OPEN LETTER April 23, 2018

U.S. Citizenship & Immigration Services
Washington, DC

RE: Support for Proposed Rulemaking: EB-5 Immigrant Investor Program Modernization, DHS Docket No. USCIS-2016-0006 ("Proposed Regulations")

Dear Policymakers:

On April 11, 2017, Invest in the USA ("IIUSA"), the largest EB-5 trade association, provided the attached letter to the Acting Chief, Regulatory Coordination Division (Ms. Deshommes) as solicited by the USCIS, for its thoughts on the Proposed Regulations ("April Letter"). IIUSA's response represented the compiled insights, comments, and suggestions of well-established and geographically diverse stakeholders in the EB-5 community. The April Letter made many comments on the Proposed Regulations. At the time we hoped and believed that Congress would act and pass sweeping reform of the EB-5 program. We further believed such legislation would provide further guidance to the USCIS and the EB-5 stakeholders concerning Congress's intent about the EB-5 program.

Unfortunately, Congress failed to enact an EB-5 reform bill, which further increases the importance of issuing reasonable and workable regulations to help reform the program. This letter reaffirms our support of all recommendations in the April Letter while providing additional economic rationale for using a TEA investment amount of $800,000 and a Minimum Investment Amount of $1,000,000 as discussed on pages 16-19 of the April Letter.

IIUSA believes it is appropriate for USCIS to make changes by Regulation. The statute specifically empowers USCIS (DHS) to make changes which are difficult to make in a legislative environment.

Targeted Employment Areas ("TEAs")

IIUSA wholeheartedly supports the proposed new regulations on TEAs. We encourage the USCIS to enact the concept of adjacent and contiguous census tracts and the other geographic areas proposed within the new regulations, with the caveat that the American Community Survey (ACS) be the only data set that can be used for determining the unemployment level in a particular census tract. In this way, a TEA cannot be

gerrymandered geographically or by the dataset.[1] A qualifying TEA could be determined quite easily. It would not need prior approval. Just as the USCIS requires regional centers to produce very complex economic studies on job creation, the same would be required in calculating simple TEAs. In this way, the USCIS would be the final arbiter of whether a given project is in a TEA.

Investment Amounts

The Proposed Regulations would set the new investment thresholds at $1.35 million for an investment in a TEA and $1.8 million for a non-TEA investment. In the April Letter, IIUSA provided numerous reasons to support a conclusion that after a three-year set of incremental increases, the minimum investment amount should be $1,000,000, while the TEA investment amount should be $800,000. One of our reasons for this is that the inflation adjustment should be applied starting in 2011 when supply first equaled demand in the EB-5 program. That would result in an increase of $33,000 to the TEA investment amount. Considering that $533,000 is far below the Proposed Regulation's investment amount of $1,300,000, the April Letter then stated IIUSA's support for $800,000 as a compromise. Based on further review of how the Consumer Price Index ("CPI") is applied, we feel that $800,000 can be justified not only based on a compromise between using 2011-2016 data but can be wholly supported using sound application of the CPI.

The Notice of Proposed Rulemaking suggests that the CPI was used as the USCIS's measure for the new threshold investment amounts, and all calculations appear to be correct using a CPI Calculator from 1990. However, as discussed in more detail below, when applying the CPI appropriately, the final regulations should calculate the increase using the increase in the CPI from 1996 to the present. If the CPI is appropriately calculated for price adjustments, the date upon which meaningful demand in the EB-5 program started is when the increase should be contemplated. This should then be applied to the lower investment amount, and a meaningful differential should be set for the non-TEA price.

Adjust TEA Investment Amount for Inflation

USCIS indexed the $1,000,000 non-TEA investment amount using the CPI and concluded that it should be increased to $1,800,000. A CPI adjustment was not applied to the TEA Investment amount. Instead, USCIS took $1,800,000 and reduced it by 25%. However, the "$1 million priced good" was almost never purchased. Nearly 100% of all EB-5 investments are in TEAs. Thus, the $500,000 investment amount should be increased by the CPI using an appropriate date range (discussed below), and then a meaningful increase should apply to the higher investment amount. Because the $1 million investment amount was almost never purchased and thus did not come close to hitting market demand, it should be excluded from a re-calculation of price amount based on CPI.

Excluding the non-TEA investment amount from an increase based on the CPI is in line with how the CPI itself is determined. For example, despite the availability of "Personal Computers and Peripheral Equipment" as early as 1975, this category was not included in the CPI until 1997. This was true for one

[1] An interactive map is available on IIUSA.org that fully details the "contiguous and adjacent" methodology, with policy analysis also available for download: https://iiusa.org/eb-5-tea-policy-proposals-analytic-mapping-tool-on-contiguous-adjacent-tea/

simple reason; it wasn't in a basket of goods that most households would purchase even though they were available as early as 1975. If a good is not purchased, inflating the value of that good with the CPI is not economically sound.

Use 1996-Present for CPI Adjustment Calculation

As explained in the April Letter and in the example above, it would not make sense to adjust the price of a good until there is demand for that good. The USCIS used the period of 1990-2016 to arrive at the non-TEA investment amount. In the April Letter, we suggested using 2011-2016 as the time frame for which the CPI adjustment should be calculated, as it was not until 2011 that the total supply of visas fully met the EB-5 demand. If using 2011-2016 for this reason is not conservative enough, we suggest using 1996 on, as we cannot show a sizable interest in the "$500,000 product" until at least 1996 when the program began to have an increase in interest from investors with over 800 investors filing I-526 petitions that year, and approximately 1,500 and 1,400 petitions in the next two years respectively.

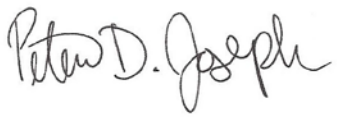
Using a CPI inflation calculator shows that $500,000 in January 1996 has the same buying power as $806,318.01 in February 2018. Congressional negotiators have also affirmed support for a qualified TEA level of $800,000 with the TEA methodology recommended in the.

As far as what the dollar amount should be for the non-TEA investment we believe, as discussed above, that since this is not something that has been consumed, it is not appropriate to utilize the CPI. We are suggesting that the differential between a TEA and a non-TEA be significant enough to encourage investment in rural and in underserved areas of the United States. We believe the differential should be $200,000 for the reasons outlined in the April Letter.

In closing, IIUSA continues to believe and advocate strongly for much-needed reform and reauthorization of this critical economic development program. IIUSA supports the Proposed Regulations if there is a decreased investment amount to $1 million and $800,000 in a TEA or Rural area. IIUSA also supports action which only Congress can take to enact needed integrity reforms and a long-term reauthorization in the coming months.

We look forward to working with you and the Department. Please let us know what additional information and analysis we can provide.

Sincerely,



Peter D. Joseph
Executive Director

Enclosures: IIUSA April 2017 Letter to USCIS regarding NPRM

APPENDIX A

April 11, 2017

Samantha Deshommes
Acting Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services ("USCIS")
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529

By electronic submission: www.regulations.gov

RE: EB-5 Immigrant Investor Program Modernization
82 Fed. Reg. 4738 (January 13, 2017)
RIN Number 1615-AC07

Dear Ms. Deshommes:

Thank you for the opportunity to provide comments on the Notice of Proposed Rulemaking: EB-5 Immigrant Investor Program Modernization ("NPRM"). Please accept this letter on behalf of Invest In the USA (IIUSA), the industry trade association for the EB-5 Regional Center Program, with over 280 Regional Center members and 200 associate from across the country. We collectively represent big and small projects, urban and rural economic development, and industry sectors ranging from real estate, manufacturing and energy to infrastructure, healthcare to education and more. Our Regional Center members are engines for economic growth in the United States, responsible for a vast majority of all EB-5 capital investment nationwide.

Since the Regional Center Program's inception, IIUSA estimates EB-5 has contributed over $34.5 billion in foreign direct investment into the United States at no cost to the taxpayer. Currently, there is over $18 billion worth of investment processing through the EB-5 lifecycle all the way from a pending I-526 to waiting for a visa number. This is comparatively over 5% of total inward foreign direct investment into the United States[1] in which all program administration is paid for by investor fees. EB-5 has proven itself to be a potent tool in many governments and private corporations' toolboxes to provide low cost capital for projects that create thousands of jobs for Americans.

In sum, IIUSA would be supportive of most provisions to this NPRM with the glaring exception of investment amount increases. With this sudden increase in the market, we expect the future of this program to be in dire jeopardy, leaving billions of dollars on the table to be directed to other country's immigrant investor programs. Please consider the following comments on each section of the NPRM for your review.

[1] See: https://data.oecd.org/fdi/fdi-flows.htm

IIUSA Comments

Priority Date Retention

IIUSA agrees with the NPRM provision regarding Priority Date Retention. Due to a number of factors, including those identified in the NPRM, it is increasingly likely that some immigrant investors will need to file subsequent petitions as described in the NPRM. IIUSA agrees that those affected investors who file subsequent petitions should be allowed to retain their priority date.

