Form I-526-014 Revision – USCIS Responses to 60-day FRN Public Comments

60-day FRN Citation (federalregister.gov): 87 FR 51696
Public Comments (regulations.gov): USCIS-2007-0021
Publish Dates: August 23, 2022 – October 24, 2022

Comment #	Commenter ID	Comment	USCIS Response
1.		**Commenter: jean publiee**	
	0079	prez biden although being aware that the citizerns of the usa do not want more immigrants being here in the usa, has by his ownb hand changed regulations to increase the number of foreigners in this coun try. he has done this although he is aware in ecvery poll that has been taken for the last tenyears that the us citizenry does not agree with him. that shows his callous behavior toward what the american citizens want. his demonic lack of integrity to work for the good of americans. this piece of work to flood the usa with foreiner to take every job we have and let some minorities sit on their butts all day long and collect checks for doing nothing is a very bad omen for america. we wer always of the principle that you work for a lioving and work for your family. now biden givr a check to every mninority on earth by building up massive debt in america, so that he is in fact maknjg america weaker andf more subject to invasion by china or russia.his actions are completely deleterious for america. how long will these foerigners work for america if an invasion comes??????? or will they run for home??????? this entire administration seems bent on the destruction of america and its citizens into complee chaos. there shoudl be no change in the way that illegals ha/ve been treated all along. tyhey should be kept out of th usa. there is no reason for this sudden attempt to change americas voting habits bny flooding the usa with foreigners. they are in fact ruining	**Response:** This comment is out of scope for the intended information collection.

		our democracy. look at the bad example of ilhan omar and her attempts to hurt america. we need to cut all immigration to zero imediately and deport all those who flooded here under this demented prez biden.	
2.		**Commenter: Klasko Immigration Law Partners LLP**	
	0081 (*see attachment*)	Please see attached letter submitted by Klasko Immigration Law Partners, LLP. In addition to the comments submitted in the attached letter, some petitioners reported that they are not able to check their I-526E case status on the USCIS' website. Also, the receipt notices issued for I-526Es filed after October 1, 2022 only included the $3,675 filing fee, but not the additional $1,000 fee for the Integrity Fund.	**Response:** See Comment Responses below labeled with Commenter ID: 0081. The information in the attachment from the public comment (0081) was separated into different sections in this comment matrix to address each portion of information on a specified form individually. **See Comment # 4 & 15. – 22.** USCIS is aware of the case status issue and is working to implement a fix. USCIS is also researching the commenter's note about receipt notices not indicating payment of the Integrity Fund fee.
3.		**Commenter: American Immigration Lawyers Association**	
	0080 (*see attachment*)	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.	**Response:** See Comment Responses below labeled with Commenter ID: 0080. The information in the attachment from the public comment (0080) was separated into different sections in this comment matrix to address each portion of information on a specified form individually. **See Comment # 4. – 14.**
4.		**Commenter: American Immigration Lawyers Association & Klasko Immigration Law Partners, LLP**	
	0080 & 0081 *(see attachments)*	Two commenters applauded USCIS for confirming that an EB-5 petitioner/investor can be a minor	**Response:** Any noncitizen petitioning for an EB-5 immigrant visa must satisfy all eligibility requirements and include the required evidence and documentation.

		(under 14) or mentally incompetent person.	
5.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 1, General Instructions: 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.	**Response:** USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometric collection. See 8 CFR 103.2(b)(9). This instruction aligns with this regulatory authority.
6.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 2, Question 19: AILA strongly objects to the overly broad language	**Response:** The EB-5 Reform and Integrity Act of 2022 requires USCIS to search the

		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 Part 2, Question 19 is exceptionally burdensome without any corresponding relevant adjudication justifications. 4 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.	alien and any associated employer on the Specially Designated Nationals List of the Department of the Treasury Office of Foreign Assets Control. See INA 203(b)(5)(R). Further, USCIS must ensure that any petitioner seeking to participate in the EB-5 Program is not a threat to the national interest of the United States. See INA 203(b)(5)(N). Consequently, USCIS must be able to review the petitioner's employment history to administer these provisions and determine the petitioner's eligibility to participate in the EB-5 Program. USCIS considered the commenter's suggestion and reassessed the burden to the public with respect to executing the statutory mandates. Accordingly, USCIS modified the requested employment history to the last 20 years of the petitioner's employment as well as any government or military service that has occurred at any time, not just within their last 20 years of employment. Note, however, that USCIS may request information or evidence related to any employer as needed on a case-by-case basis regardless of when the petitioner was employed by such employer.
7.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 2, Questions 24, 27, and 32: 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	**Response:** USCIS made the requested clarification to the section of the Form I-526 and Form I-526E regarding the petitioner's entry into the United States. USCIS asks for the city/town and state of arrival to account for petitioners that

