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## Policy Alert

**SUBJECT:** Clarifying Guidance for Deployment of Capital in Employment-Based Fifth Preference (EB-5) Category

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing clarifying policy guidance in the [USCIS Policy Manual](#) regarding deployment of investment capital, including further deployment after the job creation requirement is satisfied.

### Background

The Immigration and Nationality Act (INA) makes visas available to qualified aliens who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers. An alien investor must sustain his or her investment “at risk” throughout the 2-year period of conditional permanent residence to be eligible for removal of conditions on his or her permanent resident status. USCIS published a Policy Manual update on June 14, 2017, which addressed, among other things, further deployment of an investor’s capital to meet the capital at risk requirement. USCIS now offers clarifying guidance on maintaining eligibility through further deployment.

These clarifications apply to all Form I-526 and I-829 petitions pending on or after [date of publication]. USCIS considered potential impacts to petitioners and determined that such impacts, if any, would be minimal because this is merely a clarification of continuing eligibility requirements. USCIS is not changing any substantive requirements. This guidance, updating Volume 6 of the Policy Manual, is controlling and supersedes any prior guidance on the topic.

### Policy Highlights

- Clarifies requirements for deployment of capital generally, including providing new language regarding the deployment of capital through any financial instrument that meets applicable requirements<sup>1</sup> as well as explaining how the purchase of financial instruments on the secondary market will generally not satisfy such requirements.
- Clarifies that capital may be further deployed into any commercial activity that is consistent with the purpose of the new commercial enterprise to engage in the ongoing conduct of lawful

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<sup>1</sup> This clarification supersedes prior language discussing new issue municipal bonds as a specific type of potentially permissible financial instrument in the context of further deployment.

business. This clarification is meant to address potential confusion among stakeholders regarding prior language about the “scope” of the new commercial enterprise while remaining consistent with applicable eligibility requirements.

- Provides that further deployment must be through the same new commercial enterprise.
- Provides that further deployment must be within the geographic area of the same regional center, including any amendments to the regional center’s geographic area approved before the further deployment.
- Explains that, based on an internal review and analysis of typical EB-5 capital deployment structures, USCIS generally considers 12 months as a reasonable amount of time to further deploy capital, but will consider evidence showing that a longer period was reasonable.

#### **Citation**

Volume 6: Immigrants, Part G, Investors, Chapter 2, Eligibility Requirements [[6 USCIS-PM G.2](#)] and Chapter 4, Immigrant Petition by Alien Investor (Form I-526) [[6 USCIS-PM G.4](#)].