Include Material Change Provision in EB-5 Adjudications Policy PM-602-0083 (5/30/2013)

IIUSA further believes that the NPRM provision regarding Priority Date Retention, is in synch with USCIS' policy regarding Material Change as stated in the EB-5 Adjudications Policy PM-602-0083, issued May 30, 2013 (the "Policy Memorandum"). In order to alleviate any potential confusion, and to codify the relevant section of the Policy Manual, IIUSA requests that the NPRM be expanded to incorporate the Material Change portion of the Policy Manual for the reasons stated below.

The Policy Manual states that for Investors who have not obtained conditional LPR ("LPR") status, "if there are material changes to a Form I-526 at any time after filing, the petition cannot be approved.[2] Per the NPRM, these investors would be able to file a subsequent I-526 petition and retain their original priority date.

The Policy Manual then distinguishes the investor who has obtained conditional LPR status:

In order to provide flexibility to meet the realities of the business world, USCIS will permit an alien who has been admitted to the United States on a conditional basis to remove those conditions when circumstances have changed. An individual investor can, at the prescribed time, proceed with his or her Form I-829 petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the Form I-526, the requirements for the removal of conditions have been satisfied. Pursuant to this policy, USCIS will no longer deny petitions to remove conditions solely based on failure to adhere to the plan contained in the Form I-526 or to pursue business opportunities within an industry category previously approved for the regional center.[3]

IIUSA respectfully requests that the NPRM include USCIS current policy that an investor who has obtained conditional LPR status may proceed with his or her I-829 petition and provide evidence that the requirements for the removal of conditions have been satisfied[4] without the need to file a new I-526 petition.

IIUSA believes the Policy Manual and the NPRM are in synch. To avoid any confusion and to codify the Policy Manual's provisions regarding Material Change, the relevant portions of the Policy Manual should be stated in the NPRM.

[2] EB-5 Adjudications Policy PM-602-0083, issued May 30, 2013, p. 24.
[3] Id., p. 25.
[4] Ibid.

Expand Material Change Section of the Policy Manual to Apply to Investors with I-526 Petition Approval but Have Not Obtained Conditional Lawful Permanent Resident Status at the Time of a Material Change in the Business Plan

As noted above, the Policy Manual allows investors who have obtained conditional LPR status to file an I-829 petition. IIUSA believes the NPRM should also allow an investor who has an approved I-526 petition but not obtained conditional LPR status at the time of a material change, to obtain conditional lawful permanent residence and "at the prescribed time, proceed with his or her Form I-829 petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the Form I-526, the requirements for the removal of conditions have been satisfied."[5]

The Policy Manual treats all investors who have not obtained conditional LPR status as one group, and does not distinguish between investors who have an approved I-526 petition from those whose I-526 petition is pending approval:

Similarly, if, after the approval of a Form I-526 petition but before an alien investor has been admitted to the United States or adjusted his or her status pursuant to that petition, there are material changes to the business plan by which the alien intends to comply with the EB-5 requirements, the alien investor would need to file a new Form I-526 petition. Such material changes would constitute good cause to revoke the approved petition and would result in the denial of admission or an application for adjustment of status.[6]

IIUSA, however, believes that rather than require this investor to file a new I-526 petition, the NPRM should be expanded to allow investors whose I-526 petitions have been approved but who do not have conditional permanent resident status at the time of a material change, to remain eligible to apply for conditional permanent residence or to adjust their status, and to eventually "proceed with his or her Form I-829 petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the Form I-526, the requirements for the removal of conditions have been satisfied."[7]

There are two primary reasons for IIUSA's position. First it is a logical extension of the Policy Manual regarding Material Change and the NPRM provision regarding retaining Priority Date. If the investor would provide evidence that the investor complied with the requirements of the I-829 petition, why distinguish whether the investor has or has not achieved conditional permanent resident status and require the investor to file a new I-526 petition? In either case, the investor must ultimately demonstrate compliance with requirements that are not linked substantively to the investor's immigration status or lack of status at the time compliance is proven.

Second, with retrogression for the vast majority of EB-5 investors, there is a greater likelihood that there will be a material change between the time of the I-526 petition approval and the eventual granting of the conditional permanent resident status. When USCIS issued the Policy Memo in 2013, there was no retrogression, and as a result, there was usually a short period of time between the approval of the I-526 petition and granting of conditional permanent resident

[5] Ibid.
[6] Id., p. 24.
[7] Id., p. 25.

status. The NPRM notes that the EB-5 Program began to experience over subscription in 2014.[8] Many experts now estimate that these investors will face seven (7) or more years of retrogression.[9] As a result, there is a greater period of time between the approval of the I-526 petition and the granting of CPR, which did not exist at the time the Policy Manual was issued. Due to that extended period of time there is greater chance that there will be a material change. IIUSA believes that this practical reality necessitates a change in USCIS policy, which is best reflected in the NPRM.

Priority Date Retention Rules Should Also Apply to Investors Whose Conditional LPR Status Have Already Been Obtained

The current proposed priority date retention rules only apply to investors whose I-526s have been approved but have not yet obtained conditional LPR status and "would not be available once the investor uses the priority date to obtain conditional LPR status based upon the approved petition". Limiting the rule to those who have already obtained conditional LPR status denies the benefits to the very people who need it the most – families who are already in the United States.

As indicated in the NPRM, "DHS has generally allowed beneficiaries in the employment-based first, second, and third preference categories to retain the priority date of their previously approved immigrant petitions unless DHS revokes petition approval." And "DHS's proposal in this regulation to allow priority date retention for those in the EB-5 category would bring the EB-5 priority date retention policy into harmony with those other employment-based preference categories." It is, however, important to recognize that the EB-5 category is fundamentally different from employment-based first, second, and third preference categories in that the approval of the I-526 (followed by consular processing or adjustment of status) only grants the investor a "conditional" green card. Therefore, the purpose of the rule, which is to alleviate the burden on the petitioner, is artificially limited in the case of the EB-5 category if the rule mirrors those with I-140 approvals in other employment-based categories who do not have the burden of removing conditions to their LPR status.

Providing priority date retention benefits to investors who have already obtained conditional residency (who in many cases have already filed I-829 petitions that are not being approved because the regional center is being investigated by the SEC or otherwise caught up in litigation) would significantly alleviate the burden on investors who will otherwise be unable to obtain permanent LPR status through no fault of their own.

Due to the extensive delays in adjudicating I-829 petitions, the length of time between obtaining conditional LPR status and permanent LPR status is currently over 4 years, which increases the risk to the investor that "situations in which petitioners may become ineligible through circumstances beyond their control (*e.g.*, the termination of a regional center)" may occur.

Finally, it is also worth pointing out that the category of investors who are most likely to reinvest into a new EB-5 project and file new I-526s are people who are already in the United States and whose lives would be severely disrupted by the failure of their first I-526 investment.

[8] NPRM, p. 25.
[9] Divine, R. C. (2016, January 4). The Realities and Implications of Chinese EB-5 Investors' Wait for Visa Numbers.

Allow Investors Whose I-526s Have Been Revoked or Would be Subject to Revocation Due to Fraud or Willful Misrepresentation of Material Fact by the Project or Regional Center to Benefit from the Priority Date Retention Rules

The current proposed priority date retention rules "would not apply where DHS revoked the original petition's approval based on fraud, willful misrepresentation of a material fact, or a determination that DHS approved the petition based on a material error." This exclusion, however, denies benefits to investors who are caught up in bad EB-5 projects through no fault of their own.

In the NPRM, DHS states that the priority date retention rules aim to "[a]ddress situations in which petitioners may become ineligible through circumstances beyond their control (*e.g.*, the termination of a regional center)." It is, however, not unlikely that a regional center would be terminated when there is fraud on the part of the regional center. Therefore, the new rules should distinguish between fraud and misrepresentation on the part of the project or regional center as opposed to the investor.

NPRM's Proposed Increase in the Minimum Investment Amount Will Decimate EB-5 Program

IIUSA respectfully requests that the Agency significantly reduce the NPRM's proposed increase in the Minimum Investment Amount for the reasons stated below.

A fundamental conclusion of the NPRM is that raising the minimum investment amount would "benefit the U.S. economy by increasing the amount of foreign investment in the United States."[10] As stated below, IIUSA firmly believes that the increase in the minimum investment amount proposed in the NPRM would not benefit the US economy. Specifically, IIUSA strongly believes that the proposed increase in the minimum investment amount would: (1) dramatically decrease the number of immigrant investors in the EB-5 Program, thereby reducing the number of U.S. jobs created by the Program, (2) dramatically decrease the amount of foreign investment in the U.S. from the EB-5 Program, and (3) result in the virtual elimination of the EB-5 Program, reducing it to, at best, the paltry number of immigrant investors, and levels of foreign investment in the Program, not seen since the early 1990's.

In the NPRM, USCIS makes two arguments for significantly raising the minimum EB-5 investment amount: (1) increasing the minimum investment amount is necessary to keep up with overall inflation; and (2) at the proposed higher minimum investment amount the EB-5 Program would be competitive with other immigrant investor programs around the world. Each of those propositions is addressed below.

