



EB-5 Program:

Successes, Challenges, and Opportunities
for States and Localities

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DISCLAIMER

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Summary and Introduction



The EB-5 Immigrant Investor Program was established in 1990 to stimulate the U.S. economy through job creation and an influx of foreign capital. The EB-5 program grants foreign investors the opportunity to acquire legal permanent residence if they invest \$1 million in a commercial enterprise (or \$500,000 if the business is in a high-unemployment or rural area) and create at least ten jobs for U.S. workers. While the program experienced very low utilization in its early years, use of the program has skyrocketed since the Great Recession. The number of conditional visas issued to investors and their families increased from 1,360 in FY2008 to more than 10,000 in FY2014, marking the first time that the program had reached its numerical cap. In total, more than half of the 44,400 EB-5 visas issued since the program's inception have been granted in the last three years alone.

Nearly all of the recent growth has been propelled by the EB-5 Regional Center Program, which was created in 1993 as a pilot program to provide investors with an alternative investment channel to the original program and has essentially become synonymous with the overall visa category. Last year, 97 percent of conditional visas were issued through the Regional Center Program. Overall, about 80 percent of conditional visas issued since 1992 have been through investment in regional centers. The main advantage of the Regional Center Program for investors, other than the lack of a direct management requirement, is the ability to meet the job creation requirement through indirect jobs (i.e., those that may be created in other firms by the existence of the investment project). The Regional Center Program remains subject to periodic reauthorization by Congress, and it is currently set to expire at the end of September 2015.

The EB-5 Regional Center Program has faced several challenges since its inception, including lax oversight in its early years, negative attention around a few high-profile cases of fraud, allegations of corruption and mismanagement, and increasing delays and backlogs. The unique nature of the program, in which the motivation behind investment is primarily migration, can leave both the individual investors and the program susceptible to fraud and abuse. The qualifications and expertise of U.S. Citizenship and Immigration Services (USCIS) adjudicators—who have expertise in immigration law but not financial regulation or investments—in overseeing and verifying the details of financial-investment projects have also been called into question in previous government audits and by lawmakers. Critically, a lack of publicly available data, consistent tracking of project impacts, and other limitations have raised security concerns and make it difficult to assess the overall economic impact of the program. While USCIS has taken steps over the years to strengthen the EB-5 program’s functionality and integrity, recent growth has the potential to exacerbate these challenges.

Nonetheless, the program has worthwhile goals and potential that have already provided positive benefits and could continue to do so with appropriate reforms. Continuing a long track record of bipartisan commitment to supporting and reforming the EB-5 program, bipartisan legislation has been introduced in Congress to reauthorize and reform the program.

Analyzing some of the most recent government data and independent studies of the program, this paper provides an overview of the EB-5 program’s history, performance, and impacts to date. Considering the program’s regional nature and approach, this paper also looks at the increasing interest among state and local leaders in creating either public-private partnerships with regional centers or in creating their own regional centers to diversify their access to resources in order to spur local economic growth.

Some key takeaways include:

- **The program has attracted a minimum total of \$4.2 billion in investments and supported the creation of at least 77,150 jobs.** These minimums represent a static estimate based on the number of investors who have met the EB-5 requirements and who have been granted permanent residency to date. Less conservative methodologies, such as those used by USCIS to report program outcomes, put the minimum investment total to date (July 2015) at around \$11 billion to \$12 billion based on initial approvals for conditional residency. Economic-modeling studies by the industry group Invest in the USA also show that the program has positive effects on GDP and tax revenue. The latest study found that EB-5 spending contributed \$3.58 billion to GDP, created more than 41,000 jobs, and generated more than \$805 million in federal and state tax revenue in FY2013 alone. There have been no economic studies commissioned by the government on the EB-5 program’s wider economic impact since 2010, but USCIS has recently commissioned a new study to assess the program’s impact for FY2012 and FY2013.
- **Assessing full economic impact and program outcomes has been challenging.** Partly due to a lack of data collected and made publicly available on EB-5 projects, both non-governmental and governmental entities have had difficulty verifying economic impact assessments. Audits have shown that while USCIS collects more complete information on EB-5 program forms, such as the total number of jobs created, the agency does not consistently report outcomes beyond the minimum requirements.
- **State and local government interest in the Regional Center Program is growing.** A growing number of states and localities are creating partnerships with regional centers or creating their own to attract investments to

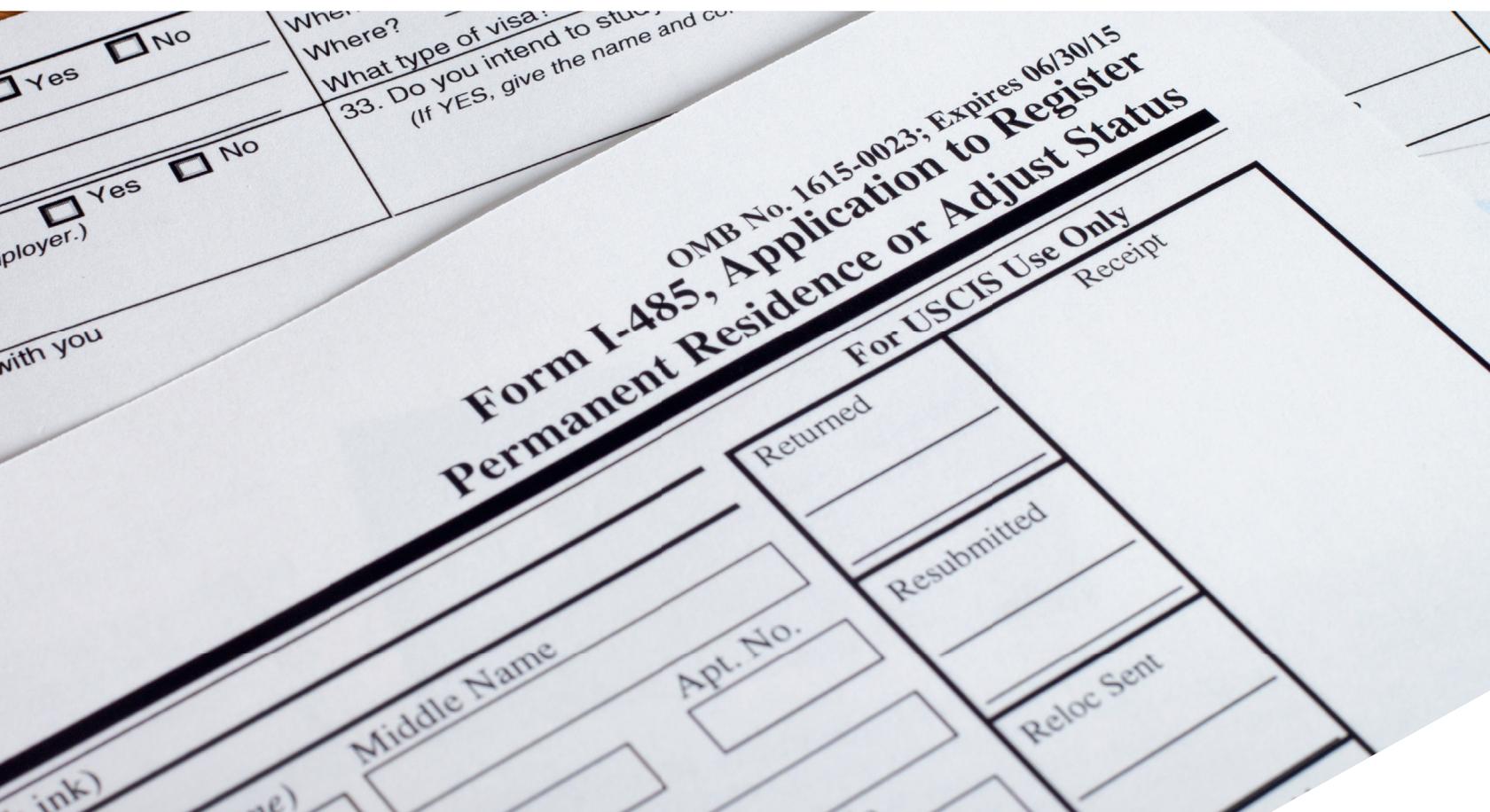
their communities. Michigan, Vermont, Hawaii, Iowa, and Pennsylvania, as well as the cities of Dallas, Miami, and Philadelphia, are just some of the municipalities with varying levels of involvement in operating regional centers. Many have already seen successful projects. In Philadelphia alone, public-private partnerships with regional centers have attracted more than \$620 million in investments for now-completed projects.

- **The program’s regional focus provides valuable opportunities to states and localities, particularly on civic development and infrastructure projects.**

The program’s ability to provide long-term, low-interest capital that can complement existing public funds presents valuable opportunities for state and local leaders to address some of their public-spending projects, including in highly underinvested but critical public infrastructure and affordable housing. Many states and localities have already taken advantage of the program for such projects and several plan to do so.

- **With increased security, functionality, and integrity, the program has great potential to support regional economic development.** Considering its relatively limited size, the EB-5 program alone will not be the primary solution for the country’s most expensive and critical needs. However, with effective reforms to increase the program’s integrity, security, and functionality, the EB-5 program has the potential to provide for incremental but relatively significant opportunities for regional economic development.

