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## Comment Submitted by American Immigration Lawyers Association

Posted by the **U.S. Citizenship and Immigration Services** on Oct 24, 2022

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Comment

The American Immigration Lawyers Association respectfully submits its comments to USCIS in connection with the 60-day notice for proposed Form I-526E. Please see the attached file.

Attachments 1

 AILA Comment on Proposed Form I-526E

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**Comment ID**

USCIS-2007-0021-0080

 **Tracking Number**

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October 21, 2022

Samantha L. Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Ave. NW,  
Washington, DC 20529-2240

**Submitted via [www.regulations.gov](http://www.regulations.gov)**

OMB Control No.: 1615-NEW  
Docket ID: USCIS-2022-0010

**Re: Agency Information Collection Activities; Form I-526E, Immigrant Petition by Regional Center Investor**

Dear Ms. Deshommes:

The American Immigration Lawyers Association (“AILA”) respectfully submits the following comments (collectively the “Comment”) to the above-referenced Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activities: Form I-526E, Immigrant Petition by Regional Center Investor, (USCIS OMB Control No. 1615-NEW; Docket ID USCIS-2022-0010) (hereinafter “Proposed Form I-526E”) published in the Federal Register on August 29, 2022.

Established in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws, including on the requirements of the EB-5 Immigrant Investor Visa program. Our members’ collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

First, we applaud efforts U.S. Citizenship and Immigration Services (USCIS) has initiated to repost the many new EB-5 Program forms to comply with traditional notice-and-comment rulemaking practices and in a manner consistent with the recent settlement in the Behring case. We also applaud USCIS for scheduling an upcoming stakeholder engagement to improve the EB-5 immigrant investor program. We hope this is just the first step by the Immigrant Investor Program

Office (IPO) to provide genuine input and exchange of ideas from stakeholders and interested parties. We hope these and other meaningful engagement efforts will lead to greater confidence in the EB-5 program on the part of stakeholders, the public, and the international community of investors.

Beyond commenting on reposted forms, AILA also urges USCIS to also engage the public in its policy formulation and Policy Manual updates. We hope our participation in this larger dialogue will assist USCIS in building a transparent and stable investment immigration program.

USCIS states that it is seeking comments on the proposed new Form I-526E and the accompanying instructions. While the forms are satisfactory in certain respects, we believe specific aspects require additional revisions and changes. Today, we submit the following comments, which we believe will assist both USCIS and program participants by eliminating confusion in certain sections, tracking more precisely the regulations in other sections, and incorporating recent policy and procedural changes required by the RIA and the Behring settlement.

### **Form I-525E Instructions**

- Page 1 General Instruction Section / Signatures Minors and Mentally Incompetent**

The Instructions direct that if the petitioner is a minor (under 14) or mentally incompetent a parent or legal guardian may sign the petition on the investor's behalf. The instructions provide as follows:

*Signature. Each petition must be properly signed and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature. If you are under 14 years of age, your parent or legal guardian may sign the petition on your behalf. A legal guardian may also sign for a mentally incompetent person.*

**AILA Comment:** AILA applauds the USCIS for expressly confirming that an EB-5 Petitioner can be a minor (under 14) or mentally incompetent person.

- Page 1 General Instruction Section / Biometric Services Appointment**

The Instructions now establish that the petitioner may be required to provide biometrics but is required to pay a separate biometric services fee of \$85. The Instructions provide as follows:

*Biometric Services Appointment. USCIS may require that you appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks. After USCIS receives your petition and ensures it is complete, we will inform you if you need to attend a biometric services appointment. If an appointment is necessary, the notice will provide you the location of your local or designated USCIS Application Support Center (ASC) and the date and time of your appointment or, if you are currently overseas, instruct you to contact a U.S. Embassy, U.S. Consulate, or USCIS office outside the United States to set up an appointment.*

### **AILA Comment:**

Nearly all petitioners reside overseas at the time of filing the I-526E Petition. AILA is very concerned about the plan to schedule biometrics for a petitioner living overseas, and whether this will cause a delay for adjudicating petitions based on State Department and overseas Consulate availability to accommodate such appointments.