NPRM's Proposed Increase in the Minimum Investment Amount Should Not Apply the Overall Inflation Rate from 1990 Because Supply Exceeded Demand Until At least 2011

The first argument in the NPRM for increasing the Minimum Investment Amount ("MIA") is to keep up with the general level of inflation in the U.S. economy and address the issue of the oversubscription of investors in the Program at the current minimum investment amount. The NPRM states that the minimum investment amount of $1,000,000 has

[10] NPRM p. 31.

not been raised since the Program started, and as a result, "over the past 25 years inflation has eroded the present-day value of the minimum investment required to participate in the EB-5 Program."[11] As such, the NPRM proposes to increase the MIA from the current $1 million to $1.8 million to reflect the inflation adjusted investment amount since the start of the EB-5 Program.

Although IIUSA agrees that some increase in the minimum investment amount is justified to match a relevant rate of inflation, IIUSA strongly disagrees with the NPRM's underlying premise that the overall rate of inflation in the U.S. economy from 1990 to the present should be applied to the MIA. Rather IIUSA believes that the NPRM should increase the investment amount only from the time that the supply and demand for the EB-5 program was in equilibrium. Otherwise, the Regulations will adjust the price to a time when almost no visas were demanded from the EB-5 program.

Actual Historical Investment Amount was $500,000 Rather than $1 Million Minimum Investment Amount

The analysis below analyzes the usage of the EB-5 Program and the minimum investment amount since the Program's inception. Although this portion of the response regards the MIA, it is critical to note that although the MIA is and has always been $1,000,000, nearly 95% of all EB-5 investments between 2000-2016 went into projects located within a TEA, thereby qualifying for the lower investment amount of $500,000. The analysis immediately below regarding demand, therefore, is of the demand at the actual historical investment amount of $500,000, and NOT the $1,000,000 investment amount, which the NPRM proposes to increase to $1.8 million.

Historical Utilization of the EB-5 Program

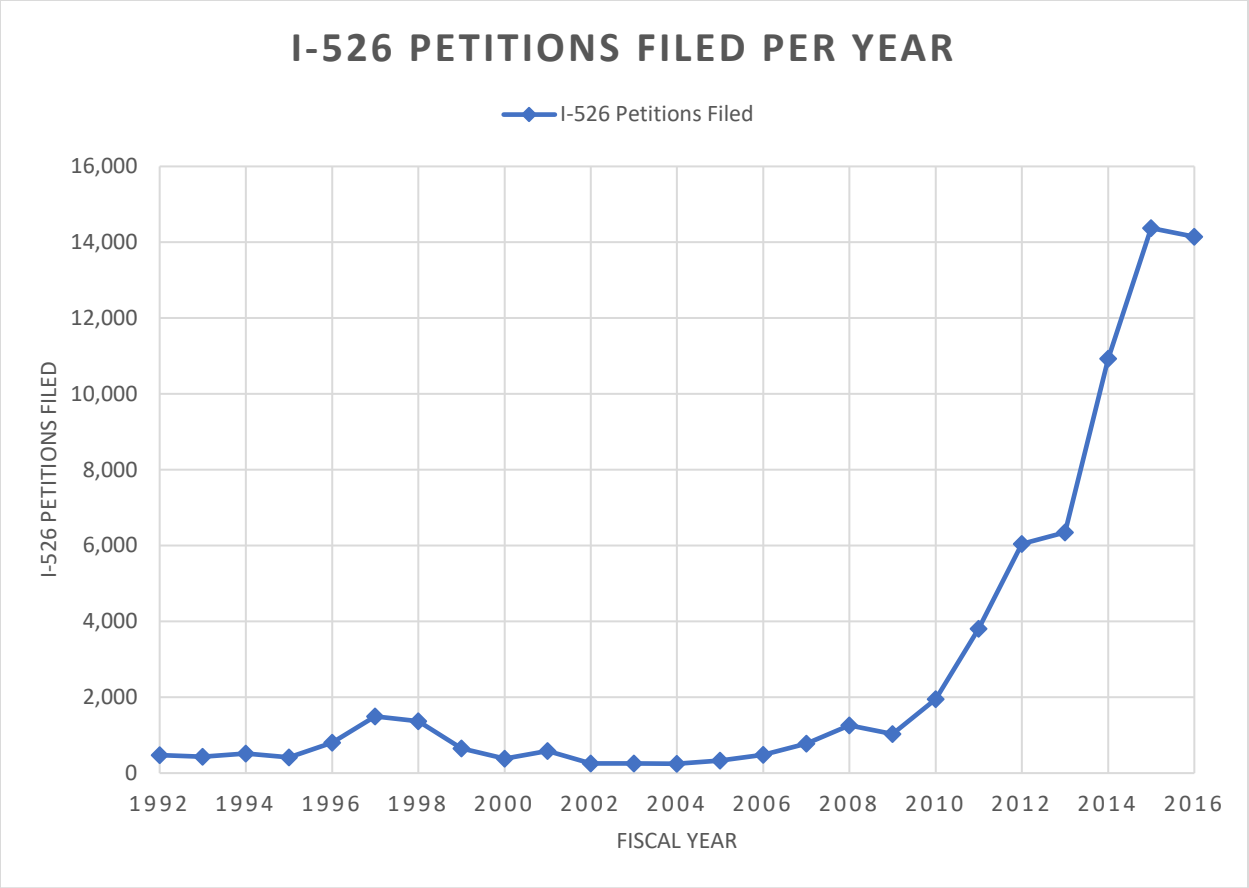
Actual historical utilization of the EB-5 Program was very low for the first 20 years of the Program, even at the $500,000 investment amount. Below are USCIS's statistics for the actual usage of the EB-5 Program since 1992, which show that for the first 17 years of the Program (until 2008) fewer than 1,000 investors consistently applied for the EB-5 Program annually.

[11] NPRM p. 27.

I-526 Petitions Filed (FY1992 - FY2016)[12]			
Fiscal Year	**I-526 Petitions Filed**	**Job Creation**	**Total $ Amount of EB-5 Investment**
1992	474	4,740	$237,000,000
1993	436	4,360	$218,000,000
1994	513	5,130	$256,500,000
1995	417	4,170	$208,500,000
1996	801	8,010	$400,500,000
1997	1,496	14,960	$748,000,000
1998	1,368	13,680	$684,000,000
1999	650	6,500	$325,000,000
2000	384	3,840	$192,000,000
2001	585	5,850	$292,500,000
2002	255	2,550	$127,500,000
2003	255	2,550	$127,500,000
2004	247	2,470	$123,500,000
2005	332	3,320	$166,000,000
2006	486	4,860	$243,000,000
2007	776	7,760	$388,000,000
2008	1,258	12,580	$629,000,000
2009	1,031	10,310	$515,500,000
2010	1,955	19,550	$977,500,000
2011	3,805	38,050	$1,902,500,000
2012	6,041	60,410	$3,020,500,000
2013	6,346	63,460	$3,173,000,000
2014	10,928	109,280	$5,464,000,000
2015	14,373	143,730	$7,186,500,000
2016	14,147	141,470	$7,073,500,000
Total (1992-2016)	**69,359**	**693,590**	**$34,679,500,000**

[12] Source: US Citizenship & Immigration Services, prepared by IIUSA.
[12] NPRM p. 70 – 71.

The following graph shows the usage of the EB-5 Program over the same period of time.



As demonstrated by the chart and graph above, even at the $500,000 investment amount, the EB-5 Program had a very low level of utilization during its first 20 years. Until 2010, the number of applications at the $500,000 investment amount did not even amount to 2,000 per year. It is thus evident that during the earlier years of the EB-5 Program, even the lower TEA investment amount of $500,000 was too high to attract more than a small number of investors.

Equilibrium: Where Supply Equals Demand

In support of its argument that the MIA should be increased, the NPRM states that the EB-5 Program is oversubscribed (when demand for visas exceeds supply) as evidenced by retrogression.[13] Although IIUSA agrees that the EB-5 Program is currently oversubscribed, IIUSA believes that this issue will not be solved by the proposed increase in the minimum investment amount, and should instead be addressed by aiming to achieve an equilibrium in terms of the supply of, and demand for, EB-5 visas. Equilibrium in the EB-5 Program is achieved when the supply of 10,000 visas equals demand for those 10,000 visas. With 10,000 visas available, and assuming each EB-5 investor uses 2.5 visas per I-526 petition, equilibrium is achieved when 4,000 I-526 petitions are filed within a fiscal year (i.e., 4,000 x 2.5

[13] NPRM, P. 20

visas per investor equals the supply of 10,000 visas available annually)[14] Equilibrium – where supply equals demand – was most closely achieved in fiscal year 2011 when 3,805 I-526 petitions were filed, which would use 9,513 visas. Although the Program is currently "oversubscribed," at the $500,000 TEA investment amount, the EB-5 Program was under-subscribed until at least 2011, and a relative equilibrium at the $500,000 TEA investment amount was not achieved until 2011. Raising the EB-5 investment amount to $1.8 million, or the $1 million in 2016 current dollars, will not return the program to equilibrium, but rather will result in demand being far less than supply (as is discussed more fully below).