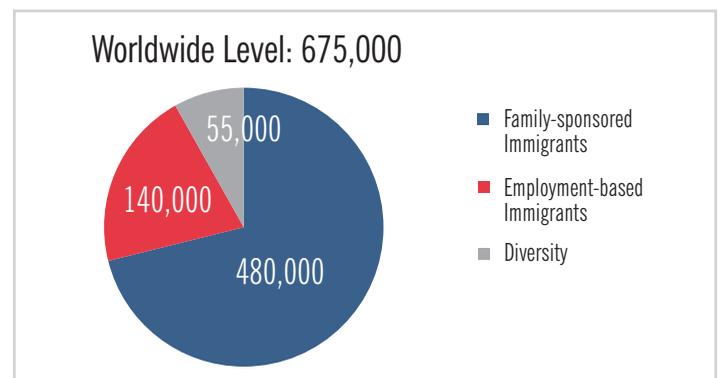
Background



Creation and Overview

The Employment-Based Fifth Preference Immigrant Investor Program, commonly known as the EB-5 program, is one of five employment-based (EB) visa categories that allow foreigners to attain lawful permanent resident (LPR) status to live and work in the United States. The program was created 25 years ago as part of the Immigration Act of 1990 to stimulate the U.S. economy through job creation and an influx of capital investment by foreign investors.¹ The program's creation in the United States was inspired by successful examples of similar investor visa programs in other countries at the time, notably Canada and Australia, and was viewed as more of an economic development and investment policy than an immigration policy.² Opponents in Congress criticized the program as simply being a channel for wealthy foreigners to “buy

Figure 1. Numerical caps on Legal Permanent Residents (LPRs)



Note: The United States usually admits more than 675,000 LPRs each year because immediate relatives of U.S. citizens, refugees, and asylees are exempt from numerical caps.

their way in” to the United States. However, proponents stressed that the program was intended to benefit the U.S. economy and create jobs, and it was ultimately approved.³

The 1990 act was the most significant restructuring of the country’s immigration system since 1965, and it instituted major reforms that remain mostly intact today. At the time, members of Congress concerned about U.S. competitiveness in the global economy sought to use legal immigration as a tool in a larger economic plan, stating that “it is unlikely that enough U.S. workers will be trained quickly enough to meet legitimate employment needs, and immigration can and should be incorporated into an overall strategy that promotes the creation of the type of workforce needed in an increasingly global economy.”⁴ As part of this shift toward economic immigration, Congress tripled the number of employment-based visas.

In addition to creating the EB-5 program, the act set a cap on

worldwide permanent immigration at 675,000, including family-sponsored immigrants and immediate relatives, employment-based immigrants, and diversity immigrants (Figure 1). The law allocates 140,000 visas annually for employment-based immigrants, prioritized by skills and professional accomplishments.⁵ For all immigrant categories, family members of the principal applicant are considered “derivative” applicants and are counted against the same category caps.

On average over the past five years (FY2010-FY2014), one million LPRs have been admitted annually, of which 14 percent were employment-based immigrants and their families. The EB-5 visa is the only immigrant category for foreign investors coming to the United States and is capped at around 7 percent of all EB visas, or roughly 10,000 visas per year. In actual usage, EB-5 investors and their families have on average accounted for about 4 percent of EB visas and 0.6 percent of all LPR admissions (about 6,000 per year).

Table 1. Employment-based preference admissions by category (FY2010-FY2014 Avg.)⁶

LPR PREFERENCE CATEGORIES		CAP*	Admitted 2010-2014 (Avg.)	% of EB LPRs	% of All LPRs
ALL LPRs		675,000	1,050,000	-	100%
EMPLOYMENT-BASED		140,000	149,000	100%	14%
EB1	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors or researchers	28.6%	37,000	25%	3.5%
EB2	Professionals holding advanced degrees or persons of exceptional ability in sciences, arts, or business	28.6%	56,800	38%	5.4%
EB3	Skilled workers, professionals, and other workers	28.6%	40,500	27%	3.8%
EB4	Certain special immigrants: ministers, religious workers, current or former U.S. government workers, and others.	7.1%	8,000	5%	0.8%
EB5	An investor who invests between \$500,000 and \$1 million in the United States that creates at least ten new full-time jobs	7.1%	6,300	4%	0.6%

Source: DHS Yearbook of Immigration Statistics (FY2010-FY2013); State Department preliminary data (FY2014).

*Caps are adjusted each year to account for a certain number of unused visas from the previous year; thus, the number of EB visas allocated will often be greater than 140,000.

EB-5 Requirements and Application Process

The EB-5 program is administered by USCIS within the Department of Homeland Security (DHS). USCIS accepts, processes, and adjudicates investor petitions; collects thousands of dollars in fees; and ultimately confirms that investors meet the proper program requirements after a two-year conditional period. The program has two principal requirements:

- **Capital investment.** Each EB-5 investor must invest a minimum of \$1 million in a new commercial enterprise, or \$500,000 if the business is in a targeted employment area (TEA). TEAs are either areas experiencing unemployment at 50 percent above the national average rate or rural areas.⁷ USCIS allows each state to determine whether a particular area is designated as a TEA. The new commercial enterprise can take the form of a limited or general partnership, corporation, sole proprietorship, joint venture, or business trust. Applicants can also invest in an existing business if their investment expands the business's net worth or number of employees by 40 percent. The investment must also be at risk with no guarantee of return.
- **Job creation.** The investment must create or preserve at least ten full-time jobs for U.S. workers within two years of the investor's admission to the United States. Investors can claim credit for "preserving" ten jobs if they invest in a "troubled business"—a business that has been in existence for two years or more and incurred a net loss of at least 20 percent of its net worth during the 12- or 24-month period prior to the investor's application.⁸

The application process for each foreign investor begins with filing Form I-526 (Petition by Alien Entrepreneur) to prove eligibility for the EB-5 program. The I-526 petition requires supporting documentation that provides USCIS a detailed plan for how the investor intends to meet the program's requirements. Documentation includes a business proposal describing the type and location of the proposed investment; evidence that the investor

has available, lawfully acquired funds to meet the minimum investment; proof that the business will result in creation or preservation of at least ten full-time jobs for U.S. workers; and evidence the investor will actively manage the business if it already exists.⁹ The I-526 filing fee is \$1,500.

Once the I-526 petition is approved, the investor and his family must apply for an immigrant visa through the regular immigration process. If the investor is already lawfully in the United States, they may apply for adjustment of status (Form I-485). If the investor is outside of the United States, they must apply for the immigrant visa at a U.S. embassy or consulate. The filing fee is \$1,070 and the investor and his family must submit to a medical examination, provide biometrics for security checks to prove they are admissible, and may be subject to an interview with a USCIS adjudicator if applying for an adjustment of status, or subject to a mandatory interview with a consular officer if applying for an immigrant visa. If the investor is approved, they are granted conditional permanent residence for two years in the United States.

Finally, before the expiration of the two-year conditional period, the investor must submit an application to provide evidence that they have met all of the EB-5 program requirements to remove the conditions on their resident status. This application is done through USCIS's Form I-829 (Petition by Entrepreneur to Remove Conditions). To remove the conditions, the investor must provide evidence that he or she invested (or is actively in the process of investing) a "substantial amount" of the required capital. Evidence may include audited financial statements, bank statements, business licenses, contracts, invoices, receipts, federal or state quarterly tax statements, and income-tax returns. The investor must also provide evidence that the investment created (or "can be expected to create within a reasonable time") or preserved ten full-time jobs for U.S. workers; evidence of which may include tax documents, business payroll records, or employee eligibility forms.¹⁰ The fee for this last step of the process is \$3,835.

Regional Center Program and Growth of EB-5



Regional Center Program

When the EB-5 program was initially proposed, proponents expected that it would attract at least 4,000 applications each year and yield \$4 billion in investments and 40,000 new jobs.¹¹ In reality, the program was little-used for much of its early existence, with only a fraction of the 10,000 allocated visas being granted each year. After this slow start to the program, Congress created the Regional Center Pilot Program in 1993 to run alongside the original EB-5 program, facilitating foreign investment and encouraging investments in specific geographic regions.¹²

The new Regional Center Pilot Program allowed foreign investors to invest in “regional centers,” defined as an economic unit “involved with the promotion of economic growth, including increased export

sales, improved regional productivity, job creation, and increased domestic capital investment.”¹³ Although most regional centers are private entities, regional centers can also be publicly owned and operated by a city, county, or state government or economic development agency (EDA), or be public-private partnerships. Essentially, regional centers serve as third-party entities that can pool foreign investments with domestic investments to fund a broad range of projects within a specified geographic area.