U.S. Consulates are not sufficiently staffed and equipped to serve as a biometrics processing center for USCIS, which raises the question of whether USCIS has developed protocols with Department of State to capture biometrics abroad. Note that not every petitioner will have a valid visitor visa to enter the U.S. to execute a biometrics obligation. For those petitioners, applying for a tourist visa while a Form I-526E petition is pending will most certainly complicate any nonimmigrant visa intent determination. Also, it is hoped that USCIS will not deny a Form I-526E petition on grounds of abandonment if the petitioner with a visa is unable to enter the U.S. to comply with biometrics scheduling.

AILA urges USCIS to delay implementation of any biometrics processing requirement until such time as reliable and easily satisfied procedures are developed to accommodate overseas petitioners.

### **Form I-526E**

#### **• Part 2 Information About You / Question 19**

The Form requires the Petitioner provide employment information as noted:

##### ***Employment History***

Provide your employment history. List present employment first. If you need extra space to complete this section, use the space provided in **Part 12. Additional Information**.

19. Have you ever been employed?

Yes  No

If you answered "Yes" to **Item Number 19.**, provide the following information for **any previous employment**.

The corresponding Instructions provide as follows:

*"Item Numbers 19. - 22. Employment History. Provide your current employment information and **all prior employment** information. Indicate the full legal name of the employer and address of employment, job title, and dates of employment for each position."*

### **AILA Comment**

AILA strongly objects to the overly broad language of "all" and "any" to mandate Petitioner's disclosure of prior work history. For example, assume a Petitioner is 60 years old. Imagine the work history and number of jobs held over a 40-year career, most of which would likely have no impact on petitioner's eligibility for the benefit sought. Compliance with Question 19 is exceptionally burdensome without any corresponding relevant adjudication justifications.

Further, and as noted in Part 5, Question 10, a petitioner may demonstrate lawful source of funds by many different means (loan, sale of real estate, gift, loan, etc) that are likely to have no significant connection to lifelong employment history. If the petitioner seeks to demonstrate lawful source from employment income, there will be specific and targeted evidentiary records supplied that may date back many years. In the absence of needing to document employment (due to gift for example), there is no justification for mandating the disclosure of a lifelong employment history.

This Question should be modified to, at most, capture a five-year employment tracking period which would be equivalent to the requirement for address history in Part 2 Question 16-18.

- **Part 2 Information About You / Questions 24, 27, 32**

The Form requires the Petitioner provide information about entry to the U.S. as noted:

**Part 2. Information About You (continued)**

**Your Entry Into the United States**

23. Date of Arrival (mm/dd/yyyy)

Place of Arrival or Port-of-Entry

24. City or Town

25. State

26. I-94 Arrival-Departure Record Number  
►

27. Date Period of Authorized Stay Expires/Expired (mm/dd/yyyy)

28. Passport Number or Travel Document Number

29. Country That Issued Passport or Travel Document

30. Date Passport or Travel Document Expires (mm/dd/yyyy)

31. Current Nonimmigrant Status (if applicable)

32. Date Current Nonimmigrant Status Expires (mm/dd/yyyy)

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**AILA Comment**

First, AILA recommends modification of the form by inserting introductory language above the “Your Entry Into the United States” to read “*If you are currently in the United States, you must answer questions 23 to 32. If you are not currently in the United States, skip to Part 3.*” A majority of petitioners file from abroad and this clarification will help them better understand and more accurately complete the form. Note, for example, the Service’s use of helpful introductory language in Part 3. That same format should be followed in Part 2 as well.