Proposed Increase to the Minimum Investment Amount will Decrease EB-5 Job Creation and Capital Investment

The NPRM further states that part of the objective of increasing the MIA to $1.8 million is to maximize the EB-5 Program's benefits to the U.S. economy. Raising the MIA to $1.8 million, however, would have the opposite effect on the economy by dramatically reducing the number of new U.S. jobs created and the amount of EB-5 capital invested into the U.S. economy by the EB-5 Program.

The Proposed Increased in the Minimum Investment Amount Will Significantly Decrease the Number of EB-5 Jobs Created

IIUSA contends that the NPRM's proposal to increase the MIA to $1.8 million, which the NPRM calculates is the equivalent in today's dollars of $1,000,000 in 1990 dollars, would cause the number of EB-5 investors to return to the number of EB-5 investors as in the earliest days of the Program. In 1992, there were 474 investors, which is a roughly 97% decline from the 14,147 EB-5 investors in 2016.

IIUSA agrees with the NPRM that the number of jobs that must be created per investor should remain unchanged at 10 U.S. jobs created per investor. Therefore, the number of jobs created by the EB-5 Program changes based solely on the number of EB-5 investors. Using the logic of the NPRM, increasing the MIA to the same amount (in constant dollars) as the amount charged in 1990, would result in the same number of EB-5 petitions being filed as were filed in 1990. Thus, using the logic of the NPRM, increasing the MIA to its equivalent in 1990-dollars would logically reduce the number of EB-5 investors and therefore the number of EB-5 jobs created by 88% from the 2011 number and 97% from the number who filed in 2016.

Fiscal Year	I-526 Petitions Filed	EB-5 Jobs Created	Decline in EB-5 Jobs Created if # of Investors Returns to 1992 Level	
1992	474	**4,740**		
2011	3,805	38,050	(33,330)	(88%)
2016	14,147	141,470	(136,730)	(97%)

[14] Oppenheim, C. (2016), U.S. Department of State: IIUSA Market Exchange, EB-5 Visas Presentation. In *How did We Get Here – The EB-5 Visa Quota & Usage*. Los Angeles, CA.

The Proposed Increased Minimum Investment Amount Will Significantly Decrease EB-5 Capital Invested

In addition, increasing the MIA to the proposed investment amount would DECREASE the amount of EB-5 capital invested into the U.S. economy for the following reason. Raising the MIA to the inflation-adjusted 1992 level, would result in a decline in the number of investors back to the 1992 number. Assuming: (1) the MIA is raised to $1.8 million, (2) the same number of EB-5 investors filed I-526 petitions as filed in 1992, and (3) all of the current investors invested at the higher $1.8 million MIA (with no portion investing at the lower TEA amount), the negative impact on the U.S. economy of the increased MIA would be dramatic.

The following chart shows the decrease in EB-5 capital invested in the U.S. economy and in the number of U.S. jobs created by the EB-5 Program at the NPRM's MIA versus the actual amount of EB-5 capital invested and the number of U.S. jobs created in 2011 and 2016 at the $500,000 TEA investment amount at that time:

Fiscal Year	**I-526 Petitions Filed**	**Minimum Investment Amount**	**EB-5 $ Invested**	**EB-5 Jobs Created**	***Result of Increase in Investment Amount***	
					Decrease in EB-5 $ Invested	***Decrease in EB-5 Jobs Created***
1992	**474**	**$1,800,000**	**$853,200,000**	**4,740**		
2011	3,805	$500,000	$1,902,500,000	38,050	($1,049,300,000)	(33,310)
2016	14,147	$500,000	$7,073,500,000	141,470	($6,220,300,000)	(136,730)

The analysis above calculates the dramatic negative impact of the increase in the MIA, but even that decline is understated. The negative impact in the chart above compares the actual number of investors, jobs created and capital invested at the $500,000 investment amount versus the proposed $1 million amount (which the NPRM proposes to raise to $1.8 million). Accordingly, IIUSA believes that the negative effects of the proposed increase in the MIA would actually be worse than that set forth above.

Furthermore, IIUSA agrees with DHS supposition in the NPRM that the increased investment amounts will result in fewer EB-5 investors, which will significantly reduce the job creating impact of the EB-5 program. Fewer EB-5 investors equates to fewer projects that will be financed, which will undoubtedly cause additional jobs to not be created in the US economy:

DHS also believes that for both regional center and non-regional center investments, the projects and the businesses involved could be impacted. A reduced number of EB-5 investors could preclude some projects from going forward due to outright lack of requisite capital.[15]

IIUSA strongly believes that the increase in the investment amount will result in fewer EB-5 investors, which means that fewer projects will be financed with EB-5 capital, which will result in certain projects not going forward due to a lack of requisite capital.

Increasing the Minimum Investment Amount Would Make the EB-5 Program Less Competitive Internationally.

The NPRM's second argument in favor of raising the investment amount is that the U.S. LPR is very highly sought after, and therefore, even at the $1.8 million MIA, "the EB-5 Program would remain extremely competitive with other countries' investor visa programs, which typically require higher investment thresholds."[16]

Although the NPRM correctly notes that there is a worldwide market for immigration via investment, the NPRM's comparison of the EB-5 Program to other countries' programs is flawed because the NPRM only compares the investment amounts required by each program. Comparing only the investment amounts, however, is not an accurate comparison because it does not take into account the respective Programs' cost and non-cost benefits and detriments.

IIUSA respectfully disagrees with the NPRM's premise that the EB-5 Program would remain competitive for two primary reasons. First, raising the MIA would make the EB-5 Program less competitive because the cost of investment is only one of many factors to compare between programs, and the EB-5 Program already has significant non-cost disadvantages. Second, assuming the EB-5 Program was "cost-competitive," the EB-5 Program would be competitive with other programs that have extremely few participants (which reinforces the argument above regarding the negative impact of the increase in the MIA on the U.S. economy, and at such levels the EB-5 Program would not meet the job creation and capital investment objectives of the Program).

Thus, when considering whether the EB-5 Program would "remain extremely competitive with other countries' investor visa programs," it is necessary to compare both (1) the non-financial factors and (2) the minimum investment amount, as described in more detail below.

Non-Financial Disadvantages of EB-5 versus other Countries' Immigrant Investor Programs

Although the minimum investment amount is one element to be taken into account when comparing the programs, IIUSA believes it is important to identify the following non-financial factors that make the EB-5 Program less-competitive with other countries' immigrant investor programs.[17]

EB-5 is a Job Creation Program, Which Has an Immigration Risk if Jobs are not Created

At its core, the EB-5 Program is a job creation program with an immigration benefit, which makes it unique among the programs cited in the NPRM. Specifically, IIUSA believes that the EB-5 Program is the only program which requires the creation or maintaining of at least 10 jobs per investor in order for the Investor to earn residency. Under the EB-5 Program, the immigrant investor, together with his or her spouse and children, will lose their immigration benefits (i.e. their conditional permanent U.S. residence), if the U.S. jobs cannot be proven to be created or maintained. The other

[16] NPRM p. 31.
[17] IIUSA is presenting the following factors, which make the EB-5 Program less competitive. IIUSA believes these factors are unique to the U.S., but has not, and likely cannot, perform an exhaustive examination of all other programs to determine if these factors are completely unique to the US.

programs cited in the NPRM do not include a risk that the immigrant investor will lose his or her immigration benefit if a certain number of new jobs are not created. Instead, the other programs cited generally require that there be only an investment. The EB-5 Program's job creation requirement, and the fact that a failure to adequately prove that the required new jobs were created or maintained, will result in the loss of the intended immigration benefit, is a major non-financial disadvantage of the US EB-5 Program in comparison to the other immigrant investor programs.

An EB-5 Immigrant Investor's Investment Must be "At Risk"

Most of the immigrant investor programs compared in the NPRM do not require a risk of the loss of the investment. On the other hand, an EB-5 immigrant investor must have a risk of the loss of the entire EB-5 investment, and is not permitted to invest into a riskless investment, as many other countries' programs permit. The EB-5 Program's required investment risk is another significant competitive disadvantage of the U.S. EB-5 Program.

It should be noted that some of the other countries' immigration by investment programs allow immigrant investors to purchase a home or a government bond, which may have an investment risk, but the level of risk is likely lower than the investment risk which is required by the EB-5 Program.

Visa Retrogression Makes EB-5 Program Significantly Less Competitive

Currently, approximately 80% of EB-5 immigrant investors are from Mainland China. As a result of visa retrogression, these immigrant investors are subjected to extended waiting times before a visa is available to them. Some estimates of the added wait time for a Mainland Chinese born immigrant investor is 7 years or more. Furthermore, retrogression makes it very difficult for families to plan when making an investment for the benefit of their family members (for example, it is not certain whether, due to retrogression, a child as young as 15 years old born in Mainland China, would like be eligible for a visa under a parent's investment or if the child would "age out"). The extended waiting time due to retrogression, and the uncertainty of visa eligibility for children, is a significant disadvantage of the EB-5 Program.