Regional centers undergo their own application process with USCIS through Form I-924 to be officially designated.¹⁴ The proposal must show that the regional center will (a) focus on a contiguous geographical region; (b) promote economic growth

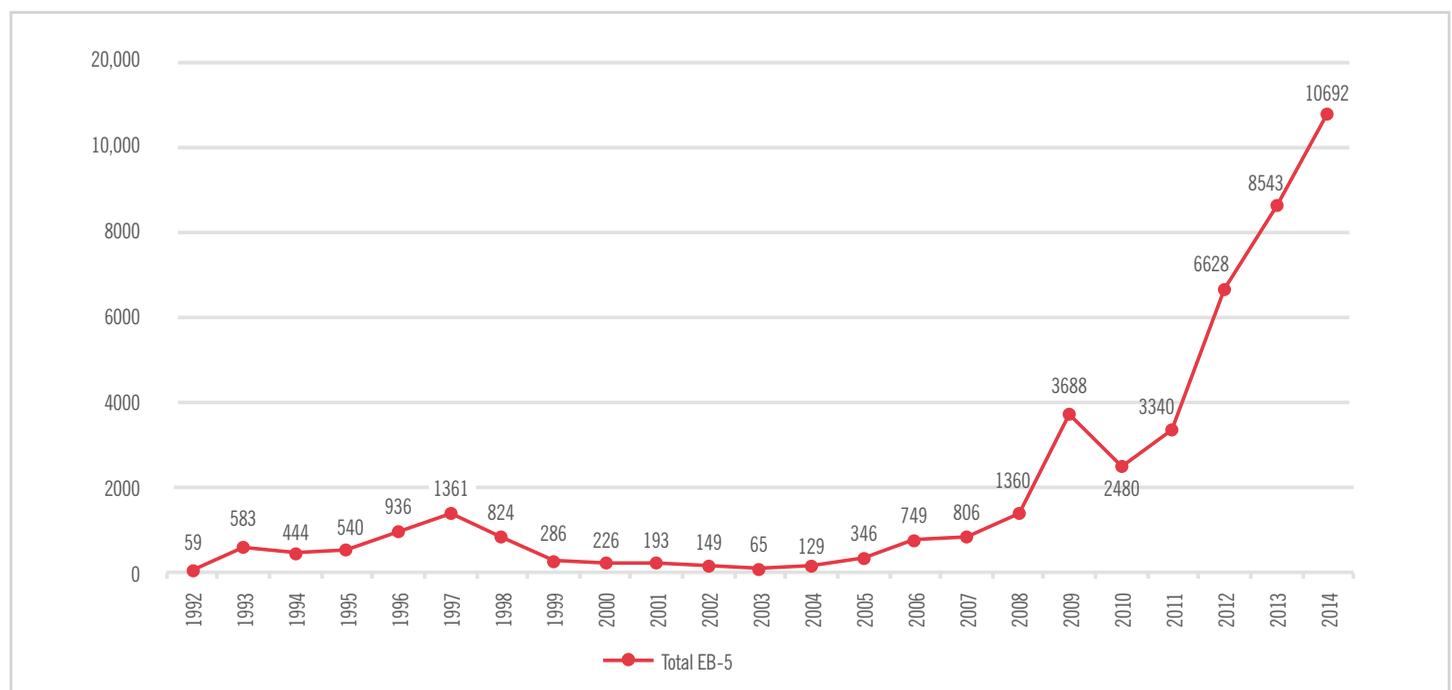
through increased export sales (if any), improved regional productivity, and increased domestic capital investment; and (c) create at least ten jobs, directly or indirectly, per immigrant investor (as demonstrated through “reasonable methodologies”).¹⁵ Regional center applications may contain either hypothetical or actual projects. Hypothetical projects can be approved based on fewer details and more general economic predictions but will later face regular scrutiny through I-526 petitions from individual investors. Applications with actual projects require more details on how the projects will meet all of the program’s requirements and can be submitted alongside an “exemplar Form I-526” for project pre-approval, which can speed up the individual I-526 investor petitions in the project.¹⁶

Regional centers facilitate the EB-5 process for foreign investors by identifying and managing projects and providing the opportunity for less-strict job-creation requirements than the direct-investment method. Regional centers can direct investors toward EB-5 projects that the regional centers manage. Usually, foreign investors

purchase equity stakes in investment funds created by the regional centers. These investment funds are used by the regional center company to either purchase equity stakes in a project company or to loan money to a different job-creating entity. These are known as the “equity” and “loan” models of regional center investment.¹⁷ Furthermore, investing through the Regional Center Program allows foreign investors to fulfill the job-creation requirement through evidence of indirect or induced jobs in addition to direct jobs. USCIS defines indirect jobs as “jobs shown to have been created collaterally as a result of the capital invested in a commercial enterprise” (e.g., workers who provide goods and services to the project, such as construction material); and induced jobs are jobs created within the community as a result of capital being spent by the EB-5 project employees.¹⁸

Since its inception in 1993, the Regional Center Program has been reauthorized at least six times in Congress with strong bipartisan support. In 2003, the program was extended for five years as part of the Basic Pilot Program Extension and Expansion Act of

Figure 2. Total EB-5 conditional visas issued by year (FY1992-FY2014)



Source: DHS Yearbook of Immigration Statistics (FY1992-FY2013); State Department preliminary data (FY2014).

2003, which passed both the House and Senate with unanimous support.¹⁹ The program was most recently extended for three years in 2012 by unanimous consent in the Senate and a 412-to-three vote in the House.²⁰ While Congress removed the word “Pilot” from the title in 2012, the Regional Center Program remains subject to periodic reauthorization. Lawmakers behind the 2013 Senate-passed comprehensive immigration reform bill, S.744, attempted to make the program permanent, but that bill was never taken up in the House. The Regional Center Program is currently scheduled to expire on September 30, 2015, without congressional action.

Growth of the EB-5 Program

As noted above, the EB-5 program had an unsuccessful first few years and did not meet expectations as to investment and numbers. Between 1992 and 1998, a total of 4,747 visas were issued through the program to investors and their dependents (an average of 678 visas per year), peaking in 1997 with 1,361 visas (Figure 2). However, since 2003, dramatic growth in the program has been propelled almost exclusively by investments through the Regional Center Program.

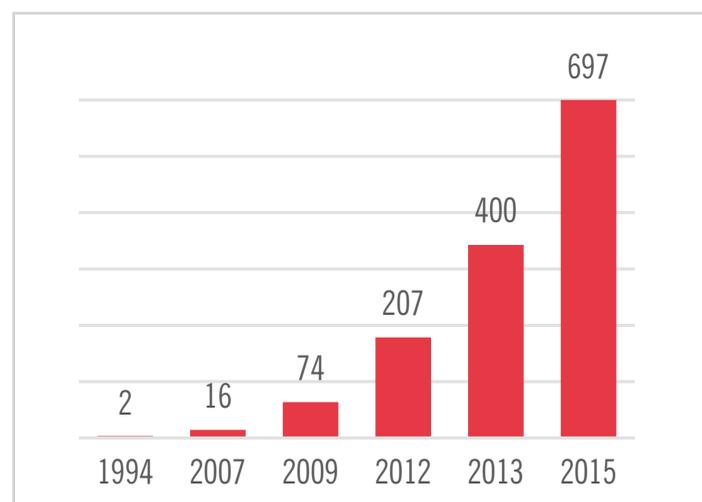
The program’s disappointing performance in its early years is usually attributed to its complex requirements, confusing regulations, and competition from simpler investor visa programs in other countries. For example, immigrant investors applying to the Canadian or Australian programs at the time only had to invest around \$250,000 to \$260,000 and employ fewer workers.²¹

After a slight uptick between FY1995 and FY1997, participation in the EB-5 program fell precipitously between FY1999 and FY2004 to an average of 175 conditional visas granted per year. Participation during these years was affected by regulatory issues and controversies regarding high-profile cases of corruption and fraud, which essentially suspended the program in 1998. Taking advantage of the program’s complex nature, lack of expertise among adjudicators, and lack of statutory guidance regarding several of the requirements at the time, intermediaries set up

fraudulent investment schemes that promised foreign investors visas for as little as \$100,000 while charging high fees along the way.²² In an effort to tighten the requirements and crack down on bad investments, the Immigration and Naturalization Services (INS)—the government agency that oversaw immigration before DHS was created—revised its regulations and adjudication requirements for business plans in 1998.²³ INS applied these changes retroactively and sought to revoke approved conditional visas, leaving as many as 900 immigrants in limbo. While the courts and Congress would later provide relief to some of the immigrants affected and make some reforms to the program, the regulatory shakeup and public discovery of fraudulent schemes cast a negative light on the program that persisted for several years.²⁴

Since 2004, the EB-5 program has experienced steady growth, with an especially steep increase after the banking crisis and recession of 2007 and 2008 when traditional investment capital became harder to acquire. The number of visas issued to investors and their dependents increased from 1,360 in FY2008 to 10,692 in FY2014, marking the first time that the program had reached its numerical cap. The FY2014 number brings the grand total of conditional visas allocated during the program’s existence to 44,427, with more than

Figure 3. Number of regional centers (selected years)



Source: USCIS; Brookings Institution.