		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 5 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	may not have arrived at a designated port-of-entry. USCIS can otherwise confirm a petitioner's entry through a designated port-of-entry, even where the petitioner identifies JFK airport as New York, NY instead of Queens, NY, for example. USCIS does not believe additional clarification is needed around the expiration date of the petitioner's status as only Item Number 32 asks for expiration of a current nonimmigrant status, if applicable.

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		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.	
8.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 3, Question 6: 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. 6 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	**Response:** This question is consistent across USCIS petitions for an immigrant visa where the petitioner is asked to identify any spouse or children that may immigrate with or follow to join the petitioner in the United States and indicate how they would seek to obtain permanent resident status, either through consular processing if residing abroad or through adjustment of status if residing in the United States. For example, this question is asked on the Form I-130, Petition for Alien Relative, and Form I-140, Immigrant Petition for Alien Workers. Selecting consular processing or adjustment of status is not binding on how the spouse or children ultimately receive status, but provides USCIS the ability to route the petition correctly for further processing if approved.

		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.	
9.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 4, Question 4: 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.	**Response:** USCIS may consider rulemaking to address this issue. USCIS notes the investment amount for a high employment area remains the same as the standard investment amount. DHS has added this response to collect data on investments that are being made in high employment areas.
10.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 5, Question 1: 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. Part 5, Question 2 also needs to be clarified to read "Total Amount of Cash Deposited or	**Response:** Part 5, Question 1 asks the petitioner to consolidate their investment in one location to ensure the petitioner has met the requirement to have invested or be in the process of investing the required amount of capital. Separating actual investment from prospective investment would not help identify that the total of the capital invested meets the amounts required by INA 203(b)(5)(C).

		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.	USCIS modified Part 5, Question 2 to more closely align with the instructions.
11.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 5, Question 8: 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.	**Response:** USCIS may consider rulemaking to address this issue.
12.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 5, Question 9: AILA strongly objects to this question for multiple reasons. First, the instructions provide no guidance or clarification	**Response:** USCIS has consistently asked for this information on the Form I-526, dating back to 2003. Congress occasionally asks for data regarding the

		to answer Part 5, 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.	net worth of individuals participating in the EB-5 Program, making this data important for USCIS to be responsive to such requests. Further, this information provides USCIS information to determine how the investor obtained their funds and provides insight in to situations where the investment capital may not be lawfully obtained, as required by INA 203(b)(5), and conduct sufficient inquiry to make a determination on the investor's eligibility for an EB-5 immigrant visa. The EB-5 Reform and Integrity Act of 2022 strengthened these requirements on USCIS to ensure an investor's eligibility and their investment capital is lawfully obtained, directly or indirectly, and remained lawful throughout the time of investment.
13.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 5, Question 10: 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.	**Response:** USCIS replicated the question from Form I-526 to Form I-526E as suggested.
14.		**Commenter: American Immigration Lawyers Association**	
	0080	In Part 7: 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."	**Response:** USCIS disagrees with the commenter regarding application of the statutory definition of "person involved" under INA 203(b)(5)(H)(v) to EB-5 investors in regional center-associated new commercial enterprises. USCIS notes that the definition includes any person directly or *indirectly* in a position of substantive (rather than "substantial" as the commenter notes) authority. This definition further specifically indicates

