	0.8%

**Source:** U.S. Department of State, *Report of the Visa Office*, Table V Immigrant Visas Issued and Adjustments of Status Subject to Numerical Limitations (by Foreign State of Chargeability), Part 3; multiple years, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports.html>.

**Notes:** Visas issued represents visas granted to individuals outside of the United States. Adjustments of status represents individuals already in the United States who adjusted their status. This table represents the sum of these two groups.

**Table 2** lists the top 10 EB-5 visa receiving countries in FY2019, FY2014, and FY2009. Foreign nationals from China have received the most EB-5 visas, accounting for approximately 46% (4,327) of all EB-5 visas granted in FY2019 and 85% (9,128) in 2014.<sup>63</sup> In FY2019, Indian nationals had the second largest number of EB-5 visas granted, with 8% (760), followed closely by Vietnamese nationals with 8% (716) and South Korean nationals with 7% (695).<sup>64</sup> No more than 7% of all employment-based visas may go to a country each year unless those allocations would otherwise go unused.<sup>65</sup> Currently, China and Vietnam are both oversubscribed for the EB-5 visa, meaning that their countries' demand for visas exceeds the allocation under the per-country cap.

Foreign nationals of oversubscribed countries face longer wait times. As of December 2020, DOS was processing visas for Chinese applicants whose petitions had been approved through August 2015 and for Vietnamese applicants whose petitions were approved through September 2017.<sup>66</sup> In

<sup>63</sup> U.S. Department of State, *Report of the Visa Office*, Table V Immigrant Visas Issued and Adjustments of Status Subject to Numerical Limitations (by Foreign State of Chargeability), Part 3; multiple years.

<sup>64</sup> Ibid.

<sup>65</sup> For more information, see CRS Report R45447, *Permanent Employment-Based Immigration and the Per-country Ceiling*.

<sup>66</sup> Department of State, *Visa Bulletin for December 2020*, Washington, DC, at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-december-2020.html>.

January 2020, USCIS announced it would begin processing I-526 forms with priority given to petitions from countries without backlogs.<sup>67</sup>

## Economic Impact

The EB-5 visa category was created as a way to increase investment and job creation in the U.S. economy. However, a lack of data has impeded comprehensive, longitudinal analyses of the program's economic impact and job creation, especially at the local level.<sup>68</sup> In 2013, the DHS Office of Inspector General (OIG) raised concerns<sup>69</sup> about the validity of USCIS estimates of economic impact.<sup>70</sup> In response to the OIG's recommendation, USCIS commissioned an economic impact study by the Department of Commerce Economics and Statistics Administration.

Published in 2017, the study examined EB-5 investor projects during FY2012 and FY2013. It identified \$16.7 billion in total EB-5 capital, of which \$5.8 billion was generated by approximately 11,000 EB-5 immigrant investors.<sup>71</sup> An estimated 174,039 jobs were generated through EB-5 related projects during this period, and this included non-EB-5 investment spending. Most investment spending and jobs were generated through regional centers.<sup>72</sup>

Additional studies of economic impact have been published by stakeholder groups and other organizations not affiliated with the federal government.<sup>73</sup> A 2019 economic impact study commissioned by two advocacy groups, the EB-5 Investment Coalition and Invest in the USA, examined projects during FY2014 and FY2015. The study identified approximately \$11 billion in capital investment through the Regional Center Program, which represented 2% of foreign direct investment in the United States during that period. Two-thirds of investments were in the construction sector. Other sectors receiving these investments were hotels and motels; real estate; wholesale trade; architecture, engineering, and related services; and health care. Investments supported an estimated 355,200 jobs.<sup>74</sup>

<sup>67</sup> U.S. Citizenship and Immigration Services, "USCIS Adjusts Process for Managing EB-5 Visa Petition Inventory," news release, January 29, 2020, at <https://www.uscis.gov/news/news-releases/uscis-adjusts-process-for-managing-eb-5-visa-petition-inventory>.

<sup>68</sup> Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014.

<sup>69</sup> U.S. Department of Homeland Security Office of Inspector General, *United States Citizenship and Immigration Services: Employment-Based Fifth Preference (EB-5) Regional Center Program*, OIG-14-19, December 2013.

<sup>70</sup> USCIS reported that from FY1990 to FY2014, the EB-5 visa had generated more than \$11.2 billion in investments and at least 73,730 jobs, U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa an Under Performing Asset?* testimony of Rebecca Gambler, Director of Homeland Security and Justice at the U.S. Government Accountability Office, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 11, 2016.

<sup>71</sup> Non EB-5 investments included domestic and foreign sources of capital including equity from project developers, commercial loans, and investment from other project participants.

<sup>72</sup> David K. Henry et al., "Estimating the Investment and Job Creation Impact of the EB-5 Program" (U.S. Department of Commerce, Office of the Chief Economist, 2017), <https://www.commerce.gov/news/reports/2017/01/estimating-investment-and-job-creation-impact-eb-5-program>.

<sup>73</sup> See, for example, David Kay, "The Economic Impact and Contribution of the EB-5 Immigration Program, 2013" (Commissioned by Invest in the USA, 2015), [https://iiusa.org/wp-content/uploads/2020/05/Economic-Impacts-of-the-EB-5-Immigration-Program\\_2013\\_FINAL-web.pdf](https://iiusa.org/wp-content/uploads/2020/05/Economic-Impacts-of-the-EB-5-Immigration-Program_2013_FINAL-web.pdf). and Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014.