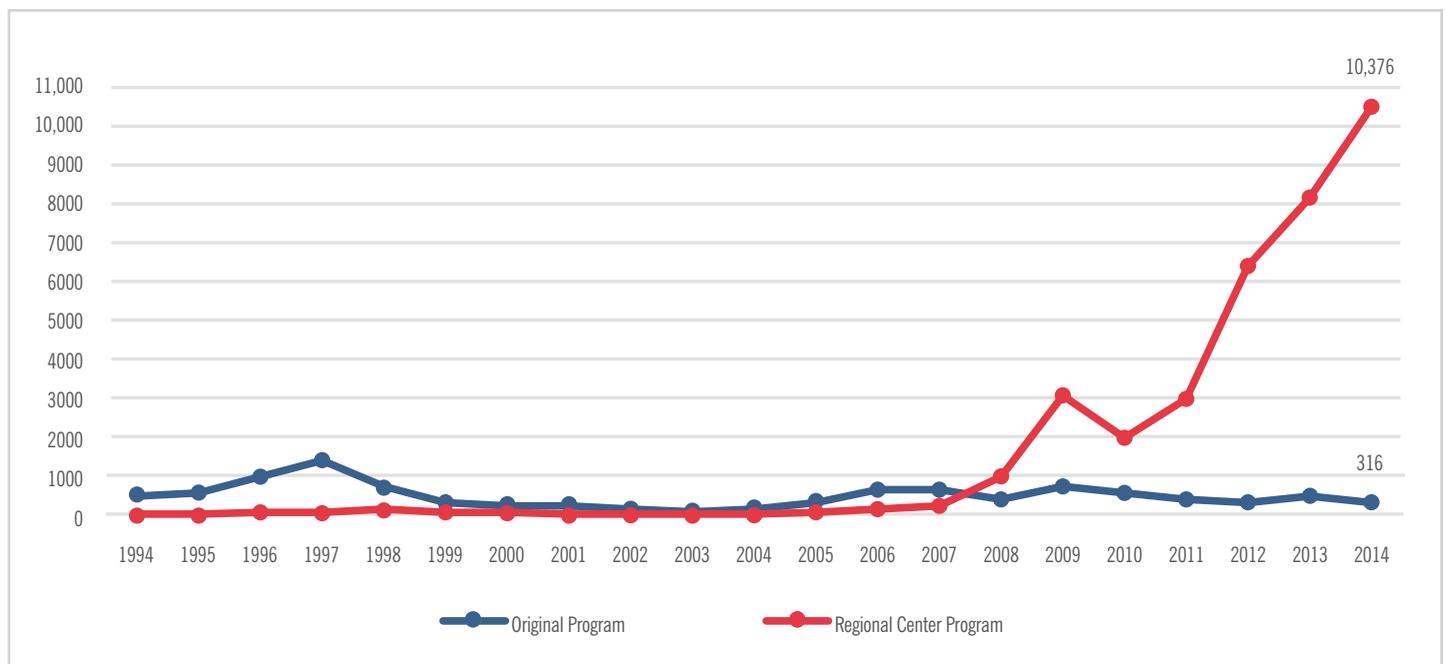
58 percent (around 25,900) issued in the last three years alone. Although growth has been dramatic, EB-5 visa recipients still account for less than 1 percent of the approximately one million new immigrants admitted to the United States each year (Table 1).

The growth in the EB-5 program has mirrored the equally dramatic increase in the number of regional centers around the country. According to a Brookings Institution analysis of the number of USCIS regional center designation letters, there were two regional centers after the Regional Center Program was established in 1994, and only 14 others were opened by 2007 (Figure 3). The number of regional centers has exploded from 74 in 2009 to nearly 400 in 2013. The analysis showed that, in 2013, the regional centers encompassed two-thirds of the nation's counties.²⁵ As of August

3, 2015, USCIS had approved approximately 697 regional centers, which operate in every state and the District of Columbia.²⁶

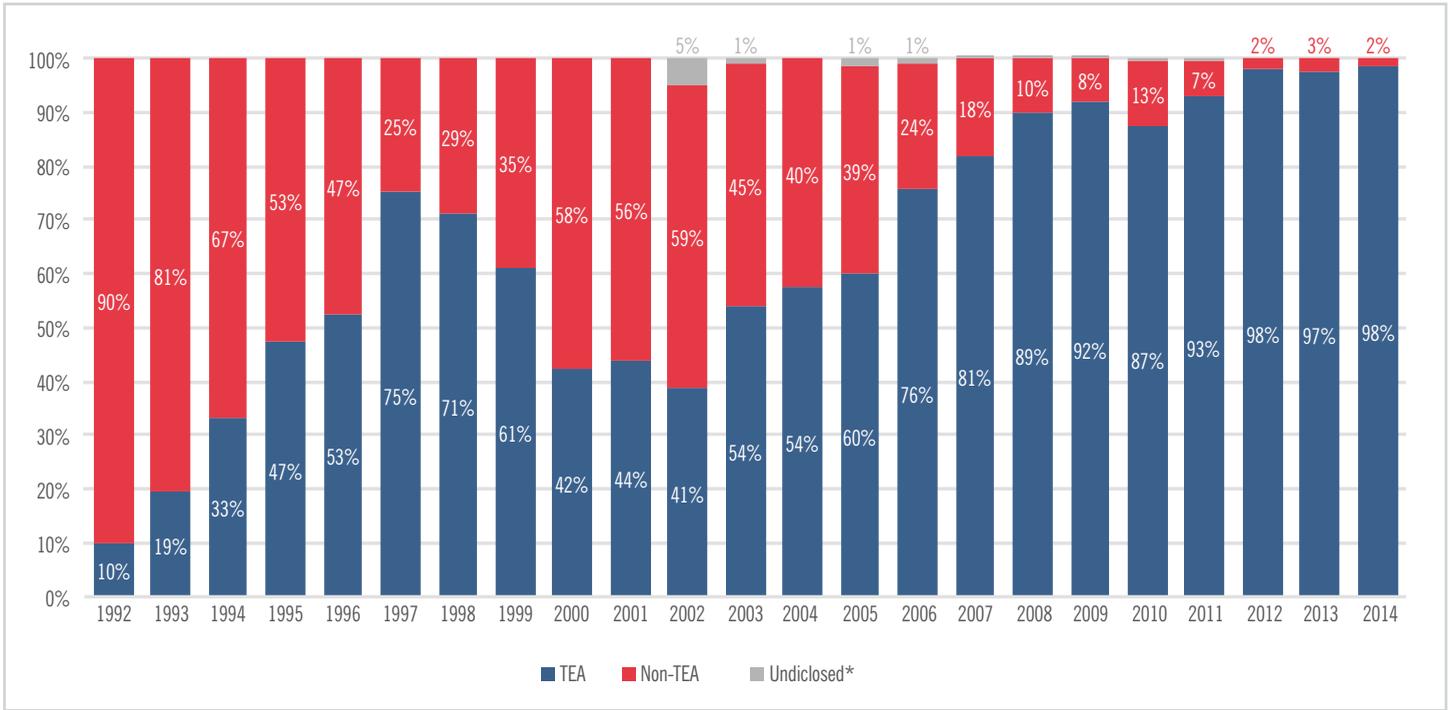
In fact, DHS and State Department data show that the overwhelming majority of EB-5 conditional visa recipients apply through the Regional Center Program. Last year, 97 percent of conditional visas issued (10,376) were granted to foreign investors and their dependents through the Regional Center Program, and only 3 percent (316) were granted through the original program (Figure 4). Since FY2008, 91 percent of all conditional visas have been granted through the Regional Center Program. Overall, about 80 percent of the total number of EB-5 conditional visas granted during the program's 25 years of existence has been through investment in regional centers.

Figure 4. Number of EB-5 conditional visas issued through Original Program and Regional Center Program by year



Source: DHS Yearbook of Immigration Statistics (FY1994-FY2013); State Department preliminary data (FY2014).

Figure 5. Percent of EB-5 conditional visas issued to investors in TEA and non-TEA



Source: DHS Yearbook of Immigration Statistics (FY1992-FY2013); State Department preliminary data (FY2014).
 *Data withheld by DHS

Similarly, EB-5 program investments have been made almost exclusively in TEAs, with the lower investment threshold of \$500,000. Other than the lower investment requirement, this is also due to the fact that nearly all regional centers operate in TEAs—only about 25 conditional visas have ever been granted to investors in a Regional Center Program project in a non-TEA. Last year, 98 percent of conditional visas issued (10,530) were granted to foreign investors investing in TEAs (Figure 5). Over the course of the program’s existence, about 90 percent of investors granted EB-5 conditional visas invested in TEAs, or nearly 40,000 of the total 44,427 conditional visas.