Extended and Inconsistent EB-5 Processing Times to Achieve U.S. Permanent Residence

All EB-5 investors are faced with ever-lengthening waiting times for petition approvals. An investor does not achieve his or her intended immigration benefit – U.S. permanent residence – until the I-829 petition is approved. With the current processing times, it is likely that the investor's I-829 petition will not be approved for at least six or more years from the time of filing the original I-526 petition (and much longer for a Mainland Chinese investor subject to retrogression). In addition, an EB-5 investor will not even receive his or her conditional permanent residence until nearly 2 years after filing the I-526 petition (and many more years for a Chinese investor). Finally, when an investor invests, it is impossible to provide the investor with accurate processing times. Many other U.S. immigration categories also have long waiting times. However, the ever-lengthening times to receive a U.S. permanent residency and the uncertainty of processing times, are significant disadvantages of the EB-5 Program as compared to other countries' immigrant investor programs.

Programmatic Risk and Uncertainty Due to Short-Term Program Authorizations

The EB-5 Program as a whole, has faced uncertainty since inception due to the fact that it is not a permanent program, and must be regularly re-authorized. This risk has been exacerbated in the past few years, because recent EB-5 Program re-authorizations have been very short term (only a few months at a time for the past several years). These shorter re-authorizations, when coupled with lengthening processing times, increases the risk to EB-5 investors that the EB-5 Program will not exist when the investor's I-829 petition is to be approved in about six years, or several more

years for Mainland Chinese investors. Absent the U.S. Congress regularly re-authorizing the EB-5 Program, the Program will sunset, resulting in tens of thousands of EB-5 investors being unable to achieve their intended immigration benefit. The risk – that the immigration benefit promised to an individual who complies with every aspect of the Program, will not exist – is likely unique to the EB-5 Program. Programmatic risk, which is the fear that the EB-5 Program will not exist, is a large and growing competitive disadvantage for the EB-5 Program.

Other EB-5 Unique Issues Make the Program Less Competitive

There are other attributes of the EB-5 Program that make it less competitive with the programs of other countries. For one, the EB-5 Program is a complex program. Complexities include aspects like the concept of a "material change," the impact of the Loan rule, the change in the calculation of certain jobs, whether changes in the Program and adjudication of petitions can be made retroactively, among other complexities add ambiguity and uncertainty to an otherwise complex program. These issues make the EB-5 Program even less competitive to immigrant investor programs in other countries

IIUSA requests that when considering whether the EB-5 Program is competitive with other countries' immigrant investor programs, the NPRM's analysis recognize that the U.S. EB-5 Program has significant non-financial disadvantages which need to be considered in addition to the relative financial cost of the EB-5 Program.

Cost Comparison of the EB-5 Program with other Countries' Immigrant Investor Programs

The NPRM focuses on the relative cost of the EB-5 Program at the increased minimum investment amount of $1.8 million, and states that at the increased investment amount the EB-5 Program would be cost competitive with other immigrant investor programs around the globe. IIUSA strongly disagrees. Rather, as IIUSA argues below, increasing the investment amount to $1.8 million will make the EB-5 Program less competitive, at best, this increase would likely make the EB-5 Program competitive with other countries' programs that have very few investors, and as a result, the EB-5 Program would have few jobs created and much less capital invested than currently.

One country's immigrant investor program compared in the NPRM is Canada. The Canadian immigrant investor programs have historically been viewed as the most competitive with the U.S. EB-5 Program.

Although there are several Canadian immigrant investor programs, the NPRM compares the proposed $1.8 million EB-5 Program's MIA to the *Canadian Immigrant Investors Venture Capital Program* ("Canadian Federal Program"). The NPRM states that the EB-5 Program at $1.8 million U.S.D., would be competitive with the Canadian Federal Program which costs $2 million Canadian (approximately $1.5 million US). Although the gross number of dollars that must be invested is relatively similar in both programs (depending on exchange rates), this comparison is inappropriate for two primary reasons. The first is non-financial -- the Canadian program requires no risk that the investor will lose the immigration benefit if jobs are not created, and there is no risk of the return of the amount invested. More importantly, it is inappropriate to compare the EB-5 Program to the Canadian Federal Program because the Canadian Federal Program is reported to have attracted fewer than 10 applicants in the past 2 years. The Canadian Federal Program, therefore, is widely considered as not successful, and should not be a model for the EB-5 Program.[18]

It is important to note that Canada has several immigrant investor programs, and the NPRM only referenced the Canadian Federal Program. IIUSA believes the *Canadian Quebec program* is a relevant comparison for the EB-5

[18] Colin r. Singer, Financial Post - http://business.financialpost.com/fp-comment/canada-losing-lucrative-immigrant-investors

Program. The Canadian Quebec program grants a Canadian passport and residency, and accepts 1,900 non-French speaking, and an unlimited number of French-speaking immigrant investors per year.

Focusing on cost only, as the NPRM does, the cost of the Quebec program is $800,000 Canadian Dollars (about $600,000 U.S.D.). However, this Canadian program has a significant cost advantage. Experienced immigration consultants in Canada report to IIUSA that the Quebec Program is specifically designed to enable immigrant investors to "finance" their investment. As a result, the actual "out of pocket" cost for the Quebec Program is $220,000 Canadian (or approximately $165,000 U.S. Dollars), and not the stated $800,000 Canadian. This cost is not returned, but many investors prefer the certainty of a specific cost of approximately $165,000 U.S.D., versus the EB-5 Program's required risk of the loss of the entire $500,000 U.S.D. investment (together with the EB-5 Program's other non-cost competitive disadvantages). Accordingly, based on cost alone, the EB-5 Program at the $1.8 million MIA would be not competitive with the Canadian Quebec program, which has an effective cost of $165,000 U.S.D.

Job Creation Objective of the EB-5 Program Versus Other Immigrant Investor Programs

When comparing the EB-5 Program with other countries' programs, it is important to consider the objective of each of the programs. The primary objective of the EB-5 Program is job creation. In 2016, over 14,000 immigrant investors filed I-526 petitions, requiring that over 140,000 U.S. jobs be created or maintained, and required over $7 billion of EB-5 capital be invested into the U.S. economy.

The objectives of each of the other countries' programs, cited in the NPRM, varies by country, but the Australian program is a good example for comparison. Rather than focus on a high number of investors, leading to a high number of new jobs created and capital invested, the Australian immigrant investor program has the following objective:

The [Australian] Premium Investor Visa (PIV) program is … focusing on attracting a small number of highly talented and entrepreneurial individuals to Australia who can contribute those skills and talents into areas which deliver long-term economic benefit to the country.[19]

The Australian program is not wrong or inferior, but its objectives are different. As with the Australian program, the other programs cited in the NPRM generally have very few investors who participate in those other programs, to which the NPRM "cost compares" to the EB-5 Program. In the most recent year with available data that IIUSA was able to collect for the other programs cited by the NPRM, those programs COMBINED had only 1,202 immigrant investors, which would equal only 12,000 U.S. jobs (or less than 10% of the total immigrant investors and jobs created by the EB-5 Program in 2016). IIUSA maintains that because the primary objective of the EB-5 Program is job creation, being cost competitive with other countries' immigrant investor programs would likely result in the EB-5 Program being reduced to the paltry number of investors as those other programs attract. As stated above, a reduced number of investors also reduces the number of EB-5 jobs created and the EB-5 investment into the U.S. economy. The chart

[19] See "Invest in Australia, Guide to Investing" at http://www.austrade.gov.au/international/invest/guide-to-investing/coming-to-australia/significant-and-premium-investor-programs/applying

below lists the number of immigrant investors in some of the visa programs offered by Australia[20], Canada[21], New Zealand[22] and the United Kingdom[23]:

Country/Territory	Immigrant Investor Program	Visa Usage
Australia	The business innovation and investment visa (188A)	2015-16: 120 Investors 2014-15: 76 Investors 2013-14: 25 Investors 2012-13: <5 Investors
Australia	Significant Investment Visa Program	2015-16: 515 Investors 2014-15: 592 Investors
Australia	Premium Investment Visa Program	n/a
Canada	Immigrant Investor Venture Capital Pilot Program (IIVC)	2015: 8 Investors
New Zealand	Investor 1 Resident Visa (Investor Plus Visa)	2015: 33 Investors 2014: 26 Investors 2013: 28 Investors
New Zealand	Investor 2 Resident Visa (Investor Visa)	2015: 311 Investors 2014: 155 Investors 2013: 157 Investors
United Kingdom	Tier 1 (Investor) Visa	2016: 215 Investors 2015: 192 Investors 2014: 1,172 Investors 2013: 565 Investors

[20] Australia. Department of Immigration and Border Protection. *Freedom of Information Request, 12 June 2016: Business Innovation and Investment Program*.
[21] Canada. Citizenship and Immigration Canada. *Temporary Resident Application Processing*. N.p. 13 Feb. 2017.
[22] New Zealand. Ministry of Business, Innovation & Employment. *Migration trends and outlook*. N.p. 24 Nov. 2016.
[23] United Kingdom. National Statistics. *Immigration Statistics, October to December 2016; Data tables.* N.p. 23 Feb. 2017.

IIUSA Proposed Minimum Investment Amount

IIUSA agrees with the NPRM's objectives to raise the MIA in a manner that would benefit the U.S., account for inflation and enable the EB-5 Program to remain competitive. Ultimately, the final analysis is likely not driven solely by economics, but by a number of factors. There are several factors that should be considered when setting the MIA, including the following:

Increase in Rate of Inflation of $500,000 Investment Amount and Not $1 million.