Second, the proposed instructions for Question 24/25 provide that “**Item Numbers 24. - 25. Place of Arrival or Port-of-Entry.** Provide the city/town and state where you arrived in the United States.” AILA recommends that Form and Instructions for Question 24/25 should be amended to specifically allow petitioner opportunity to simply report the name of Port of Entry (POE). Petitioners are likely to be confused about the actual city or state of entry if arriving through a POE. For example, a petitioner landing at Washington-Regan National Airport (DCA) is likely to believe he landed in Washington DC (and report that in error on the Form) when in fact

he landed in Arlington, Virginia. A petitioner landing at LaGuardia or JFK Airports are likely believe he landed in New York, NY (and report that in error on the Form) when in fact he landed in Queens, NY. The Form should allow petitioner to note the place of admission as a POE.

Third, Questions 27 and 32 both seek information about status expiration dates. These are technical issues and likely to confuse the Petitioner. AILA urges USCIS to provide greater clarification in the accompanying instructions to explain when and why the petitioner might have different status expiration dates, including the situations when a status is changed after admission through a benefits request and subsequent issuance of Form I-797 Notice of Approval.

- **Part 3 Information About Your Spouse and Children**

Part 3 requires the Petitioner provide basic biographical information about the spouse and children, and reads as follows:

**Part 3. Information About Your Spouse and Children**

List your spouse and all of your children. Also, note if the individual will be applying for a visa abroad or for adjustment of status as your dependent. If you need additional space to list other children, use **Part 12. Additional Information**.

**Family Member 1**

1. Family Name (Last Name)	Given Name (First Name)	Middle Name (if applicable)
<input type="text"/>	<input type="text"/>	<input type="text"/>
2. Date of Birth (mm/dd/yyyy)	3. Country of Birth	
<input type="text"/>	<input type="text"/>	
4. If spouse, Country(ies) of Citizenship (current and relinquished)		
<input type="text"/>		
5. Relationship to You <input type="checkbox"/> Spouse <input type="checkbox"/> Child		
6. Applying for Adjustment of Status? <input type="checkbox"/> Yes <input type="checkbox"/> No      7. Applying for Visa Abroad? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

**AILA Comment**

AILA is very concerned by the broad language of Part 3 which requires the petitioner speculate as to the future intent of each family member to seek derivative immigrant classification. It is entirely appropriate for the petitioner to list all family members for identification purposes. However, a family member's individual decision to ultimately apply / not apply for derivative immigrant benefits should not be the speculation of the petitioner reported upon submission of the Form I-526 Petition. For example, it is common for the investor and children to seek EB-5 benefits, while the investor's spouse intentionally elects to not pursue any immigrant benefits. In current form, Part 3 demands the reporting of the name of such non-participating spouse and such listing could impute immigrant intent, thus complicating future nonimmigrant visa applications and admissions.

Moreover, Question 6 is inappropriate as it requires the petitioner to speculate on the family member's future intent to seek consular or adjustment of status processing. The accompanying instructions provide:

***Item Numbers 6. - 7. Permanent Residence.*** *Indicate whether the person will seek lawful permanent resident status by selecting the appropriate boxes to indicate whether the person will apply for adjustment of status or for an immigrant visa abroad.*

AILA recommends the Form be modified to simply direct petitioner to list and provide basic biographical information on spouse and children, and not speculate about their individual decisions to ultimately pursue benefits and how that might be accomplished.

- **Part 4 Information About Your Regional Center and Project Application**

Question 4 requires the petitioner provide information pulled from the Form I-956F to determine if the investment meets one or more specified categories, as follows:

4. Indicate whether the offering and project in the Form I-956F associated with your petition is based on an investment in the following (select **all** that apply):
  - Rural Area
  - High Unemployment Area
  - Infrastructure Project
  - High Employment Area
  - None of the Above

**AILA Comment**

AILA recommends the elimination of “High Employment Area” category option. The Instructions provide that

***“High Employment Area.*** *A high employment area is an area experiencing unemployment significantly below the national average unemployment rate. The investment amount required in a high employment area is the same as the standard investment amount.”*

However, the phrase “significantly below” is not defined. In the absence of a specific and objective testing criteria, this option should be removed.