Figure 6. Percent of total EB-5 conditional visas issued to investors and dependents (FY1992-FY2014)

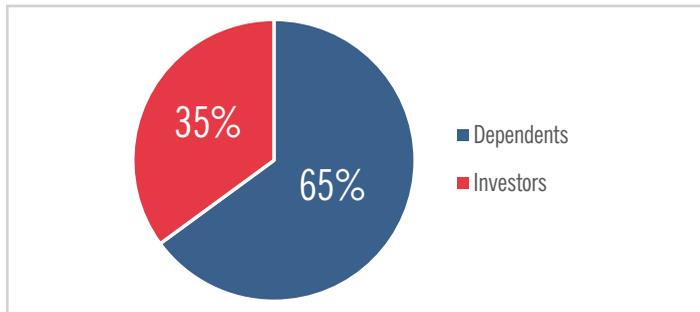
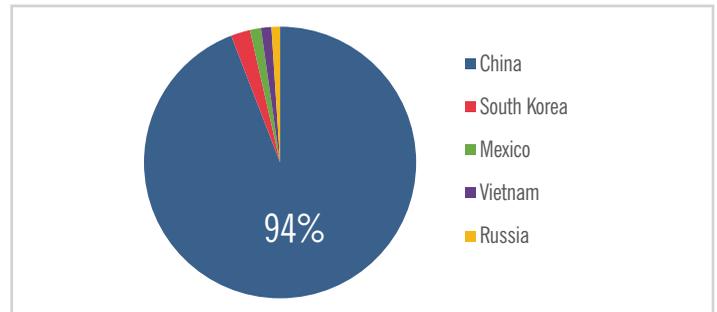


Figure 7. Top five countries receiving conditional visas (FY2014)



Source: DHS Yearbook of Immigration Statistics (FY1992-FY2013); State Department preliminary data (FY2014).

Because immigrants and their dependents (spouses and children) are counted against the cap and included in final yearly totals, not all conditional visas can be attributed to investors and an investment of capital. On average, the ratio of visas granted to dependents per investor over the years has remained stable at about two family members per investor. Overall, around 15,600 conditional visas, or about 35 percent of all visas, have been granted to investors and 28,800 have been granted to dependents since the program began (Figure 6). The majority of foreign investors and their families have consistently come from a handful of countries, mostly in Asia. In FY2014, Chinese investors and their families claimed more than 9,000 of the 10,692 visas issued. The other countries rounding out the top five included South Korea, Mexico, Vietnam, and Russia (Figure 7).

Program Outcomes and Economic Impacts



Tappan Zee Bridge, New York

Assessing the economic impacts of the EB-5 program has been one of the many challenges faced since the program's inception. Partly due to a lack of data collected and made publicly available by USCIS on EB-5 Regional Center Program projects, both non-governmental and governmental entities like the Government Accountability Office (GAO) and DHS's Office of Inspector General (OIG) have had difficulty verifying economic impact assessments. For example, until a few years ago, USCIS did not collect annual data from Regional Center Program projects—it would only do so at the different stages of petition adjudication (I-526/I-829) or Regional Center Program applications (I-924). Nevertheless, USCIS provides enough information to make static analyses based on minimum requirements met and petitions approved (though these can sometimes under- or over-estimate impacts), and both USCIS and non-governmental organizations have concluded their own analyses using economic models to measure wider, indirect effects like impact on GDP and tax revenue.

Based on the number of investors who have been granted

permanent residency to date, the program has attracted a minimum total of \$4.2 billion in investments and supported the creation of at least 77,150 jobs. Less conservative methodologies, such as those used by USCIS, put the minimum investment total to date at around \$11 billion to \$12 billion based on approved initial petitions for conditional residency. Other analyses of the program, some of which have been conducted by industry groups, have indicated that EB-5 program spending has had significant positive impacts on GDP and tax revenue.

Critics of the program have argued that even the most liberal economic estimates show insignificant results when compared with the total foreign direct investment the United States attracts each year (on average, more than \$200 billion per year).²⁷ However, the program's potential to deliver billions of dollars and thousands of jobs to communities around the country is even more notable when one considers its relatively small size (e.g., 10,000-visa cap, the majority of which go to dependents), previous history of significantly low usage, and investment amounts that have not increased since

1990.²⁸ Furthermore, the program’s focus on regional economic development allows for more targeted investment to local communities, particularly in a recovering economy. Lastly, there are several project success stories in states around the country that have provided opportunities for regional economic development and targeted funding, particularly on high-priority spending projects like public infrastructure.

This section examines some of the most recent government data available on I-526 and I-829 petition approvals to make estimates based on minimum requirements, provides an overview of similar analyses and others using economic modeling, and discusses some of the state and local impacts and opportunities.

Static Analyses

Static analyses of the program are those that project total investment and job-creation numbers for either a period of time or throughout the program’s history by multiplying the minimum program requirements (\$500,000 in TEAs or \$1 million in non-TEAs and ten jobs) by one or more factors: (a) the overall number of approved I-526 petitions, and/or (b) approved I-829 petitions. Table 2 shows the number of approved petitions in each category, and Figure 8 provides a summary of minimum total investment estimates based on the three methods discussed below.

USCIS methodology. A recent GAO audit of the program explains USCIS’s methodology for estimating the program’s impacts:

To estimate job creation, USCIS multiplies the number of immigrant investors who have successfully completed the program with an approved Form I-829, by 10—the minimum job creation requirement per immigrant investor. To estimate overall investment in the economy, the agency multiplies the number of immigrant investors approved to participate in the program with an approved Form I-526, by \$500,000—the minimum investment amount, assuming all investments were made for projects in a targeted employment area.²⁹

Following USCIS’s methodology, and considering the year-to-date (YTD) approval rates for both I-526 and I-829 EB-5 petitions (Table 2), the program has created a minimum of 77,150 jobs and attracted at least \$12.9 billion in investments.

Adjusted USCIS Methodology. As GAO points out, there are several limitations to the USCIS methodology and to all methodologies using static assumptions based on the program’s minimum requirements. First, multiplying the number of approved I-829 petitions by only the minimum number of jobs (ten) can underestimate the jobs actually

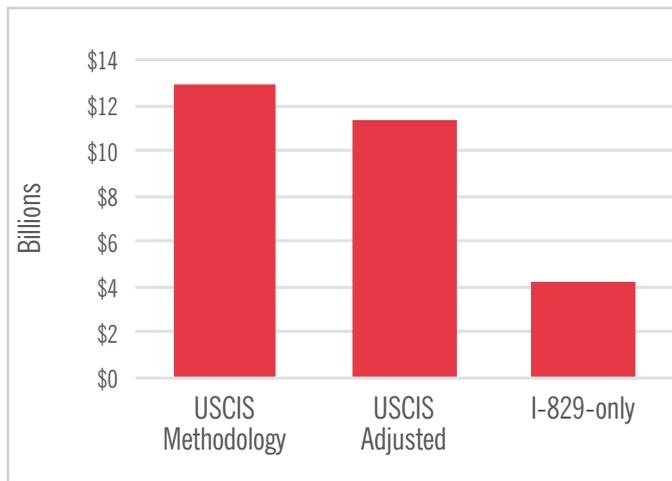
Table 2. I-526 and I-829 petitions received, approved, and denied (FY1992-July FY2015)³¹

FY	I-526 Conditional Petitions			I-829 Petition for Removal of Conditions		
	Receipts	Approvals	Denials	Receipts	Approvals	Denials
1992	474	240	40	0	0	0
1993	436	384	170	0	0	0
1994	513	407	82	24	15	1
1995	417	291	109	130	111	10
1996	801	616	122	287	344	53
1997	1,496	1,110	141	877	718	135
1998	1,368	358	290	469	104	13
1999	650	141	1,558	384	86	24
2000	384	167	270	384	30	33
2001	585	44	207	143	52	114
2002	255	69	217	194	198	174
2003	255	132	194	139	36	66
2004	247	131	159	123	217	93
2005	332	187	156	39	206	132
2006	486	344	132	89	108	108
2007	776	485	149	194	117	52
2008	1,258	642	120	391	161	69
2009	1,031	1,265	208	437	350	57
2010	1,955	1,369	165	768	274	56
2011	3,805	1,571	372	2,345	1,067	46
2012	6,041	3,677	957	712	736	60
2013	6,346	3,699	943	1,217	844	44
2014	10,923	4,925	1,169	2,516	1,603	178
2015YTD	5,250	3,630	406	1,503	338	2
TOTAL	46,084	25,884	8,336	13,365	7,715	1,520

Source: USCIS

Note: Petitions are not the same as visas granted. Petitions are one per investor while the total number of visas granted includes dependents (spouses and children). Additionally, these numbers do not always match the yearly totals because petitions from one year can be approved in a later year.

Figure 8. Summary of minimum total EB-5 investment (FY1992–July FY2015)



created by a project. For example, one project reviewed by GAO with about 450 immigrant investors created more than 10,500 jobs (or 23 per investor). USCIS only reported 4,500. Secondly, although the number of investments made in TEAs greatly outnumber non-TEA investments, multiplying all approved I-526 by the \$500,000 investment level leaves out millions of dollars in investments made at the \$1 million level, which—as mentioned above—make up about 10 percent of all EB-5 investments. However, there is also a danger of over-estimating total dollars invested by approved I-526 petitions. The GAO analysis showed that approximately 26 percent of all investors with an approved I-526 did not complete the process through the removal of conditions, so the level of investment actually made is unknown.³⁰

Therefore, the methodology could be adjusted to omit any investments made by 26 percent of investors with approved I-526 petitions who did not complete the process (per GAO’s finding) but to take into account the full minimum investments made in non-TEAs at the \$1 million level. Using this adjusted methodology, the number of jobs created would be the same, but the potential investment total would be closer to \$11.4 billion.

