U.S. Chamber of Commerce

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Immigrant Investor Program Office
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB 5 Program; Automatic Revocation of Petitions for Immigrant Classification; DHS Docket No. USCIS-2026-0100; RIN 1615-AC94

Dear Officer:

The U.S. Chamber of Commerce ("Chamber") respectfully submits this comment in response to DHS's Notice of Proposed Rulemaking on the EB-5 Reform and Integrity Act of 2022.[1] The Chamber's members have a significant and direct interest in the EB-5 program, which generates billions of dollars in foreign capital, grows the U.S. economy, and creates millions of jobs for American workers. The Chamber supports the integrity objectives of the EB-5 Reform and Integrity Act of 2022 ("RIA"), but several provisions of the proposed rule extend beyond the statute Congress enacted, reverse settled agency policy without acknowledgment or explanation, and impose obligations that banks, institutional investors, public companies, and businesses that merely contract with EB-5 projects cannot practically meet—producing not greater integrity, but reduced participation by the strongest capital sources and largest employers, and undermining the program's job-creation purpose.

[1] 91 Fed. Reg. 40,676 (July 2, 2026) (DHS Docket No. USCIS-2026-0100) (the "Proposed Rule" or "NPRM").

Discussion

I. The EB-5 program is a proven engine of economic growth and job creation that DHS must protect.

Congress established the EB-5 Immigrant Investor Program in 1990 expressly "to create new employment for U.S. workers and to infuse new capital into the country."[2] Since then, EB-5 investments have created millions of jobs and attracted many billions in foreign direct investment. The regional center model is the backbone of the program, funding large-scale infrastructure, real estate, and manufacturing projects—generating the construction and supply chain jobs central to the Administration's domestic investment agenda.[3] Ninety-six percent of all EB-5 investments flow through regional centers. Commerce Department data show that regional center investments in FY2012-2015 alone created approximately 381,000 American jobs, contributed $27.9 billion in capital, and added more than $33 billion to U.S. GDP—without a dollar of taxpayer funding.[4]

A Fourth Economy study commissioned by IIUSA found that between 2016 and 2019, EB-5 attracted $75.2 billion in total investment, created 1.7 million jobs, delivered $122 billion in wages, contributed $184 billion to GDP, and generated $14.5 billion in tax revenue—with each investor supporting an average of 45 American jobs, far exceeding the statutory minimum of ten.[5] Since 2022, EB-5 has attracted more than $5.36 billion in new capital, and FY2024 saw a record 14,924 visas issued—the highest in the program's 35-year history—alongside an 85% surge in new investor petitions.[6]

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[2] Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978; see also 91 Fed. Reg. at 40,686-40,687 (NPRM Section III.A, "The EB-5 Program").

[3] *See* White House statements describing Administration goals as "bringing jobs and critical industry back home," "revitalizing domestic supply chains," and encouraging foreign and domestic investment in U.S. manufacturing facilities.

[4] U.S. Department of Commerce, Economics and Statistics Administration, Estimating the Investment and Job Creation Impact of the EB-5 Program (Jan. 2017); see also 91 Fed. Reg. at 40,687-40,688 (NPRM Section III.B); Western Washington University Center for Economic and Business Research, Quantitative Assessment of the EB-5 Program: Economic Impacts and Contributions to the U.S. Economy 2014-2015.

[5] Fourth Economy, The EB-5 Program: Driving American Prosperity Through Foreign Investment (June 2025), commissioned by Invest in the USA (IIUSA).

[6] Invest in the USA (IIUSA), post-RIA program data, as reported in EB-5 Fiscal Year 2024: Official Data Overview (2024).

These benefits extend well beyond major metropolitan areas. Regional center projects have operated in 25 states and the District of Columbia, where the Targeted Employment Area ("TEA") incentive structure steers capital toward rural communities and areas of high unemployment. Accordingly, any regulatory disruption to the regional center program will fall hardest on these communities.

II. The Proposed Rule's new compliance obligations must be accompanied by adequate transition provisions and processing resources.

The Proposed Rule imposes substantial requirements on regional centers and while the Chamber supports integrity objectives, simultaneous implementation without adequate transition periods, clear processing timelines, and sufficient USCIS adjudicatory resources risks disrupting currently authorized regional centers and the projects and investors that depend on them. Administrative bottlenecks can effectively suspend the program's operation even without a formal suspension order.