Because nearly all investments in the EB-5 Program to date have been at the $500,000 level (made in a TEA), one way to ascertain the appropriate current MIA would be to apply a rate of inflation to $500,000 rather than to $1 million. Using the NPRM's analysis, $500,000 in 1990 dollars equals approximately $900,000 in 2016 dollars. If $900,000 is the lower investment amount for investment in a TEA, and setting the TEA investment amount at 75% of the MIA as proposed in the NPRM, the MIA would be $1.2 million. While there is logic to this approach, IIUSA does not propose that DHS adopt these investment amounts because they too high to achieve the Program's job creation and capital investments objectives. IIUSA's basis for stating that inflating the 1990 TEA investment amount of $500,000 to 2016 $900,000 is too high, is supported by the fact that there was a very low utilization of the Program for its first 20 years when most of the investments were made at the TEA investment amount of $500,000, and raising the TEA amount to this level would be pricing the investment amount at a higher rate which will reduce the Program's utilization (as represented by I-526 petitions) back to the unacceptably low levels of the early years of the Program.

Increase from the Rate of Inflation From the Time Where Supply Equaled Demand.

The NPRM notes that the EB-5 Program is currently "over-subscribed." Following that logic, then the inflation adjustment should be raised from the time when the supply of visas equaled demand for those visas. That equilibrium was most closely achieved in 2011 when the number of I-526 petitions filed represented nearly the supply of visas available for that number of I-526 petitions. Inflating the TEA investment amount of $500,000 in 2011, equals approximately $533,000 when inflated to 2016 dollars. Again, using the 75% factor proposed in the NPRM would results in a MIA of approximately $711,000. Although there is a logic basis for this approach, IIUSA does not propose that DHS adopt these amounts because they are objectively too low.

IIUSA's Proposed Minimum Investment and TEA Investment Amounts.

IIUSA believes the appropriate MIA and the TEA investment amounts are between the two extremes listed above. There are any number of factors that could be considered, and there is likely no single correct MIA or TEA investment amount. IIUSA therefore proposes what it believes is a reasonable and logical proposal to stagger increases in the MIA and the TEA investment amounts, with increases over three years, to the following investment amounts:

Year	Minimum Investment Amount	TEA Investment Amount
First	$700,000	$650,000
Second	$850,000	$750,000
Third and beyond	$1,000,000	$800,000

IIUSA Proposes These Investment Amounts For The Following Reasons:

Increase is Material. IIUSA believes the proposed increase in the MIA is a material increase. The effective historical investment amount is $500,000 because nearly 95% all EB-5 investment projects were historically located in a TEA since the inception of the Program. The increase in the investment amount from the historical actual $500,000 investment amount would be:

Year	**Minimum Investment Amount**	***Increase from $500,000***	**TEA Investment Amount**	***Increase from $500,000***	**Investment Differential Between MIA and TEA**	**Percentage Differential Between TEA and MIA**
First	$700,000	*40%*	$650,000	*30%*	$50,000	8%
Second	$850,000	*70%*	$750,000	*50%*	$100,000	13%
Third and beyond	$1,000,000	*100%*	$800,000	*60%*	$200,000	25%

In the first year, the increase in the investment amount would be 40% for the MIA, and (2) a 30% increase in the investment amount in a TEA. For year 3 and beyond, at $1 million the MIA would be double the current effective investment amount, and the investment amount in a TEA would increase by 60% from the current investment levels. A price differential is the most impactful way to influence and incentivize investment in TEAs and the IIUSA suggested differentials in investment amount are material but not so great as to eliminate investment in non-TEA areas.

Increase in Investment Amounts Applies an Appropriate Inflation Factor to the Investment Amount. As stated above, IIUSA believes that applying the overall rate of inflation in the US economy from 1990 to 2016 to the MIA, would result in a dramatic reduction in the number of I-526 petitions filed, and thereby dramatically reduce the number of jobs created and capital invested which those I-526 petitions represent, to an unacceptably low level. There are a wide variety of factors which could be considered in determining the correct rate of inflation, and factors which influence demand to determine the time when supply and demand were in an equilibrium, and returning to which would cause the greatest benefit to the US. It is dramatically apparent to IIUSA that simply applying the overall rate of inflation in the economy is not appropriate. IIUSA therefore believes that its proposed investment amounts represent a reasonable approach to increasing the MIA and the TEA investment amounts to a level which more closely correlates supply and demand at the IIUSA proposed investment amounts.

Minimum Investment Amount at $1 Million Would Effectively Double the Historical EB-5 Investment Amount. As stated repeatedly in this Comment, the actual historical investment amount of the EB-5 Program was at the $500,000 TEA investment amount. Although at first blush it could seem that IIUSA is proposing that the MIA be unchanged, in reality, IIUSA is proposing that, for the first time, the actual MIA will be $1 million, which is double the current effective historical investment amount (of $500,000 in a TEA). Since nearly all EB-5 investments were made at the lower $500,000 TEA level over the history of the Program, $500,000 was effectively the minimum investment amount. The IIUSA proposed MIA of $1 million is double the effective historical minimum investment amount.

Investment Differential Between IIUSA Proposed Minimum Investment Amount and TEA Investment Amount is Material, Reasonable and Practical. IIUSA believes the differential between the two investment levels should begin at a lower amount and increase over time. Staggering the increase in the investment amount and the differential will

enable the 60% of projects that would not be in a TEA (per the NPRM's statement) to continue to raise EB-5 capital at a higher investment amount, but not such a high level as to cause significant market disruption. By the third year, the differential would grow to 25%, which is the same percentage investment differential proposed in the NPRM.[24] At this level, the TEA investment amount would have a material cost advantage over projects located in a non-TEA area, but again IIUSA believes the differential would not be so large as to result in projects almost exclusively being undertaken in a TEA, as is currently the case.

Staggered Increases. IIUSA believes it will be less disruptive to the overall market if the investment amounts are increased in a staggered fashion. Staggering the increases in the investment amounts will give the market time to adapt to the higher investment amounts more smoothly than if the investment amount was increased to the highest levels immediately.

IIUSA would also suggest that the NPRM authorize the Director's discretion in implementing the staggered increases in the MIA so that the Director could analyze the actual impact of the initial year's increases in the MIA in order to potentially delay future staggered increases. Although IIUSA believes the suggested MIA and TEA investment amounts and the staggered implementation of the increases are reasonable and workable in the current market, the actual impact of the changes will not be known until those price increases are actually implemented. IIUSA would therefore suggest the NPRM give the Director a degree of flexibility in implementing the MIA increases, so that the Director can make increases of the proposed MIA on the staggered basis, up to the highest amount of $1,000,000 for the MIA and $800,000 for the investment in a TEA. IIUSA retains its position that these investment levels are the highest the market would bear and still provide the intended benefit to the U.S. economy in the form of EB-5 jobs created and capital invested, but the actual impact of the increases will not be reflected in the number of I-526 petitions filed until the increases in the MIA and the TEA amount are implemented.

Proposed Price Increases Conform to General Understanding of Recent Congressional Intent. In addition to practical market and competitive rationales for IIUSA's suggested increases in the investment amounts, IIUSA believes the investment amounts it is proposing are also appropriate from a policy perspective. The IIUSA proposed investment amounts are generally in conformance with the amounts proposed in legislation introduced and in discussions with Members of Congress and their staffs since 2015. Although there have been many proposed amounts, and comments about appropriate investment amount, the investment amounts included in introduced legislation, drafts and serious discussions with Congressional staff have been much closer to, and often were, the amounts suggested by IIUSA. The investment amounts proposed in the NPRM are significantly higher than in any introduced legislation or in serious negotiations in which IIUSA has participated since 2015. IIUSA therefore believes that its suggested investment amounts are appropriate from a policy perspective and generally conform with the Congressional intent expressed to IIUSA since at least 2015.

[24] NPRM p. 37.

Contribute Minimum Investment Amount by Time Initial Petition Filed. IIUSA supports the NPRM's statement that the "DHS proposes that each investor will be required to contribute the minimum investment amount that is designated at the time the initial petition is filed."[25] The citation to the draft regulation (8 CFR 204.6(f)(1)), however, does not appear to include this requirement. Finally, IIUSA requests that if this requirement is included in the NPRM that the regulations state that the appropriate investment has been adequately contributed if the investment amount has been placed into escrow pending release conditions including (but not limited to) that the I-526 petition be approved and other commonly used release conditions.

TEA Designations

IIUSA largely supports the NPRM's definition of the geographic area that can be utilized to constitute a TEA. IIUSA believes that rather than have USCIS determine whether a geographic area is a TEA, that the NPRM should establish a single set of clear standards or criteria for a TEA so that determining whether a geographic area is a TEA would be an objective, "non-gerrymanderable" exercise which would not require USCIS (or any outside body) to designate.