<sup>74</sup> Jeffrey B. Carr and Robert A. Chase, "Assessment of the Economic Value and Job Creation Impacts of Project

Although these studies have identified substantial capital investments, the EB-5 program has been scrutinized for the high proportion of investments that have gone to projects in affluent, urban areas.<sup>75</sup> Prior to reforms applied through a 2019 federal regulation (see the “EB-5 Immigrant Investor Program Modernization” section), a broader interpretation of TEAs meant that these investments were made at the discounted rate for TEA investments.<sup>76</sup>

### December 16, 2021, Update

In June 2021, the United States District Court for the Northern District of California vacated the EB-5 Immigrant Investor Program Modernization rule described below under an Administrative Procedure Act claim. As a result, the regulations in place before November 21, 2019, currently apply. Under those regulations, minimum investment requirements are \$1,000,000 or \$500,000 in a TEA, USCIS permits state agencies to designate high unemployment TEAs, and there is no priority date retention on a previously approved EB-5 petition. See **Table 3**, “Before November 21, 2019.” USCIS has appealed the decision.

## EB-5 Immigrant Investor Program Modernization

Members of Congress have introduced several legislative measures aiming to change the EB-5 program in recent years but none have become law.<sup>77</sup> The most significant changes to the program have come from the Executive Branch through the DHS EB-5 Immigrant Investor Program Modernization regulation.<sup>78</sup> The regulation, proposed in January 2017 and implemented in November 2019, made the most substantial overhaul to the EB-5 program since Congress introduced the Regional Center pilot program in 1992.

The regulation applies to all petitioners who file an I-526 on or after the regulation’s effective date of November 21, 2019. As mentioned previously, there were three major sets of changes under the regulation, affecting priority date retention, minimum investment amounts, and TEA designations. In addition, the regulation made technical clarifications and adjustments. (For a brief summary of the rule’s major changes, see **Table 3**.)

The regulation has generated opposition from some Members and industry stakeholders. Senator Rand Paul introduced a joint resolution to prohibit the rule changes.<sup>79</sup> Major industry stakeholders and advocates submitted public comments to the proposed version of the rule requesting that it be withdrawn.<sup>80</sup> Some public comments submitted in response to the proposed rule expressed the

Capital Investment Activity Under the EB-5 Program,” Economic & Policy Resources, February 28, 2019.

<sup>75</sup> Eliot Brown, “How a U.S. Visa-for-Cash Plan Funds Luxury Apartment Buildings,” *Wall Street Journal*, September 10, 2015, sec. US, <https://www.wsj.com/articles/how-immigrants-cash-funds-luxury-towers-in-the-u-s-1441848965>.

<sup>76</sup> Testimony of Jeanne Calderon, NYU Stern School of Business Clinical Associate Professor, in U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2016, at <https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-Wstate-CalderonJ-20160211.pdf>.

<sup>77</sup> Previous legislative attempts included, in the 113<sup>th</sup> Congress: S. 744, H.R. 2131, H.R. 3163, H.R. 4178, H.R. 4659; in the 114<sup>th</sup> Congress: H.R. 616, S. 1501, H.R. 3370, S. 2115, S. 2415, S. 2122, H.R. 5992; and in the 115<sup>th</sup> Congress, S. 727; H.R. 3471.

<sup>78</sup> Department of Homeland Security, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35750, July 24, 2019.

<sup>79</sup> S.J.Res. 55 was introduced in the 116<sup>th</sup> Congress.

<sup>80</sup> Letter from Robert Maples on behalf of American Immigration Lawyers Association, U.S. Chamber of Commerce, EB-5 Investment Coalition, Invest in the USA, The Real Estate Roundtable, and EB-5 Rural Alliance to Honorable John F. Kelly, Secretary of Homeland Security, February 24, 2017, <https://www.regulations.gov/document?D=USCIS->

view that EB-5 reforms should be made by Congress through the legislative process, rather than through federal regulation.<sup>81</sup> Shortly after the regulation was implemented, a Florida regional center sued DHS over it.<sup>82</sup> The motion for a preliminary injunction against the regulation was denied.

DHS has argued that regulatory action was necessary because Congress had failed to pass comprehensive EB-5 reform legislation and explained that it was acting with authority granted under the Immigration and Nationality Act. Some Members of Congress, on both sides of the aisle, urged implementation of the new rule after its proposal, arguing that it would “advance the national interest” and re-align the program with congressional intent.<sup>83</sup>

## Priority Date Retention

The regulation allows petitioners to retain the priority dates of approved I-526 petitions for subsequent I-526 petitions.<sup>84</sup> For example, if an initial application by a petitioner is with a regional center that is terminated through no fault of the petitioner, the petitioner may still retain that priority date. DHS claims that this will provide investors with greater predictability, certainty, and flexibility, given that it expects the visa to “remain oversubscribed for the foreseeable future.”<sup>85</sup> As of April 2020, there were more than 24,000 EB-5 petitions that had been approved and were awaiting visa availability, 98% of which were filed by petitioners from China.<sup>86</sup> According to DHS, several commenters on the rule expressed general support for this change.<sup>87</sup>

## Changes to Minimum Investment Amounts

Since the EB-5 program was established in 1990, minimum investment requirements had remained the same: \$1 million or \$500,000 in a TEA. The regulation increased these amounts for the first time to \$1.8 million or \$900,000 in a TEA, maintaining the same 50% differential for TEA and non-TEA projects.<sup>88</sup> DHS determined these amounts to be the present-day value of the initial investment requirement amounts established by Congress, as adjusted for inflation using the unadjusted CPI-. The regulation sets a schedule for adjustment for inflation every five years, beginning from the regulation’s effective date.