The Chamber supports these integrity objectives, but simultaneous implementation without adequate transition periods, clear processing timelines, and sufficient USCIS adjudicatory resources risks disrupting currently authorized regional centers and the projects and investors that depend on them. Administrative bottlenecks can effectively suspend the program's operation even without a formal suspension order.[7]

The final rule should provide a meaningful transition period of no less than 180 days before new compliance obligations take effect for currently authorized regional centers. DHS should commit to processing timelines for I-956F applications that do not leave regional centers and investors in operational limbo.[8] Existing authorizations and previously approved investment offerings should remain valid throughout the transition.

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[7] Brief of the Chamber of Commerce of the United States of America as Amicus Curiae in Support of Plaintiffs' Motion for Preliminary Injunction or Summary Judgment at 11-12, EB5 Capital v. DHS, No. 1:22-cv-1455 (D.D.C. June 23, 2022).

[8] *See* INA Section 203(b)(5)(F)(iii), 8 U.S.C. Section 1153(b)(5)(F)(iii) (establishing 240-day processing goal for regional center investor petitions; 120 days for TEA petitions); 91 Fed. Reg. at 40,677 (NPRM Section II.B).

III. The Proposed Rule must preserve job-creation credit for bona fide bridge financing.

Proposed 8 C.F.R. Section 204.407(e)(1) contains two sentences with sweeping effect: claimed jobs "would not have been created but for the investment capital provided by the investor," and "[j]obs attributable to any financing repaid with EB-5 investment capital may not be claimed as jobs created by such EB-5 investment capital." Together, they would deny job-creation credit to every bridge-financed project—overturning the position USCIS adopted in 2013 (PM-602-0082) and has maintained in its Policy Manual since.[9] The asserted authority is thin: the RIA replaced "and" with "by" in INA Section 203(b)(5)(A)(ii), and the preamble concedes no legislative history supports the change. A one-word edit does not mandate abolishing a decade of settled practice.

The "but for" standard, read literally, would reach far beyond bridge loans to imperil credit in any project financed through a blended capital stack—which is to say essentially all of them. Bridge and interim financing are standard features of capital formation across the economy—in real estate, hospitality, manufacturing, energy, and infrastructure alike. Because EB-5 capital is raised investor by investor over months or years, sponsors routinely begin work on short-term financing and replace it with EB-5 capital as it is raised; the jobs are created by the project the EB-5 capital funds, and the bridge solves a timing problem, nothing more. Businesses across the country have structured transactions in reliance on the agency's consistent treatment of bridge financing, and an abrupt, unexplained departure from settled policy of this kind undermines the regulatory predictability on which capital formation depends.

Withdrawing job-creation credit would redirect EB-5 capital toward ventures unable to attract conventional financing—where the program's fraud losses have historically concentrated—even as DHS's own preamble concedes that bridged projects are more credible and more likely to deliver qualifying employment. A bridge lender risks its own capital and underwrites accordingly, providing an independent market check that benefits every EB-5 investor.

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[9] 91 Fed. Reg. at 40,678 (NPRM Section II.C.1); proposed 8 CFR Section 204.407(e)(1) (bridge financing prohibition); USCIS Policy Memorandum PM-602-0082 (May 30, 2013) (establishing job-creation credit for bridge-financed projects).

The Chamber urges DHS to abandon the categorical disqualification and finalize instead the calibrated alternative its preamble identifies: job-creation credit for bridge-replaced financing conditioned on (1) contemporaneous documentation, made when the bridge was incurred, of a bona fide intent to repay it with EB-5 capital, and (2) scheduled or actual replacement within 36 months of the bridge's initial funding—a period matching the 12-to-36-month maturities the preamble itself cites—with authority to approve longer windows where project scale or complexity makes them commercially reasonable. Any proportional ceiling, if one is adopted at all, should be computed against total project cost as stated in the project application—not the EB-5 raise or costs incurred to date—and set no lower than 85 percent. Whatever standard emerges must apply prospectively; retroactive application to projects financed under the existing policy would compound the reliance harms.