IIUSA Supports NPRM's Definition of The Geographic or Political Area That Can be Combined to Constitute a TEA

The NPRM proposes:

Special designation of a high unemployment area. USCIS may designate a particular geographic or political subdivision as an area of high unemployment (at least 150 percent of the national average rate). Such geographic or political subdivision must be composed of the census tract or contiguous census tracts in which the new commercial enterprise is principally doing business, and may also include any or all census tracts contiguous to such census tract(s). The weighted average of the unemployment rate for the subdivision, based on the labor force employment measure for each census tract, must be at least 150 percent of the national average unemployment rate. See proposed 8 CFR 204.6(j)(6)(ii)(B)[26]

IIUSA supports the NPRM's definition of the geographic area that can be combined to determine whether that geographic area constitutes a TEA. IIUSA believes that the definition of the geographic area that can constitute a TEA in the NPRM is a reasonable definition, effects the Congressional intent of providing a benefit for investments made into high unemployment areas and is within DHS's statutory authority to establish this definition.

As is noted in the NPRM, there are many possible ways within the overall statutory framework to establish the geographic or political area that could constitute a TEA. As the NPRM notes, permitted geographic areas that could be defined as a TEA, could consist of a single census tract, a maximum number of census tracts (i.e. the California model), areas other than a census tract or smaller than a single census tract, an unlimited number of census tracts, or some other standard. IIUSA believes that the establishment of the geographic area in the NPRM is a reasonable compromise to the possible definitions of the geographic area that could constitute a TEA. In addition, IIUSA believes

[25] NPRM p. 32.

that this limitation on the appropriate census tracts, will meet the Congressional intent of providing a monetary advantage to investments in high unemployment areas. Specifically, if the census tract in which the NCE is principally doing business may not alone meet the criteria for a TEA, allowing adjoining census tracts to be included in the geographic area means that the NCE is principally operating in direct proximity to areas which when combined, do meet the criteria of a TEA. The NPRM states, that approximately 55% of all EB-5 projects undertaken to 2016 would have been located in a TEA under the NPRM's definition.[27] In IIUSA's independent analysis of its own database of projects from the Regional Center Program's inception to this year, it was found that approximately 42% of projects using current 5 year ACS data would be located in a TEA under the NPRM's definition.[28] IIUSA believes, therefore, that the NPRM's proposal is a reasonable compromise to the definition of the geographic area which may be used to constitute a TEA.

In addition, IIUSA agrees with the NPRM's proposal to allow any city or town with high unemployment to qualify as a TEA. This is a logical extension of the current policy. Finally, the potential geographic area proposed in the NPRM is not-gerrymanderable. It is a single standard, which allows projects a degree of flexibility in designing the geographic area of the TEA, but not an unlimited number which results in significant gerrymandering. IIUSA requests one clarification or modification so that the NPRM identifies a single standard by which the unemployment rate of the geographic area will be determined. The NPRM states:

DHS proposes that petitioners submit a description of the boundaries of the geographic or political subdivision and the unemployment statistics in the area for which designation is sought as set forth in proposed 8 CFR 204.6(i), and the method or methods by which the unemployment statistics were obtained. [29]

Although IIUSA agrees in principle with the above, IIUSA believes that DHS should select a single dataset from which the "unemployment statistics" are obtained. IIUSA believes that the appropriate unemployment data source is the 5 year American Community Survey (ACS). With this single data source for the appropriate unemployment data to determine whether a particular geography meets the TEA criteria, petitioners will be able to more accurately determine, before petitioning USCIS, whether the geographic area constitutes a TEA.

In summary, IIUSA believes that if there is a single data set from which the unemployment statistics are obtained, and only that dataset is used to determine the unemployment rate, then the NPRM's TEA definition will eliminate gerrymandering, either by geography or by the source of the unemployment statistics applied to that geography

A Single Standard for Geography and Unemployment Data Eliminates the Necessity for 3rd Party TEA Determination.

IIUSA believes that the NPRM's limited geographic area which can constitute a TEA, together with IIUSA's proposed use of a single dataset to determine the unemployment rate, eliminates gerrymandering. Furthermore, having a limited geography and single unemployment data set would provide a clear and uniform standard for TEA's. The clarity and

[27] NPRM. *Table 5 – TEA Metrics.*

[28] Targeted Employment Area (TEA) Reform: Policy Proposals Comparative analysis by State. *How TEA policy proposals will shape the future landscape of the EB-5 Regional Center Program.* Lee Li, Policy Analyst, IIUSA.

simplicity of this proposal is such that it would eliminate the need for USCIS or a 3rd party (like a state government) to a priori determine whether an area is, in fact, a TEA.

IIUSA is not proposing that USCIS abdicate its role in determining whether a Petitioner's proposed TEA is, in actually, a TEA. Rather, IIUSA's proposal envisions that USCIS would continue to adjudicate the I-924 and I-526 petitions in all respects, to a preponderance of the evidence, including the Petitioner's proposed TEA designation. This is no different than USCIS' adjudication of the balance of the petition, including specifically petitioner's economic analysis included in the I-924 or I-526 petition. Although an economic analysis is incredibly more complex than the proposed TEA designation (in which only the geography and unemployment data are applied in a uniform way) USCIS adjudicates the economic analysis to a preponderance of the evidence. In the same way that a petitioner will include an economic analysis based on sound data and reasoning, IIUSA envisions that petitioners would submit the TEA designation based on sound economic data, and that USCIS would adjudicate that TEA designation to a preponderance of the evidence.

It should be noted that although the current practice is for individual states (or municipalities depending on the state) to designate a TEA, it is currently permissible for a petitioner to provide its own TEA determination whether a geographic area is a TEA. When a petitioner submits that evidence, USCIS will adjudicate it.

IIUSA applauds the NPRM's objective that there be a single uniform standard for TEA's across the US. IIUSA also understands the objective of having only USCIS adjudicate whether a geographic area is a TEA. However, absent a single dataset to determine the appropriate unemployment rate, IIUSA feels there is a significant possibility that there will be gerrymandering based on the unemployment dataset utilized. As such, there would not be one standard throughout the US, but potentially many standards depending on the unemployment data used.

Factors to Consider if USCIS Will Designate TEA's

There are several disadvantages, or issues to consider if only USCIS will designate all TEA's. These include the following:

Critical Importance of a TEA Designation. Determining whether a project is in a TEA is a critical fundamental underpinning for any EB-5 investment project. A TEA designation is usually secured early in the process of analyzing whether a particular investment project is suitable for EB-5 investment. The investment differential, between a project in a TEA and those not in a TEA, is an important factor in analyzing whether a project is viable. Furthermore, whether the NCE will be principally operating in a TEA determines the potential number of immigrant investors, the amount of EB-5 capital which must be invested by each investor, and the total amount of capital which can be raised.

It is not possible to finalize the offering documents (i.e. the comprehensive Business Plan, the Private Placement Memorandum and other similar documents) without knowing the amount of the required investment per investor. Without knowing whether an NCE is principally doing business within a TEA, it would be extremely difficult if not impossible to finalize the agreements to invest EB-5 capital into the JCE and to raise capital from investors. Preparing the offering documents can take months, and there needs to be certainty before any of this work is undertaken.

If only USCIS can designate TEA's, that calls into question what a project can do, and when investors can invest, in relation to the time that a TEA designation is made by USCIS. If only USCIS will designate TEA's, and USCIS creates a specific process to designate TEA's, does that prohibit the filing of I-924 and I-526 petitions and accepting of investors until USCIS determines whether an NCE is operating in a TEA? If there is a uniform standard for TEA's, the

petitioner may decide to proceed with structuring the investment and generating the securities documentation, but can the petitioner file a petition or accept an investor?

If only USCIS is going to designate TEA's, USCIS must commit to a very speedy process, because whether an NCE is principally doing business in a TEA is fundamental to all other aspects of the EB-5 investment process, and must be determined at the earliest stages of the EB-5 process. If only USCIS is going to designate TEA's, IIUSA strongly suggests that USCIS commit to designating TEA's within 10 days of the application for a TEA designation. Currently the states adjudicate TEA's, and most make their determination quickly and stating a 10 day time within which USCIS would adjudicate the TEA application seems to be an appropriate timeline.

However, even if there is a 10 day time to make a designation, IIUSA is very concerned that the actual time for USCIS to designate TEA's may be much longer. As only an example, USCIS currently published and required time to adjudicate an I-924, I-526 and I-829 petition is many months, if not a year longer than the stated ideal processing times which USCIS has repeatedly stated over several years. Furthermore, USCIS has repeatedly stated that it believes processing times will get shorter, but that rarely, if ever, occurs in practice. TEA designation is fundamental to EB-5 investment project, and if the actual adjudication of a TEA is longer, that will have a detrimental impact on EB-5 projects from their very inception through final offering to investors.

If USCIS is going to designate TEAs, in addition to committing to a speedy process, USCIS must permit an alternate process to designate a TEA if the specific timelines.

Speedy TEA designation is a key to the successful use of the EB-5 Program

IIUSA therefore suggests that DHS follow the following procedures. USCIS establishes a process to implement the NPRM's proposal for USCIS to adjudicate whether the geographic area in fact constitutes a TEA as defined in the Proposed Regulations, with a specifically defined process. Under that process, the Regional Center, NCE or JCE would propose that a geographic area be designated a TEA ("Proposed TEA Designation"). The Proposed TEA Designation would be accompanied by statistical and other evidence supporting the application for TEA designation.