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2016-0006-0031.

<sup>81</sup> Department of Homeland Security, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35757, July 24, 2019.

<sup>82</sup> Genevieve Douglas, “Overhaul of Immigrant Investor Program Challenged in Court (1),” *Bloomberg Law*, November 29, 2019, [https://www.bloomberglaw.com/document/X35VNSMK000000?bna\\_news\\_filter=daily-labor-report&jcsearch=BNA%25200000016eb761dbcaa16ebfef7d170001#jcite](https://www.bloomberglaw.com/document/X35VNSMK000000?bna_news_filter=daily-labor-report&jcsearch=BNA%25200000016eb761dbcaa16ebfef7d170001#jcite).

<sup>83</sup> “Grassley, Leahy Press Trump Administration on EB-5 Regulations,” news release, March 11, 2019, <https://www.grassley.senate.gov/news/news-releases/grassley-leahy-press-trump-administration-eb-5-regulations>.

<sup>84</sup> 8 C.F.R. §204.6(d).

<sup>85</sup> Department of Homeland Security, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35751, July 24, 2019.

<sup>86</sup> Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIM3, queried April 2020, TRK 5965. [https://www.uscis.gov/sites/default/files/document/data/EB\\_I140\\_I360\\_I526\\_performancedata\\_fy2020\\_Q1\\_Q2.pdf](https://www.uscis.gov/sites/default/files/document/data/EB_I140_I360_I526_performancedata_fy2020_Q1_Q2.pdf).

<sup>87</sup> See, for example, Letter from Peter D. Joseph, Invest in the USA Executive Director, to Samantha Deshommes, Acting Chief, USCIS Regulatory Coordination Division, April 11, 2017, <https://www.regulations.gov/document?D=USCIS-2016-0006-0287>.

<sup>88</sup> 8 C.F.R. §204.6(f).

Opponents to the increased minimums state that they disadvantage less wealthy investors, could reduce overall investment and economic development, and make EB-5 less competitive compared with other countries' investor programs.<sup>89</sup>

DHS acknowledged that higher investment amounts may dissuade some investors, which could impact job creation, make it more costly for regional centers to match investors to projects, and drive interest to other countries' foreign investor visa programs. However, it argues that these increases are necessary to keep pace with inflation, will increase overall investment, and that greater funding could reduce burdens on regional centers to recruit more investors. DHS also asserts that EB-5 will remain competitive with other countries' visa programs.<sup>90</sup>

## TEA Designations

Investors qualify for a reduced minimum investment amount for investments in NCEs that are located in rural areas or areas of high unemployment (for more information, see the “What is a targeted employment area (TEA)?” section). The regulation made a substantial change regarding high unemployment areas by removing states' authority to designate those areas—now only USCIS may approve TEA geographies.<sup>91</sup>

The regulation also specifies how determinations are made when considering groups of census tracts. The weighted average of the unemployment rate in the census tract(s) in which the NCE is principally doing business must be at least 150% of the national average. Only census tracts that are directly related to EB-5 projects may be included in these groupings. The regulation also allows cities and towns with populations of 20,000 or more that are located outside of Metropolitan Statistical Areas to qualify as high unemployment areas.

Some have argued that removing states' authority to designate TEAs creates additional burdens for investors who may have to hire economists to analyze unemployment data to submit for TEA determinations and disallows states from participating in decisions related to their own economic development.<sup>92</sup>

DHS stated its goal with this change was to reduce inconsistencies between states and to ensure that the investments that qualify for the lower minimum amount are actually directed toward areas with high levels of unemployment, creating jobs where they are most needed and thereby better fulfilling Congress's intent for TEAs. This change addresses previous allegations that wealthy, urban areas were being gerrymandered into TEAs. DHS estimates that 43% of NCEs with TEA designations could be impacted by the change.

<sup>89</sup> See, for example, Dear Colleague Letter from Senator Rand Paul, August 20, 2019, <https://www.eb5investors.com/resources/sen-rand-paul-dear-colleague-on-eb-5.pdf>; and Dillon Colucci, “New EB-5 Regulations: Winners and Losers,” *EB-5 Insights*, July 24, 2019, at <https://www.eb5insights.com/2019/07/24/new-eb-5-regulations-winners-and-losers/>.

<sup>90</sup> Department of Homeland Security, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35763, July 24, 2019.

<sup>91</sup> 8 C.F.R. §204.6(i).

<sup>92</sup> See, for example, Dillon Colucci, “New EB-5 Regulations: Winners and Losers,” *EB-5 Insights* (blog), July 24, 2019, <https://www.eb5insights.com/2019/07/24/new-eb-5-regulations-winners-and-losers/>; Suzanne Lazicki, “Targeted Employment Areas from November 21,” *EB-5 Updates* (blog), November 22, 2019, <https://blog.lucidtext.com/2019/11/22/targeted-employment-areas-from-november-21/>.

## Technical Adjustments and Clarifications

The regulation also makes a number of clarifications and technical adjustments. One clarification relates to derivative family members and I-829 petitions. If a family member is not included on the principal investor's I-829 petition because the principal investor fails or refuses to file a Form I-829, they may file their own I-829 to remove conditions on their permanent residence. The regulation also provides greater flexibility in interview locations for I-829 petitions.<sup>93</sup> Additional changes update regulations to reflect statutory changes and clarify key terms for the program.