IV. The Proposed Rule must narrow its requirements concerning the source of non-EB-5 capital.

Proposed Section 204.407(c)(4) conditions the presence of non-EB-5 owners in a new commercial enterprise on identification and lawful derivation of "all capital invested into the new commercial enterprise or provided to the job-creating entity," enforced through mandatory removal of unverified capital and sanctions exposure under Section 204.431 for the new commercial enterprise ("NCE"), the job-creating entity ("JCE"), and the overseeing regional center.[10]

Congress drew the line elsewhere. INA Section 203(b)(5)(L) requires the alien investor to demonstrate the lawful source of the capital "required under subparagraph (A)"—the investor's own contribution—together with associated fees, and it specifies the records that showing entails, extending beyond the investor only to the donor of a gift or the lender on a non-bank loan. It imposes no documentation regime on unrelated sources of project finance. The proposed rule enlarges former Section 204.6(g)(1)'s language to capital "provided to the job-creating entity"—a phrase that, read literally, reaches

[10] *See* 91 Fed. Reg. at 40,678 (NPRM Section II.C.1); proposed 8 CFR Sections 204.407(c)(4), 204.431 (non-EB-5 capital identification requirements and sanctions authority); INA Section 203(b)(5)(L), 8 U.S.C. Section 1153(b)(5)(L) (limiting lawful-source requirement to the alien investor's own capital).

institutional debt, third-party equity, and co-investor funds contributed by parties who never transacted with the NCE or any EB-5 investor—and couples it, for the first time, with removal and sanctions. No participant in a modern capital stack can substantiate the provenance of others' money: a sponsor cannot compel a national bank to account for its commingled deposits, nor a pension fund for its millions of contributors.

Oversight of illicit finance in commercial capital markets is, in any event, a mandate Congress lodged with the Treasury Department's specialized regimes, not with an immigration benefits agency. Extending that obligation to USCIS through this rulemaking exceeds the agency's institutional mandate and would discourage regulated lenders, institutional investors, public agencies, and established developers from participating in EB-5 projects.

The provision also contradicts the preamble it accompanies. USCIS there describes a project-level framework under which questions concerning non-EB-5 capital are put to the regional center and the responsive evidence is incorporated into investors' petitions; the regulatory text, however, can be read to place on each individual investor the burden of establishing—and curing—the lawfulness of third-party capital. A rule whose preamble and operative text point in opposite directions invites inconsistent adjudication and guarantees disputes.

The Chamber recommends that USCIS delete the lawful-derivation condition, the removal-and-replacement mechanism, and the related sanctions provisions from Section 204.407(c)(4), preserving only the core multiple-investor rule: a new commercial enterprise may serve as the basis for classification notwithstanding owners—natural persons or entities, domestic or foreign—who are not seeking immigrant-investor status. Capital-stack transparency should instead be achieved through the project application under Section 204.423(b), identifying each source of non-EB-5 financing, instrument type, and anticipated amount. The final rule should make explicit that a qualified investor who has documented the lawful source of his or her own capital may not be denied by reason of the participation of non-EB-5 capital in the enterprise or the project.[11]

V. DHS must not establish a new $1.4 million investment threshold for high employment areas.

The Chamber does not question DHS's authority to require a higher investment amount in high employment areas — Congress clearly provided it, and we appreciate the care the agency has taken in implementing the RIA. Our comments address only the method for deciding which places qualify. Under the statute, the higher amount applies solely to a location that is both prosperous and not a targeted employment area. And in deciding whether a place is a targeted employment area, Congress expressly allowed a project's census tract to be combined with adjacent tracts — so a project serving a struggling neighborhood may still qualify even if its own tract appears healthy on paper.

We are concerned the proposed rule may unintentionally omit that step. As drafted, it appears to consider only the single tract where the project sits, so that a low-unemployment reading in that one tract would classify the project as a high employment area without the adjacent-tract combination the statute permits. The practical effect could be that a project one block from high-unemployment neighborhoods, employing workers who commute in from those communities, would see its required investment rise from $800,000 to $1.4 million based on census geography alone.

We respectfully suggest a clarification of sequence in the final rule: a location would be designated as a high employment area only after it has been evaluated under the complete targeted-employment-area analysis — including the combination of adjacent tracts — and found not to qualify. We also encourage USCIS to confirm that a single tract's low unemployment rate does not prevent that tract from being included in a high-unemployment-area calculation with its neighbors. These adjustments would fully preserve DHS's authority to require a higher investment in genuinely affluent areas while

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[11] *See* proposed 8 CFR Section 204.423(b) (project application); proposed 8 CFR Section 204.431(c) (listing "manner, nature, and magnitude" of violation, awareness, harm, compliance culture, cooperation, and disciplinary history as factors in sanction severity determinations).

ensuring that projects serving struggling communities are evaluated as Congress directed.

