

# Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development

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“A reconsideration of the EB-5 regional center program can strengthen its utility and better accomplish its central goal of aiding regional economic development.”

## Summary

Difficulties in accessing traditional domestic financing brought on by the Great Recession, along with a rise in the number of wealthy investors in developing countries, have led to a recent spike in interest in the EB-5 Immigrant Investor visa program. Through this federal visa program administered by U.S. Citizenship and Immigration Services (USCIS), immigrant investors may eventually secure permanent residency for themselves and their immediate family by investing at least \$500,000 in a U.S. business and creating or preserving 10 full-time jobs. The majority of EB-5 visas are currently administered through EB-5 regional centers, entities that pool investments and are authorized to develop projects across a large swath of America’s metropolitan regions and rural areas. The focus of this paper is on the regional center program.

Although utilization of EB-5 financing has increased dramatically in recent years as a source of regional economic development, the program faces some major challenges. First, immigrant investors encounter a complicated network of intermediaries with little regulatory oversight, which discourages investment. Immigrants also bear the burden of compliance with program requirements, although they themselves have little control over the investment process. Second, there is generally little coordination between regional centers and local economic development agencies (EDAs), even though these entities often share similar goals and could develop mutually beneficial partnerships. Finally, there is a dearth of reliable and publically available data that would enable better monitoring and evaluation of the economic impacts of regional center investments.

The following suggestions for a reconsidered EB-5 regional center program can help federal policymakers strengthen the utility of this tool and better accomplish the central goal of the program, which is to aid regional economic development, especially in distressed areas:

- **Designate an oversight role for the Department of Commerce** to supervise the adjudication of regional centers, standardize data and methodology, and better monitor program impact.
- **Create incentives for partnerships between regional centers and EDAs**, thus aligning similar goals in mutually beneficial arrangements. Regional centers and EDAs often possess complementary resources and can leverage more funding and reduce risk for investors.
- **Generate high-quality, multi-variable public data on regional centers** to facilitate better evaluation of the program.

## Introduction

Facing slow economic and job growth, many state and metropolitan leaders are searching for innovative means of rousing their economies. The 22-year old EB-5 Immigrant Investor visa program has enjoyed renewed interest since the 2008 economic downturn made traditional bank financing more difficult to access. Recently, many state and local government and business leaders have looked abroad, especially to emerging markets, for capital to help local economies grow by creating jobs through foreign direct investment (FDI). Fueling this interest in global capital is the anticipated growth in ultra-wealthy individuals: While centa-millionaires are projected to grow by 37 percent worldwide over the next ten years, they will double in China and India.<sup>2</sup> In this context, the underutilized EB-5 Immigrant Investor visa program has been discovered as a potential strategy for job creation.

This federal program allows private entities or states to apply for designation as “regional centers,” authorizing them to develop new commercial projects in which immigrants may choose to invest. These investments must create or preserve jobs and, in exchange, foreign nationals are ultimately granted permanent U.S. residence. These investments are managed by the designated regional centers that, more often than not, are pooled with domestic sources of funding. Successful projects using EB-5 financing have included investments in large commercial property developments, transit infrastructure, manufacturing, and the redevelopment of closed military bases.

However, the program battles a poor reputation, largely due to high-profile cases of fraud at regional centers that highlight risks and vulnerabilities for immigrant investors and a failure to properly regulate the promotion of the program.<sup>3</sup> Recent allegations of corruption and mismanagement within the Department of Homeland Security (DHS) have also generated attention and a sense of concern that the program’s problems outweigh its benefits.<sup>4</sup>

Despite these issues, interest in the program has escalated since the recession, with the number of regional centers doubling in the past two years. From the vantage point of state and local leaders, EB-5 investment is viewed as a potentially valuable contribution to local economic development projects. Tapping into global capital helps diversify sources of financing during a time of scarcer resources. For immigrant investors, EB-5 visas provide the means for themselves and their immediate family members to live, work, and study in the United States. Up to 10,000 visas are available annually for investors and their family members. Although this cap has never been reached, demand has been rising. The number of visas issued has grown in recent years, from approximately 800 in 2007 to 6,600 in 2012.

The EB-5 program was recently featured in the 2013 congressional debates on immigration policy reform. The comprehensive immigration reform bill passed by the U.S. Senate in June 2013 includes several important changes to the investor program. In addition to other changes, the regional center program would become permanent and unused visas from a given year would potentially carry over to the next year. Federal immigration reform provides an opportunity to “clean up” the program, in order to alleviate opacity; regulate several business and economic functions; and provide access to more data and analysis going forward, as program successes have thus far been difficult to track.

The EB-5 regional center program is not currently utilized by most municipalities, but the program’s unique financing could be better used to augment development plans. EB-5 funds can be utilized for public-, private-, and mixed-sector project development through investments pooled by regional centers. This paper focuses on improvements to the EB-5 regional center program at the federal level, innovations that will encourage regions to better use the program in support of their broader economic development plans, and the need for more information and ongoing evaluation of the program. First, we review some of the challenges to the performance of the program. We then turn to enhancements of federal functions that should help regions approach the program more strategically, thus serving as a starting point for further discussion.

## Background

### Origin

The EB-5 Immigrant Investor visa program was created as part of the Immigration Act of 1990.<sup>5</sup> It is one of five permanent resident visas available in the “employment-based” (EB) preference system that prioritizes immigrants based on their skills. There is a separate preference system for “family-based” visas. The United States admits approximately 1 million people to permanent residency annually (Table 1). During the 2010-2012 period, on average, 13 percent of immigrants and their family members were admitted under employment-based preferences, with the majority of remaining visas going to both family-based preferences and the immediate family members of U.S. citizens and permanent residents. Generally, about 3 percent of employment-based visas are for EB-5 visa investors and their immediate family members, and less than half of 1 percent of all visas issued annually.

**Table 1. Employment-Based Immigration Categories and Totals for 2010-2012**

Preference (Visa)	Description	Number Admitted, 2010-2012 Average	Percent of Employment-Based LPRs, 2010-2012 Average	Percent of All LPRs, 2010-2012 Average
1st (EB-1)	Priority workers with extraordinary abilities in their field	35,207	24.5%	3.4%
2nd (EB-2)	Individuals with advanced degrees or considered to have exceptional ability	57,245	39.8%	5.5%
3rd (EB-3)	Skilled and unskilled workers in sectors deemed to have labor shortages	38,736	26.9%	3.7%
4th (EB-4)	Special immigrants such as religious workers, foreign nationals working for the government, etc.	8,556	5.9%	0.8%
5th (EB-5)	Immigrants who invest at least 500 thousand dollars in an project, and create a required number of jobs	4,149	2.9%	0.4%
Employment-Based LPRs	Total Legal Permanent Residents (LPRs), Employment-Based Preferences	143,893	100.0%	13.8%
All LPRs	Total Legal Permanent Residents (LPRs) across all categories	1,045,432	N/A	100.0%

Source: *Immigration Statistics Yearbook, Department of Homeland Security, 2012*

The EB-5 visa program establishes a path to permanent residency for up to 10,000 immigrants (and their immediate family members) annually who invest in an existing or new business in the United States and create or preserve at least 10 U.S. jobs. Under this program, immigrants are required to invest \$1 million in a qualified U.S. business; however, if they invest in a business located in specified “targeted employment areas,” the investment threshold is lowered to \$500,000.<sup>6</sup> A geographic area is classified as a targeted employment area (TEA) if it is considered rural or if it is experiencing an unemployment rate at least 150 percent of the national average (to be reported by each regional center’s state of operation). For the purposes of this program, a rural area is not part of a metropolitan statistical area (as designated by the Office of Management and Budget) and is outside of any city or town with a population of 20,000 or more. When immigrant investors apply for visas, they receive a conditional green card contingent on meeting the job creation requirement. Subsequently, when they prove that they have met the requirement, the conditions are removed.

Over the years, demand for the EB-5 program has traditionally been low and negative attention has not helped to bolster its appeal. The program has developed a negative reputation due to several

high-profile cases of corruption and deception by intermediaries both in the United States and abroad.<sup>7</sup> Changes to the adjudication of business plans by the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS), leading to the denial of green cards to some investors, have been another source of distress.<sup>8</sup> Furthermore, other countries with investor visa programs in competition with the United States have less strict requirements.<sup>9</sup> All in all, the program has underperformed since its inception; however, the current economic climate has been changing the trend, as an increasing number of immigrants have applied for visas and the number of regional centers has ballooned.

Although the regional center program is still technically a pilot, the majority of visas administered annually since 2007 have been through regional centers. The regional center program has been continuously reauthorized since its inception in 1992, most recently in September 2012, when the program was renamed the regional center program (dropping the word “pilot” from the name).<sup>10</sup> In this paper, we follow suit and refer to the regional center program.

### **Purpose: Job Creation**

The original EB-5 program required the creation or preservation of 10 full-time jobs, regardless of whether the investment was located in a TEA. These jobs were required to be “direct jobs,” or those created directly by the new commercial enterprise.<sup>11</sup> Only jobs created directly by the business receiving the investment could be counted toward this requirement. Immigrant investors had to prove that the money they intended to invest was earned legally, and that it would be fully “at risk” in the forthcoming project.<sup>12</sup> To be “at risk,” an investment had to carry a risk of loss and a chance for gain. In the original form of the program, immigrants were responsible for managing their investment and satisfying all program requirements in order to receive a green card.

In 1993, due to low participation, the Regional Center Pilot Program was added to the original program to facilitate the use of EB-5. This program created “regional centers”—defined by USCIS as “any economic entity, public or private, which is involved with the promotion of economic growth”—to serve as intermediaries that provide immigrants with suitable projects and process their investments.

The regional center program maintains the same parameters regarding investment levels and TEAs as the original program, but expands the job creation definition to include “indirect” jobs. Indirect jobs can include, but are not limited to, those held by employees of the producers of materials, equipment, or services used by the new commercial enterprise.<sup>13</sup> Regional centers encourage concentrated investments.<sup>14</sup> Pooling investments encourages more immigrants to invest, especially at the lower amount of \$500,000, since this type of structure facilitates larger development projects and creates more jobs.<sup>15</sup>

The original program and the regional center program have been operating side by side since the latter’s establishment in 1993. However, the regional center program quickly became the preferred program for immigrant investors since regional centers consolidate the process, contain job creation requirements that are easier to satisfy, and require half the level of investment. Today, the vast majority of EB-5 visas are granted through the regional center program.