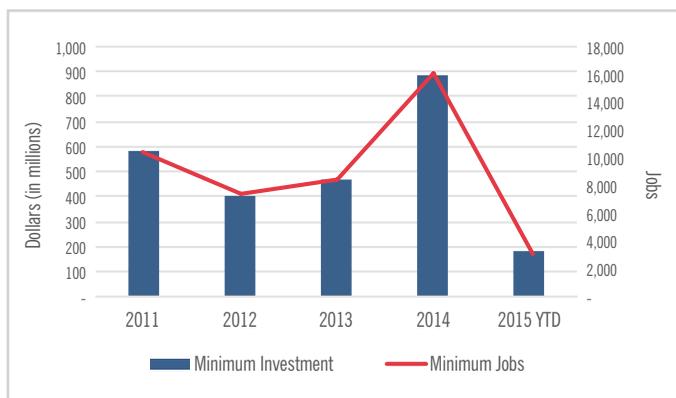
I-829-only. Perhaps the most conservative static method of estimating the program’s outcomes based on minimum

requirements would be to base both investment and job-creation totals strictly on I-829 approvals. One argument favoring this method is that approved petitions at this stage must have been verified by USCIS as substantially fulfilling both the job-creation and investment requirements of the program. However, this could discount partial investments made after approval of I-526 petitions or over-count I-829 approvals granted based on prospective additional investment or job creation, as allowed under current regulations. However, using only the approved I-829 petitions to date (7,715), and taking into consideration non-TEA investments at the full amount, it can be estimated that the program has resulted in at least \$4.2 billion in investments. (The total minimum number of jobs would remain at 77,150, because it is estimated according to approved I-829 petitions in each method.) In FY2014 alone, the program attracted a minimum total of nearly \$900 million and supported around 16,000 jobs (Figure 9).

Other organizations have frequently used static analysis based on the minimum requirements to estimate EB-5’s economic impacts at various time periods of the EB-5 program’s life. Some of these include:

- **GAO.** A 2005 GAO audit of the EB-5 program estimated total investment from 1992 to 2004. Based on the number of immigrant investors granted LPR status (approved I-829), GAO estimated that the total investment amount made was between \$784 million and \$1.3 billion. GAO could not determine how many jobs the program had established.³²
- **Brookings.** In its 2014 report, *Improving the EB-5 Investor Visa Program*, Brookings estimated that EB-5 had created at least 85,500 direct full-time jobs and attracted approximately \$5 billion in direct investments since its inception. The estimate is based on the number of conditional visas granted (excluding dependents) as of 2012 (around 8,580) and takes into account both regional center and original program contributions at both the TEA and non-TEA levels.³³

Figure 9. Yearly minimum dollars invested and number of jobs, I-829-only (FY2011-July FY2015)



- U.S. Policy Metrics/Hamilton Place Strategies.** A report released this year, *Harnessing Private Capital for Job Creation: An Analysis of the EB-5 Visa Program*, authored by Steve McMillin, former deputy director at the White House Office of Management and Budget, estimates that the EB-5 program generated a minimum of \$5.2 billion in private investment between 2005 and 2013 and that in 2013 alone, the EB-5 program generated at least \$1.6 billion in private investments and created 31,000 jobs.

Modeled Economic Effects

While there are few official governmental studies on the EB-5 program’s indirect national economic impact, there have been two notable attempts made in recent years. These studies have attempted to estimate wider economic impacts through economic models to analyze the effects of the EB-5 program on GDP, jobs, and tax revenue (Table 3). USCIS has also recently commissioned the Department of Commerce’s Economics and Statistics Administration to conduct a new study of the program’s recent economic benefits.

USCIS/ICF International. USCIS conducted a study through ICF International in 2010, which used sample data between 2001 and 2007—before the program’s dramatic increase. To assess

the impact of EB-5 investments, ICF used the IMPLAN model—a commonly used and accepted framework to estimate the total economic impact of a project on a region. The IMPLAN model analyzes the ripple effects created by the introduction of new industry activity or income into an economy, such as the effects on GDP and subsequent effects on job creation and tax revenue.³⁴ Overall, the study found that EB-5 investments and resulting economic activity had significant impacts, including adding \$700 million to GDP.

Invest In the USA (IIUSA)/Minnesota IMPLAN Group (MiG), Inc.

The second set of studies have periodically been commissioned by the industry group IIUSA and conducted by the Minnesota IMPLAN Group (MiG), Inc. IIUSA is a national not-for-profit trade association for the EB-5 Regional Center Program industry. The studies have modeled the economic impacts of EB-5 investments for each fiscal year between 2010 and 2013. The group’s latest study found that EB-5 spending contributed \$3.58 billion to GDP and created more than 41,000 jobs in FY2013.³⁵

Opportunities for States and Localities

Despite the lack of studies on the national impact of the EB-5 program, state and local leaders have increasingly looked to EB-5 Regional Center Program financing to diversify their access to resources to spur local economic growth. Just this year, both the U.S. National Conference of Mayors and the National Association of Counties adopted resolutions during their annual conferences supporting the reauthorization of the EB-5 Regional Center Program.³⁶ The support is not surprising considering the program has provided low-interest, long-term capital to projects around the country as traditional funding sources became scarce in the wake of the Great Recession.

Increased interest in public-private partnerships on behalf of state and local leaders has also been to the benefit of regional centers around the country. As examined in several other reports, some of the most successful and longest-running regional centers have

Table 3. Summary of modeled EB-5 national economic effects

FY	GDP Contribution	Jobs Supported	Federal Tax Revenue	State/Local Tax Revenue
USCIS/ICF International				
2001-2007	\$700 million	12,000	\$100 million	\$62 million
IIUSA/IMPLAN Group				
2010	\$1.14 billion	14,000	\$149 million	\$93 million
2011	\$1.51 billion	18,800	\$197 million	\$125 million
2012	\$3.39 billion	42,800	\$447 million	\$265 million
2013	\$3.58 billion	41,200	\$520 million	\$285 million

Source: USCIS and IIUSA.

been those that create public-private partnerships with city and state governments or with EDA who share the goal of promoting regional economic growth.³⁷ The involvement of public partners can often bring greater scrutiny and due diligence to projects, providing additional transparency and accountability to the program. Additionally, projects conducted with city or state governments can often mean the availability of additional public funds for a project, which is attractive to foreign investors.

In Pennsylvania, the city of Philadelphia has had a long history of successful Regional Center Program project partnerships. In 2004, the Philadelphia Industrial Development Corporation (PIDC)—the city’s regional development entity—partnered with CanAm Enterprises, a private company that specializes in running dozens of regional centers around the country, to start a regional center. To date, PIDC’s regional center has overseen more than 30 projects, attracting \$620 million in foreign investment. Some of the projects included an expansion of the Pennsylvania Convention Center that created 3,000 construction jobs and raised \$100 million in EB-5 funds; improvements to the Aker Philadelphia Shipyard with \$80 million in EB-5 funds; redevelopment of Philadelphia’s Navy Yard into a mixed-used business campus, where hundreds of companies

now operate and employ 11,500 people; the construction of the Temple University Health System, Inc. headquarters with \$13 million in EB-5 funds; and the creation of a new electronic fare system for the Southeastern Pennsylvania Transportation Authority with \$175 million in EB-5 funds.³⁸

In New York City, where many projects involve public-private partnerships with local government, regional centers have secured millions in foreign investment to help fund several projects throughout the area. Some projects include partnerships with the New York City Economic Development Corporation and the Brooklyn Navy Yard Development Corporation to assist in the redevelopment of several historic buildings and sites, including the Brooklyn Navy Yard with more than \$100 million in EB-5 capital, the Battery Maritime Building with \$77 million in EB-5 funds, and the historic Pier A in Battery Park with more than \$16 million in EB-5 capital.³⁹

Away from the East Coast, similar Regional Center Program projects are active in several cities across the country in conjunction with local EDAs and state and local governments. For example, Civitas Capital Group—a company similar to CanAm that runs several regional centers across the country—formed a public-private

partnership with the Dallas city government to operate its city-owned regional center. Dallas’s regional center has completed projects in several industries, including restaurants, multifamily apartments, and assisted-living facilities, all with the help of EB-5 funds.⁴⁰

City governments and regional development agencies are not the only ones using the EB-5 program; state governments are also beginning to express interest in opening state-run regional centers. For nearly 20 years, the state of Vermont had the only regional center in the country completely owned, controlled, and supervised directly by a state government, attracting millions of dollars in EB-5 funding to open and upgrade ski resorts around the state.⁴² However, in April of last year, Michigan Governor Rick Snyder announced that his state had officially become the second state in the country to have a designated state-run regional center—the Michigan EB-5 Regional Center. The state’s regional center will focus on mixed-use developments, senior public housing, public-private university projects, and hotel/condo projects.⁴³ This year, Maine also announced that it was looking at the possibility of creating a state-run regional center to attract investment to the state.⁴⁴