VI. The Proposed Rule's definitions of "person involved" and "affiliated job-creating entity" must be narrowed to track the statute.

Congress defined "person involved" in INA Section 203(b)(5)(H)(v) with an operative test and an illustrative list. The test is functional—a person qualifies only if positioned, directly or indirectly, with "substantive authority to make operational or managerial decisions" over the pooling, securitization, investment, release, acceptance, or control, or use of EB-5 funding—and the list is permissive, providing that an individual "may be" in such a position if serving in an enumerated role. Proposed Section 204.401 rewrites both halves. It converts "may be" to "is," making titles conclusive; it inserts "limited partner" into a list Congress wrote without it, even though Congress named "general partner"—the role that carries management power under partnership law—a deliberate contrast; it strikes "affiliated," extending the definition to every job-creating entity despite the statute's express limitation; and it subjects agents, fiduciaries, and representatives to an "input or oversight" trigger that requires no decision-making authority at all. The companion "affiliated job-creating entity" definition then sweeps in any entity "controlled, managed, or owned" by a person involved, with no ownership percentage or control standard whatsoever.

Because every "person involved" must personally submit attestations, disclose criminal and civil history, and appear for biometrics, these changes fall hardest on the largest employers—public companies, nonprofit hospital systems, and enterprises with dozens of officers and layers of management. The rule never says who a "manager" is, and in a large organization the question may be unanswerable. The practical effect is to shut the entities most capable of creating jobs at scale out of the program, while generating thousands of attestations and biometrics appointments from individuals who make no decisions over EB-5 funds—volume that produces no integrity benefit.

The proposal is also internally inconsistent and procedurally deficient. In the same document, USCIS justifies dropping investors' managerial-involvement evidence on the ground that the RIA "permits a largely passive investment"; it cannot simultaneously deem the same passive interests to carry "substantive authority" for integrity screening. And since May 2022, the agency's own Form

I-956H instructions have defined the term in the statute's words—a four-year administration on which thousands of filings and countless governance arrangements rest. An agency changing course must acknowledge that it is doing so, show that the new position is lawful, and address the reliance its prior position engendered; the preamble does none of this.

The Chamber urges DHS to restore both definitions to the statute's functional architecture. A person should be "involved" only where his or her actual function—as established by governing documents or enforceable agreements—includes authority to direct, approve, or veto decisions over EB-5 funding; titles, ownership interests, and customary investor protections should carry no independent weight, and professionals who advise without deciding should be excluded outright. Affiliation should require either meaningful ownership—20 percent direct or 25 percent indirect—or actual control over major entity decisions, with express exclusions for lender covenants, minority protections, and a new commercial enterprise's own investment or loan-document rights. The 14-day supplement obligation, which appears in the proposed form revisions but nowhere in the proposed regulatory text, should be withdrawn or extended to a realistic period.

VII. Biometrics authority over unaffiliated job-creating entities must track the statutory "reasonable basis" condition.

Proposed Section 204.417(a) authorizes USCIS to demand bona fides information, attestations, and biometrics from persons involved with non-affiliated job-creating entities whenever it chooses—broader than the statute allows. Congress permitted the agency to reach unaffiliated entities only "if there is a reasonable basis to believe such entity or person is not in compliance." INA Section 203(b)(5)(H)(iii)(III). The proposed rule omits this condition entirely.

Unaffiliated job-creating entities are, by definition, not controlled, managed, or owned by anyone involved with the regional center or new commercial enterprise. They are ordinary operating businesses—a general contractor, a hotel operator, a manufacturer—that happen to receive EB-5 capital or whose employment counts toward a project's job-creation showing. Their officers and owners have no relationship with the EB-5 offering and no reason to expect that accepting a construction contract or a loan will subject them personally to fingerprinting and FBI background checks at an agency's unreviewable discretion. Faced with that exposure, many will simply decline EB-5-financed transactions—a result that shrinks the program's reach into the mainstream economy and directly undermines its job-creation purpose. Congress anticipated exactly this concern and conditioned the authority on individualized suspicion; the regulation should do the same.

The Chamber urges DHS to incorporate the statutory precondition on its face: persons involved with an unaffiliated job-creating entity may be required to submit the information, attestation, and biometrics only where a reasonable basis exists to believe the entity or person is not in compliance with INA Section 203(b)(5)(H)(i) or (ii). The Chamber further recommends extending the 14-day attestation deadline for newly involved persons to at least 30 days.