### **Process: Regional Centers and Investors**

Regional centers are initiated via an application to USCIS (Form I-924). USCIS reviews the regional center’s proposed industry foci, geographic scope, marketing plan, and the economic model(s) it intends to use to demonstrate job creation.<sup>16</sup> Only upon approval of the I-924 application can the regional center begin accepting immigrant investments. In 2011, USCIS implemented a standardized reporting form, the I-924A, in which regional centers must report information regarding projects, job creation, and total investments processed in a given year on an annual basis.<sup>17</sup> Over the course of the program, approximately 400 regional centers have been established in nearly every state in the country.

The petition process for investors is the same in both the original program and the regional center program. In order to initiate investment in a regional center project, an immigrant must first come to agreement with the relevant regional center before filing an “immigrant petition by alien entrepreneur” (I-526) with USCIS,<sup>18</sup> which provides details about the project and how the immigrant plans to satisfy EB-5 program requirements. The immigrant, not the regional center, files the application.<sup>19</sup> If the petition is approved, the immigrant and any family members go through consular processing and are granted provisional green cards valid for two years. Before the provisional green cards expire, the

immigrant and any family members are required to apply for “a removal of conditions” using Form I-829.<sup>20</sup> This form details the project’s progress and provides evidence of how it has satisfied the program’s job creation requirements. If this form is approved, the immigrant and his or her family receive legal permanent residency. Both programs allow immigrants to live and work in any part of the country, regardless of where their investment project may be located.

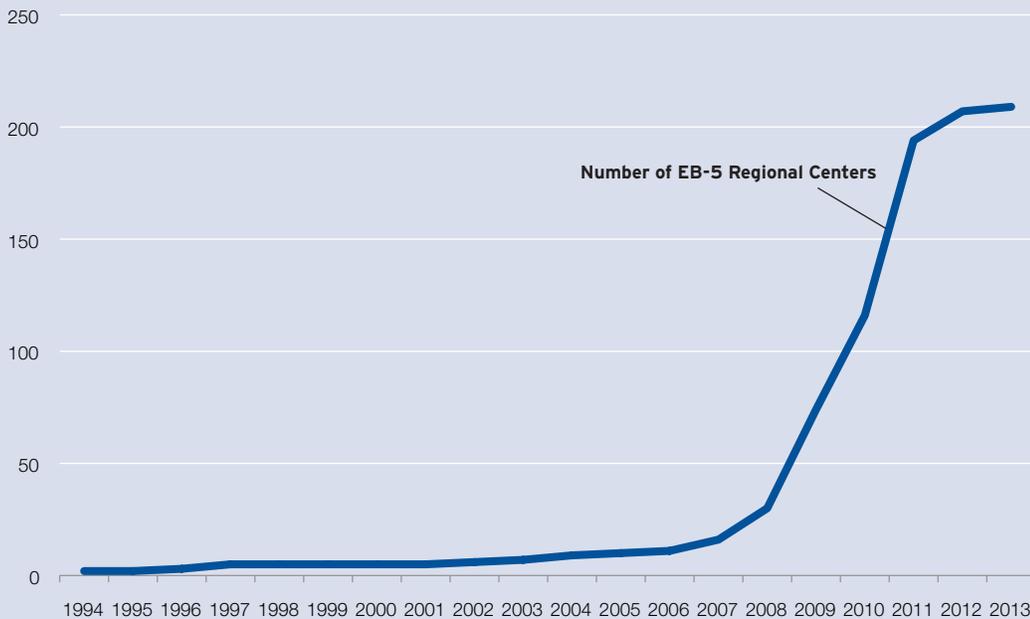
Regional centers have proliferated since the banking crisis made access to capital scarcer, although it is clear that very few currently have active projects. For much of the program’s existence, only a handful of regional centers existed. However, as the banking crisis set in, the number of designated regional centers rose quickly.

The first two regional centers opened in 1994, two years after the program began; several more were established over the next few years (Figure 1). By 2007, 16 regional centers had been created through the first 15 years of the program’s existence. Since then, the number of regional centers has mushroomed. Between 2007 and 2008, the number of regional centers nearly doubled, and then grew at a rate of 150 percent in the following year, when 74 regional centers were up and running. Since then, the number of regional centers has grown rapidly to 207 in 2012 and more than 400 as of the end of 2013, a near doubling of the total number of unique regional centers from the beginning of the year.<sup>21</sup>

The Brookings analysis of regional center designation data runs through February 2013, when 223 unique regional centers were identified. However, only 209 designation letters were obtained: These are shown in Figure 1.<sup>22</sup> The explosive growth seen in the number of regional centers since 2012 is not captured by the Brookings Freedom of Information Act (FOIA) data.

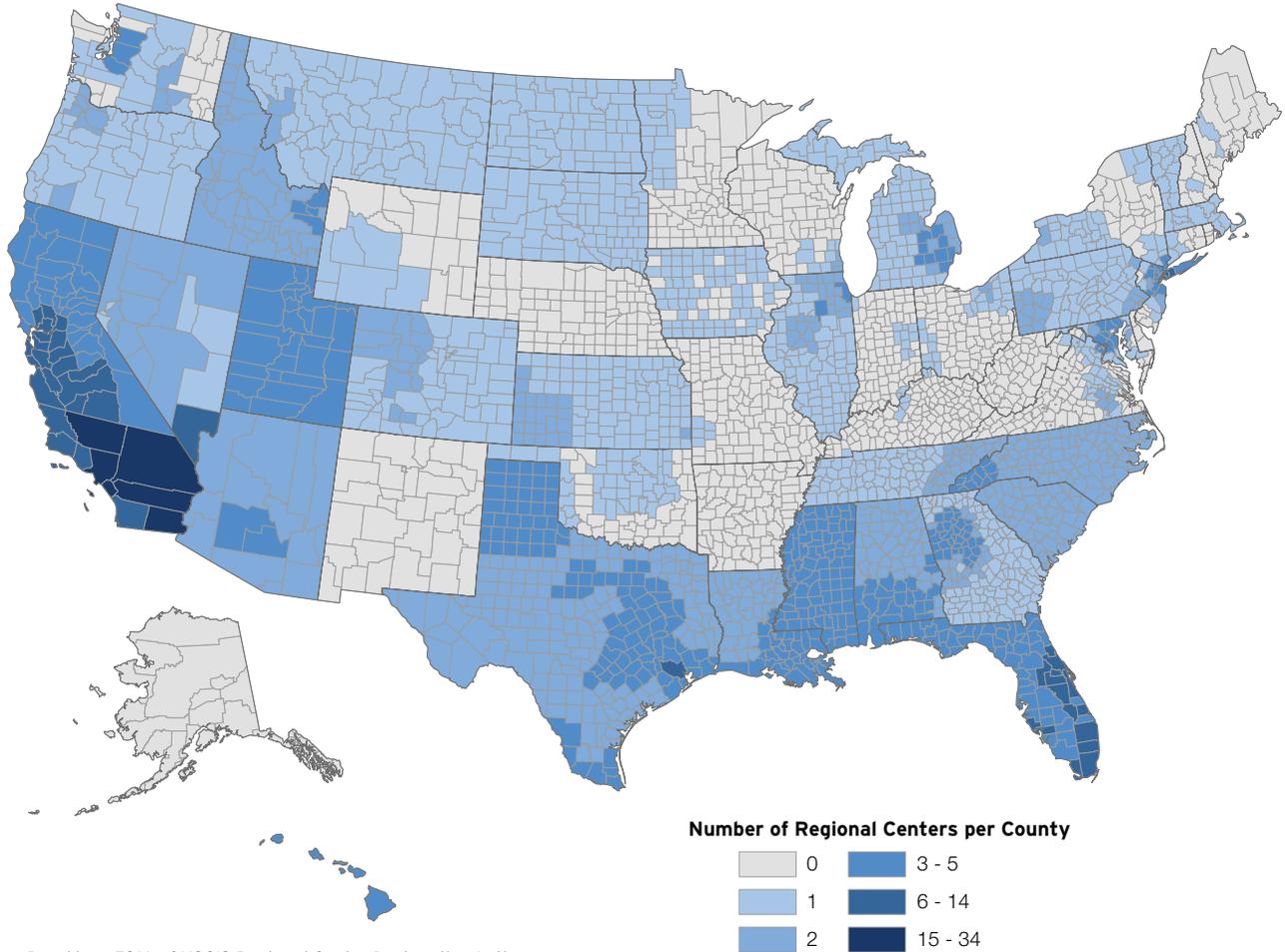
See **Appendix for notes on data and methods.**

**Figure 1. EB-5 Number of Approved Regional Centers, 1994-2013**



Source: Brookings FOIA of USCIS Regional Center Designation Letters  
 Note: 2013 data through 2/22/2013

Map 1. Geographic Scope of Operation among EB-5 Regional Centers by County, 2012



Source: Brookings FOIA of USCIS Regional Center Designation Letters

Our geographical analysis of where regional centers are authorized to initiate projects reveals that a good portion of the United States is designated as available for investment. Combined, the investment geography of the 209 regional centers encompasses two-thirds (2,106) of the nation's 3,143 counties or county equivalents, where 82 percent of the U.S. population lives (Map 1).<sup>23</sup> Among these counties, about half have only one regional center, while the rest have two or more. Some 500 counties have more than two regional centers, ranging from 3 to 34 apiece.

Overall, 44 states, the District of Columbia, and Guam had at least one regional center authorized to operate within their borders as of February 22, 2013. Six states had no regional centers: Alaska, Delaware, Nebraska, New Mexico, Rhode Island, and West Virginia. 36 regional centers had a geographic scope that included at least one entire state boundary, operating across 23 states, the District of Columbia, and Guam.<sup>24</sup> Notably, 13 states had multiple regional centers, which covered the entire state. Mississippi, California, Utah, and Hawaii each had three regional centers covering all of their counties. Hence, most large metropolitan population centers are well-covered by these regional centers, as are large areas of rural America. States in the Southwest, Mountain West, and Southeast have the greatest coverage.

Authorization does not necessarily mean that investment is taking place in covered areas; rather, it simply means that regional centers have the authority to enter into investment in those locations. Moreover, these authorization areas are not equivalent to targeted employment areas (TEAs), the

special designation status that lowers the investment threshold to \$500,000. Regional centers may place an investment in either a TEA or non-TEA location, and most have a geographic scope that includes both types of areas.<sup>25</sup>

Although the program is administered nationally by USCIS, regional centers using the EB-5 program are established in communities across the country. All regional centers must designate the geographies in which they plan to operate, and TEA designations based on unemployment must be certified by a state entity. Thus, these are referred to as state regional centers. However, regional center headquarters are often either not located where they operate, operate across several regions in different states, or are owned by parent companies operating several entities in several locations (e.g., CanAm Enterprises). Only one regional center is an exclusively public model: the State of Vermont Regional Center, which is operated entirely by a state agency.