- **Part 5 Information About Your Investment**

Question 1 requires the petitioner provide information about completed and prospective investment activities, as follows:

## Part 5. Information About Your Investment

1. Enter the amount and date of your investment(s) in the NCE. If you are actively in the process of investing capital in the NCE, enter the amount and date you anticipate making the investment. If you need additional space, use the space provided in **Part 12. Additional Information**.

Date of Investment (mm/dd/yyyy)	Amount of Investment
	\$
	\$
	\$
	\$
Total	\$

The corresponding Instructions provide:

**“Item Number 1. Dates and Amounts of Your Investment.** Provide the date(s) and amount(s) of your investment in the NCE in a month/day/year format. If you are actively in the process of investing capital, provide the date(s) and amount(s) you anticipate making the investment.”

### AILA Comment

AILA finds the table response formatting for Question 1 confusing. Petitioner is directed to consolidate into a single table both completed investment activities and prospective activities. AILA recommends the table separate completed activities from prospective activities.

Question 2 also needs to be clarified to read “*Total Amount of Cash Deposited or Committed to Deposit into U.S. Business Accounts for NCE, including qualified escrow accounts.*” This change would better inform the petitioner and correspond with the accompanying instructions.

## • Part 5 Administrative Costs and Fees / Question 8

Question 8 requires the Petitioner provide information about “all” administrative costs and fee, as follows:

### *Administrative Costs and Fees*

8. Enter the date and amount of **all** administrative costs and fees associated with your investment.

Date (mm/dd/yyyy)	Amount
	\$
	\$

The Instructions direct the Petitioner as follows:

**Item Number 8. Administrative Costs and Fees.** Provide the date(s) and amount(s) of **any** administrative fees you paid associated with your investment in the NCE in a month/day/year format.

**AILA Comment**

The form and instructions use overly broad language of “all” and “any” to mandate petitioner’s disclosure of administrative fees and costs. AILA is extremely concerned that the instructions fail to provide any meaningful guidance defining the terms “administrative fees and costs.” Petitioner is only left to guess at the scope of the request.

For example, under the current question’s language, it is unclear whether the Petitioner must report such items as: immigration legal fees; corporate lawyer legal fees for due diligence review of offering; all translation fees; interpreter fees; accounting professional fees for lawful source of funds analysis; and any investment advisor fees. AILA urges USCIS to provide additional clarification to this question and accompanying instructions and recommends limiting this question to administrative fees paid to the new commercial enterprise. Fees paid directly by the investor to his or her own advisers are outside of the scope of the Form I-526E petition.

• **Part 5 Administrative Costs and Fees / Question 9**

Question 9 requires the petitioner provide information about net worth, as follows:

<i>Your Net Worth</i>	
9. Your Current Net Worth	\$ <input type="text"/>

**AILA Comment**

AILA strongly objects to this question for multiple reasons. First, the instructions provide no guidance or clarification to answer Question 9. Second, and more importantly, a petitioner’s net worth is not a requirement or factor appearing in the RIA, regulations or Policy Manual. Moreover, net worth is not naturally connected to lawful source of funds or path of funds eligibility requirements. For example, net worth is not dispositive to any Form I-526E adjudication if the petitioner is receiving a gift or loan to make the investment.

Further, this inquiry is an unnecessary and overly broad intrusion into the privacy of the petitioner by demanding highly confidential information unrelated to any eligibility criteria. This question should be eliminated in its entirety.