**Table 3. Summary of Major Changes under the EB-5 Immigrant Investor Program Modernization Regulation**

	Before November 21, 2019	On or After November 21, 2019
<b>Minimum Investment Amounts</b>	Investment amounts had not changed since the visa's inception: \$1 million or \$500,000 in a TEA	Investment amounts increased to \$1.8 million or \$900,000 in a TEA. The amounts will be adjusted for inflation, tied to the CPI-U, every five years.
<b>TEA Designations</b>	State governments could certify a TEA by identifying a particular geographic or political subdivision as an area of high unemployment	States may no longer designate geographic and political subdivisions as high unemployment areas. Only USCIS can make special designations of a high unemployment area of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business.
<b>Priority Date Retention</b>	Investors were unable to use the priority date on an approved I-526 for future petitions.	EB-5 petitioners will retain the priority dates of approved I-526 petitions for use in connection with any subsequent I-526 petition.

**Source:** CRS summary of the DHS EB-5 Immigrant Investor Program Modernization regulation.

**Note:** The EB-5 Immigrant Investor Program Modernization regulation applies to all petitions filed on or after November 21, 2019.

## Policy Issues

USCIS implementation of the EB-5 modernization regulation in 2019 addressed several longstanding perceived deficiencies of the EB-5 program, including concerns about TEA gerrymandering and investment amounts that had not been changed since the program's inception. Nevertheless, concerns about the program remain, particularly with regard to fraud and national security risks, data collection, and backlogs in application processing. In addition, new concerns have emerged related to the COVID-19 pandemic. The following sections review these issues and, where applicable, discuss changes USCIS has made to address them.

### Fraud and Security Risks

Some Members of Congress have repeatedly expressed concerns about instances of fraud and national security concerns associated with the EB-5 visa category and the Regional Center

<sup>93</sup> 8 C.F.R. §216.6.

Program and have questioned whether these issues merit reform or ending the program entirely.<sup>94</sup> The Government Accountability Office (GAO) found that EB-5 faces the risk of fraud in three unique respects that stem from its investment components.<sup>95</sup> First, immigrant investors must provide evidence that their investment funds were obtained through lawful means. It can be difficult, however, for USCIS to verify these sources.

Second, the potential for large financial gains through the EB-5 visa may motivate regional center operators and intermediaries<sup>96</sup> to take advantage of foreign investors. Some intermediaries have used aggressive tactics to recruit investors abroad and some misrepresent the Regional Center Program. For example, because of these tactics, some investors mistakenly believe that regional centers are government-run even though most are administered by limited liability companies.<sup>97</sup> There have been cases of regional center developers and managers defrauding immigrant investors for personal gain<sup>98</sup> and putting at risk their immigration status.<sup>99</sup>

U.S. Securities and Exchange Commission (SEC) officials reported over 100 tips, complaints, and referrals on possible security fraud violations concerning the EB-5 visa from January 2013 to January 2015, and just over half were referred for further investigation.<sup>100</sup> Further, from February 2013 to December 2015, SEC filed 19 cases involving EB-5 offerings, of which almost half involved fraud allegations.<sup>101</sup> USCIS Fraud Detection and National Security (FDNS) has identified the program's susceptibility to "Ponzi schemes" and financial fraud.<sup>102</sup> Several EB-5 investors have filed lawsuits against regional centers and NCEs alleging fraud and misappropriation of funds.<sup>103</sup>

<sup>94</sup> See, for example, U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018; U.S. Congress, House Committee on the Judiciary, *The Department of Homeland Security's Proposed Regulations Reforming the Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., March 8, 2017; U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 11, 2016; and U.S. Congress, Senate Committee on the Judiciary, *The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?*, hearing, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 2, 2016.

<sup>95</sup> U.S. Government Accountability Office, *Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO-15-696, August 2015.

<sup>96</sup> Regional center operators and intermediaries can include the individual who created the regional center, the individual who manages or oversees the regional center, or the individual who connected or recruited the foreign investor to invest in a certain regional center.

<sup>97</sup> Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014

<sup>98</sup> Ellen Sheng, "Foreign Investors Defrauded Through U.S. EB-5 Visa Program," *Forbes*, August 1, 2016.

<sup>99</sup> Prepared Statement by Senator Chuck Grassley, Senate Judiciary Committee Chairman, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018. <https://www.judiciary.senate.gov/grassley-statement-at-hearing-on-citizenship-for-sale-oversight-of-the-eb-5-investor-visa-program>.

<sup>100</sup> U.S. Government Accountability Office (GAO), *Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO-15-696, August 2015.

<sup>101</sup> U.S. Congress, Senate Committee on the Judiciary, *The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?* testimony of Stephen L. Cohen, Associate Director of U.S. Securities and Exchange Commission's Division of Enforcement, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 2, 2016.

<sup>102</sup> Prepared Statement by Senator Chuck Grassley, Senate Judiciary Committee Chairman, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018. <https://www.judiciary.senate.gov/grassley-statement-at-hearing-on-citizenship-for-sale-oversight-of-the-eb-5-investor-visa-program>.