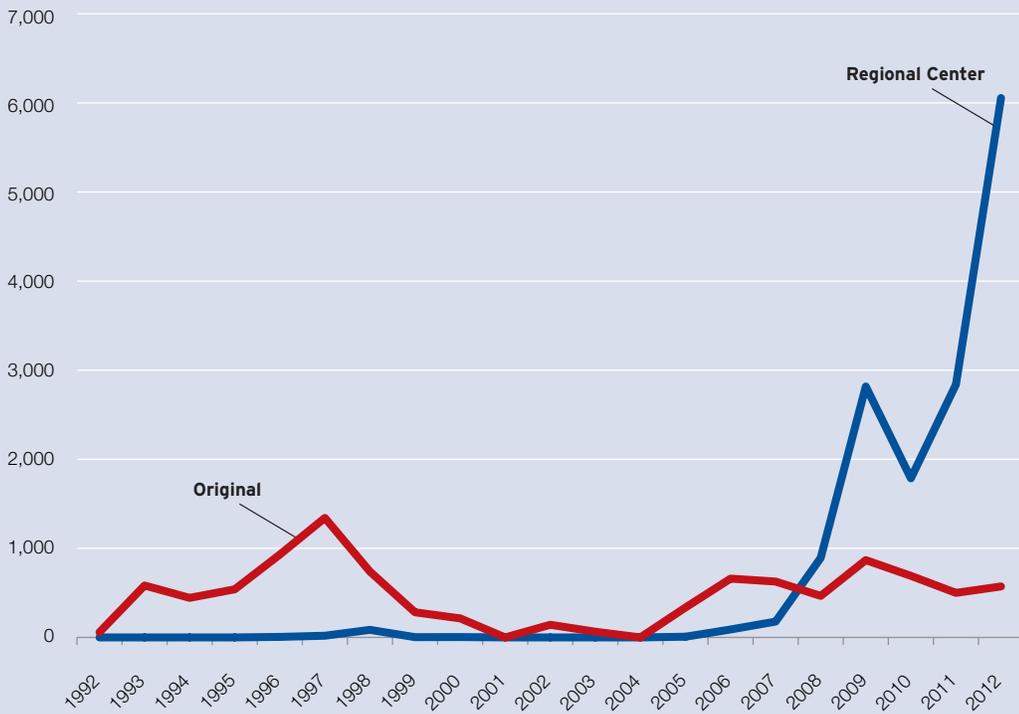
**Performance**

Over the course of the 22-year history of the EB-5 visa, levels of use have been low (Figure 2). While the program experienced an early peak in usage from 1996-1998, the program was temporarily suspended in 1998 due to suspicions of fraud. Following the suspension—during which upward of 900 visas were held up—the program experienced particularly low rates of use.<sup>26</sup>

See **Appendix for notes on data and methods.**

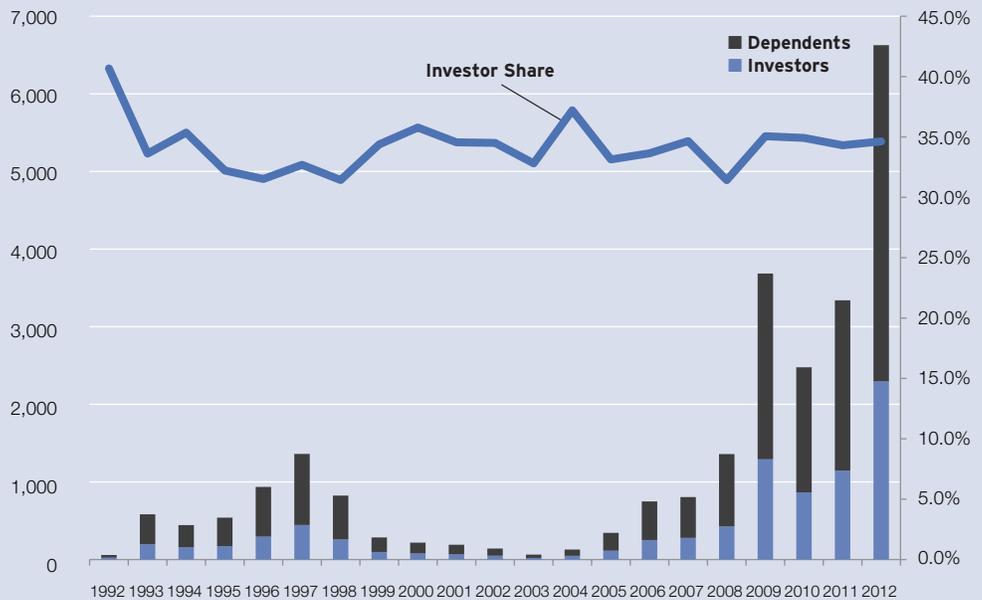
Since 2007, the program has taken off rapidly, particularly in the number of visas allocated through the regional center program. The annual cap of 10,000 visas, which includes both investors and their family members, has never approached capacity until recently. A precipitous upswing in the number of visas granted, beginning in 2008, has brought the number to 6,627 in 2012. In total, 25,162 conditional visas have been granted through the program for the entire duration of its existence. While there was some variability in usage of the two programs in the early years, the majority of investments since 2008 have been made through the regional center program.

**Figure 2. Conditional Visas Allocated in Original and Regional Center EB-5 Programs, 1992-2012**



Source: Department of Homeland Security, Office of Immigration Statistics

**Figure 3. Conditional Visas Allocated to EB-5 Investors and Dependents, 1992-2012**



Source: Department of Homeland Security, Office of Immigration Statistics

Over the entire program duration, 59 percent of investors used the regional center program. Among immigrant investors who used this program, the vast majority invested in a targeted employment area (TEA) and therefore invested at the lower threshold of \$500,000.

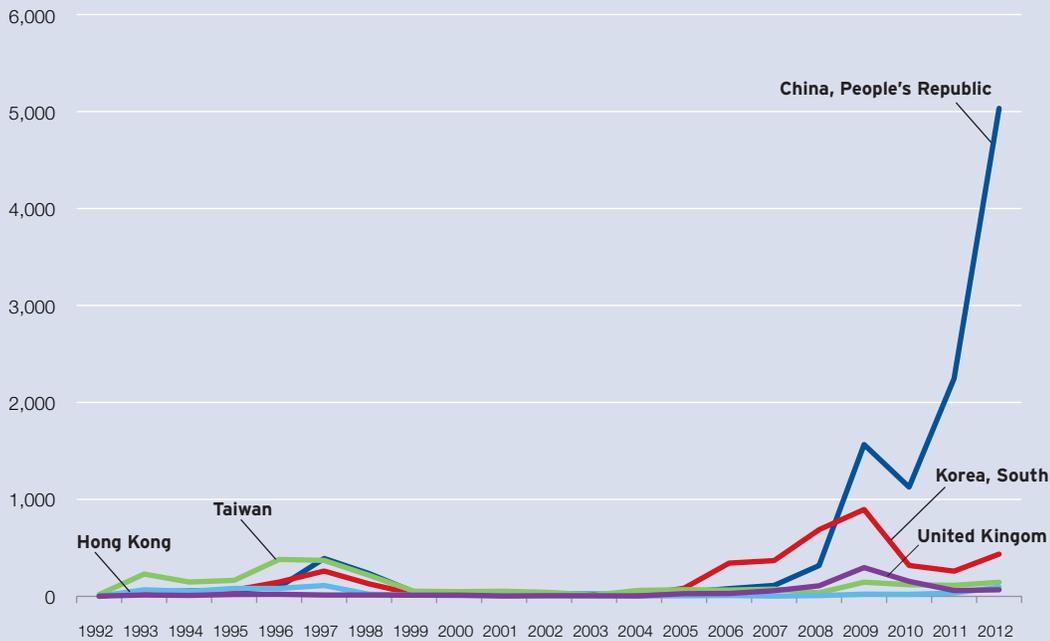
Figure 3 shows that, on average, for every investor, approximately two family members have been granted conditional visas. This ratio has remained fairly consistent throughout the program’s history, and has held even in recent peak years. In total, 8,580 visas have been granted to investors and the remainder (16,582) has gone to family members. Because immigrant investors may bring spouses and children to the United States under the EB-5 program, the overall visa number includes them in the tally. Thus, overall visa numbers do not accurately reflect the dollar value of the investment and number of jobs created.

Immigrants who use the EB-5 investor visa program are unlikely to have faster alternative ways to enter the United States for legal permanent residence. Many potential immigrant investors have families with minor children; one incentive provided by the EB-5 visa is the opportunity for children who migrate with their parents to attend U.S. schools, and ultimately U.S. universities.<sup>27</sup> The explicit marketing of EB-5 visas as family visas is inconsistent with the classification of the visa as “employment-based.” In fact, the majority of the visas allocated to the EB-5 category go to family members of the investor, a higher share than for other employment-based visas.<sup>28</sup>

Over the duration of the program, nearly 80 percent of investors have come from just five additional countries: China (46 percent), South Korea (17 percent), Taiwan (10 percent), United Kingdom (4 percent), and Hong Kong (3 percent). There have also been at least 250 participating investors from five countries: Canada, India, Mexico, Iran, and Japan. However, the prevalence of investor source countries has varied over time. Currently, China is the leading source country by a large margin, with nearly nine times the total number of visas given to Chinese citizens in 2012 than to citizens of the next largest source, South Korea. Seventy-six percent of all visas went to Chinese investors in that year.

By contrast, immigrants from Taiwan and Hong Kong were the most prevalent investors in the 1990s. China is the only country among the top five with a steep upward trend in the number of investors

**Figure 4. Top Five Countries of Birth of EB-5 Conditional Visa Holders, 1992-2012**



Source: Department of Homeland Security, Office of Immigration Statistics

since the lull in the program in the early 2000s. In fact, the rise of Chinese investment coincides with the rise in overall use of the program. Those who made fast fortunes in China’s real estate boom are reputedly one source of EB-5 investors.<sup>29</sup> Investors from Korea, Taiwan, United Kingdom, and Hong Kong not only receive notably fewer numbers of annual visas, but their participation in the program has tapered somewhat in the past few years.