		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.	that it may include owners, who in many circumstances would exercise authority indirectly such as through voting rights or other means, and provides no explicit exception for owners who are EB-5 regional center investors specifically or limited partners more generally. In addition, the definition also provides broad authority to the Secretary to "otherwise determine[]" who may or may not be a person involved for purposes of compliance with the new provisions of INA 203(b)(5)(H). USCIS notes, however, that biometrics submission for EB-5 regional center investors may not be necessary under INA 203(b)(5)(H)(iii) in connection with the Form I-526E in all circumstances at this time. Consequently, USCIS will not require the submission of biometrics from EB-5 regional center investors in connection with the Form I-526E in all circumstances but may request the submission of biometrics from a Form I-526E petitioner as may be necessary under INA 203(b)(5)(H)(iii), 8 CFR 103.2(b)(9), or under other applicable authorities. The commenter also suggests that Questions 12 and 13 be removed. INA 203(b)(5)(H)(i)(IV) precludes the individuals specified by these two questions from being involved with a regional center, new commercial enterprise, or job-creating entity. No matter how small the population may be, USCIS is asking these questions in line with the statutory exclusion.

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15.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 1: The EB-5 Reform and Integrity Act ("RIA") allows good faith investors to receive relief in the statute if they are the victims of a termination or debarment of the regional center, NCE or JCE. In the event of such a termination or debarment, the good faith investor has 180 days to take action. In the case of a terminated regional center, the NCE must associate with another regional center (without respect to geographical boundaries), or the alien must make a qualifying investment in another NCE. In the case of the debarment of the NCE or JCE, the good faith investor must associate with a new NCE and invest additional capital, if necessary, to satisfy job requirements. The good faith investor must file an amended petition to document compliance with this requirement within 180 days. Such petitions may be approved without any changes being deemed material changes. In addition, any funds recovered by the investor from third parties, including insurance proceeds, shall be considered the investor's capital for purposes of complying with the capital investment requirement. The good faith investors who comply with these requirements retain their priority date. KILP Comment: There is presently no formal procedure for the "debarment" of an NCE or JCE. Since the relief available to good faith investors depends on such debarment, KILP urges the agency to publish clear guidance and	**Response:** USCIS may consider rulemaking to address this issue.

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		procedures for debarment of NCE or JCE as soon as possible.	
16.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	The instructions for Part 4, Item Numbers 1. – 3. need to be updated to comply with the settlement agreement pursuant to Behring Regional Center LLC, et al. v. Mayorkas, et al. (No. 3:22-cv-2487-VC (N.D. Cal.)) and EB5 Capital, et al. v. DHS, et al., (No. 3:22-cv-3948-VC (N.D. Cal.)). Specifically, under the settlement agreement, for an immigrant's Form I-526E petition, if a Form I-956F receipt notice is not issued within ten calendar days of physical delivery of the I-956F filing, USCIS will accept the lockbox notice along with a copy of at least the first six pages of the filed Form I-956F (Parts 1-5) for purposes of providing "the receipt number for the regional centre's Form I-956F" in order to facilitate the petitioner's ability to file their I-526E petition. In the event that a Previously Approved Regional Center does not receive a receipt or notice from USCIS within ten calendar days of physical delivery of the Form I-956F, USCIS will accept proof of cashed check or credit card charge (along with regional center name, new commercial enterprise name, job creating entity name if available, and approximate Form I-956F filing date) for purposes of providing "the receipt number for the regional center's Form I-956F." USCIS will not contest a Previously Approved Regional Center's representation that it has not received a receipt or notice.	**Response:** USCIS modified the language to "may reject" as there may be filings in the future that are not covered by the settlement in this case. USCIS also modified language in the form instructions related to evidentiary submission of the Form I-956F receipt notice.

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17.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 2, Question 19: KILP strongly objects to the USCIS' approach to mandate the Petitioner to disclose "all" prior employment information. It makes compliance with Question 19 exceptionally burdensome especially for petitioners who have long employment history. Further, it would likely have no impact on Petitioner's eligibility for the benefit sought, or the veracity of the lawful source of funds. Specifically, relating to the lawful source of funds, the Petitioner's investment capital may be derived from many different means other than employment income (such as gifts, investment gain, or sale of properties). Regardless of his/her employment, the Petitioner is always required to provide detailed evidentiary records to demonstrate lawful source of funds, and therefore, there is no justification for mandating the disclosure of a lifelong employment history. This question should be modified to, at most, capture the past ten years of employment history. Even the State Department only requires a maximum of ten (10) years of employment history on Form DS-260, and the USCIS only requires a maximum of five (5) years of employment history on Form I-485, Application to Register Permanent Residence or Adjust Status. We note also that even within 10 years, records of exact employment dates, positions, titles, etc. may not be available, and memories may not be perfect. The instructions should allow for approximate dates and the best	**Response:** The EB-5 Reform and Integrity Act of 2022 requires USCIS to search the alien and any associated employer on the Specially Designated Nationals List of the Department of the Treasury Office of Foreign Assets Control. See INA 203(b)(5)(R). Further, USCIS must ensure that any petitioner seeking to participate in the EB-5 Program is not a threat to the national interest of the United States. See INA 203(b)(5)(N). Consequently, USCIS must be able to review the petitioner's employment history to administer these provisions and determine the petitioner's eligibility to participate in the EB-5 Program. USCIS considered the commenter's suggestion and reassessed the burden to the public with respect to executing the statutory mandates. Accordingly, USCIS modified the requested employment history to the last 20 years of the petitioner's employment as well as any government or military service that has occurred at any time, not just within their last 20 years of employment. Note, however, that USCIS may request information or evidence related to any employer as needed on a case-by-case basis regardless of when the petitioner was employed by such employer.

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		information available while acknowledging that the information may not be perfect based on the passage of time.	
18.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 4, Question 4: KILP recommends the elimination of "High Unemployment Area" category option. The instructions for Form I-526E provide that 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 clear definition or criteria, this classification should be removed to avoid confusion it may cause.	**Response:** INA 203(b)(5)(C)(iv) provides DHS the ability to set a different investment amount for investments in high employment areas, which are areas that are not a targeted employment area (TEA) and is an area with an unemployment rate significantly below the national average unemployment rate. Currently, the investment amount in a high employment area is the same as the standard amount provided in INA 203(b)(5)(C)(i). DHS has added this response to collect data on investments that are being made in high employment areas.
19.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 5, Questions 2-7: It is unclear what purpose this question serves. First, unlike direct/standalone EB-5 investors, a vast majority, if not all, of the regional center investors invest only cash in the NCE. More importantly, even for situations where the investment is not in cash, the question does not capture all possibilities. For example, question #4 asks for the "Total Value of All Property Transferred From Abroad for Use in NCE", but there is no similar question relating to property transferred from within the U.S. And, there is no definition of "Other Capital".	**Response:** INA 203(b)(5)(D) defines capital as "cash and all real, personal, or mixed tangible assets owned and controlled by the alien investor, or held in trust for the benefit of the alien and to which the alien has unrestricted access." "Other capital" allows a petitioner to self-identify a type of a capital that may meet the definition at INA 203(b)(5)(D) that is not otherwise listed on the form, including property transferred in the United States for use by the new commercial enterprise. Identifying types of capital used other than cash provides USCIS information necessary to determine that the petitioner has invested the amount of capital required by INA 203(b)(5)(C).

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20.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 5, Question 9: KILP strongly objects to this Question. First, the Instructions do not provide clear definition of "Net Worth." Is the Petitioner only allowed to include liquid assets? Does the Petitioner need to do appraisals for all the assets (s)he owns? It makes answering the question exceptionally burdensome, and makes it extraordinarily likely that petitioners will use inconsistent methodologies or formulas, leading to data that is practically useless for any statistical purposes. It is also unclear why the USCIS requests such information, since it appears to serve no purpose, and would likely have no impact on Petitioner's eligibility for the benefit sought, or the veracity of the lawful source of funds-- especially since it is the USCIS's long-standing practice to disallow using net worth to demonstrate lawful source of funds.	**Response:** USCIS has consistently asked for this information on the Form I-526, dating back to 2003. This information allows USCIS to determine how the investor obtained their funds and provides insight in to situations where the investment capital may not be lawfully obtained, as required by INA 203(b)(5), and conduct sufficient inquiry to make a determination on the investor's eligibility for an EB-5 immigrant visa. The EB-5 Reform and Integrity Act of 2022 strengthened these requirements on USCIS to ensure an investor's eligibility and their investment capital is lawfully obtained, directly or indirectly, and remained lawful throughout the time of investment.
21.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 7, KILP strongly objects to this Question, and strongly disagrees with the agency's interpretation of the statute as to who are considered "Persons Involved With Regional Center Program." The RIA provides that a person is involved with a regional center, a new commercial enterprise, any affiliated job-creating entity 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 that was procured under the*	**Response:** USCIS disagrees with the commenter regarding application of the statutory definition of "person involved" under INA 203(b)(5)(H)(v) to EB-5 investors in regional center-associated new commercial enterprises. USCIS notes that the definition includes any person directly or *indirectly* in a position of substantive authority. This definition further specifically indicates that it may include owners, who in many circumstances would exercise authority indirectly such as through voting rights or other means, and provides no explicit exception for owners who are EB-5 regional center investors specifically or

