



# U.S. Citizenship and Immigration Services

EB-5 Immigrant Investor Program Stakeholder Meeting  
June 30, 2011



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# Agenda

- I. Opening Remarks – Director Mayorkas**
- II. EB-5 Update**
- III. Regional Center Economic Analysis**
- IV. Stakeholder Suggested Topics and Questions**
- V. Open Forum Q&A**



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# EB-5 Stakeholder Meeting Presentation

This presentation is intended to provide a guide for discussion at the stakeholders' meeting and to explain current USCIS policy and practice. It is not intended to be an official statement of USCIS policy, and does not supersede any existing statutes, regulations, or policy memoranda. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in any way.



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# EB-5 Updates

- **EB-5 Case Processing Times and Statistics**
- **EB-5 Visa Usage**
- **I-924- Guidance for Annual Reporting Filings**
- **Use of Governmental Logo**
- **Q and A on topics covered in this segment**



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# II. EB-5 Program Statistics

## Regional Center Data:

- There are currently 147 approved Regional Centers (RCs), operating in 39 states, including the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90-95% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.
- There are 83 initial RC Proposals, as well as 9 RC proposals seeking to amend approved RCs, pending initial review with USCIS.



# Regional Center Proposal Filing Receipts for FY10 and FY11 Q1&Q2

|  |  |   |
|--|--|---|
| Initial RC Proposal<br>Filings FY10    | Initial RC Proposal<br>Filings FY11 Q1&Q2<br>(10/01/2010 – 12/31/2010) | FY11 Q1&Q2 Filings<br>as a %<br>of FY10 Filings |
| <b>110</b>                             | <b>146</b>   | <b>133%</b>                                     |
| Amended RC<br>Proposal Filings<br>FY10 | Amended RC Proposal<br>Filings<br>FY11 Q1&Q2                           | FY11 Q1&Q2 Filings<br>as a %<br>of FY10 Filings |
| <b>42</b>                              | <b>55</b>  | <b>131%</b>                                     |



# Regional Center Final Case Actions FY10 and FY11 Q1&Q2

| FY10   |  | FY11 Q1 & Q2   |  |
|--|--|--|--|
| <b>Initial Proposal Approvals /<br/>Final Action %</b> | <b>Initial Proposal Denials /<br/>Final Action %</b> | <b>Initial Proposal Approvals /<br/>Final Action %</b> | <b>Initial Proposal Denials /<br/>Final Action %</b> |
| <b>36 / 55%</b>  | <b>30 / 45%</b>                                      | <b>25 / 69%</b>  | <b>11 / 31%</b>                                      |
| <b>Amended Proposal Approvals /<br/>Final Action %</b> | <b>Amended Proposal Denials /<br/>Final Action %</b> | <b>Amended Proposal Approvals /<br/>Final Action %</b> | <b>Amended Proposal Denials /<br/>Final Action %</b> |
| <b>42 / 71%</b>  | <b>11 / 29%</b>                                      | <b>21 / 78%</b>  | <b>6 / 22%</b>                                       |



# EB-5 Individual Petition Filing Receipts FY05 – FY10, & FY11 Q1&Q2

| Fiscal Year and/or Quarter | Form I-526 Petition | Form I-829 Petition |
|----------------------------|---------------------|---------------------|
| FY11 Q1&Q2                 | 1,601               | 1,150               |
| FY10                       | 1,955               | 768                 |
| FY09                       | 1,028               | 437                 |
| FY08                       | 1,257               | 390                 |
| FY07                       | 776                 | 194                 |
| FY06                       | 486                 | 89                  |
| FY05                       | 332                 | 37                  |



## Form I-526 Petition Final Actions and Final Action % for FY05 – FY10 & FY11 Q1&Q2

| Fiscal Year and/or Quarter | Form I-526 Approvals | Final Action % | Form I-526 Denials | Final Action % |
|----------------------------|----------------------|----------------|--------------------|----------------|
| FY11 Q1&Q2                 | 407                  | 81%            | 96                 | 19%            |
| FY10                       | 1369                 | 89%            | 165                | 11%            |
| FY09                       | 1262                 | 86%            | 207                | 14%            |
| FY08                       | 640                  | 84%            | 120                | 16%            |
| FY07                       | 473                  | 76%            | 148                | 24%            |
| FY06                       | 336                  | 73%            | 124                | 27%            |
| FY05                       | 179                  | 53%            | 156                | 47%            |