The “success rate” for immigrants making the transition to permanent residency has improved dramatically in recent years. This rate is defined by the number of investors with a conditional green card who are approved to have the conditions of their green card removed. In fact, according to USCIS, the denial rate for both I-526 (conditional residency) and I-829 (removal of conditions) applications has decreased significantly since 2005.<sup>30</sup> Denials of applications for the conditional green card represented 47 percent of the total in 2005. However, given the steady drop in the denial rate, the average since that year rests at 19 percent. For those immigrants who applied to remove conditions from their visas, 38 percent were denied in 2005, compared to a 16 percent average for the entire period. In recent years, denial rates have improved, especially for those removing the conditions of their green card: The denial rate in 2011 was only 4 percent and, in 2012, it was 6 percent. The reduction in denials may be a sign that the program has become clearer about its requirements and more consistent in evaluation. Beyond these statistics, however, there are no estimates that would help evaluate the program, such as how many immigrants see a return on their investment versus how many lose their initial outlay.

When examining EB-5 performance as a job generator, the data are less than ideal because investors are required to report only that they have met the requisite threshold of 10 jobs. Nonetheless, we estimate (from the most recent data available) that, based on the minimum requirements, the program has created 85,500 direct full-time jobs and attracted approximately \$5 billion in direct investments since its inception, with nearly half of this figure accruing since just 2010. These figures refer to the entire program, not just the regional center program, so they include investments at both the lower- and higher-investment thresholds.

While the \$5 billion number is small—in its entirety, the figure represents a fraction of the \$204 billion the U.S. brings in foreign direct investment *annually*—this source of international financing may make a substantial difference for local projects and the communities that host them, within the current economic and banking context.<sup>31</sup>

Thus, the regional center program—with its very recent growth in both the number of regional centers and investors, concurrent with the rise of the investor class in key source countries—has become the defining feature of the entire EB-5 program, and has the potential to become an important source of capital for many more regional economic development projects. This paper specifically focuses on the regional center program and its relevance as a development tool for state and local leaders.

## Program Challenges

The EB-5 investor program has been marked by low but rapidly expanding usage rates as more states, local areas, and businesses view EB-5 funds as a viable resource for development in the face of shrinking funds from traditional sources. The complex range of program components presents challenges to various actors, who may have different interests in the process. We discuss three major challenges associated with the program and follow with strategies that should both improve its functionality and guide the use of EB-5 funds through the regional center program to make the most of the program's economic development potential.

### **Immigrant investors must navigate a complicated and unpredictable web of intermediaries with little oversight, which discourages investment**

The EB-5 regional center program generates a number of logistical and technical challenges for regional centers, USCIS, and immigrant investors, within a complex process that involves various actors and procedures. In a nutshell, the regional center program functions as a three-way interaction. First, once a regional center is established via a successful application to USCIS, it may develop projects and recruit immigrant investors. For their part, immigrants must apply to USCIS to become an immigrant investor. This self-petition process includes information on the regional center project in which the immigrant is investing.<sup>32</sup> Finally, USCIS adjudicates both regional center projects and immigrant investor applications.

The first set of actors in this three-way interaction is the **regional centers**. Regional centers bear the responsibility of developing investment projects and recruiting investors and play a “brokering” role between immigrants, their cash, and the business of investing it. The relationship between a regional center and an immigrant investor is interdependent: Each needs the other to exist. However, this relationship is contingent on USCIS designating regional centers, approving regional center projects, and ultimately determining whether an immigrant's investment has met the qualifications of job creation so that the conditional status of his or her green card is removed.

The second actor is **USCIS**, which monitors investments and job creation, and administers visas. If a project's business plan (as submitted by the regional center) does not match its ultimate performance, then the immigrant does not receive his or her green card and must leave the country, an issue referred to as “material change.” Whether or not an investor is approved for a conditional or permanent green card is decided independently by USCIS; regional center staff do not play any role. Also, there are no penalties imposed by USCIS on regional centers that fail to demonstrate that the required jobs were created during the 2-year probationary period. **Immigrant investors**—the third set of actors—bear the responsibility of meeting these requirements.

Although regional centers use varying approaches to recruiting investors, many utilize a network of intermediaries to attract immigrant investors from abroad, file USCIS petitions, and execute projects in local areas.<sup>33</sup> They also charge substantial fees to investors to cover administrative expenses associated with travel and legal fees, as well as commissions.<sup>34</sup> Recruiters travel abroad in order to advertise regional centers' available projects to potential investors, and receive commissions for every investor they attract. Regional centers often contract with law firms and real estate development firms in order to achieve the parallel tasks of securing legal immigration for their investors and identifying good investment opportunities. These fees and contracts are completely unregulated.

These large commissions are probably the incentive at the root of the aggressive promotional tactics often seen abroad. Media reports indicate that some marketers have misrepresented the program to potential immigrant investors by exaggerating the safety of EB-5 investments or the likelihood of receiving a green card. One common misperception is that the regional centers are run by the U.S. government, which purportedly backs immigrants' investments.<sup>35</sup> While the federal government approves of EB-5 regional centers and their projects through USCIS, it does not directly administer the investments, manage any projects, or financially back any investments. Immigrants are left in a lurch if their permanent green card applications are denied, and there is no guarantee that immigrants' investments are returned in these cases.

Regional centers are largely private entities—mostly limited liability companies—which stand to profit from the investments of immigrants who participate. This can create a conflict of interest wherein regional centers and their affiliates (such as lawyers and immigrant recruiters) may have an incentive to emphasize the benefits of the program and downplay its risks. Beyond approving regional centers and the business plans of individual projects, the federal government historically has not tracked the investments of incoming immigrant investors. Furthermore, regional center operators charge fees beyond the required investment amount for their services in shepherding the immigrant through the EB-5 process, and the federal government does not regulate how this income is used.

Some missteps in the first few years of the program illustrate the vulnerability of a system dependent on the relationships between USCIS, regional centers, and investors. The program faced widespread fraud and abuse in its first few years of operation. The largest case of fraud transpired in the late 1990s when the owners of Interbank, an investment business designed to coordinate EB-5 projects, were indicted and found guilty of a variety of money-laundering and fraud charges. The program was temporarily suspended and hundreds of applications were held up. Due to several cases of fraud and abuse, the official guidelines for EB-5 projects were drastically changed in 1998.<sup>36</sup> These issues of abuse and overall administrative uncertainty contributed to a steep decline in program participation from 1998 to 2003.<sup>37</sup>

More recently, several high-profile cases have brought unfavorable attention to the program, creating a credibility problem that extends to the entire agency. In February 2013, the Securities and Exchange Commission (SEC) filed a lawsuit against a regional center owner in Chicago with the charge of attempting to defraud over 250 investors of investments worth more than \$150 million.<sup>38</sup> The project in question involved a hotel and conference center near O'Hare Airport. In March of 2012, 27 immigrant investors brought a lawsuit against a New Orleans regional center for misuse of funds that were to be used to build restaurants and hotels in an effort to revitalize the New Orleans economy after Hurricane Katrina. Instead, the regional center was alleged to have diverted funds and mismanaged construction projects.<sup>39</sup> Most recently, in October 2013, the SEC charged a Texas couple with stealing funds from foreign investors under the guise of the EB-5 program.<sup>40</sup>

The EB-5 program involves three primary actors that—if all goes well—act in concert to secure international investment funds from immigrants, spur needed economic development in key areas, and prevent fraud and abuse. Developing standardized requirements and appropriate economic oversight should help the burgeoning program as it grows.

### **Regional centers and local economic development agencies lack coordination in their work, even though they share many similar goals**

The EB-5 program is a *federal* program, intended to promote economic development and job creation and created independently of state and regional development programs. However, most economic development in the U.S. happens at the state and local level. In fact, many economic development agencies (EDAs)<sup>41</sup> have never considered using the EB-5 program (and may have never heard about it). There are no criteria in the federal program that promote coordination between regional centers and existing state and regional economic development efforts. However, there are presently approximately 400 regional centers that could potentially move projects in the direction of regional place-based or industry-based development goals. The EB-5 program could have more of an impact if both entities worked more closely with each other.

Most regional centers are run by private limited liability companies (LLCs) and are established through an application to USCIS. The regional center application identifies geographies where

investment may occur, usually at the county level, as well as a list of industries on which the regional center plans to focus investment activity. In addition, regional centers must state whether they plan to have projects in targeted employment areas (TEAs).

More careful attention paid to two issues—the number and location of regional center operations and the designation of TEAs—could potentially improve the impact of the EB-5 program on regional economies. EDAs can play a role in defining both of these issues, thereby creating more robust economic outcomes.

The program employs two pathways for those contributing at the lower threshold of investment, based upon definitions of TEAs. One pathway requires that the TEA be classified as a rural area (outside of a metropolitan area and not in a city of more than 20,000). The other pathway is within metropolitan areas (usually made up of either counties or census tracts) experiencing 150 percent of the national unemployment rate. The definition of a TEA relies on the unemployment rate of the residents in a given county or tract. However, the requirement that a regional center's project create 10 full-time jobs within the TEA does not mandate that the jobs created go to residents of the TEA. Residents from neighboring areas (or anywhere else), which may not have the same unemployment levels, may commute to the TEA and fill the newly-created jobs.

While TEA geographies must be officially designated by state governments, they are strikingly arbitrary and outmoded, especially when they fall within metropolitan area boundaries. Census tracts, for example, usually have small populations and can be densely populated in metro areas. Metropolitan areas (in their entirety) constitute labor markets. Workers may be just as likely—if not more likely—to commute to jobs outside their immediate neighborhood than to work inside them simply because the skills they possess may not match available jobs.<sup>42</sup> Thus, the unemployment measure of TEAs can lose meaning when applied to the metropolitan context, especially when one considers that investment projects are not required to hire residents from within the TEA.

It is likely that regional center activity and regional economic development plans do not sync. There is no requirement that regional centers work with or coordinate efforts with state or local economic development entities. Each state has a department of economic development that oversees the state's activities that encourage and support economic growth. There are also regional and local economic development agencies that supplement state-level structures and provide the leadership to improve the economic vitality of targeted communities. These organizations—including public, private, and partnership development organizations—work with planners and the business community to attract businesses and investment, stimulate economic growth, create job opportunities, facilitate and encourage partnership between the public and private sectors, and improve the quality of life for all residents in the region. These objectives parallel the goals of EB-5 regional centers.