<sup>103</sup> Gary Friedland and Jeanne Calderon, "EB-5 Securities: New Developments and Updated NYU Stern Database—2018 Edition" (New York: NYU Stern School of Business, 2018), <https://www.stern.nyu.edu/sites/default/files/assets/>

Third, the EB-5 visa is susceptible to the appearance of favoritism and special access. A DHS OIG report identified the risk of internal and external influence on the EB-5 visa, listing USCIS's lack of protocols to document inquiries, decisionmaking, and responses to external parties who inquired about EB-5 activities as a key issue.<sup>104</sup> In March 2015, DHS OIG released a report prompted by USCIS employee complaints on the management of the EB-5 visa.<sup>105</sup> Subsequently, the DHS Secretary asked Congress to help increase the security and integrity of the visa. USCIS then issued a new ethics and integrity protocol for EB-5 that addresses application processing and stakeholder communication.<sup>106</sup>

USCIS has conducted risk assessments to identify, analyze, and establish solutions for issues surrounding fraud. In 2018, USCIS reported that it had begun conducting an annual fraud assessment in response to GAO recommendations.<sup>107</sup> USCIS has also reported to GAO that it conducts regular oversight work and collaborates with other enforcement agencies that may uncover fraud, such as the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement's (ICE's) Homeland Security Investigations (HSI), and SEC. USCIS also reported a memorandum of understanding with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, to investigate illicit use of investors' funds (e.g., money laundering).<sup>108</sup> USCIS has stated that these partnerships facilitate national security vetting and help identify "potential terrorists... potential spies, saboteurs, and technology thieves."<sup>109</sup>

USCIS has stated that "there are indications that the [regional center] program has been used to undermine our national security."<sup>110</sup> A 2017 FDNS report identified 40 cases with possible national security concerns from 2011 to 2015 and noted that additional cases may be missing due to limitations of law enforcement data systems.<sup>111</sup> A central concern related to fraud and national security risks is USCIS' interpretation that it lacks the authority to deny or terminate a regional center's participation in EB-5 based solely on fraud or national security concerns.<sup>112</sup>

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documents/EB-5%20Securities%20-%20New%20Developments%20and%20Updated%20NYU%20Stern%20Database%20-%202018%20Edition.pdf.

<sup>104</sup> U.S. Department of Homeland Security Office of Inspector General, *United States Citizenship and Immigration Services: Employment-Based Fifth Preference (EB-5) Regional Center Program*, OIG-14-19, December 2013.

<sup>105</sup> The report found that then-USCIS Director Alejandro Mayorkas had "communicated with stakeholders on substantive issues, outside of the normal adjudicatory process and intervened with the career USCIS staff in ways that benefited stakeholders." U.S. Department of Homeland Security Office of Inspector General, *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program*, March 2015.

<sup>106</sup> U.S. Department of Homeland Security, *Ethics and Integrity: Protocols for Processing EB-5 Immigrant Investor Visa Petitions and EB-5 Regional Center Applications, Including Stakeholder Communications*, April 30, 2015.

<sup>107</sup> Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

<sup>108</sup> James Reiser, "A Dive Into EB-5: A Need for Complete Modernization of U.S. Investor-Based Immigration Program or EB-5 (Employment-Based Immigration: Fifth Preference)," *Touro Law Review* 35, no. 4 (2019): 37.

<sup>109</sup> Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

<sup>110</sup> *Ibid.*

<sup>111</sup> Letter from Senator Charles E. Grassley to Kirstjen Nielsen, Department of Homeland Security Secretary, June 4, 2018, at [https://www.judiciary.senate.gov/imo/media/doc/2018-06-04%20CEG%20to%20DHS%20\(EB-5%20vulnerabilities\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-06-04%20CEG%20to%20DHS%20(EB-5%20vulnerabilities).pdf).

<sup>112</sup> Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

USCIS may terminate a regional center’s participation in the EB-5 program if the regional center fails to submit required information or it is no longer promoting economic growth.<sup>113</sup> USCIS can deny immigration benefits to individual immigrants who are considered to be a national security threat,<sup>114</sup> but the agency has interpreted the INA as not being applicable to regional centers because they are pooling funds from investors rather than seeking an immigrant benefit or visa.<sup>115</sup> USCIS officials have noted that this statutory limitation is a “major challenge and requires a significant amount of time to link findings [of fraud or national security concerns] to the statutory criteria,” for terminating a regional center.<sup>116</sup>

During a 2018 Senate Judiciary Committee hearing on the EB-5 program, then-USCIS Director L. Francis Cissna made four requests to Congress for the agency to achieve greater oversight of the program and mitigate fraud and security risks: (1) authority to terminate regional centers involved with criminal activity, (2) the ability to prevent individuals with criminal records from holding positions as principals within centers, (3) authority to audit regional centers, and (4) authority to sanction regional centers through fines rather than termination alone. Director Cissna recommended that “Congress should consider allowing the [regional center] program to expire” if legislative reforms are not undertaken.<sup>117</sup>

## Data Collection and Oversight

In a 2015 report, GAO identified limitations in USCIS’ data collection for the EB-5 program. Addressing these could assist in its assessment and detection of fraud. For example, USCIS relies heavily on paper-based documentation and does not fully transfer information into its electronic databases or transfer information in a standardized manner.<sup>118</sup> These practices can make it difficult to search for certain information, especially when attempting to identify fraud through the tracking of irregularities or trends.

In recent years, USCIS has cited improvements to its data collection processes. In 2017, USCIS published revised forms to improve its data collection and ability to vet regional centers, principals, and petitions.<sup>119</sup> For example, Form I-526 was expanded from 3 to 13 pages to collect more detailed information from filers, including employment history, address history, source of investment, and additional information on regional centers and NCEs.<sup>120</sup>

<sup>113</sup> 8 C.F.R. §204.6(m)(6).

<sup>114</sup> INA §212(a)(3).