VIII. The "infrastructure project" definition must reflect how infrastructure is actually delivered.

Proposed Section 204.401 defines "infrastructure project" in terms that appear to require a single governmental entity to occupy every role at once—administrator, job-creating entity, contracting party, and direct recipient of EB-5 capital—in its own name. The rule's pivotal term, "public works project," is used three times and never defined; the terms "administered" and "governmental entity" fare no better; and the preamble's two different sector lists—a ten-sector list the agency "generally expects" to qualify and a sixteen-sector critical-infrastructure framework borrowed for a different provision—appear in no operative text and are never reconciled. Because Section 204.403(a) permits the qualification determination only at project-application adjudication, with no advance ruling available, the parties bear the full development and offering costs before learning whether their structure qualifies.

The mismatch with market reality is stark. As the Congressional Budget Office has documented, governments increasingly deliver infrastructure through public-private partnerships, and states and localities routinely act through authorities, instrumentalities, and special-purpose vehicles for procurement, debt-limit, and immunity reasons. The sectors where U.S. infrastructure capital actually concentrates—power generation and transmission, broadband, ports, freight rail, and regulated water utilities—are dominated by private owners operating under franchise, concession, or rate regulation. Congress created the RIA's infrastructure category, with reserved visas and an $800,000 threshold, to bring EB-5 capital to precisely these projects. If the definition is read to require a general-purpose government to act in its own name at every step, the category will exclude the delivery models—authorities, special-purpose entities, and public-private partnerships—through which the overwhelming share of U.S. infrastructure investment actually flows, and the RIA's reserved infrastructure visas will go largely unused.

The Chamber urges DHS to define its terms in operative text. "Public works project" should reach physical assets that provide or support services to the general public, whether publicly owned or privately developed and operated under a franchise, concession, permit, license, tariff, or comparable authorization with continuing governmental oversight; governmental entities should be permitted to act through owned or controlled authorities, instrumentalities, and special-purpose entities; and "maintaining, improving, or constructing" should include modernization, capacity expansion, rehabilitation, replacement, resiliency work, and the design, engineering, and permitting phases of a capital project. The dispositive facts should be the public-benefit character of the asset and the reality of governmental administration or oversight—a standard that admits genuinely public projects however they are delivered, and screens out commercial ventures dressed in governmental form. Public-private-partnership form alone should not confer eligibility.

IX. The Proposed Rule's regulatory impact analysis must fully account for the economic costs of the proposed restrictions.

DHS acknowledges that it "is not possible to sort out or identify all the possible factors that can influence the program" and that most impacts cannot be easily quantified.[12] The Chamber urges DHS to treat that acknowledged uncertainty as a reason for regulatory caution. The Proposed Rule's quantified cost estimates—ranging from approximately $38.8 million to $87.4 million annualized—capture only administrative and paperwork burdens.[13] They do not capture the costs of the bridge financing prohibition, the chilling effect of open-ended capital tracing obligations on institutional lenders, or the reduction

[12] 91 Fed. Reg. at 40,678-40,679 (NPRM Section II.D, "Summary of Benefits and Costs").
[13] Id. (reporting annualized quantified impacts of $38.80 million to $87.36 million at 3% and 7% discount rates).

in investor participation from a $1.4 million threshold for high employment areas. These are the predictable consequences of specific regulatory choices that fall directly on American businesses, workers, and communities. Regulatory decisions that reduce investor confidence will cause capital to flow to competing programs in other nations, a loss the current analysis does not attempt to measure. Before finalizing the rule, DHS should supplement its regulatory impact analysis to account for these costs and treat the program's demonstrated economic value—billions in capital formation, millions of jobs, and tens of billions in GDP contributions—as a material consideration.

Conclusion

The Chamber respectfully urges DHS to revise the Proposed Rule to protect the integrity and accessibility of the EB-5 program by ensuring that new obligations are accompanied by adequate transition periods, that job-creation credit is preserved for legitimate financing structures that investors and developers have relied upon, and that unnecessary conditions on non-EB-5 capital are removed in favor of transparency through the project application process. DHS should also correct internal definitional inconsistencies that create unworkable compliance burdens and define "infrastructure project" broadly enough to reflect how infrastructure is actually built and financed in the United States. A final rule that falls short on these points will undermine a program Congress has repeatedly reauthorized because of its proven economic value and will deprive the U.S. economy of the investment and job creation it cannot afford to lose.

Respectfully submitted,

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