Many state and regional economic development agencies partner with private developers to bring projects to bear in particular localities. These are generally state-, county-, or city-run agencies that utilize public resources to provide financial assistance and facilitate business and job creation. Some of the oldest EB-5 regional centers established themselves as public-private partnerships.

Finally, the number of regional centers established in response to potential projects in search of financing is unclear, but it is likely that many more are established to search for potential projects. Moreover, it does not appear to be common for regional centers to partner with regional economic development agencies. Proactive coordination would help surface projects that have been vetted as state and regional priorities; these, in turn, would enjoy widespread public support because they are part of broader regional economic planning.

### **The regional center program's successes and failures are difficult to evaluate due to a dearth of available information**

The scarcity of reliable historical data about the performance of the EB-5 visa program makes it very difficult to evaluate the benefits it has conferred to individuals, businesses, and localities. The stated goal of the EB-5 program is to stimulate local economic development but there are scant data available to measure its impact, especially at the local level. There are no comprehensive, longitudinal data regarding regional centers' economic impact on project completion rates, job creation levels, and other regional- and municipal-level economic indicators such as change in unemployment rates. While systematic collection of information was recently initiated by USCIS, access to that information is not

publically available. Thus, very little reliable, consistent, and clear data exist that make possible an evaluation of the job creation aspect of the program, the success and viability of the business projects, and the successes of individual regional centers.

For example, among the approximately 400 designated regional centers, it is unknown how many regional centers are currently active with projects, how many have ever contributed EB-5 funding to a development project, and how many have completed requirements that enable investors to apply to have conditions removed from their green cards.

Furthermore, there is no information about EB-5 project activity beyond the 2-year period required for the lifting of green card conditions, and the only piece of data available is whether an immigrant successfully met the job creation condition.<sup>43</sup> Therefore, the ways in which projects funded by EB-5 have stimulated long-term investment or provided beneficial effects to broader regional economies is unknown. Although the media has reported on such, USCIS has not comprehensively identified regional center failures, nor has it reported the causes of such failures.

Among other data, information on the number of jobs that have been created per project would be useful for evaluating the program. Currently, adjudicators are only concerned with the creation of the minimum number of 10 jobs per investment; therefore, this is all that is reported. Another important piece of data would be the share of project investment costs attributable to EB-5 investors, as opposed to the share from other sources. Moreover, the program's effectiveness in spurring economic development or affecting local unemployment rates is not known. The regional center program has never been evaluated by Congress, despite its 20-year lifetime and multiple temporary reauthorizations, and against recommendations by the Government Accountability Office to do so.<sup>44</sup> For these reasons, knowledge of the program's true economic impact is elusive at best. Given the lack of available data, practitioners are hard-pressed to evaluate the efficacy of regional centers for wise investment or to find successful investment models.

## A New (Regional) Approach

Despite the challenges outlined above, many legitimate business deals have been conducted under the auspices of EB-5, and the program has seen its share of successes. For example, EB-5 funds have been used to repurpose military bases in both Southern California and Philadelphia, and in support of major infrastructure projects such as airports and public transit systems. In Seattle, EB-5 funding has revitalized the city's SoDo industrial district.<sup>45</sup> As an economic development tool, EB-5 investments made through regional centers offer a way of obtaining pooled investments that can contribute to the financing of deals that benefit local economies. State and metropolitan areas should be able to make better strategic use of the EB-5 investor visa program for projects that fit with the character and industries of their own region, especially if the investment is used strategically and in tandem with greater economic development objectives. However, maximizing the possibility that regional economic development efforts align with the federal program will require changes to the program at the both the federal and state levels.

At the time of this writing, U.S. immigration policy is facing renewed scrutiny and the possibility of a complete overhaul, as Congress debates comprehensive immigration reform. Reform of the EB-5 investor program is likely; Senate bill S.744 (passed in June 2013) includes revisions to the program. The regional center program will likely continue as a permanent feature of the EB-5 investor visa program.

Regardless of whether immigration reform happens, the recent growth in the number of regional centers and geographic areas in which they are permitted to operate, as well as the rise in the number of immigrants requesting visas in order to make investments, is an indication that EB-5 financing will become an even more popular source of funding for economic development projects.

Below, we offer some suggestions aimed at federal policymakers for how to make the program more attractive to potential investors and function more efficiently. We also provide tools for evaluating the program going forward. To help regional economies, we offer suggestions for changes and enhancements to the regional center program that highlight the opportunities that EB-5 financing holds for regional officials.

### **Utilize federal immigration reform to “clean up” some of the complexity of the program by standardizing key processes in collaboration with the U.S. Department of Commerce**

The EB-5 program brings together interests that may not be gracefully coordinated. The complexity of the application process, varying roles for different institutions, high transaction costs, a cadre of intermediaries—including unregulated brokers working abroad—and an ill-suited government agency charged with administering the program present a set of obstacles that may prevent potential investors from using the program and further erode public confidence. Changes to the federal program, including a shift in responsibility to the Department of Commerce, would benefit investors, regional centers, and the federal government.

**Create a partnership or consultative role for the Department of Commerce.** One question that has loomed over the program, especially as the creation of regional centers has ramped up in recent years, has been whether USCIS is the appropriate U.S. government entity for adjudicating the designation and termination of regional centers and the certification of the job creation requirement. USCIS is an agency charged with managing the admission of permanent and temporary immigrants (both family-based and employment-based), along with naturalization and other functions. The agency is already overburdened by the volume of EB-5 applications and has, at times, been unable to proceed in a timely manner, holding up deals and jeopardizing the success of the program.<sup>46</sup>

The most likely U.S. government partner to play an oversight role in the adjudication of regional center applications and administer job creation assessments would be the Department of Commerce. Most recently, Senator Patrick Leahy proposed an amendment (approved unanimously) to Senate bill S.744, passed by the Senate Judiciary Committee in June 2013.<sup>47</sup> Among other provisions, the amendment creates a new role for the Commerce secretary to “provide consultation assistance” to determine whether proposed regional centers should be designated, terminated, or subjected to other adjudicative action. Although there are drawbacks to housing the program in two separate agencies, Commerce’s expertise and staff with a related program, Invest in America (now incorporated into SelectUSA), has been cited as a good reason to shift some program responsibilities.<sup>48</sup> This federal government initiative promotes and supports inbound foreign direct investment, similar to the aims of the EB-5 investor program.<sup>49</sup>

Another Commerce program, the Economic Development Administration (EDA), is the only federal agency involved in fostering economic development through private investment and aims to support strategic development in areas of high need.<sup>50</sup> This program might also be well-positioned to lend expertise on projects that are regionally collaborative. Through a consultative partnership, an interagency task force, or some other mechanism, the Department of Commerce and USCIS should combine forces to improve the functioning of the regional center program.

In December 2013, the DHS Office of Inspector General (OIG) released an audit of the EB-5 regional center program that also calls for collaboration with Commerce and other federal agencies (see **Box: DHS Office of Inspector General Audit (OIG) and USCIS Response**). One unique aspect of the EB-5 program is that USCIS, in addition to its responsibility for verifying eligibility of investors and regional centers, is charged with preventing fraud and national security threats associated with the program. Regarding these risks, USCIS has begun implementing administrative changes to improve the integrity of the program by working with the SEC and other federal agencies.

We focus here on the Commerce Department and see three primary roles for the agency—in some guise—to have a hand in the EB-5 regional center program:

- ▶ **Adjudicate regional center applications.** The Department of Commerce, whose mission is to promote business and job creation, sustainable development, and improved standards of living, has the staff and expertise to review and assess the formation of regional centers. This agency has expertise in foreign direct investment through its SelectUSA program, which makes it better suited to evaluate regional center applications and monitor existing centers than USCIS, an agency tasked with processing applications for visas. SelectUSA is designed to promote inbound foreign direct investment opportunities in U.S. communities by providing information on federal programs and incentives for business development, including EB-5. Thus, Commerce could play an important role in overseeing the determination of regional center designation, modification, and termination.

► **Standardize the job creation methodology to better determine outcomes.** In order for an immigrant investor to have the conditions on his or her green card cleared to move to permanent residency, the regional center must demonstrate that the individual's investment has created 10 jobs. The onus of that demonstration is on the regional center and, over the years, a few organizations and regional centers have "cracked the nut" by developing the complex proprietary methodology necessary to demonstrate job creation.<sup>51</sup> New regional centers may struggle with showing that the job requirements have been met and may rely on the wisdom of the successful consultants, for a price. If Commerce plays a consultative role as proposed in the Leahy amendment, the newly-tasked agency could develop clear guidelines and standard methodologies to streamline the process. The Commerce Department would have an in-house team to work with regional centers and derive estimates and projections of job creation using a standard method. The methodology would be clearly explained and available to regional centers, investors, and other interested parties. This would level the playing field by removing some of the mystery and expense for regional center practitioners.

► **Evaluate and report on the status of regional centers annually.** The Commerce Department adjudication team would be responsible for compiling and analyzing data and generating reports that would be useful for evaluating program performance. Each regional center currently submits Form I-924A annually regarding investments and the number of jobs created or maintained. More data should be collected to analyze the program, in addition to monitoring whether it is meeting its goals. In addition to annual reports on the number of regional centers, projects in process, and investors (including information on the investor's stage in the process), there should be a separate evaluation of the program to date. Such an evaluation would include an aggregation of several figures in order to reflect on program impact: the number of regional centers, number of projects ever completed, total investors with conditional green cards, total investors with conditions removed, number of jobs created or preserved, number of regional centers with active projects, and the amount of total investment. We discuss the role of data to enable evaluation elsewhere in this report (See pg. 18.).

While some initial startup time may be necessary to transition these roles to Commerce, this is a logical partnership with a well-prepared agency that should strengthen the program over the longer term.