<sup>115</sup> U.S. Department of Homeland Security Office of Inspector General, *United States Citizenship and Immigration Services: Employment-Based Fifth Preference (EB-5) Regional Center Program*, OIG-14-19, December 2013.

<sup>116</sup> U.S. Government Accountability Office (GAO), *Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO-15-696, August 2015.

<sup>117</sup> Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

<sup>118</sup> For example, databases do not require that all information on paper forms be entered; certain input, such as an applicant’s name from the I-924 form, is optional. U.S. Government Accountability Office, *Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO-15-696, August 2015.

Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

<sup>120</sup> Sylvia Sobczyk, “USCIS Releases New Edition of Form I-526 with New Changes and Information Requested From Investors,” EB-5 Insights (blog), April 14, 2017, <https://www.eb5insights.com/2017/04/14/uscis-releases-new-edition->

In 2015, GAO reported that USCIS, SEC, and HSI officials and members of the national industry association representing regional centers agreed that expanding site visits would increase the program's integrity. USCIS reported that FDNS staff increased project site visits through the USCIS Administrative Site Visit Verification program from 50 visits in 2016 to 232 in 2017. Thirty-one percent of sites visited were classified as "not operating as expected" because the business had been sold, gone out of business, appeared to be deserted, or there was no evidence of construction.<sup>121</sup>

USCIS is required by statute to interview immigrant investors within 90 days of submitting Form I-829, but the agency also has the authority to waive that requirement.<sup>122</sup> Interviews can be a method to collect corroborating information on whether investors meet program requirements and whether the project may involve fraud. USCIS began a pilot program to conduct interviews via videoconference in 2016 and reported conducting 44 in 2018.<sup>123</sup>

In September 2020, USCIS proposed a new regulation to expand biometric data collection. The proposed regulation would authorize the collection of biometric data for criminal and national security background checks on all principals of regional centers under the EB-5 program, including U.S. citizens and LPRs.<sup>124</sup> USCIS asserts that this biometric collection would detect "instances of fraud, financial crimes, or other activities that would demonstrate a lack of ability to promote economic growth" and identify potential national security concerns associated with regional centers.<sup>125</sup> The regulation has been met with opposition from some stakeholders, including the American Immigration Lawyers Association (AILA), which argued in a comment on the regulation that, "DHS has failed to provide a reasoned analysis that necessitates such a significant and overbroad intrusion on the privacy of Regional Center applicants."<sup>126</sup>

As mentioned previously (see the "Economic Impact" section), data limitations also impede analyses of the EB-5 program's economic impacts. For example, with regard to job creation, USCIS only tracks that the minimum number of jobs (10) have been created through EB-5 investments, rather than the total number of jobs produced.<sup>127</sup> Some Members of Congress have expressed concern that USCIS does not collect or publicly release enough data about the program to show stakeholders where visas go and what types of projects get funded. In response, USCIS

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of-form-i-526-with-new-changes-and-information-requested-from-investors/.

<sup>121</sup> Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

<sup>122</sup> 8 U.S.C. §1186b(c)(1)(B) (INA interview requirement); 8 U.S.C. §1186b(d)(3) (discretionary waiver authority).

<sup>123</sup> Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018, at <https://www.judiciary.senate.gov/imo/media/doc/06-19-18%20Cissna%20Testimony.pdf>.

<sup>124</sup> U.S. Citizenship and Immigration Services, DHS, "Collection and Use of Biometrics by U.S. Citizenship and Immigration Services," 85 *Federal Register* 56338, September 11, 2020.

<sup>125</sup> Department of Homeland Security, "Collection and Use of Biometrics by U.S. Citizenship and Immigration Services," 85 *Federal Register* 56362, September 11, 2020.

<sup>126</sup> American Immigration Lawyers Association. "AILA Comment on the Biometrics Rule as it Relates to Regional Centers," October 13, 2020, at <https://www.aila.org/infonet/comments-dhs-proposed-rule-biometrics>.

<sup>127</sup> Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014.

has stated that it does not track this information.<sup>128</sup> These limitations can make it difficult to evaluate the successes of the program.

## Application and Petition Processing

Processing times for EB-5 applications (both for the regional center designation and the petitions for foreign national investors), and the impact of delays on investors and project developers, remain ongoing issues within the EB-5 program.<sup>129</sup> As of December 30, 2020, USCIS estimated processing times for investors filing Form I-526 to immigrate to the United States ranged from 35.0 months to 52.5 months. USCIS estimated Chinese (mainland born) investors' processing times at 50.0 to 75.5 months, while the range for all other foreign nationals was between 27.5 and 43.0 months. The processing time to remove conditionality from LPR status (Form I-829) ranged between 33.0 and 59.0 months. The processing time for applications for regional center designations (Form I-924) ranged between 52.5 and 56.0 months.<sup>130</sup>

Some investors who have experienced long wait times for EB-5 visas have filed lawsuits to rescind their investments and leave the EB-5 program.<sup>131</sup> EB-5 stakeholders have stated that USCIS needs to adjudicate EB-5 and regional center applications in a more predictable manner, noting that the EB-5 program faces competition from other countries' immigrant investor programs that operate more predictably and quickly.

In testimony to Congress in 2018, USCIS stated a primary reason for processing delays in recent years was an increased number of EB-5 filings. In response to these delays, the agency added new staff to review, investigate, and adjudicate petitions.<sup>132</sup> In 2017, IPO announced an organizational restructuring that created a division of Adjudicators and Economists focused on I-829 filings and I-526 adjudication.<sup>133</sup> Full-time IPO staff increased from 184 employees at the end of 2017 to 245

<sup>128</sup> Responses to Questions for the Record by L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018. [https://www.judiciary.senate.gov/imo/media/doc/Cissna%20Responses%20to%20QFRs%20\(Public\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Cissna%20Responses%20to%20QFRs%20(Public).pdf).