## Form I-829 Petition Final Actions and Final Action % for FY05 – FY10 & FY11 Q1&Q2

| Fiscal Year<br>and/or Quarter | Form I-829<br>Approvals | Final Action<br>% | Form I-829<br>Denials | Final Action<br>% |
|-------------------------------|-------------------------|-------------------|-----------------------|-------------------|
| FY11 Q1&Q2                    | 166                     | 86%               | 26                    | 14%               |
| FY10                          | 274                     | 83%               | 56                    | 17%               |
| FY09                          | 347                     | 86%               | 56                    | 14%               |
| FY08                          | 159                     | 70%               | 68                    | 30%               |
| FY07                          | 111                     | 69%               | 49                    | 31%               |
| FY06                          | 106                     | 64%               | 59                    | 36%               |
| FY05                          | 184                     | 62%               | 112                   | 38%               |



# EB-5 Case Processing

| Form Type                       | Target Processing Time | Current Processing Time |
|---------------------------------|------------------------|-------------------------|
| Form I-526                      | 5 Months               | 5.5 Months              |
| Form I-829                      | 6 Months               | 5 Months                |
| RC Initial Designation Proposal | 4 Months               | 4.5 Months              |
| RC Amended Designation Proposal | 4 Months               | 1 Month                 |

Note: Responses to requests for evidence (RFEs) for individual petitions, and for new or amended RC Proposals are matched with the case file upon receipt of the response. CSC strives to finalize EB-5 cases within 30 days after the responses to the RFEs are received.



# EB-5 Visa Usage

| Fiscal Year and/or Quarters                      | Total EB-5 Visas Issued |
|--|-------------------------|
| FY11 Q1&Q2                                       | 2,129*                  |
| FY10   | 1,885                   |
| FY09   | 4,218                   |
| FY08   | 1,360                   |
| FY07   | 806                     |
| FY06   | 744                     |
| *Preliminary Estimate of FY11 Q1&Q2 Visas Issued |                         |



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# Form I-924A – Guidance for Annual Reporting Filings

Question: Will there be any guidance on what will be expected in the annual reporting filings of Form I-924A that are due at the end of the year?

Answer: USCIS plans to devote a substantial portion of the September EB-5 Stakeholder meeting to this topic and is specifically encouraging the submission of questions regarding this topic.

Note: USCIS has developed queries in order to generate RC-associated individual petition statistics. The data generated through these queries is still being validated but should be available at the September EB-5 stakeholder meeting as well.



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# The use of Governmental logo on EB-5 materials or websites is not permitted.

18 U.S.C. § 701 provides:

Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

Note: USCIS will be reviewing RC websites and promotional material as part of the I-924A review for inappropriate use of DHS and USCIS branding as well as material that is non-EB-5 compliant.



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# Questions?



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# Regional Center Economic Analysis

- **Methodology Examples**
- **Simple Multiplier Example**
- **Q and A on topics covered in this segment**



# Simple Multiplier Example

**Scenario:** Project located in Oklahoma that will manufacture food products, plans to operate at a level that will achieve average industry revenue.

## Data from business plan:

- Number of Oklahoma food manufacturing establishments 238 (2007 Economic Census)
- Total OK revenue \$5,527,980,000 (2007 Economic Census)
- Number of food manufacturing employees in OK 15,162 (2007 Economic Census)
- Oklahoma average production worker hourly wage \$15.53 (Bureau of Labor Statistics)

## Analysis:

- Average revenue for OK food manufacturers \$23,226,807 ( $\$5,527,980,000/238$ )
- Average revenue/output per employee for OK food manufacturing \$364,594 ( $\$5,527,980,000/15,162$ )
- Number of direct employees needed to produce average revenue target 64 ( $\$23,226,807/\$364,594$ )
- Labor costs \$3,617,869 ( $35 \text{ hrs/wk} * 52 \text{ wk} * 2 \text{ yrs} * 64 \text{ employees} * 15.53/\text{hr}$ )



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# Simple Multiplier Example

**Scenario:** Project located in Oklahoma that will manufacture food products, plans to operate at a level that will achieve average industry revenue.

## Results:

### Direct Jobs Method

For a RIMS II analysis you would multiply 64 direct employees with the direct effects employment multiplier for food manufacturing.

### Revenue Method

For a RIMS II analysis use average revenue (initial change in final demand) of \$23,226,807/\$1million multiplied against the final-demand employment multiplier.

*Note: This is an overly simplified example, intended to show the level of transparency that can be achieved in these analyses. An actual case would need an accompanying credible business plan to provide inputs for the model.*



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# Questions?