IIUSA proposes to allow for other entities to use the guidelines set in this process in order to insure the efficient operation of the EB-5 Program for Regional Centers, NCE's, JCE's and immigrant investors who need certainty in the EB-5 process. Utilizing a Proposed TEA Designation is not intended to skirt the NPRM's objectives. Rather, it is important to note that the determination that a geographic area is in fact a TEA – whether that determination is made by USCIS or in the Proposed TEA Designation – should be identical if both analyses follows the standards set forth in the NPRM. Furthermore, USCIS would be the final arbiter to determine if the Proposed TEA Designation did in fact follow the guidelines established in the NPRM to a preponderance of the evidence. Therefore, IIUSA would support the NPRM's process of USCIS designation of TEAs as long as there is a speedy and consistent adjudication, and there is a "backup" process if the prescribed timelines are not achieved.

If USCIS will not establish a process by which a geographic area is designated a TEA within a very limited period of time (e.g., 10 days) and that there be a backup designation process in the event that this deadline is violated (as proposed above), then IIUSA would oppose the NPRM's proposal that USCIS be the sole arbiter of whether a geographic area is a TEA. Instead, IIUSA would support the current state designation process pursuant to the standards adopted in the NPRM, with USCIS review of the analysis performed by the state agency.

No Retroactive Application of the NPRM's Increases in the Investment Amount or TEA Designations

The NPRM's proposed changes should apply only to I-526 and other petitions filed in the future (after the effective date of the NPRM) and not retroactively to petitions filed before the effective date. IIUSA applauds the Agency for not proposing changes that would apply retroactively. To alleviate any ambiguity, IIUSA suggests that the NPRM specifically state that the proposed: increases in the MIA and TEA investment amounts, and changes in TEA Designations only apply to I-526 petitions filed after the effective date of the NPRM. In addition, IIUSA suggests the NPRM specifically state that all subsequent petition filings filed pursuant to an original I-526 petition filing, will be adjudicated pursuant to the law, rules, regulations and policies in effect at the time of the original I-526 petition filing.

Removal of Conditions

IIUSA is supportive of the technical changes proposed in the NPRM. These include (1) clarifying the process for derivatives filingI-829s separately from principle investors; (2) enhancing flexibility in determining the interview location for I-829 adjudication; (3) improving process for receiving permanent resident cards such as discontinuing district office processing of I-829 due to the move towards biometric data and fingerprinting that is now required – allowing for cards to be mailed directly to investors.

Miscellaneous Changes

Relief for Defrauded Investors

The EB-5 Program can only prosper if solutions to its critical challenges are holistic in nature. Additional integrity measures are essential, but the approach that USCIS and IIUSA both desire to enhance program integrity will not by itself solve all associated problems of fraud, misrepresentation and criminal conduct. If the EB-5 Program is to become healthy and thrive, USCIS should expressly provide in its forthcoming regulations that your agency is expressly authorized to grant equitable, discretionary remedies, calibrated to circumstances, to EB-5 investors who were victims of fraudulent or otherwise unlawful conduct (collectively, "Innocent Investors"). Included in the class of Innocent Investors are are all EB-5 investors who have filed I-526 petitions and their derivative family members (including those granted conditional residence) who (a) are or are likely to become victims of civil or criminal fraud, deceit, unlawful practices, violations of U.S. or state securities laws, or other U.S. or state financial or commercial torts or crimes; and (b) did not participate in the conduct leading to their EB-5 victim status.[30]

[30] Agency websites, court dockets and media reports are replete with tragic incidents of dishonest, criminal or otherwise improper or unlawful conduct by a few unscrupulous individuals and entities. See, e.g., "Joint USCIS-SEC Investor Alert: Investment Scams Exploit Immigrant Investor Program," Oct. 1, 2013, accessible at: https://www.sec.gov/oiea/investor-alerts-bulletins/investor-alerts-ia_immigranthtm.html, and "EB-5 2.0: Can Account Transparency Save the Program?", Article by New York University Scholar-in-Residence Gary Friedland, Esq., and Professor Jeanne Calderon, Esq., (Draft, Oct. 6, 2016), pp. 5-7, accessible at: http://www.stern.nyu.edu/sites/default/files/assets/documents/EB-

As USCIS well knows, many Innocent Investors have suffered not merely the loss of their investments but also the loss of treasured immigration benefits such as I-526 and I-829 petition denials, denials of immigrant visas or applications for adjustment of status, revocations of conditional residency or permanent resident status. These hapless individuals have no immigration remedy other than to depart the United States, make another EB-5 investment in a different regional center or new commercial enterprise, or renew an I-829 petition before an Immigration Judge.

IIUSA therefore believes that USCIS should provide an array of potential equitable remedies, benefits and protections in the exercise of the agency's discretion for which Innocent Investors may apply, for an appropriate filing fee, and receive an adjudication.

The USCIS regulations should prescribe that possible protections, rights or remedies available to Innocent Investors would vary depending on several factors, including the stage of investment, the pendency or approval of the I-526 or I-829, the presence or absence of qualifying job creation, the preservation and availability, or the loss of invested funds, and the overall direct and consequential harm suffered by Innocent Investors and their derivative family members. To be sure, however, this proposal for equitable remedial remedies, protections or benefits would not eliminate moral hazard or relieve an EB-5 investor from engaging, directly or through competent third parties, in conducting adequate due diligence on any prospective EB-5 investment opportunity. Moreover, the anticipated equitable alternatives described below would not allow defrauded investors to gain conditional residency or removal of conditions on resident status through the EB-5 program.

The remedial immigration authorities to be prescribed in the forthcoming USCIS EB-5 regulations should include but not be limited to:

- Parole in place, humanitarian parole, deferred action status, or extended voluntary departure, e.g., to allow Innocent Investors a grace period within which to (a) participate as parties in litigation, mediation or arbitration or as witnesses in government investigations, and civil or criminal proceedings, (b) wind down their business and personal affairs and allow their children to fulfill their plan for study in the United States, (c) to apply for a change or adjustment of status, or (b) any other remedy USCIS determines is appropriate under the circumstances.

- Employment authorization, and advance parole travel authorization, incidental to, and coextensive with, other discretionary relief which USCIS deems appropriate;

- Age-out protections for minors, and

5%202.0%20%20Can%20Account%20Transparency%20Save%20the%20Program.pdf (both citations last visited on Apr. 4, 2017).

- Preservation of the original I-526 priority date and its application and use pursuant to a new EB-5 qualifying investment or a different employment-based immigrant visa category for which the individual may otherwise qualify.

As noted, IIUSA believes that each Innocent Investor and family member should be given the right, by regulation, to petition or apply for remedial immigration benefits through the normal application or petition process and receive an adjudication that USCIS in the exercise of agency discretion is appropriate based on the particular circumstances. Moreover, because their EB-5 cases arise under the employment-based business visa categories, the regulations should further state that the USCIS Premium Processing Service may be made available to Innocent Investors.

Expand Regional Center's Designated Geographic Area with I-924 or I-526 petition filing

At its EB-5 stakeholder meeting in Washington, D.C. on Friday, March 3, USCIS stated that it had changed its policy from the May 30, 2013 EB-5 policy memorandum which had allowed regional centers ("RCs") to sponsor investors with I-526 petitions filed for projects located outside the RC's already-approved geographic area or jurisdiction (as clarified in other meetings: with impact areas at least adjacent to the approved area). The change in the longstanding policy severely damages the ability of RCs to promote capital investment and create new jobs.

USCIS failed to properly forewarn the EB-5 community of its radical policy shift, in order that the EB-5 community could meaningfully comment. Last fall, in a Policy Manual chapter about Investors published on November 30, 2016, USCIS stated that RCs can sponsor projects in industries for which the RC is not already approved (as stated in the 2013 memorandum), but it did not say the same for projects outside the approved RC area. Especially because USCIS leaders had stated that the initial Policy Manual chapter on investors would only be consolidating existing policy, it seemed that this omission might have been just an oversight.

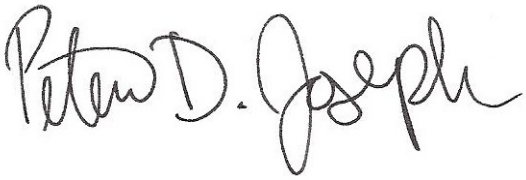
In more recent forums, USCIS representatives talked about current developments without mentioning a change in policy requiring approval of RC area expansions before investors could file I-526 petition.

IIUSA therefore requests that the following should be adopted into the Code of Federal regulations:

(1) Language that clearly states that a Form I-924 amendment is not necessary to amend the geography of a regional center to adjacent, contiguous territory and that such expansion is permitted via the filing of an I-526 or an I-924 petition, at the petitioner's discretion.

(2) Alternatively, language that clearly states that a regional center may file I-526 petitions subject to the expansion of geography of a previously filed and, pending I-924.

Sincerely,



Peter D. Joseph
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