<sup>129</sup> For example, see Office of the Citizenship and Immigration Services Ombudsman, *EB-5 Immigrant Investor Program Stakeholder Meeting*, Executive Summary, Washington, DC, March 5, 2013. See also Office of the Citizenship and Immigration Services Ombudsman, *Employment Creation Immigrant Visa (EB-5) Program Recommendations*, Department of Homeland Security, Washington, DC, March 18, 2009.

<sup>130</sup> USCIS Case Processing Times. "Processing Times," accessed December 30, 2020, at <https://egov.uscis.gov/processing-times/>.

<sup>131</sup> Gary Friedland and Jeanne Calderon, *EB-5 Securities: New Developments and Updated NYU Stern Database—2018 Edition* (New York: NYU Stern School of Business, 2018), <https://www.stern.nyu.edu/sites/default/files/assets/documents/EB-5%20Securities%20-%20New%20Developments%20and%20Updated%20NYU%20Stern%20Database%20-%202018%20Edition.pdf>.

<sup>132</sup> Responses to Questions for the Record by L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018. [https://www.judiciary.senate.gov/imo/media/doc/Cissna%20Responses%20to%20QFRs%20\(Public\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Cissna%20Responses%20to%20QFRs%20(Public).pdf).

<sup>133</sup> Immigrant Investor Program Office, *EB-5 Stakeholder Engagement*, remarks of Acting IPO Chief Julia Harrison, New York, NY, November 7, 2017. [https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED\\_EB5EngagementTalkingPoints\\_11072017.pdf](https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED_EB5EngagementTalkingPoints_11072017.pdf).

in 2020.<sup>134</sup> By FY2018, IPO reported a 21.9% increase in I-526 completions and a backlog reduction of 36%.<sup>135</sup>

However, investors and stakeholders expressed concerns as adjudications (approvals and denials) of I-526 petitions dropped substantially in FY2019.<sup>136</sup> Despite a high number of pending I-526 petitions (14,394 at the end of FY2018), 4,673 were adjudicated in FY2019 compared with 15,122 in FY2018 and 12,243 in FY2017. IPO acknowledged to stakeholders that “increased processing times” were “the subject of much comment and understandable concern” and attributed delays in processing times to its focus on protecting integrity and preventing abuse in the program, as well as a lapse in congressional authorization of the Regional Center Program.<sup>137</sup>

In January 2020, IPO announced that effective March 31, 2020, it would begin processing pending I-526 applications based on the availability of visas for a petitioner’s country of origin instead of using its previous “first in, first out” approach to processing petitions in the order in which they were received. IPO stated that this new approach would better address congressional intent for visa allocation by enabling petitioners to use their annual per-country allocation without waiting in line behind petitioners from oversubscribed countries.<sup>138</sup>

## COVID-19 and the EB-5 Program

In response to the COVID-19 pandemic, in April 2020, the Trump Administration issued a Presidential Proclamation barring the entry of most foreign nationals. However, the proclamation included some exemptions, including “any alien applying for a visa to enter the United States pursuant to the EB-5 Immigrant Investor Program.”<sup>139</sup>

In response, four Senators sent President Trump a letter asking the Administration to “remove the exemption... until real reforms are adopted” citing fraud and characterizing the program as “effectively functioning as a pay-for-citizenship scheme in many cases.”<sup>140</sup> Some industry stakeholders criticized the Senators’ response, arguing that EB-5 contributes to the economy and generates jobs “at no cost to the taxpayer.”<sup>141</sup>

<sup>134</sup> Immigrant Investor Program Office, *EB-5 Stakeholder Engagement*, remarks of IPO Chief Sarah Kendall, Washington, DC, March 13, 2020. [https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED\\_SarahKendallRemarksEB5\\_03132020.pdf](https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED_SarahKendallRemarksEB5_03132020.pdf).

<sup>135</sup> Immigrant Investor Program Office, *2018 AILA & IIUSA EB-5 Industry Forum*, remarks of IPO Chief Sarah Kendall, Chicago, IL, October 29, 2018. [https://www.uscis.gov/sites/default/files/document/foia/2018\\_AILA\\_IIUSA\\_EB-5\\_Industry\\_Forum\\_Sarah\\_M.\\_Kendall\\_Remarks.pdf](https://www.uscis.gov/sites/default/files/document/foia/2018_AILA_IIUSA_EB-5_Industry_Forum_Sarah_M._Kendall_Remarks.pdf).

<sup>136</sup> Immigrant Investor Program Office, *EB-5 Stakeholder Engagement*, remarks of IPO Chief Sarah Kendall, Washington, DC, March 13, 2020, at [https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED\\_SarahKendallRemarksEB5\\_03132020.pdf](https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED_SarahKendallRemarksEB5_03132020.pdf).

<sup>137</sup> Immigrant Investor Program Office, *2019 IIUSA EB-5 Industry Forum*, remarks of IPO Chief Sarah Kendall, Seattle, WA, October 29, 2019. [https://www.uscis.gov/sites/default/files/document/checklists/2019\\_IIUSA\\_EB-5\\_Industry\\_Forum.pdf](https://www.uscis.gov/sites/default/files/document/checklists/2019_IIUSA_EB-5_Industry_Forum.pdf).