While regional centers associated with state and local governments and EDAs are among the longest-running and most-successful EB-5 Regional Center programs, there are many privately owned regional centers that have seen success around the country.⁴⁵ The majority of regional centers are still privately owned (and mostly focused on real-estate development), but many also support civic initiatives. This year, the rural town of Green Valley, Arizona, opened its first hospital with the help of \$56 million in EB-5 capital (out of \$79 million total), sparing residents from what would otherwise be a 40-minute drive to Tucson.⁴⁶ In Washington state, a regional center raised \$15 million in EB-5 funds to update and renovate the infrastructure at ASPI Technology Park in Moses Lake in rural Grant County, which had a high unemployment rate as recently as 2010. The renovations led the way to a new raw carbon fiber-manufacturing plant for BMW electric cars that now employs 150 workers.⁴⁷

Table 4. Sample of state and local governments with direct involvement in the EB-5 Regional Center Program⁴¹

Government Entity	Type
States	
Vermont	State-owned
Michigan	State-owned
Puerto Rico	State-owned
Pennsylvania	Public-private partnership
Iowa	State-owned, operated by CanAm Regional Centers
Hawaii	State-owned, operated by CanAm Regional Centers
Municipalities	
Miami	City-owned
New Orleans	City-owned
Philadelphia	Public-private partnership
Dallas	City-owned, operated by Civitas Regional Centers
New York City	Public-private partnership
Los Angeles County	Public-private partnership
Milwaukee	Public-private partnership

Public Infrastructure and Affordable Housing Projects

The program’s ability to provide long-term, relatively low-cost capital that can complement existing public funds presents valuable opportunities for state and local leaders to address some of their high-priority spending projects. Just as private real-estate developers have been using EB-5 investments to fill financing gaps in their hotel or business-center projects, state and local governments are increasingly looking at EB-5 capital to bridge the funding gap for some of their large-scale infrastructure projects and to try to meet their community’s affordable housing needs.

Infrastructure. Public infrastructure is suffering from years of neglect and underinvestment. Just looking at the state of bridges around the country alone, the Federal Highway Administration deemed one out of every nine in the country as structurally

deficient.⁴⁸ Government funds alone are unlikely to keep up with the rising costs of building, maintaining, and upgrading the country's roads, bridges, airports, and railways, and partisan gridlock in Washington over how to pay for infrastructure is leading state and local government leaders to look for alternative resources to complement available public funds.⁴⁹ As a report by the NYU Stern School of Business Center for Real Estate Finance Research recently outlined, EB-5 capital is one of the alternative resources to which local governments are increasingly turning to fund large-scale, high-priority infrastructure projects for the construction of bridges, highways, convention centers, and other public needs.⁵⁰

In Pennsylvania, the Pennsylvania Turnpike Commission recently secured a \$200 million loan in EB-5 funds to complement \$220 million in federal funding for the construction of the Pennsylvania Turnpike/I-95 Interchange project, which will link the two superhighways. Because EB-5 loans typically have lower interest rates and more favorable financial terms, the state is projected to save about \$35 million over the course of the five-year loan. At a rate of 2 percent per year, the EB-5 loan is half the rate of borrowing municipal bonds, which is how the funding gap would have otherwise been filled.⁵¹ The project is also expected to create 5,300 jobs.⁵²

In New York, several public-infrastructure projects have been funded through a similar mechanism. Regional centers in New York City partnered with the Port Authority of New York and New Jersey and the Metropolitan Transportation Authority to redevelop the George Washington Bridge bus-station hub (with more than \$90 million in EB-5 funds) and to construct, operate, and maintain the wireless infrastructure network in the New York City subway system (with \$75 million in EB-5 funds).⁵³ In a larger project, a regional center in New York City is raising up to \$1 billion to help the city fund the Tappan Zee Bridge reconstruction project, which is projected to cost \$3.9 billion. Instead of using the loan model, foreign investors in this project are directly buying municipal bonds issued by the local city government through the regional center.⁵⁴

Airports and seaports around the country are also receiving EB-5 investments to fund expansions and upgrades. A regional center working with North Carolina's Port Authority recently broke ground on a new expansion project in the Port of Wilmington that will bring the first in-port cold-storage facility to the state.⁵⁵ In Baltimore, \$40 million in EB-5 investment helped double the capacity of a major terminal in the city's port.⁵⁶ Finally, a regional center is helping the city of Astoria in Oregon expand the city's regional airport to service international air travel and its seaport to accommodate additional cruise ships.⁵⁷

Affordable Housing. The availability of affordable housing—especially for low- and moderate-income households, young adults, and seniors—is one of many housing challenges the country faces today. The aging of the baby-boom generation will increase the number of seniors by 30 million over the next 20 years to 72 million. Additionally, with more than half of the country's 41 million renter households spending more than half of their income for housing and the number of low-income renters far outnumbering available units, young adults and low- to moderate-income households are having greater and greater difficulty finding affordable housing.⁵⁸ Just as EB-5 capital can augment public funding in infrastructure projects, EB-5 funds can be used in combination with federal tax-credit programs like the low-income housing tax credits to bridge or close a funding gap for a project. Development of affordable housing could also be attractive to investors since infrastructure and construction projects are usually job creators that can help investors meet their visa requirements. Many cities around the country are beginning to take advantage of the opportunity EB-5 investments present for these projects.

In the past year, the city of Miami created its own regional center, which will be overseen by the Office of International Business Development, to attract investment in local economic development projects. In July, Miami's mayor called on developers and projects to focus specifically on financing affordable housing for low- and middle-income residents and senior citizens.⁵⁹ In Puerto Rico,

the government-owned and -operated EB-5 regional center was also recently created to focus on high-priority projects such as affordable housing projects being allocated low-income housing tax credits, among others.⁶⁰ Both in Dallas and in Seattle, regional centers are augmenting funding provided by the city government and the U.S. Department of Housing and Urban Development to create assisted-living facilities for seniors, including disabled seniors, and provide affordable housing units to residents of the area.⁶¹

Considering its relatively limited size, the EB-5 program alone will not be the primary or main solution for the country's most expensive and critical needs. However, the regional nature of the projects and the type of funding EB-5 can deliver, has the potential to provide for incremental but relatively significant funding relief to communities. Specifically, the EB-5 Regional Center Program is being increasingly noticed and used by state and local leaders around the country to meet some of their high-priority infrastructure and housing funding needs.

EB-5 Program Challenges



Despite its potential, the EB-5 Regional Center Program has faced several challenges since its inception. The unique nature of the program, in which the motivation behind investment is principally migration, can leave both the program and individual foreign investors susceptible to fraudulent schemes by bad regional center actors or middlemen. USCIS's qualifications for overseeing financial-investment projects have also been called into question. Lastly, a lack of publicly available data, clear tracking of economic impacts, and USCIS's statutory limitations on oversight have raised some security concerns and make it difficult for government and non-government entities to assess the overall economic impact of the program. USCIS has taken some steps to strengthen the utility and integrity of the program, and more potential reforms have been recommended through both government entities and through current legislation in Congress. Below is a discussion on some of

the challenges faced, reforms undertaken by USCIS, and potential reforms in recently proposed legislation.

Program Integrity and Risks

EB-5 investments are considered securities and therefore regulated by federal and state securities law. However, because EB-5 investments are considered "private placement" and are not public offerings, they are often exempt from registration with the Securities and Exchange Commission (SEC), which means investors are not protected by certain safeguards, like disclosure requirements.⁶² Without proper knowledge or assistance in exercising due diligence, foreign investors can fall prey to fraudulent schemes by unscrupulous actors. As reported in a recent GAO audit of the program, USCIS officials are increasingly noticing

that fraudulent scams are “creative and constantly evolving,” particularly as the program grows in popularity.⁶³ In 2014, USCIS and the SEC worked together to charge a Chicago regional center founder with fraudulently raising more than \$145 million from 250 Chinese investors for a project that never got off the ground. Some of the money—secured with the help of false promises and forged documents—was misappropriated and used for personal expenses.⁶⁴ In total, the SEC has initiated four civil-enforcement actions by EB-5 participants as of July 2015, and USCIS has 59 open investigations. While the number of cases of fraud or potential fraud is relatively small, the SEC has stepped up enforcement activities and has issued alerts warning potential investors of scams to exploit the program.⁶⁵

Echoing concerns raised in a 2013 DHS OIG audit, the GAO report also acknowledged that USCIS has identified potential security risks with the EB-5 program through various risk assessments. Although the audits did not discuss examples of the “sensitive nature of the information,” members of Congress and others have expressed concern that the program can attract questionable individuals. There are also concerns about USCIS’s limitations in attempting to mitigate security risks. USCIS determined that it does not have the authority under law to terminate a regional center or to deny petitions based on national security concerns, “unless such concerns lead an adjudicator to determine that the petitioner or [regional center] applicant does not meet one or more EB5 Program eligibility requirements.” USCIS also faces challenges ensuring that immigrant-investor funds are not obtained through unlawful means, such as drugs or human-trafficking because the U.S. government lacks access to many foreign financial systems. Some immigrant investors looking to hide financial sources have reportedly used overseas preparers to submit false documentation, which is hard for USCIS to verify.⁶⁶

GAO also found that USCIS was not consistently recording information that would be helpful in mitigating both fraud and other criminal risks. For example, USCIS is not consistently

recording basic information like the name, address, and date of birth of Regional Center Program applicants and participants in its database.