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# Stakeholder Suggested Topics and Questions

- Targeted Employment Area (TEA)
- Prospective Regional Centers – Solicitation of Funds
- Use of Multiple Legal Organization Plans
- Reorganized and Restructured Businesses vs. Troubled Businesses



# Targeted Employment Area

- USCIS is currently reviewing the policy regarding TEA designations, keeping in mind that USCIS must fulfill its responsibility to ensure statutory and regulatory compliance while, at the same time, not rendering a state's TEA designation immaterial.
- In the meantime, USCIS is following the current policy as set forth in the December 11, 2009 memo.



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# Prospective Regional Centers – Solicitation of Funds

Question: Is there any restriction on a regional center soliciting EB-5 funds before it receives its approved designation as a regional center?

Answer: There is no specific prohibition to a proposed regional center soliciting EB-5 funds before it receives its approved designation as a regional center. However, USCIS is aware that some prospective regional centers have inappropriately represented that the entities have already received the regional center designation on websites and in promotional literature. Prospective regional centers may not make any representations that could potentially mislead an investor into believing that the entity has been approved for the regional center designation prior to the actual regional center approval by USCIS.



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## Use of Multiple Legal Organization Plans with Regional Center Petition or Amendment

Question: Where a U.S. business is not sure what legal organization would be best, may we submit with an RC petition or amendment several options? Will USCIS approve the ones that are acceptable and reject the ones which are not without denying the whole petition?

Answer: Yes, a Regional Center application may contain more than one legal organization plan. If upon review, one or more of the legal organization plans do not appear to be EB-5 compliant, then USCIS will issue an RFE. If upon final adjudication USCIS determines that one or more legal organization plans are qualifying, USCIS would approve the Regional Center application, and the legal organization plans that were deemed acceptable would be specifically noted in the Regional Center approval notice.



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# Reorganized and Restructured Businesses vs. Troubled Businesses

There appears to be some confusion regarding the difference between a “reorganized or restructured business” and a “troubled business” for EB-5 purposes.

The “reorganized or restructured business” concept relates to the requirement that the commercial enterprise in which the EB-5 investor will invest must be “new”, which is defined in 8 CFR 204.6(e) as *a commercial enterprise established after November 29, 1990.*

8 CFR 204.6(h)(2) provides that a *new* commercial enterprise may consist of the *purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results.*



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# Reorganized and Restructured Businesses vs. Troubled Businesses, Cont'd

Note that the regulation at 8 CFR 204.6(h) has been superseded by a subsequent statutory amendment (Section 11036 of Public Law 107-273), which eliminated the requirement that the investor had to establish the new commercial enterprise. Presently, an investor only has to invest in a new commercial enterprise.

*Matter of Soffici*, 22 I. & N. Dec. 158 (Assoc. Comm., 1998), is a binding precedent decision that provides a detailed discussion regarding the factors that must be established to demonstrate that a commercial enterprise is new by virtue of being reorganized or restructured.



# Reorganized and Restructured Businesses vs. Troubled Businesses, Cont'd

If an immigrant investor makes an investment in a business that is already operating which does not meet the “troubled business” requirements, then he or she may only be credited with jobs created as a result of their investment.

*Matter of Soffici*, also provides in pertinent part that:

A petitioner who acquires a pre-existing business must show that the investment has created, or at least has a reasonable prospect of creating, 10 full-time positions, in addition to those existing before acquisition. The petitioner must, therefore, present evidence concerning the pre-acquisition level of employment. Simply maintaining the pre-acquisition level of employment is not sufficient, unless the petitioner shows that the pre-existing business qualifies as a “troubled business.”



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# Reorganized and Restructured Businesses vs. Troubled Businesses, Cont'd

The “troubled business” concept relates to the crediting of job creation through the preservation of jobs in an existing business that has incurred substantial net losses, and is defined in 8 CFR 204.6(e) as:

[A] business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty per cent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.



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# Reorganized and Restructured Businesses vs. Troubled Businesses, Cont'd

8 CFR 204.6(j)(4)(ii) provides that:

To show that a new commercial enterprise which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the [I-526] petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years. Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.



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# Reorganized and Restructured Businesses vs. Troubled Businesses, Cont'd

In the case of a regional center investment project context, an acceptable economic analysis may demonstrate the preservation of indirect as well as direct jobs in a “troubled business” through the EB-5 investment activity.

In summary, the issue of whether a business has been “restructured or reorganized” is related to establishing if a business can be considered a *new* commercial enterprise. A “troubled business” only has to be shown to have been ‘reorganized or restructured’ if the commercial enterprise was established on or before November 29, 1990.



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# Open Forum Q&A



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