<sup>138</sup> Ibid.

<sup>139</sup> The White House (President Donald J. Trump), “Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak,” accessed October 15, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>.

<sup>140</sup> Sens. Tom Cotton, Ted Cruz, Chuck Grassley, and Josh Hawley, “Cotton, Colleagues Urge Expansion and Extension of Immigration Proclamation,” press release, May 7, 2020, <https://www.cotton.senate.gov/news/press-releases/cotton-colleagues-urge-expansion-and-extension-of-immigration-proclamation>.

<sup>141</sup> Invest in the USA, “IIUSA Urges Senators to Embrace the EB-5 Program to Help Save and Create American Jobs at

Although EB-5 petitioners were exempted from entry bars, the pandemic interrupted consular processing of EB-5 visas abroad. DOS temporarily suspended visa services in March 2020 and announced a phased resumption of visa services in July.<sup>142</sup> As mentioned previously, most EB-5 petitioners are new arrivals who must go through consular processing (see the “EB-5 Admissions” section). Industry stakeholders expressed concern that because of the pause in consular processing, along with “stalled business projects,” the COVID-19 pandemic put the program at risk of losing unclaimed visas to other employment categories.<sup>143</sup>

The pandemic’s industry impacts have had direct implications for the EB-5 program. For example, there have been pandemic-related downturns in hospitality and commercial real estate construction projects, which are the targets of many EB-5 investments. There are also concerns about job creation requirements in light of the economic downturn impacting those industries.<sup>144</sup>

Additional concerns regarding delayed processing times have emerged related to the pandemic. In May 2020, USCIS, a fee-funded agency, predicted it would experience a budget shortfall due to declines in immigration filings and associated fees because of the pandemic.<sup>145</sup> USCIS cautioned about, though later rescinded, large-scale staff furloughs as a result of the shortfall.<sup>146</sup> In the Continuing Appropriations Act, 2021 and Other Extensions Act (H.R. 8337), Congress addressed the budget shortfall by amending the INA to expand “premium processing” and authorized the agency to increase premium processing filing fees. Premium processing is not currently available for EB-5 petitions, but the bill requires the DHS Secretary to provide Congress a five-year plan that includes plans to “improve processing times for all immigration and naturalization benefit requests.”<sup>147</sup>

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No Cost to the U.S. Treasury,” IIUSA Blog, May 11, 2020, <https://iiusa.org/blog/iiusa-urges-senators-to-embrace-the-eb-5-program-to-help-save-and-create-american-jobs-at-no-cost-to-the-u-s-treasury/>.

<sup>142</sup> U.S. Department of State, “Phased Resumption of Routine Visa Services,” *U.S. Visas News*, November 12, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/phased-resumption-routine-visa-services.html>.

<sup>143</sup> Genevieve Douglas, “Immigrant Investors Stalled by Virus Add to Economic Worries,” *Bloomberg Law*, June 8, 2020, Daily Labor Report, <https://news.bloomberglaw.com/daily-labor-report/immigrant-investors-stalled-by-virus-add-to-economic-worries>.

<sup>144</sup> Andrew McIntyre, “3 Ways COVID-19 Is Reshaping The EB-5 Landscape,” *Law360*, October 20, 2020, <https://www.law360.com/articles/1320447/3-ways-covid-19-is-reshaping-the-eb-5-landscape>.

<sup>145</sup> “Deputy Director for Policy Statement on USCIS’ Fiscal Outlook | USCIS,” June 25, 2020, <https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook>.

<sup>146</sup> USCIS, “USCIS Averts Furlough of Nearly 70% of Workforce | USCIS,” August 25, 2020, <https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce>.

<sup>147</sup> H.R. 8337-33 §4103.

## Appendix. EB-5 Related Terminology

**Table A-1. Acronyms**

<b>ANPRM/NPRM</b>	Advanced Notice of Proposed Rulemaking/Notice of Proposed Rulemaking
<b>CPI-U</b>	Consumer Price Index for All Urban Consumers
<b>DHS</b>	Department of Homeland Security
<b>DOS</b>	Department of State
<b>EB-5</b>	Investor Visa Program (fifth category of employment-based visas)
<b>FBI</b>	Federal Bureau of Investigation
<b>FDNS</b>	Fraud Detection and National Security (within USCIS)
<b>FinCEN</b>	Financial Crimes Enforcement Network
<b>GAO</b>	Government Accountability Office
<b>HSI</b>	Homeland Security Investigations
<b>ICE</b>	Immigration and Customs Enforcement
<b>INA</b>	Immigration and Nationality Act
<b>IPO</b>	Immigrant Investor Program Office
<b>LPR</b>	Lawful permanent resident
<b>MSA</b>	Metropolitan statistical area
<b>NCE</b>	New commercial enterprise
<b>NTA</b>	Notice to Appear – Form I-862
<b>OIG</b>	Office of Inspector General
<b>SEC</b>	Securities and Exchange Commission
<b>TEA</b>	Targeted Employment Area
<b>USCIS</b>	United States Citizenship and Immigration Services

**Table A-2. Forms**

<b>DS-260</b>	Immigrant Visa Electronic Application
<b>I-485</b>	Application to Register Permanent Residence or Adjust Status
<b>I-526</b>	Immigrant Petition by Alien Investor
<b>I-829</b>	Petition by Investor to Remove Conditions on Permanent Resident Status
<b>I-924</b>	Application For Regional Center Designation Under the Immigrant Investor Program
<b>I-924A</b>	Annual Certification of Regional Center

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