#### **Box: DHS Office of Inspector General Audit (OIG) and USCIS Response**

The DHS Office of Inspector General (OIG) released an audit of the USCIS-run EB-5 regional center program in December 2013.<sup>52</sup> The audit asserted that USCIS was not effectively managing the regional center program for two primary reasons. First, the legislation establishing the program does not give USCIS the authority to prevent fraud and national security threats; and second, the agency does not consistently enforce its own regulations and procedures. The audit offered four recommendations to USCIS aimed at improving the EB-5 regional center program:

- Update and clarify regulations related to USCIS' authority to deny or terminate regional center participants when connections to fraud and/or national security risks are known, and to make these concerns explicit cause for revocation of regional center status
- Develop memoranda of understanding with other federal agencies (Commerce, SEC, Labor) to lend expertise to the adjudication of applications and petitions related to the EB-5 regional center program
- Conduct comprehensive reviews of the EB-5 program to measure economic impact of the program on the U.S. economy
- Establish quality assurance to strengthen the integrity of the program and ensure that regional centers operate within the Code of Federal Regulations requirements

In their response, USCIS concurred with and is developing plans to implement changes related to recommendations one, two, and four listed above and described corrective actions and detailed steps that are already underway to improve the functioning of the program as related to the recommendations made by OIG. Regarding the first recommendation, USCIS will update regulations to provide greater clarity on eligibility under the program, especially regarding evidentiary requirements, and will issue a revised rule. In response to recommendation number two, USCIS will develop and implement an interagency collaboration plan. USCIS also plans to establish quality assurance standards to promote program integrity and ensure regulatory compliance in response to the fourth recommendation. Regarding the third recommendation concerning a broader assessment of the program's impact, USCIS did not concur that it was the best agency to conduct such a study, even though it agreed that such a review would be beneficial. As an agency that administers benefits, USCIS argued that it was not well-positioned to conduct such a study.

### **Use EB-5 financing to achieve regional economic development goals by creating partnerships between economic development agencies (EDAs) and EB-5 regional centers**

Regional centers and EDAs have similar goals of job creation and economic growth but usually work independently of each other. However, they stand to benefit from each other's expertise in working toward those shared goals. Ultimately, this relationship should be mutually beneficial for municipalities, investors, and the organizations that support regional development.

**Create incentives for regional centers to develop partnerships with state and local economic development agencies.** The main advantage to this kind of partnership is that, combined, the two entities may more effectively reach economic development goals while simultaneously ensuring more successful immigration outcomes.

There are several reasons why EB-5 regional centers and local development offices should consider working together. Economic development agencies can identify projects that are likely to meet the requirements for the regional center program and, in turn, regional center projects can help EDAs find additional funding. Regional centers offer familiarity with a unique visa program that yields non-traditional capital. For their part, EDAs offer knowledge of the local development context, access to multiple funding streams (including use of federal programs like tax credits), and a pipeline of "shovel-ready" projects, as well as an established apparatus for managing projects over the long term. They can help identify priorities within regional strategic growth plans and coordinate multiple funding streams to support those priorities.

Regional centers that partner with local economic development organizations will likely expand the impact of EB-5 money since the projects pursued by EDAs are part of broader, long-term economic development strategies and, therefore, are more likely to leverage complementary funding sources. For example, EB-5 investment funds augmented the impact of public funds devoted to the redevelopment of Philadelphia's Navy Yard. Because the Navy Yard redevelopment project was supported by the Philadelphia Industrial Development Corporation (PIDC), which allocated state and other funds to the initiative, the project was more stable and perhaps facilitated immigrants' successful applications for temporary visas and green cards. In addition, EDAs generally focus on developing distressed areas as part of their mission, and this model aligns well with the EB-5 program's focus on development in targeted employment areas.

Several such models already exist at different municipal levels.<sup>53</sup> For example, the City of Dallas Regional Center is a public-private partnership, where the city has partnered with an investment firm, Civitas Capital Group. The Philadelphia Industrial Development Corporation (PIDC) Regional Center is a nonprofit-private model that pairs a city development entity with the chamber of commerce and a private company, CanAm Enterprises, that specializes in regional center operations and technical and legal assistance. CMB Export Regional Center collaborates with county-level regional economic development organizations in the Riverside-San Bernardino area of California.

#### **See [Box: EB-5 Regional Center Partnerships](#).**

Creating effective partnerships between regional centers and EDAs requires drawing upon the strengths of both types of organizations. EDAs often have the best access to high-quality projects in a local area, due to a combination of their experience in development, local contacts, and public pressure to use tax dollars wisely. For these reasons, it may be attractive for EB-5 regional centers to invest in projects identified by local development agencies. EB-5 regional centers can also greatly benefit from EDAs' existing processes and practices; since they already monitor job creation for their own projects, regional centers can benefit from agencies' expertise in this area. Also, the stability of public investment projects is likely to be more attractive to potential immigrant investors, especially those who are most concerned about a project's ability to comply with USCIS requirements so they can receive their green cards. The City of Dallas Regional Center clearly states this as an advantage on their website: "With every CDRC investment, the reputations of both the City of Dallas and Civitas Capital Management are at stake."<sup>54</sup>

Combining a proportion of EB-5 funds with public development funds enhances the impact of public funding while avoiding exposure of the whole project to the risks of the EB-5 program. Thus, an alternative model for regional centers would be to work directly with economic development agencies to better coordinate economic development activities and regional goals. Regional centers that operate as public-private partnerships with state and local governments appear to have some of the strongest

### Box: EB-5 Regional Center Partnerships

While each regional center has its own business model, some of the earliest regional centers, as well as the most successful examples, include partnerships with economic development agencies (EDAs).

A company called **CMB Regional Centers** manages three regional centers: one in California (CMB Export), operating since 1997; one in Ohio (CMB Summit), which opened in 2008; and a third in Florida and Georgia that opened in 2013 (CMB Southeast Regional Center). They also operate the Iowa Regional Center on behalf of the state economic development agency. In California, CMB Export has partnered with, for example, the Inland Valley Development Authority, a regional economic development agency, thereby pooling its immigrant investor capital with funds from public sources.

CMB Export was founded with the intention of focusing on California communities affected by the federal Base Realignment and Closure Commission (BRAC). These communities faced BRAC-associated job losses and needed to retool their local economies. CMB's major projects include redeveloping the Norton Air Force Base into the San Bernardino International Airport, as well as major infrastructure investments at the McClellan Air Force Base, including sewer replacements and upgrades, environmental cleanup, rehabilitation of former military base structures, new construction, railroad upgrades, street rebuilding, flood control, and other infrastructure building. Their website boasts a success rate of 100 percent with over 1,200 investors.<sup>55</sup>

Another example of regional center/EDA collaboration can be seen in Philadelphia, where the **Philadelphia Industrial Development Corporation (PIDC) Regional Center** partners with CanAm Enterprises, the Philadelphia Chamber of Commerce, and the city's regional development corporation (PIDC). CanAm is a company that specializes in designating and reaffirming regional centers through USCIS, marketing to and recruiting investors, and performing due diligence on whether potential projects qualify for the EB-5 program. They have also developed a method for calculating job creation that has proven to be successful with USCIS adjudicators. Their record touts \$1.3 billion in EB-5 capital raised in 40 projects across five regional centers. Thus far, more than 2,000 investors have received green cards.<sup>56</sup>

While CanAm provides technical assistance related to EB-5 program navigation, PIDC serves as a conduit to local development projects and, at times, public funding to support those projects. The PIDC Regional Center/CanAm partnership has helped finance 28 projects to date, including the redevelopment of the Philadelphia Navy Yard into a mixed-use business campus, the expansion of the Pennsylvania Convention Center, the construction of administrative headquarters for the Temple University Health System, and the construction of the corporate headquarters for Comcast Corporation.

A third example of an effective partnership is provided by the **City of Dallas Regional Center (CDRC)**.<sup>57</sup> This regional center is a public-private partnership between the city and a private partner, Civitas Capital Management. This partnership allows the city to apply EB-5 investments to their own interests and combine those funds directly with tax abatements, grants, and other programs. Their portfolio of EB-5-funded projects includes real estate development of assisted living facilities, call centers, restaurants, and multifamily apartments.

track records to date. However, public agencies need to be careful in choosing which EB-5 regional centers to partner with, since many have little experience with the program. An agency should partner with a regional center with the expectation that they need to educate themselves in compliance with USCIS's regulations.

**Create a "partnership project program" that would eliminate TEA requirements for regional center projects that involve public-private partnerships.** The majority of investments through regional centers are projects that fall within TEA boundaries. If regional centers and EDAs partner on identifying viable projects and carrying them through, there may be good reason to change the standards for designating geographical regions for investment. The current practice is for states to certify

TEAs based on a threshold of 150 percent of the national unemployment rate. In order to qualify, regional centers often come up with gerrymandered boundaries. As such, they are largely arbitrary (and inaccurate) representations of available labor pools.

Others have suggested that the definition be revised to align the TEA designation with other well-defined federal investment incentive programs such as “enterprise zones,” or programs that encourage private investment in declining economic areas in need of job growth.<sup>58</sup> In addition, the proposed Leahy amendment to S.744 broadens the definition of TEAs to include areas with high poverty.

Our proposed “partnership project program” would make TEA requirements more flexible in order to capture an investment geography that is both strategic and regionally appropriate. The creation of this sub-program within the EB-5 regional center program would allow regional centers to develop partnership projects outside the TEA at the reduced investment price of \$500K. In other words, criteria would be developed to designate select projects of highest priority to communities and regions, in order to promote collaboration by permitting regional centers and economic development agencies to work together on a partnership project to operate outside TEAs and still receive investments at the lower threshold.

Thus, if Commerce takes on the role of adjudicating regional center activity, they would be responsible for the development of criteria for the certification of such partnership projects. In addition to designing fair standards, Commerce’s regulation and oversight of such partnerships would be important to ensure that “gaming the system” does not occur.

State, regional, or local economic development agencies are positioned to identify the most pragmatic investment geographies to promote job creation and value for local area development. These priority projects would arguably add benefits to the region, safeguard the intent of the regional center program, and give investors more confidence in projects. In addition, the partnership project program would have the potential to unlock the EB-5 regional center program for those municipalities that are unable to meet the current TEA unemployment threshold, but could nevertheless benefit from alternative financing for economic development projects.

In many cases, as in the examples highlighted above, these partnerships are already happening; it could be argued that they are making some of the best strategic investments in their regions.

### **Generate data regarding regional centers for evaluation purposes and make it publically available**

In order to judge whether the EB-5 program has achieved its stated purpose, regional centers and their economic activities need to be analyzed as institutions with a particular programmatic purpose. Measuring the program’s ability to stimulate state and local economic development requires accurate and publically available data regarding regional centers’ economic inputs, including job creation levels, direct and indirect economic effects, and impacts on particular industries.

USCIS began collecting annual data on regional centers only in 2011, through Form I-924A. Each year, regional centers report on the industries that have been the focus of EB-5 capital investments; the number of jobs created and/or maintained; the total number of approved, denied, and revoked petitions for conditional green cards; and the number of petitions filed by EB-5 investors for removal of conditions. While this information is useful, access to it is limited and broader assessments about the program are narrow.