• **Part 5 Your Sources of Investment Capital / Question 10**

Question 10 requires the Petitioner identify the sources of the capital invested or actively in the process of being invested into the NCE, as well as any funds used to pay administrative costs and fees associated, as follows:

### ***Your Sources of Investment Capital***

10. Please identify the sources of the capital you have invested or are actively in the process of investing into the NCE, as well as any funds used to pay administrative costs and fees associated with your investment. (Select **all** that apply)

- Income
- Loan Proceeds (including mortgage of real estate)
- Sale of Real Estate
- Gift (including capital obtained through inheritance)
- Tangible Assets (Equipment, Inventory, etc.)
- Insurance Proceeds
- Sale of Securities
- Other (Specify in the space below)

### **AILA Comment**

AILA urges the current text of Question 10 be deleted and replaced with the superior structure and formatting of Form I-526, Part 4, Question 14, in which each source is specifically listed alphabetically. Separately labelling each source alphabetically results in greater specificity and accountability. This highly preferred format is found below:

### ***Your Sources of Investment Capital***

Please identify the sources of the capital you have invested or are actively in the process of investing into the NCE, as well as any funds used to pay administrative costs and fees associated with your investment. (Select all that apply.)

14. A.  Income  
B.  Loan Proceeds (including mortgage of real estate)  
C.  Sale of Real Estate  
D.  Gift (including capital obtained through inheritance)  
E.  Tangible Assets (Equipment, Inventory, etc.)  
F.  Insurance Proceeds  
G.  Sale of Securities  
H.  Other (Specify in the space below)  
I. In the space below, describe the documentation included with this petition to demonstrate that the capital you have invested or are actively in the process of investing, as well as any funds used to pay administrative costs and fees associated with your investment, was obtained through lawful means. Read the Lawful Capital section of the Form I-526 Instructions for a list of documents that must be included with the petition.

### **• Part 7. Bona Fides of Persons Involved With Regional Center Program**

Part 7 and Questions 1 to 13 require information from a Petitioner that holds a “position of substantial authority” in the NCE, JCE or RC. The introduction provides as follows:

## Part 7. Bona Fides of Persons Involved With Regional Center Program

Each person involved with a regional center, NCE, or affiliated JCE must answer the questions below. A person is involved with a regional center, NCE, or affiliated JCE if the person is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance or control or use of any funding. A person may be in a position of substantive authority if they serve as a principal, a representative, an administrator, an owner, an officer, a board member, a manager, an executive, a general partner, a fiduciary, an agent or in a similar position at the regional center, NCE, or affiliated JCE.

Each petitioner must answer the questions in their capacity as an owner of the NCE associated with the Regional Center.

1. Have you committed a criminal or civil offense involving fraud or deceit within the previous 10 years?  Yes  No
2. Have you ever committed a criminal or civil offense involving fraud or deceit that resulted in a liability in excess of \$1,000,000?  Yes  No
3. Have you ever committed a criminal or civil offense for which you were convicted and sentenced to a term of imprisonment of more than 1 year?  Yes  No

The instructions mandate the petitioner “answer “Yes” to any question that applies, even if the records were sealed or otherwise cleared, or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record. You should also answer “Yes” to the ... questions whether it occurred here in the United States or anywhere else in the world.”

### **AILA Comment**

A vast majority, if not all, of the petitioners in Regional Centers serve only as a limited partner in the NCE with no role in its daily management or operations, which is allowable under the regulations, USCIS policy and now the RIA. As a result, a position of “limited authority (as limited partner) does not therefore meet the definition of a “position of substantial authority.” Accordingly, USCIS should revise Part 7 to begin with a “Yes/No” question such as *“Does the Petitioner’s role in the NCE or JCE exceed that of a limited partner?”* If you answer No to the above, skip to Part 8. If you answered Yes, answer the below questions.”

Additionally, Questions 12 and 13 seem totally without merit and appears only to target a petitioner-investor seeking immigrant classification who is also a practicing lawyer in the United States. It is hard to imagine such a fact pattern exists, but in the rare instance it does – there is insufficient justification to further expand the form to include two separate questions to that extraordinarily small universe of potential petitioners. AILA urges the removal of Questions 12 and 13.

### **Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-526E and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION