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## Comment Submitted by **jean ;ubliee**

Posted by the **U.S. Citizenship and Immigration Services** on Sep 6, 2022

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no one in americs is behind this new form that demented biden is pushing. he is flooding the usa with 30 millino central americans including terrorists from all over the world who will create more chaos in the usa and burn down our buildings. biden is not protctng amreica and is a totally deficient american president. he is the worst president ever. we need to deny him all powers of the presidency until his term is over. we need no changes from dementged biden

this is a change that will not help america.it wll cost more. it will hurt americans even more than the lasts ijlegal imimgant law. io am totally against this proposal. it sucks. this law taxes us americans to give away free telephones, free bus rides, free airplane rides, frere food, free housng everythig for sneak illegls with 20 forms of identificatin oin their pockets who have fentanyl on their backpacks. america is in big trouble when a president cant recognize that. big big trouble.

#### Comment ID

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- 1) Are registered representatives of a US broker-dealer required to file Form I-956K as individuals separately? Or are only US broker-dealers needed to file the form?
- 2) After the regulation becomes effective, do broker-dealers have to file Form I-956K immediately before they can promote Regional Center EB-5 projects, or will there be a grace period?
- 3) Do broker-dealers need a filing receipt of I-956K before they can promote Regional Center EB-5 projects?

#### Comment ID

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## Comment Submitted by Robert Divine

Posted by the U.S. Citizenship and Immigration Services on Sep 7, 2022

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Please see attached pdf document for my comments

Attachments 1



R Divine Comments for I-956 Forms



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## Comments from Robert C. Divine for USCIS EB-5 Forms

This constitutes comments to U.S. Citizenship & Immigration Services from Robert C. Divine in response to OMB Control Number 1615-NEW, Docket ID USCIS-2022-0010, as referenced at 87 FR 54233 on September 2, 2022.

The commenter, Robert C. Divine, is an attorney who has practiced immigration law for 36 years, authored of *Immigration Practice* (a well respected practical treatise on all aspects of U.S. immigration law) for 15 editions, served as Chief Counsel and Acting Deputy Director of USCIS (2004-2006), and been elected Vice President of IIUSA (the industry association of regional centers) for 7 years in the past. His full bio and contacts are available at [www.bakerdonelson.com/robert-c-divine](http://www.bakerdonelson.com/robert-c-divine).

The comments are provided in reference to each form for which comments were solicited, plus two other closely related forms for which comment should be solicited on the same basis.

### **General Comments**

The forms should be downloadable, fillable, and printable, with each checkbox accessible, with ample room in the fields to type answers. Format control should not be used at all, or at least very sparingly, as accurate answers in complex situations sometimes do not fit originally perceived restrictions.

### **I-956**

Instructions are too vague about what is required, particularly for establishing geography. How much detail about plan to develop businesses is required? Surely not the level of Matter of Ho, but what? Are hypothetical projects acceptable?

What types of and how much evidence is needed to establish the geographic scope? Economic impact of the types of projects presented? What factors establish economic impact geographically?

Is it enough to describe the required policies and procedures without supplying them? Under what conditions are the actual procedures needed to be submitted?

### **I-956F**

USCIS needs to clarify whether the mandatory waiver of fund administrator requirements due to annual audited financial statements can be applied to a project when the NCE obtains such audits but the separate JCE does not. INA 203(b)(5)(Q)(v)(II) states, "The Secretary of Homeland Security shall waive the requirements under clause (iv) for any new commercial enterprise that commissions an annual independent financial audit of such new commercial enterprise **or** job creating entity conducted in accordance with Generally Accepted Auditing Standards, which audit shall be provided to the Secretary and all investors in the new commercial enterprise." It seems that "or" was used because of the possibility that an NCE subscribing multiple investors in a project and thus needing to use regional center sponsorship and compliance but not involving a separate JCE. In that instance, of course only the NCE would need audited financial statements, as there would be no separate JCE. But if there will be a separate JCE where the money will get used, then also the JCE should be required to be annually audited to enjoy the waiver. It would make no sense only to track the EB-5 capital going in and out of the NCE through an audit but then have no accountability as it goes into and through the JCE, where many fraudulent uses of EB-5 capital have occurred in the past. Congress meant to avoid fraud through fund

administration or audit at all relevant points, and this interpretation is needed to accomplish such intent.

USCIS needs to clarify what a regional center needs to do if changes are made to the documents submitted with an I-956 filing. For instance:

- the issuer realizes that mistakes were made in drafting the business plan or PPM,
- some minor aspect of the business plan actually changes (for instance, if a local government reviewing drawings require a design changes with implications for construction costs),
- USCIS publications of new regulations, forms, or policies changes what needs to be explained as risks in the PPM,
- Someone involved in the NCE or affiliated JCE could die or terminate employment and become replaced by someone else
- Owners of the NCE or JCE could change their ownership shares or their management roles, or people could roll off the board of directors and be replaced.
- The fund administrator may retire or be terminated and become replaced.
- The NCE or JCE may change banks and move “separate accounts.”
- Policies and procedures may be changed based on changes in securities or immigration law or policy

The first question is whether any amendment is necessary. It should not be necessary for the RC to amend the I-956F record to reflect minor changes that tend to occur regularly in business projects. USCIS should convey some reasonable limit on the types of changes that need to be made through amendment of the I-956F vs. being retained in files for periodic audit by USCIS. While Form I-956F contemplates its use for amendment, it does not indicate under what circumstances an amendment is required.

A technical problem is that leaving the I-956F record as filed, with investors filing I-526E certifying that they have subscribed to the documents contained in the I-956F, would result in a technical misrepresentation. USCIS needs to recognize that routine changes may be made without amendment to the I-956F. USCIS could clarify that it expects RCs to maintain up to date examples of documents submitted in the I-956F with clear accounting for changes made since I-956F filing so that USCIS auditors of RC records can quickly see what has changed. Form I-956G could be changed to require reporting of such changes, at least in a general sense, and subject to audit.

Even if USCIS refuses to relieve RCs of filing amendments for any change whatsoever to I-956F filings, USCIS needs to clarify how RCs may amend the I-956F while the I-956F is pending. Should the filing party submit changes through interfiling?

It is unreasonable to require RCs (and NCEs who will end up paying for most amendments and fees) to pay the full \$17,795 filing fee for small changes to I-956F filings. USCIS should establish some modest fee or the lodging of modest amendments.

## **I-956G**

Page 12 Attachment 1, item 18 needs to be rewritten to make sense and to follow the relevant statutes, as explained below:

INA 203(b)(5)(F)(IV)(dd) provides that a project application (I-956F) must include:

“(dd)(AA) any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the new commercial enterprise, or any issuer of securities intended to be offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien investors in connection with the investment;

“(BB) a description of the services performed, or that will be performed, by such person to entitle the person to such fees, interest, or compensation; and

“(CC) the name and contact information of any such person, if known at the time of filing;

INA 203(b)(5)(K)(iv) provides:

“(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (F).

Form I-956F at page 7 Part 6 item 6 appropriately asks:

Are there any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the NCE, or any issuer of securities intended to be offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien investors in connection with the investment?

Form I-956G, at page 12 Attachment 1, item 18 requires:

To the best of the regional center’s knowledge, for all fees, including administrative fees, loan monitoring fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, the new commercial enterprise, any affiliated job-creating entity, any affiliated issuer of securities intended to be offered to alien investors, or any promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors.

Item 18 should be rewritten to say:

To the best of the regional center's knowledge, for all fees, including administrative fees, loan monitoring fees, commissions and similar transaction based ongoing interest, or other compensation, collected from alien investors by the regional center, the new commercial enterprise, any affiliated job-creating entity, or any affiliated issuer of securities intended to be offered to alien investors, or to any promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors involved in the offering of securities to alien investors.

USCIS needs to clarify what the statute and I-956G mean concerning required regional center compliance with federal labor laws. Regional centers as entities rarely employ more than a few people. Obviously, RCs fund NCEs and JCEs. NCEs also employ few people. The statute does not say that the RC needs to make sure that NCEs or especially JCEs comply with labor laws, but if USCIS will contend that such is required, USCIS needs to clarify that in Part 3 Question 3 or the instructions thereto and in regulations.

I applaud the approach to require accounting on an investor-specific level only as to the EB-5 capital flowing into the NCE, with accounting on expenditures, job creation, and fees being required only on an aggregate basis (all investors together). This is appropriate because NCEs are not and should not be required to track the downward flow and effects on a per investor level.

Like the instructions to Part 3 Item 1 ("since the date of regional center designation"), Attachment 1 Items 13, 17, and 18 and instructions should clarify that the question calls for aggregate (all EB-5 investors' total) investment, job creation, and fees since the inception of the NCE. Without this clarification, the implication from the form's coverage of an identified fiscal year in Part 1 Item 2 might be to provide only the aggregate numbers for each item during the particular fiscal year, as was the case with the prior I-924A. I agree with the approach to collect aggregate (all investors together) cumulative (all time) investment, job creation, and fees. The comparison of the amounts in a later fiscal year's report to the prior year's report will reveal incremental amounts.

The instructions should clarify, however, that the supporting evidence needs only relate to the fiscal year being reported on, so that voluminous evidence provided in prior year reports need not be re-submitted.

#### **I-956H**

The instructions require that "Each person must complete I-956H for each entity with which they are involved for submission with any related form, as applicable." That seems to mean at the very least that an individual who holds a role in the NCE and in an affiliated JCE would need to submit two different forms, each reflecting the role in the respective entities.

\$85 filing fees should not be required for an I-956H for an entity, whose biometrics cannot be taken. And only one \$85 fee should be required for one person who has to fill out more than one I-956H in an I-956 or I-956F because of involvement through multiple entities. The form's instructions need to clarify this and the mailroom needs to be alerted to this to avoid improper rejections for lack of a fee for each I-956H form. I-956H should ask, "Has a biometrics fee already been paid for you in connection with Form I-956 or I-956F?" And if yes, it should ask the Form number, the filing party, and the biometrics receipt number, with instruction that no new \$85 is required for such person.

#### **I-956K**

Promoter needs definition.

Direct promoter, third-party promoter, and migration agent need definition with the implications.

The form should clarify whether registration required for an employee or sub-agent who operates under a registrant. This is implied in Part 2 Item 20, but it should be stated more clearly, at least in the instructions. Agents will tend not to want to believe that all promoters interacting with the investor, including individual employees, are required to independently register. If they are so required, it should be clearly specified so that everyone will be "on the same page."

What role of an employee or agent triggers obligation to register? (i.e., it would seem only those interacting with prospective investors)

How does a registrant complete Part 3 as to written agreement with RC, NCE, JCE as an employee or sub-agent of the promoter who has the agreement? Such registrant will not have a written agreement directly with the issuer. Should the employee or sub-agent identify the written agreement with the issuer entered by the primary broker/agent under whom they are operating?

Form I-956K should also require promoters to cooperate in complying with the written disclosure of fees, ongoing interest, and compensation to promoters as required by INA 203(b)(5)(K)(iv). Promoters are going to be very hesitant to follow this regulation, and it should be specifically mentioned.

The form should clarify whether I-956K (and 203(b)(5)(K)) applies to a promoter in selling to a stand alone investor (I-526, not I-526E).

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

While the Federal Register notice did not call for comments to new Form I-526E, it should have, because it needs some fixes.

Most importantly, the instructions fail to include as required evidence the written disclosure of fees, ongoing interest, and compensation to promoters as required by INA 203(b)(5)(K)(iv). Promoters are going to be very hesitant to follow this regulation, and it should be specifically mentioned.

The instructions should also tell an investor what to do if the documents provided to the investor from the NCE reflect changes from what was submitted by the regional center with the I-956F. Periodic changes to business projects are inevitable, and it does not make sense to file formal amendments to I-956F with \$17,795 filing fee for every such change. Investors could be instructed to submit amendment changes, or side letters unique to them, in their I-526E submission. Once USCIS implements some kind

of electronic system to allow regional centers to upload changes to I-956F project filings to reflect supplements to those documents, such supplemental documents would not be needed for I-526E filings.

**I-526 for standalone investors**

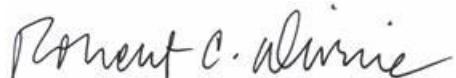
While the Federal Register notice did not call for comments to new Form I-956, it should have, because it needs some fixes.

Part 4 Item 14.l. should be renumbered as 15. 15 and 16 should become 16 and 17.

Most importantly, the form should clarify whether or not INA 203(b)(5)(H), (K), and (Q) apply to standalone investments. Even if they do not apply, this should be clarified because of the ambiguity in the phrasing of the statute. I don't think they should apply, because the sections involved were written with pooling of investments in mind, and it makes no sense in the situation where the alien investor is in fact an organizer of the business. But if they do apply, then the form instructions at least should require inclusion in the require evidence, as applicable: Forms I-956(H) from those involved with NCE, written disclosure to investor of fees, ongoing interest, and other compensation to promoters, and identification of NCE separate account and fund administrator.

Thank you for your consideration.

Respectfully,



Robert C. Divine

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## Comment Submitted by Robert Divine

Posted by the **U.S. Citizenship and Immigration Services** on Sep 9, 2022

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Please see attached for supplementary comments from Robert Divine, who commented previously.

Attachments 1



Supplementary Comments of Robert Divine for I-956 forms

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### **Supplementary Comments of Robert Divine for I-956G and I-956K, as well as I-526E**

Following my initial comments, it has come to my attention that many agents selling EB-5 investments are refusing to register with USCIS and to provide written disclosures to investors of the amounts they will receive by virtue of the investor's investment, and that some NCEs and sponsoring RCs are developing arrangements to funnel commissions and ongoing interest to investors outside of the administrative fees in an effort to avoid the granular disclosures required by INA §§ 203(b)(5)(K)(iv) and 203(b)(5)(F)(i)(IV)(dd).

In addition to writing the attached articles that have been or are being published in various media, I wish to urge USCIS immediately to take all steps possible to clarify the requirements, including correcting several forms relating to this issue.

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

First, as mentioned in my initial comments, Form I-526E should include a question such as, "Have you included with your petition a written disclosure of all fees, ongoing interest, and other compensation paid to any promoter by virtue of your investment?" This question would be to alert the petitioner to the requirement in the instructions, which erroneously do NOT include such written disclosure, clearly required by INA § 203(b)(5)(K)(iv), as required evidence for the I-526E submission.

It is important for USCIS to clarify exactly what that disclosure must require. INA §§ 203(b)(5)(K)(iv) states:

“(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (F).

Importantly, the statute does not limit the disclosure to any source; therefore, it covers compensation paid from any source, even if the source is not the RC, NCE, or other issuer of the security. The instructions should clarify that the required disclosure must cover payments from any and all sources, so that clever parties trying to get around the statute's intent cannot arrange for payments to come from parties other than the RC, NCE, or other issuer of securities. The reference to "ongoing interest" is meant to capture the very common practice of paying promoters from the NCE manager's share of profits of the NCE. All that is required to trigger the requirement of disclosure is that the RC or NCE knows about the compensation. Although this particular statute focuses on what must be in the investor's petition, this is part of the RIA's total package of integrity measures and falls under the set of statutes that the RC and the NCE are required to certify continual compliance with by all parties involved.

The I-526E instructions should clarify that the required disclosure must identify each person receiving compensation by virtue of the investor's investment, especially including the individuals and entities interacting directly with the investors. It is obvious that such payments are the most important in the investor's assessment of the conflicts of interest on the part of people persuading the investor to make

a particular investment decision. The above statute's words "paid to any person" can be read to mean that each person receiving such compensation should be identified. This interpretation is supported by the specificity in Subsections (F) ("the name and contact information of any such person, if known at the time of filing") and (G) ("an accounting of the entities that received such fees"). Without such clarification, some industry players will set up global clearinghouses through which to funnel all fees and disclose the fees only to such clearinghouses, failing to disclose the promoters closer to the investor and the amounts those promoters receive, and thereby frustrating the purposes of the statute to disclose the most meaningful conflicts of interest of all.

USCIS needs to amend Form I-526E immediately to cure this glaring oversight in the original form and instructions, and in the process it should clarify the nature of the required disclosure.

If USCIS decides that the above interpretation is wrong, then it should publish that fact instead, stating that it is enough for issuers to disclose the total amount of the investor's administrative fees

#### **I-956F and I-956G**

It is curious that the statutes underlying these forms are worded a bit differently than the statute above concerning disclosure to the investor, and differently from each other:

#### **203(b)(5)(F)**

(dd)(AA) any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the new commercial enterprise, or any issuer of securities intended to be offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien investors in connection with the investment;

(BB) a description of the services performed, or that will be performed, by such person to entitle the person to such fees, interest, or compensation; and

(CC) the name and contact information of any such person, if known at the time of filing;

#### **203(b)(5)(G)**

(ff) to the best of the regional center's knowledge, for all fees, including administrative fees, loan monitoring fees, loan management fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, the new commercial enterprise, any affiliated job-creating entity, any affiliated issuer of securities intended to be offered to alien investors, or any promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors-

(AA) a description of all fees collected;

(BB) an accounting of the entities that received such fees; and

(CC) the purpose for which such fees were collected;

Subsection (F) concerning project applications specifies three parties who would be paying the compensation: the RC, NCE, or any issuer of securities. Arguably this limitation arises from an appreciation of the situation, that the parties issuing the security might not know at that point about compensation that might be paid to promoters in the future. More importantly, in fact, parties rarely

know for sure what promoters will be paid to originate investors in the future, and we expect most RCs to legitimately indicate in Form I-956F that they don't yet have the information needed to answer that question fully.

Subsection (G) concerning annual reports goes a little further and limits the required information based on where the compensation for promoters came from: "collected from alien investors." It makes some sense for Congress to have framed the annual report requirement in terms of an accounting of all of the capital and administrative fees paid in by investors, with a focus on what made its way to promoters.

As stated in my original comments, the word "or" in the first version of Form I-956G seems to be a mistake. What I did not realize in making that comment is that the nonsensical word "or" comes directly from the statute. Nevertheless, the agency can take note that Congress clearly made a "typo" error and can fix it in implementation. The word "to" makes much more sense and is consistent with the other statutory requirements generally on this topic as quoted above.

Nevertheless, the issue arises that RCs and NCEs could "hide behind" the Form I-956G reporting requirement and claim that they are required to disclose to investors and report to USCIS only compensation to promoters that originate from investors' administrative fees. Even if USCIS limits the annual reports to what the statute requires (correcting "or" to "to"), USCIS should clarify and publicize that the critical required written disclosure to investors at time of subscription is not limited to payments arising from investor administrative fees and must identify the specific promoters receiving such compensation, including especially the people and entities directly engaging with the investor. Another option is for USCIS to broaden the annual report to include copies of all of the written disclosures given to investors for filing with their I-526 petitions or to summarize those disclosures that are required to be available for USCIS audit.

If not, and USCIS will allow RCs and NCEs to limit the investor disclosures and the annual reports to the payments made to global clearinghouses out of the administrative fees paid by investors, then USCIS should publicize that interpretation so that RCs and NCEs who otherwise might strive for compliance in the spirit of the RIA can join the trickier and craftier parties who are appealing to fee-thirsty agents who don't want their own compensation disclosed to the investors they are soliciting.

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## Comment Submitted by William Besco

Posted by the U.S. Citizenship and Immigration Services on Sep 9, 2022

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Evidence to Accompany Registration: I suggest that USCIS clarify whether or not the hardcopy legal written agreement(s) is required at the time of filing I-956K, or if a summary of the legal agreement - in writing - is sufficient. If a summary is acceptable, then I request USCIS to identify the required data points to meet the evidentiary requirement.

#### Comment ID

USCIS-2022-0010-0016



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### PUBLIC SUBMISSION

## Duplicate Comment Submitted by Robert Divine

Posted by the **U.S. Citizenship and Immigration Services** on Sep 9, 2022

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See attached file(s). I submitted this supplement (to my Sept. 7 comments) on Sept. 8, but I failed to include proper references, and I don't see it posted in the system, so I have added the proper references and am resubmitting.

Attachments 1



Supplementary Comments of Robert Divine for I-956 forms

[Download \(\[https://downloads.regulations.gov/USCIS-2022-0010-0017/attachment\\\_1.pdf\]\(https://downloads.regulations.gov/USCIS-2022-0010-0017/attachment\_1.pdf\)\)](#)

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## **Supplementary Comments of Robert Divine for I-956G and I-956K, as well as I-526E**

This constitutes supplementary comments to U.S. Citizenship & Immigration Services from Robert C. Divine in response to OMB Control Number 1615-NEW, Docket ID USCIS-2022-0010, as referenced at 87 FR 54233 on September 2, 2022. My initial comment was submitted on Sept. 7, 2022, and this supplements those comments.

The commenter, Robert C. Divine, is an attorney who has practiced immigration law for 36 years, authored of *Immigration Practice* (a well respected practical treatise on all aspects of U.S. immigration law) for 15 editions, served as Chief Counsel and Acting Deputy Director of USCIS (2004-2006), and been elected Vice President of IIUSA (the industry association of regional centers) for 7 years in the past. His full bio and contacts are available at [www.bakerdonelson.com/robert-c-divine](http://www.bakerdonelson.com/robert-c-divine).

Following my initial comments, it has come to my attention that many agents selling EB-5 investments are refusing to register with USCIS and to provide written disclosures to investors of the amounts they will receive by virtue of the investor's investment, and that some NCEs and sponsoring RCs are developing arrangements to funnel commissions and ongoing interest to investors outside of the administrative fees in an effort to avoid the granular disclosures required by INA §§ 203(b)(5)(K)(iv) and 203(b)(5)(F)(i)(IV)(dd).

In addition to writing the attached articles that have been or are being published in various media, I wish to urge USCIS immediately to take all steps possible to clarify the requirements, including correcting several forms relating to this issue.

### **I-526E**

First, as mentioned in my initial comments, Form I-526E should include a question such as, "Have you included with your petition a written disclosure of all fees, ongoing interest, and other compensation paid to any promoter by virtue of your investment?" This question would be to alert the petitioner to the requirement in the instructions, which erroneously do NOT include such written disclosure, clearly required by INA § 203(b)(5)(K)(iv), as required evidence for the I-526E submission.

It is important for USCIS to clarify exactly what that disclosure must require. INA §§ 203(b)(5)(K)(iv) states:

“(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (F).

Importantly, the statute does not limit the disclosure to any source; therefore, it covers compensation paid from any source, even if the source is not the RC, NCE, or other issuer of the security. The instructions should clarify that the required disclosure must cover payments from any and all sources, so that clever parties trying to get around the statute's intent cannot arrange for payments to come from parties other than the RC, NCE, or other issuer of securities. The reference to "ongoing interest" is meant to capture the very common practice of paying promoters from the NCE manager's share of

profits of the NCE. All that is required to trigger the requirement of disclosure is that the RC or NCE knows about the compensation. Although this particular statute focuses on what must be in the investor's petition, this is part of the RIA's total package of integrity measures and falls under the set of statutes that the RC and the NCE are required to certify continual compliance with by all parties involved.

The I-526E instructions should clarify that the required disclosure must identify each person receiving compensation by virtue of the investor's investment, especially including the individuals and entities interacting directly with the investors. It is obvious that such payments are the most important in the investor's assessment of the conflicts of interest on the part of people persuading the investor to make a particular investment decision. The above statute's words "paid to any person" can be read to mean that each person receiving such compensation should be identified. This interpretation is supported by the specificity in Subsections (F) ("the name and contact information of any such person, if known at the time of filing") and (G) ("an accounting of the entities that received such fees"). Without such clarification, some industry players will set up global clearinghouses through which to funnel all fees and disclose the fees only to such clearinghouses, failing to disclose the promoters closer to the investor and the amounts those promoters receive, and thereby frustrating the purposes of the statute to disclose the most meaningful conflicts of interest of all.

USCIS needs to amend Form I-526E immediately to cure this glaring oversight in the original form and instructions, and in the process it should clarify the nature of the required disclosure.

If USCIS decides that the above interpretation is wrong, then it should publish that fact instead, stating that it is enough for issuers to disclose the total amount of the investor's administrative fees

#### **I-956F and I-956G**

It is curious that the statutes underlying these forms are worded a bit differently than the statute above concerning disclosure to the investor, and differently from each other:

##### **203(b)(5)(F)**

(dd)(AA) any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the new commercial enterprise, or any issuer of securities intended to be offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien investors in connection with the investment;

(BB) a description of the services performed, or that will be performed, by such person to entitle the person to such fees, interest, or compensation; and

(CC) the name and contact information of any such person, if known at the time of filing;

##### **203(b)(5)(G)**

(ff) to the best of the regional center's knowledge, for all fees, including administrative fees, loan monitoring fees, loan management fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, the new commercial enterprise, any affiliated job-creating entity, any affiliated issuer of securities intended to be offered to alien investors, or any

promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors-

- (AA) a description of all fees collected;
- (BB) an accounting of the entities that received such fees; and
- (CC) the purpose for which such fees were collected;

Subsection (F) concerning project applications specifies three parties who would be paying the compensation: the RC, NCE, or any issuer of securities. Arguably this limitation arises from an appreciation of the situation, that the parties issuing the security might not know at that point about compensation that might be paid to promoters in the future. More importantly, in fact, parties rarely know for sure what promoters will be paid to originate investors in the future, and we expect most RCs to legitimately indicate in Form I-956F that they don't yet have the information needed to answer that question fully.

Subsection (G) concerning annual reports goes a little further and limits the required information based on where the compensation for promoters came from: "collected from alien investors." It makes some sense for Congress to have framed the annual report requirement in terms of an accounting of all of the capital and administrative fees paid in by investors, with a focus on what made its way to promoters.

As stated in my original comments, the word "or" in the first version of Form I-956G seems to be a mistake. What I did not realize in making that comment is that the nonsensical word "or" comes directly from the statute. Nevertheless, the agency can take note that Congress clearly made a "typo" error and can fix it in implementation. The word "to" makes much more sense and is consistent with the other statutory requirements generally on this topic as quoted above.

Nevertheless, the issue arises that RCs and NCEs could "hide behind" the Form I-956G reporting requirement and claim that they are required to disclose to investors and report to USCIS only compensation to promoters that originate from investors' administrative fees. Even if USCIS limits the annual reports to what the statute requires (correcting "or" to "to"), USCIS should clarify and publicize that the critical required written disclosure to investors at time of subscription is not limited to payments arising from investor administrative fees and must identify the specific promoters receiving such compensation, including especially the people and entities directly engaging with the investor. Another option is for USCIS to broaden the annual report to include copies of all of the written disclosures given to investors for filing with their I-526 petitions or to summarize those disclosures that are required to be available for USCIS audit.

If not, and USCIS will allow RCs and NCEs to limit the investor disclosures and the annual reports to the payments made to global clearinghouses out of the administrative fees paid by investors, then USCIS should publicize that interpretation so that RCs and NCEs who otherwise might strive for compliance in the spirit of the RIA can join the trickier and craftier parties who are appealing to fee-thirsty agents who don't want their own compensation disclosed to the investors they are soliciting.

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## Comment Submitted by Joseph Whalen

Posted by the U.S. Citizenship and Immigration Services on Sep 9, 2022

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See attached file(s) this is a comment on the USCIS form I-956K

Attachments 1



THE LATEST EB-5 FORMS RELEASE 9-2-2022

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USCIS-2022-0010-0018

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4 **DEPARTMENT OF HOMELAND SECURITY (DHS)**  
5 **UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES (USCIS)**  
6 **OFFICE OF THE DIRECTOR**  
7 **ADMINISTRATIVE APPEALS OFFICE (AAO)**  
8 **OFFICE OF CHIEF COUNSEL (OCC)**  
9 **WASHINGTON, DC**

10 **COMMENTS ON**  
11 **OMB Control Number 1615-NEW**  
12 **Docket ID USCIS-2022-0010**

13 **THE LATEST EB-5 FORMS**  
14 **RELEASED 09/02/2022**  
15 ***I-956K, REGISTRATION FOR DIRECT***  
16 ***AND THIRD-PARTY PROMOTERS***

17 **Dated this 9<sup>th</sup>Day of September 2022**

18 **I. INTRODUCTION**

19 USCIS released for comment additional EB-5 Regional Center Program  
20 related forms. They asserted that they created them **all** back in May 2022  
21 but the first we saw of **one** of them was three and a half months later on  
22 September 3, 2022. The FR Notice states that comments will be accepted  
23 through November 1, 2022. It further states: “All submissions received  
24 must include the **OMB Control Number 1615-NEW** in the body of the  
25 letter, the agency name and **Docket ID USCIS-2022-0010**. Submit  
26 comments via the Federal eRulemaking Portal website  
27 at <https://www.regulations.gov> under e-Docket ID number USCIS-2022-  
28 0010.”

29 **II. NEW EB-5 FORMS POSTED FOR REVIEW AND COMMENT**

30 USCIS created five new forms following the passage of significant  
31 legislation reauthorizing and reforming the EB-5 Immigrant Investor  
32 Regional Center Program. Those forms are:

---

33 ***COMMENTS ON I-956K, REGISTRATION FOR DIRECT AND THIRD-PARTY PROMOTERS***

1 a.) Form I-956, Application for Regional Center Designation;  
2 b.) Form I-956F, Application for Approval of an Investment in a  
3      Commercial Enterprise;  
4 c.) Form I-956G, Regional Center Annual Statement;  
5 d.) Form I-956H, Bona Fides of Persons Involved with Regional Center  
6      Program; and  
7 e.) Form I-956K, Registration for Direct and Third-Party Promoters.

8      The forms and their instructions along with the FR Notice are found at:  
9      <https://www.regulations.gov/search?filter=uscis-2022-0010>

10     **III. CONTROLLING LEGAL AUTHORITY**

11     The Secretary of Homeland Security and the agencies under the Secretary  
12    have not only the legal authority to create and issue forms, but there is also a  
13    genuine need for them. Without the right forms in place, the work cannot be  
14    done. USCIS cannot adjudicate a request for benefits in the absence of such a  
15    request. The easiest way to submit a request is on the form specifically designed  
16    for that particular request. Since USCIS is fee funded, there must be a fee for  
17    filing and adjudicating the benefit request.

18     **8 USC §1103. Powers and duties of the Secretary, the Under Secretary, and  
19    the Attorney General**

20     **(a) Secretary of Homeland Security**

21     (1) The Secretary of Homeland Security shall be charged with the administration and  
22    enforcement of this chapter and all other laws relating to the immigration and  
23    naturalization of aliens, except insofar as this chapter or such laws relate to the powers,  
24    functions, and duties conferred upon the President, Attorney General, the Secretary of  
25    State, the officers of the Department of State, or diplomatic or consular  
26    officers: *Provided, however,* That determination and ruling by the Attorney General  
27    with respect to all questions of law shall be controlling.  
28     (2) He shall have control, direction, and supervision of all employees and of all the  
29    files and records of the Service.  
30     (3) He shall establish such regulations; prescribe such forms of bond, reports, entries,  
31    and other papers; issue such instructions; and perform such other acts as he deems  
32    necessary for carrying out his authority under the provisions of this chapter.

33     \*\*\*\*\*

34     (June 27, 1952, ch. 477, title I, §103, 66 Stat. 173; Pub. L. 100-525, §9(c), Oct. 24, 1988, 102  
35    Stat. 2619; Pub. L. 101-649, title I, §142, Nov. 29, 1990, 104 Stat. 5004; Pub. L. 104-208, div.  
36    C, title I, §§102(d), 125, 134(a), title III, §§308(d)(4)(C), (e)(4), 372, 373, Sept. 30, 1996, 110  
37    Stat. 3009-555, 3009-562, 3009-564, 3009-618, 3009-620, 3009-646, 3009-647; Pub. L.  
38    107-296, title XI, §1102, Nov. 25, 2002, 116 Stat. 2273; Pub. L. 108-7, div. L, §105(a)(1), (2),

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39     **COMMENTS ON I-956K, REGISTRATION FOR DIRECT AND THIRD-PARTY PROMOTERS**

Feb. 20, 2003, 117 Stat. 531; Pub. L. 108-458, title V, §5505(a), Dec. 17, 2004, 118 Stat. 3741; Pub. L. 111-122, §2(a), Dec. 22, 2009, 123 Stat. 3480.)

## **8 CFR § 2.1 Authority of the Secretary of Homeland Security.**

All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary of Homeland Security may, in the Secretary's discretion, delegate any such authority or function to any official, officer, or employee of the Department of Homeland Security, including delegation through successive redelegation, or to any employee of the United States to the extent authorized by law. Such delegation may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion. A delegation of authority or function may in the Secretary's discretion be published in the Federal Register, but such publication is not required.

[68 FR 10923, Mar. 6, 2003]

## 8 CFR § 103.2 Submission and adjudication of benefit requests.

**(a) *Filing* -**

**(1) Preparation and submission.** Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions regardless of a provision of [8 CFR chapter I](#) to the contrary. The form's instructions are hereby incorporated into the regulations requiring its submission. Each form, benefit request, or other document must be filed with the fee(s) required by regulation. All USCIS fees are generally [are] non-refundable regardless of if the benefit request or other service is approved, denied, or selected, or how much time the adjudication or processing requires. Except as otherwise provided in this chapter I, fees must be paid when the request is filed or submitted.

\*\*\*\*\*

[29 FR 11956, Aug. 21, 1964]

#### IV. SUBJECT MATTER BACKGROUND

There are some misconceptions about this subject matter and a need for clarifications on certain topics or aspects of it. A major necessity in the administration of the immigration benefits available under the law are the forms used to apply for those benefits. USCIS is primarily fee funded so it must charge fees for most adjudications. Filing fees require something be filed so that the benefit request may be adjudicated. Unfortunately, filing fees also require a surcharge to cover humanitarian filings that are an unfunded mandate from Congress. For example, the United States receives an inordinate number of requests for asylum; more than any other country in the world and we grant more requests than any other country.

**COMMENTS ON I-956K, REGISTRATION FOR DIRECT AND THIRD-PARTY PROMOTERS**

1 On the other hand, we likely deny more requests than any other country  
2 because so many requests are insufficiently supported. While some  
3 requests for asylum are outright frivolous, more are simply requests that  
4 do not meet the legal requirements for asylum. Most of those insufficient  
5 requests are desperate attempts to flee economic hardship and poor living  
6 conditions but they do not amount to persecution.

7 **V. THE NEWLY UNVEILED EB-5 FORM**

8 The new USCIS Form *I-956K, Registration for Direct and Third-*  
9 *Party Promoters*, does not require a filing fee. Unlike the  
10 “humanitarian” benefit requests mentioned above, the I-956K is a  
11 necessity to ensure more accountability in a “for profit” world of  
12 immigration benefits. The obscene filing fees charged for the majority  
13 of forms in the EB-5 program will have to support the processing and  
14 adjudication of this particular form to ensure the integrity of the EB-5  
15 Regional Center Program as a whole.