**Collect on a wider set of variables to permit an evaluation of the program.** If USCIS develops a partnership with Commerce, data collection and analysis could be designated within the latter’s purview.

Two types of reports would be valuable. The first would be an annual report produced on the state of the program, using data collected through the I-924A form. This annual report would provide a basic description of regional centers, investors, and investments. For example:

- ▶ How many regional centers are operating, in which jurisdictions are they located, and which industries do they support?
- ▶ What is the economic impact of EB-5 spending, and how many jobs have been supported directly and indirectly by the program?
- ▶ How many investors have invested capital, and in how many projects? From what countries are the investors coming?

- ▶ How many investors have received a green card and how long did it take?
- ▶ How many investors did not meet the job creation requirement?
- ▶ What is the total amount of investment across all regional centers? In which particular regions and industries did the investment occur?
- ▶ Beyond direct job creation, what is the indirect impact of the EB-5 regional center program on local economies?

Some of these data exist, but are not available in one place. Other statistics require complex estimation conducted with clarity across the entire universe of regional centers and investors, rather than a mere sample.

A second report would be a one-time, in-depth, longitudinal evaluation of the program. In addition to the questions listed above, there would be deeper economic impact questions involved, with answers that would be valuable to an assessment of the program, and especially important for regions considering this investment tool for the first time. For example:

- ▶ How many estimated jobs (direct and indirect) have been created through EB-5 investment, and in which regions and industries have they been created?
- ▶ Were they short- or long-term jobs?
- ▶ Have EB-5 investments had an impact on local unemployment?
- ▶ How many investors have seen a return on their investment, and at what rate does the average investment turn around?
- ▶ What share of total investment in projects has come from EB-5 sources, and what share has come from other sources?

The Association to Invest in the USA (IIUSA) recently commissioned a report to examine state and national economic impacts and investments of the EB-5 program. The report used information obtained from a Freedom of Information Act (FOIA) request of all I-924A forms reported by regional centers for the 2010-2011 period, which compiles information from I-526 and I-829 forms. Some of the questions outlined above were estimated for a recent two-year period, with the focus on economic impacts associated with EB-5 investors and their households.

The analysis estimated that spending associated with EB-5 investors contributed \$2.65 billion to U.S. GDP and supported over 33,000 jobs nationally during this period. Furthermore, an estimated \$347 million to federal tax revenues and \$218 million to state and local tax revenues were generated for the two-year period. The top ten impacted sectors were: construction (nonresidential); food services and drinking places; wholesale trade businesses; real estate establishments; securities, commodity contracts, investments, and related services; legal services; employment services; architectural and engineering services; offices of physicians, dentists, and other health practitioners; and private hospitals.<sup>59</sup> While this effort is valuable and illuminating, the practice of evaluating the program's effects—or at least making available the program evaluation data—should fall to the program's administrator and be delivered to the public on a continual and regular basis. The DHS OIG audit also recommended that USCIS produce a comprehensive review of the program (see **Box: DHS Office of Inspector General Audit (OIG) and USCIS Response**).

The regional centers highlighted above—CMB Export, CanAm's PIDC, and City of Dallas Regional Center—have a fair amount of up-to-date information available on their websites regarding their projects and investments. While this information is likely directed primarily toward potential investors, the fact that some regional centers make this data available on their websites indicates that they do monitor their own activities. Designing a template to collect more information than the current I-924A form would not be an onerous task. For example, CanAm's website presents a track record for PIDC as of May 2013 that includes, for each project, the loan amount, number of investors, I-526 approvals, I-829 approvals, and percent of principal repaid.

With these data, USCIS, Commerce, potential investors, and regional centers will be able to better evaluate the EB-5 program, and it is imperative that the evaluations are released in a timely fashion so that the program can benefit from these insights. Evaluations will also help improve the program's image with the public, potential investors, and regional leadership.

This kind of transparency and assessment would contribute greatly toward understanding the success and failure of projects and regional centers going forward.

## Conclusion

The uses of EB-5 financing addressed in this paper offer a new perspective on strengthening the regional utility of the program. Using the suggestions outlined above to address EB-5 challenges should increase investors' visa security and, thus, their confidence and willingness to invest; maximize the immediate economic impact of EB-5 dollars; and more directly aim EB-5 funds toward strategic economic development goals. When used in this way, EB-5 funding will better achieve the goals set out by the original program: that is, to stimulate economic activity, especially in economically distressed areas of the country.

With the possibility of broad immigration reform looming, there is an opportunity to ensure a more predictable EB-5 process for investors and regional centers alike by moving key functions to the Department of Commerce, such as regional center adjudication, a standardized system of measuring job creation, and the production of regular and reliable program-related data.<sup>60</sup>

Direct partnerships between regional centers and economic development agencies (EDAs) have proved successful in the past. We propose that, since these entities already share development goals, they may benefit from working together. An added incentive would be the elimination of targeted employment area standards for projects involving this kind of partnership, since it is likely that EDAs, with the public interest in mind, know best where investments are needed most. Finally, the program can only benefit from more (and better) information about its impacts. An evaluation that examines the program in the aggregate—both its successes and failures—can help the program over the longer term.

The ultimate objective of any changes to the EB-5 program should be to ensure a sustainable program that neither impedes investment, development, or regional job growth nor puts immigrants at risk of fraud.

## Appendix: Data and Methods

### EB-5 Visa Data

We use data on immigrant visas (I-526 application for conditional residence) obtained directly from tabulations by the Department of Homeland Security Office of Immigration Statistics. These data include EB-5 visa conditional admissions for the period 1992–2012, and identify pilot and non-pilot entries, investor and family member entries, and country of origin. We also use data from the Department of State on removal of conditions for legal permanent residence (I-829 application for removal of conditions).

### Regional Center Data

To create a data set of all regional centers, including date of designation and geographic scope, we used original designation letters from U.S. Citizen and Immigration Services (USCIS), obtained through a Freedom of Information Act (FOIA) request in May of 2012. We obtained a 1,435 page document via that FOIA request, which was to include original designation letters for all regional centers in existence at the time. These letters also included some amendments when regional centers expanded their original geography or industries. We used the letters from the FOIA request to construct a baseline data set; we then included additional letters for any missing or new regional centers, obtained from websites or directly from the regional centers.

A review of the designation letters included in the May 2012 FOIA request revealed that there were letters for 197 of these regional centers.<sup>61</sup> Through internet research we acquired the designation letters for five additional regional centers that were operating at the time of the FOIA request but were excluded in the FOIA letters, bringing the total number in our database to 202.<sup>62</sup> On February 22, 2013, we compared our count of 202 to the updated list of regional centers on USCIS' website. Since May 2012, another 21 regional centers had opened, bringing the total number of unique regional centers to 223. Through internet research and contacting regional centers for which we had no letters, we acquired seven additional designation letters, bringing the total number of letters in our database to 209, out of 223 regional centers. The final 14 for which we did not have letters were all recently opened regional centers that did not yet have working websites with contact information.

Since then, many more regional centers and affiliates have opened. According to the USCIS website, approximately 400 are authorized to operate as of November 2013.<sup>63</sup>

## Endnotes

1. Audrey Singer is a senior fellow with the Brookings Institution's Metropolitan Policy Program. Camille Galdes is currently an associate at the Pew Charitable Trusts. All supporting research for this paper was performed while Camille was a research assistant for the Brookings Metropolitan Policy Program.
2. Knight Frank Research and Citi Private Bank, "The Wealth Report 2012," 2012 (<http://www.thewealthreport.net/The-Wealth-Report-2012.pdf>).
3. Information on some of the recent high-profile fraud cases and allegations can be found here: <http://www.oyetimes.com/lifestyle/immigration/56549-like-flies-to-honey-eb-5-investor-visas-keep-attracting-interesting-people>.
4. USCIS director's DHS nomination was held up by an Inspector General investigation into whether he improperly used his role to help EB-5 investors obtain visas. He was confirmed on December 20, 2013. See: <http://www.nationaljournal.com/defense/senate-confirms-dhs-nominee-despite-ig-probe-20131220>.
5. The original EB-5 program was created after Canada initiated a similar investor program that successfully attracted investors at a time when Canada was coming out of a recession in the late 1980s. Several other countries currently have investor visa programs, including Australia and New Zealand.
6. Must be a "new commercial enterprise," or have been established after 1990. A business may also classify as "troubled," triggering different requirements. See full requirements and definition of TEAs: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac8-9243c6a7543f6d1a/?vgnextoid=fac83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=fac83453d4a3210VgnVCM100000b92ca60aRCRD>.
7. See: James Kelleher, Karin Matz, and Melanie Lee, "Special Report: Overselling the American Dream Overseas." Reuters, December 22, 2010; and Walter F. Roche Jr., "Interbank Sent INS Fraudulent Documents, Witnesses Say," *Baltimore Sun*, April 4, 2001.
8. USCIS Policy Memorandum, May 2013. (<http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>).
9. Until recently, Canada, Australia, and the U.K. had comparable investor visa programs. Prior to 2012, Canada and Australia required a minimum investment to be made directly to the government, free of middlemen. Canada required at least CA\$800,000 in investment, while Australia required AU\$1.5 million, but both countries guaranteed that the principal investment would be returned after a set number of years. Since 2012, Canada and Australia have moved to more of an entrepreneur model, similar to that of the U.K. investor visa that existed prior to 2011, wherein immigrants must invest their money in an at-risk venture. While the U.K. investor visa program is now closed, there is another visa program for entrepreneurs. All three countries offer multiple paths of entry for business individuals, wherein a list of criteria ranging from business experience to net worth and demographic characteristics are evaluated on a points system and require no coordination with a third party.
10. The word "pilot" was struck from the program's title in the most recent legislation. PL 112-176, 126 Stat. 1325. Sept. 28, 2012. *Congressional Record*, p. D942. 112th Congress. (<http://npl.ly.gov.tw/pdf/7994.pdf>).
11. USCIS Policy Memorandum, May 2013. (<http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>).
12. Debt payments were originally considered acceptable "capital," but the Administrative Appeals Office reversed this policy in its 1998 precedent rulings. See page 8 of 2005 Citizen and Immigration Ombudsman report for full discussion of these changes, [https://www.dhs.gov/xlibrary/assets/CIS\\_Ombudsman\\_EB-5\\_Recommendation\\_3\\_18\\_09.pdf](https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf).
13. USCIS Policy Memorandum, May 2013. (<http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>).
14. For more information on regional centers, see: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=2785a5f224a2e210VgnVCM100000082ca60aRCRD&vgnnextchannel=2785a5f224a2e210VgnVCM100000082ca60aRCRD>.
15. All jobs created by a project can be attributed to each individual investment; in this sense, the jobs created are also pooled and individual investments can satisfy the requirements more easily.