		program … An individual may be in a position of substantive authority if the person serves 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, new commercial enterprise, or job-creating entity, respectively. (Emphasis added). In other words, under the statute, even if an individual is an owner of an NCE, (s)he is not a person "involved in a regional center program" if (s)he cannot make operational or managerial decisions over pooling, securitization, investment, release, acceptance, or control or use of EB-5 funding. The statute requires operational or managerial control over a very specific and limited number of activities. It is possible to be a managerial employee of an entity, with the ability to hire and fire employees, and manage important functions of a business and still not have any operational or managerial control over pooling, securitization, investment, release, acceptance, or control or use of EB-5 funding. Most employees, non-managing owners, minority shareholders, etc. will have absolutely no involvement in the management or control over these limited functions. Importantly, a vast majority, if not all, of the regional center investors serve only as a limited partner or non-managing member of the NCE and have limited control over the NCE's daily management or operations. It is absurd to think that they have any operational or managerial control	limited partners more generally. In addition, the definition also provides broad authority to the Secretary to "otherwise determine[]" who may or may not be a person involved for purposes of compliance with the new provisions of INA 203(b)(5)(H). USCIS agrees with the commenter that biometrics submission for EB-5 regional center investors may not be necessary under INA 203(b)(5)(H)(iii) in connection with the Form I-526E in all circumstances at this time. Consequently, USCIS will not require the submission of biometrics from EB-5 regional center investors in connection with the Form I-526E in all circumstances but may request the submission of biometrics from a Form I-526E petitioner as may be necessary under INA 203(b)(5)(H)(iii), 8 CFR 103.2(b)(9), or under other applicable authorities.

		over pooling, securitization, investment, release, acceptance, or control or use of EB-5 funding. More importantly, mistakenly classifying an I-526E Petitioner as "Persons Involved With Regional Center Program" unduly subject the Petitioner to biometrics requirement. Many I-526E petitioners reside overseas at the time of filing the I-526E Petition, and not all of them have a valid visitor visa to enter the U.S. to attend their biometrics appointments. Further, petitioners who need to apply for a tourist visa to travel to the U.S. will need to disclose that (s)he has a pending immigrant petition and could as a result be found ineligible for a travel visa by the State Department due to immigrant intent. KILP is very concerned about requiring biometrics for Petitioners living overseas may cause delays for adjudicating petitions, or even denials for Petitioners who are unable to travel to the U.S. to attend biometrics appointments. Finally, we note that the INA provides for grounds of inadmissibility in INA § 212. By deeming EB-5 investors to be persons involved with a regional center when they have no substantive managerial or operational control essentially creates grounds of inadmissibility that do not exist in the statute. It also exceeds the statutory eligibility requirements for EB-5 investors.	
22.		**Commenter: Klasko Immigration Law Partners, LLP**	
	0081	In Part 6, KILP suggests the USCIS to add a third option for the Petitioner who has not determined whether they wish to proceed with Immigrant	**Response:** This question is consistent across USCIS petitions for an immigrant visa where the petitioner is asked to identify any spouse or children that may

		Visa Processing or Application for Adjustment of Status at the time of filing the I-526E. KILP encourages the USCIS to give an opportunity to the Petitioner to decide later, without having to file a Form I-824, Application for Action on an Approved Application or Petition and pay a fee currently at $465 and wait an inordinate amount of time for USCIS to process the applicaiton, to transfer his/her petition to a Consulate overseas for immigrant visa processing.	immigrate with or follow to join the petitioner in the United States and indicate how they would seek to obtain permanent resident status, either through consular processing if residing abroad or through adjustment of status if residing in the United States. For example, this question is asked on the Form I-130, Petition for Alien Relative, and Form I-140, Immigrant Petition for Alien Workers. Selecting consular processing or adjustment of status is not binding on how the spouse or children ultimately receive status, but provides USCIS the ability to route the petition correctly for further processing if approved.