Some allegations of mismanagement of the program by government officials have also surfaced. A 2015 DHS OIG report raised concerns about the behavior of former USCIS Director and current DHS Deputy Secretary Alejandro Mayorkas, who, although not found to have broken any rules, was found to have fostered an “appearance of favoritism and special access” in the adjudication of some EB-5 matters.⁶⁷ Some of the cases reviewed seemed to indicate that some political figures, such as Virginia Governor Terry McAuliffe, used their influence to attempt to sway USCIS adjudication decisions regarding EB-5 projects. Mayorkas stressed in his response that he was only involved in cases when they brought up broader issues of agency policy and adherence to the law, not because of the parties involved, and that he used the incidents to enact improvements in the oversight and adjudication of the program.⁶⁸ There have also been isolated incidents of misuse or mismanagement of the program at the state and local levels. In late 2014, former South Dakota Governor Mike Rounds faced an investigation into his state’s dealings with a regional center that contracted with the government. Although it was later found that only one individual was responsible for misdirected funds, the high-profile incident brought negative attention to the state’s EB-5 program.⁶⁹

Lack of Data and Reliable Methodology to Measure Program Impacts

As previously mentioned, one of the major challenges the program has faced is the dearth of available data that would allow for consistent reporting on the program’s direct economic impact. The 2015 GAO audit found that while USCIS collects more complete information on EB-5 program forms, it “does not track or analyze this information to more accurately report program outcomes.” For example, while petitioners report the total number of new

jobs created or preserved at the end of the two-year conditional period, USCIS only reports program outcomes using the minimum requirements (ten jobs) because that is what is required by law and they “are not statutorily required to develop a more comprehensive assessment of overall program benefits.”⁷⁰ GAO deemed USCIS’s methodology for reporting EB-5 program outcomes and economic benefits as unreliable because they may overstate or understate results. Regional center investors are also allowed to take credit for the total number of jobs regardless of what percentage of the total pooled investment was provided by EB-5 capital—or the percentage of an EB-5 investor’s investment in the overall “capital stack.”

Verifying Job Creation and TEA Designations

Previous audits of the program have found that USCIS staff did not have the proper expertise to estimate job creation and other economic outcomes, particularly indirect effects through the Regional Center Program. DHS’s OIG reported in 2013 that “USCIS lacked the meaningful economic expertise to conduct independent and thorough reviews of economic models used by investors to estimate indirect job creation for regional center projects.” The report went on to recommend coordination with other federal agencies like the Department of Commerce to provide further expertise.⁷¹ Lastly, the designation of TEAs has also been criticized for being too lenient, allowing many projects to be built in affluent neighborhoods.⁷² Under current rules, regional centers can meet the TEA unemployment requirement for their designated area by linking, or “gerrymandering,” several census tracts with high unemployment with wealthier areas in order to meet the requirement. While in some cases this is done to accommodate a region’s commuting patterns and to allow states to decide what area fits their localized economic needs, more rigorous analysis and approval of TEA designations might help more closely align current practices with the statute’s intended purpose.

USCIS Reform Steps and Proposed Legislation

In recent years, USCIS has taken several measures to address many of the challenges cited, and both government entities and congressional legislation have proposed further reforms and recommendations.

To better address fraud and other risks, USCIS’s EB-5 program organization underwent major restructuring in 2013, including moving all activities to its headquarters in Washington, D.C., under a new Immigrant Investor Program Office, which adjudicates all applications and oversees the program.⁷³ It also augmented its staff with dozens of new adjudicators, fraud-detection experts, and 22 economists trained to use data from several of the economic models EB-5 regional center participants use to calculate job-creation estimates. To increase scrutiny and oversight of projects, the agency will begin to do more immigrant-investor interviews at the I-829 stage to better verify that requirements were met and that original proposals matched final results—the agency has usually not done this in the past; the agency’s investigative unit, Fraud Detection and National Security, will also expand its ability to do site visits at ongoing EB-5 projects to better assess and detect potential fraudulent activity firsthand.⁷⁴

The agency has also undertaken several risk-assessment exercises to better inform risk mitigation and oversight in the past few years. However, GAO found that these were “one-time exercises” and that the agency did not have plans to conduct any in the near future. Considering the dramatic growth of the program in the past year alone, GAO recommended that the agency “plan and conduct regular future fraud risk assessments” of the program.⁷⁵

To address its national security limitations, USCIS has recommended statutory language changes that would give DHS “discretionary authority to deny EB-program petitions, regional center applications or other petitions or benefits . . . when deemed necessary in the national interest of for other good cause.”⁷⁶ Lastly,

the agency has increased its collaboration with other government agencies like the SEC, Immigration and Customs Enforcement, and the Federal Bureau of Investigation, particularly to improve enforcement.

In response to the DHS OIG's 2015 audit and criticisms of possible mismanagement and favoritism on behalf of DHS officials, DHS Secretary Jeh Johnson directed his agency to create a new protocol to ensure that the "EB-5 program is free from the reality or perception of improper outside influence."⁷⁷ Full implementation of the protocol is expected by the end of the summer. Secretary Johnson also called on Congress to strengthen the integrity of the program as they face the upcoming deadline to reauthorize the Regional Center Program.

Further reforms to the program have been proposed in bipartisan legislation introduced in both the House and Senate to reauthorize the initiative before its expiration at the end of September 2015. In the Senate, Judiciary Committee Chairman Chuck Grassley (R-IA) and Ranking Member Patrick Leahy (D-VT) introduced the American Job Creation and Investment Promotion Reform Act to reauthorize the Regional Center Program for five years and to provide several reforms to improve the program's integrity.⁷⁸ In the House, Representatives Mark Amodei (R-NV) and Jared Polis (D-CO) introduced similar legislation, the American Entrepreneurship and Investment Act of 2015, which would make the Regional Center Program permanent.⁷⁹

Some of the key reforms proposed in the Senate bill touch on several aspects of the program as well as the challenges discussed above:

- **TEA designation.** The designation of TEAs would be amended for metro areas to include an area consisting of a single census tract. DHS—and not the states—would be given authority to determine the boundaries of TEAs.
- **Increased USCIS authority.** DHS would be given more authority to terminate regional centers in case of fraud, criminal misuse, or a threat to public safety or national security.

- **Integrity fund.** Regional centers would pay an annual fee that would go toward an EB-5 integrity fund to be used to conduct audits, fraud investigations, site visits, and ensure regional center compliance with EB-5 laws and regulations.
- **Fraud and security risks.** Regional centers would be required to increase their financial disclosures to foreign investors to better inform them of risks and conflicts of interest. SEC would have an increased monitoring role for securities compliance. Lastly, regional center principals and participants and project developers would also be subject to background checks.
- **Job creation.** Regional center investors would only be able to claim up to 90 percent indirect jobs toward meeting the job-creation requirement. At least 10 percent would now be required to be direct jobs. Additionally, investors may only receive credit for up to 30 percent of the jobs created as a result of investment capital by other U.S. domestic investors, as opposed to claiming the total number of jobs created by the project. Finally, at least 50 percent of jobs must be created in TEAs.
- **Department of Commerce oversight.** Methodologies used by regional centers must be accepted by the Department of Commerce's Bureau of Economic Analysis.
- **Investment minimums.** Minimum investments in non-TEAs would be raised from \$1 million to \$1.2 million. Minimum investments in TEA would be raised from \$500,000 to \$800,000.
- **Family members.** To increase the number of conditional visas that go to the principal investors, spouses and children would no longer be counted against the visa cap.

Most recently, Representative Zoe Lofgren (D-CA) also introduced the Entrepreneurial Business Creating Jobs Act of 2015 to reform and permanently reauthorize the EB-5 Regional Center Program. The bill raises the minimum investment amounts to \$1 million

for TEAs and \$2 million for non-TEAs. Additional reforms are also proposed to increase the program's integrity and economic transparency, including: increased USCIS authority to sanction, suspend, or terminate regional centers and run background checks on individuals associated with regional centers; a required study on the job-creation methodologies used and the submission of biennial reports to Congress on the program's economic impact; and enhanced regional center disclosure and reporting requirements.⁸⁰

Conclusion



Considering the very real challenges the EB-5 program faces and its incredible growth in recent years, it is clear that government agencies and Congress need to continue to improve the program's functionality and integrity to avoid exacerbating some of these issues going forward. The track record of bipartisan commitment to supporting and reforming the EB-5 program, which continues this year as evinced by recently proposed renewal legislation, shows promising signs that the program's valuable aspects will be preserved and reformed in the coming years. Additionally, as more state and local leaders become familiar with the program's ability to provide long-term, relatively low-cost capital, which can complement existing and sometimes scarce public funds, EB-5 will continue to present valuable help to address high-priority spending projects and public needs.

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