16. There are three economic impact models used to analyze job creation and economic impact of EB-5 financing: RIMS-II (Regional Input-Output Modeling System); IMPLAN (Impact Analysis for Planning); and REMI (Regional Economic Models, Inc.). For a good discussion of the advantages and limitations of each model, see: AKRF, "IMPLAN, RIMS-II and REMI Economic Impact Models: Comparisons in Context of EB-5 Analysis." See: <http://www.akrf.com/>.
17. See the I-924A form here: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=256866fcd667c210VgnVCM100000082ca60aRCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.
18. See Form I-526: <http://www.uscis.gov/files/form/i-526.pdf>.
19. For a complete review of the immigrant investor process, see: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=8bf89ea1c35be210VgnVCM100000082ca60aRCRD&vgnnextchannel=8bf89ea1c35be210VgnVCM100000082ca60aRCRD>.
20. See Form I-829: <http://www.uscis.gov/files/form/i-829.pdf>.
21. See the USCIS website: <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>.
22. Brookings analysis of USCIS regional center designation letters obtained through a FOIA request and independent research. See appendix for further details.
23. Although we counted 223 unique regional centers by February 22, 2013, we were only able to gather designation letters for 209 of these regional centers. Therefore, we recorded and mapped the geographic scope of 209 of 223 regional centers.
24. Alabama, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Massachusetts, Mississippi, Montana, Nevada, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont
25. Angeliqe Brunner and David M. Morris, "Realizing the Economic-Development Goals of EB-5 through an Integrated Targeted Employment Area Definition," *Bender's Immigration Bulletin* (2009): 1290-1294.
26. GAO, "Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors." p.3. April 2005.
27. See, for example: The Florida Equity and Growth Fund Regional Center website, <http://www.eb5-visaprogram.com> and the American Liberty Regional Center, [http://www.americanlibertyeb5.com/the\\_eb5\\_program/benefits/index.html](http://www.americanlibertyeb5.com/the_eb5_program/benefits/index.html).
28. In 2011, 65 percent of a total of 3,340 EB-5 visas went to immediate family members of investors. Among all other employment-based visas, 55 percent were allocated to family members.
29. Lauren A.E. Schuker, "Courting the Chinese Buyer," *The Wall Street Journal*, June 21, 2012. (<http://online.wsj.com/news/articles/SB10001424052702304765304577478573004173212>); "China's Real Estate Bubble." CBS News, *60 Minutes*. August 11, 2013. (<http://www.cbsnews.com/news/chinas-real-estate-bubble-11-08-2013/>); and Zheng Wang, "Why China's New Rich Want to Emigrate." *The Diplomat*, November 5, 2013. (<http://thediplomat.com/2013/11/why-chinas-new-rich-want-to-emigrate/>).
30. USCIS Quarterly Statistics. June Preliminary 2012 data from Performance Analysis System (PAS). April 23, 2012 (updated July 19, 2012) ([http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/Upcoming%20National%20Engagement%20Pages/2012%20Events/July%202012/EB5\\_Statistics\\_Q3\\_2012.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/Upcoming%20National%20Engagement%20Pages/2012%20Events/July%202012/EB5_Statistics_Q3_2012.pdf)).
31. The investment threshold has remained steady throughout the entire history of the program (\$500,000 for projects located in a TEA and \$1 million outside of TEAs). Whether the investment threshold should be adjusted for inflation is another consideration. Half a million dollars in 1992 would be worth more than \$830,000 in 2013. It could be argued that an adjustment would increase the chance that jobs are created and could potentially infuse more funds into local areas.
32. The EB-5 visa is different from other employment-based permanent residency visas in that the immigrant submits an application for the visa. All other employment-based visas are submitted by the employer on behalf of the immigrant.
33. Antonio Olivo, "Fast Track to the American Dream," *Chicago Tribune*, July 15, 2012.

34. James Kelleher, Karin Matz, and Melanie Lee. "Reuters Special Report: Overselling the American Dream Overseas," Dec. 22, 2010 (<http://www.reuters.com/article/2010/12/22/us-usa-immigration-business-idUSTRE6BL2KJ20101222>).
35. Ibid. In addition, websites tout regional center connections to former government officials as a selling point; see, for example: <http://usfreedomcap.com/eb-5-visa/>.
36. GAO, "Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors, pp. 12-13. April 2005.
37. Ibid.
38. See: <http://www.sec.gov/litigation/litreleases/2013/lr22615.htm>.
39. See: <http://www.eb5insights.com/2012/03/23/eb-5-investors-file-suit-against-new-orleans-regional-center/>.
40. See: <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-210.pdf>.
41. By economic development agencies (EDAs), we refer to all economic development entities, including regional public-private partnerships, economic development finance agencies, chambers of commerce, and other entities that facilitate development, including foreign direct development.
42. Distance traveled to work has been increasing in recent years, and close to 40 percent of workers commuted outside their county of residence in 2010. See: Steve Polzin and Alan Piasarski, "Commuting in American 2013, Brief #5 #15" (forthcoming) (Washington: American Association of State Highway and Transportation Officials, 2014). [www.traveltrends.transportation.org](http://www.traveltrends.transportation.org) In addition, part of the definition of a metropolitan area includes commuting ties between counties. See: William H. Frey, Jill H. Wilson, Alan Berube, and Audrey Singer, "Tracking Metropolitan America into the 21st Century: A Field Guide to the New Metropolitan and Micropolitan Definitions" (Washington: Brookings Institution, 2004).
43. The program requires that a minimum of 10 jobs be created or preserved, and USCIS tracks only if that minimum requirement has been met. Furthermore, that calculation is really only a modeling exercise designed to produce the 10 jobs. If more jobs are created, that information is not tracked.
44. GAO, "Immigrant Investors," April 2005.
45. See American Life Inc.'s Homeplate Center project: <http://www.amlife.us/real-estate-portfolio/property/homeplate-north1>.
46. Letter from the Association to Invest in the U.S.A. (IIUSA) to Senior Advisor to the President Valerie Jarrett, May 9, 2013, <http://iisablog.org/wp-content/uploads/2013/05/IIUSA-ltr-to-WH-re-processing-backlog.pdf>.
47. See: [http://www.judiciary.senate.gov/legislation/immigration/amendments/Leahy/Leahy2-\(MRW13335\).pdf](http://www.judiciary.senate.gov/legislation/immigration/amendments/Leahy/Leahy2-(MRW13335).pdf).
48. See the Select USA website: <http://selectusa.commerce.gov>.
49. Select USA's mission is to promote the United States as "the world's premier business location and to provide easy access to federal-level programs and services related to business investment. SelectUSA is designed to complement the activities of our states—the primary drivers of economic development in the United States." <http://selectusa.commerce.gov/about-selectusa>.
50. The Economic Development Administration is focused on fostering regional economic development efforts in communities across the nation through strategic investments. <http://www.eda.gov/about/>.
51. See: discussion of the advantages and limitations of three economic impact models that have been developed: RIMS-II (Regional Input-Output Modeling System); IMPLAN (Impact Analysis for Planning); and REMI (Regional Economic Models, Inc.); AKRF, "IMPLAN, RIMS-II and REMI Economic Impact Models: Comparisons in Context of EB-5 Analysis." <http://www.akrf.com/>.
52. See the DHS OIG audit of the EB-5 regional center program: [http://www.oig.dhs.gov/assets/Mgmt/2014/OIG\\_14-19\\_Dec13.pdf](http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf)
53. See: Umarji, Bharat, Scott Dyer, Alex Meyers, and Lizzy Shay, "EB-5 Investor Program and the State of Minnesota," A study by the Carlson Consulting Enterprise, no date [http://mn.gov/deed/images/EB-5\\_Whitepaper.pdf](http://mn.gov/deed/images/EB-5_Whitepaper.pdf).
54. See the City of Dallas Regional Center website: <http://cdrc.us/the-cdrc-advantage/>.

55. See the CMB Export website: <http://www.cmbeb5visa.com/about>.
56. See the CanAm Enterprises website: <https://www.canamenterprises.com/about-us.html>.
57. See City of Dallas Regional Center: <http://cdrc.us>.
58. Angelique Brunner and David M. Morris, "Realizing the Economic-Development Goals of EB-5 through an Integrated Targeted Employment Area Definition," *Bender's Immigration Bulletin* (2009): 1290-1294.
59. IIUSA, "Economic Impacts of the EB-5 Immigration Program, 2010-2011," prepared by MIG, Inc. 2013.
60. As a result of the DHS OIG audit of the EB-5 regional center program, there is also the possibility that administrative changes will occur more immediately.
61. In order to derive the final count we had to resolve duplicates and name changes, and identify defunct regional centers. There were two regional centers that had duplicative entries on the USCIS website, but not because they operate in multiple states. American Life Ventures was considered two separate regional centers, but the designation letters indicate that it is one regional center with a geography spanning two cities in Washington State. California Greenhouse Farm Regional Center and California Farm Limited Partnership also appeared to be duplicative entries for a regional center which was originally designated as "California Greenhouse Farm Limited Partnership." In some cases, regional centers had changed their names since first being established. Through secondary internet research we identified which regional centers had undergone name changes and associated them with the regional centers in the current USCIS list. For example, USA California was in our dataset but no longer on USCIS' list; since it appears to be associated with USA Continental Regional Center (founded by the same person), we treated this as a name change. There were two regional centers from the designation letters that are no longer listed on USCIS' list and which appear to no longer be in operation: Wave House California Regional Center and Riverside PUMA Regional Center. There were also three regional centers which had expanded their geography since our data was gathered: Northern California Regional Center (into Nevada), American Life Regional Center (into Oregon), and Chicagoland Regional Center (into Indiana and Wisconsin). However, there were two regional centers for which the geography was more limited on the USCIS website than was evident by the designation letters: Atlantic Regional Center of Foreign Investment (missing South Carolina) and Gulf Coast Funds Management (missing Louisiana). It is not clear to us whether this data is missing from the USCIS website, or if these regional centers no longer operate in certain states.
62. This excludes three defunct regional centers: Wave House California Regional Center, Riverside PUMA Regional Center, and Mamtek Regional Center.
63. See the USCIS website: <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>.

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