16 For over two decades the potential for making ill-gotten profits from  
17 the program has gone unchecked by INS and then USCIS. The  
18 oversight for that aspect of the program has come from the outside.  
19 Scrutiny has come from the SEC or state-level securities authorities,  
20 the IRS and the FBI or from various state attorneys general or district  
21 attorneys. Congress has now commanded that USCIS should take a  
22 better-defined oversight role in tracking the cast of characters  
23 involved in the EB-5 Regional Center industry. USCIS will have the  
24 power to sanction those who misbehave. USCIS will be able to bar  
25 temporarily or permanently any promoters who break the rules. RCs,  
26 NCEs, JCEs, promoters, and really anyone who screws up can be  
27 barred from participation, some of them can be fined as well.

28 **VI. THE STATUTORY PROVISION FOR THE FORM I-956K**

29 **8 USC § 1153 (b)(5)**

30 **(K) Direct and third-party promoters**

31 **(i) Rules and standards**

1 Direct and third-party **promoters** (including **migration agents**) of a regional center, any new  
2 commercial enterprise, an affiliated job-creating entity, or an **issuer of securities** intended to  
3 be offered to alien investors in connection with a particular capital investment project **shall**  
4 **comply with the rules and standards prescribed by the Secretary** of Homeland Security  
5 and any applicable Federal or State securities laws, to oversee promotion of any offering of  
6 securities related to the EB-5 Program, **including**-

7 (I) **registration** with U.S. Citizenship and Immigration Services, which-  
8 (aa) includes identifying and contact information for such promoter and  
9 **confirmation of the existence of the written agreement** required under clause  
10 (iii); and  
11 (bb) may be made publicly available at the discretion of the Secretary;  
12 (II) **certification** by each promoter that such promoter is not ineligible under subparagraph  
13 (H)(i);  
14 (III) **guidelines** for accurately representing the visa process to foreign investors; and  
15 (IV) **guidelines** describing permissible fee arrangements under applicable securities and  
16 immigration laws.

17 (ii) **Effect of violation**

18 If the Secretary determines that a direct or third-party promoter has violated clause (i), the  
19 Secretary shall suspend or permanently bar such individual from participation in the program  
20 described in subparagraph (E).

21 (iii) **Compliance**

22 Each regional center, new commercial enterprise, and affiliated job-creating entity shall  
23 maintain **a written agreement between or among such entities and each direct or third-**  
24 **party promoter** operating on behalf of such entities that outlines the rules and standards  
25 prescribed under clause (i).

26 (iv) **Disclosure**

27 Each petition filed under section 1154(a)(1)(H) of this title shall include a disclosure, signed  
28 by the investor, that reflects all fees, ongoing interest, and other compensation paid to any  
person that the regional center or new commercial enterprise knows has received, or will  
receive, in connection with the investment, including compensation to **agents, finders, or**  
**broker dealers** involved in the offering, to the extent not already specifically identified in  
the business plan filed under subparagraph (F).

29 The form is designed to cover the registration of the promoter, their  
30 certification that they comply with the *bona fides* required under  
31 subparagraph (H), an attestation as to the existence of a written agreement or  
32 agreements along with a copy of it or them, and that they will abide by the  
33 guidelines set by the agency. Those guidelines have yet to be published. I trust  
34 that those guidelines are being written, debated and re-written even as I am  
35 writing this comment. Hopefully, USCIS will receive some useful input at its  
36 upcoming **EB-5 Stakeholder Engagement** planned for **Wednesday, Oct.**  
37 **19, from 2 to 3 p.m. Eastern.**

1

**VII. MORE ABOUT THE “GUIDELINES”**

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According to the statute, it is the Secretary who will prescribe rules and standards. The two sets of guidelines should fall under that obligation. Undoubtedly, the task of crafting those guidelines will fall on USCIS.

5

**a. Guidelines For Accurately Representing The Visa Process To Foreign Investors.**

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I think the biggest misconception that has been used by unscrupulous “promoters” of EB-5 projects is that if you are willing to pay enough for it, you can get a visa. That is a common sales pitch, but it is dead wrong. First things first, the guidelines need to emphasize that there are stages to the visa process and the investors must succeed at each of them in order to get their green cards. One must have a qualifying investment that will create enough jobs. Their money has to be legal and clean. Then depending on their country of origin, they might need to wait for visa availability. Of course, the individuals must be admissible.

14

**b. Guidelines Describing Permissible Fee Arrangements Under Applicable Securities And Immigration Laws.**

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This subject requires input from securities attorneys and brokers. Some current practices might be quashed while others might be adopted. It is hard to say what will become part of these guidelines. Are their existing fee limits under SEC rules or state rules? Perhaps some industry leaders will provide useful input to USCIS?

20

**VIII. SUGGESTED CHANGES IN FORM & INSTRUCTIONS**

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USCIS needs to be more explicit about the substance of these guidelines. Perhaps it would be wise to make specific reference to the guidelines by titles in the form and instructions even if the guidelines themselves are to be published separately either as supplements or posted to the USCIS website (probably both). It is also feasible but perhaps unwise to codify the guidelines in the regulations. The fee guidelines might require regular adjustment for inflation and the cost of living, and it would be easiest to

1 simply update them online accompanied by a Federal Register Notice.  
2 Treating both sets of guidelines the same and keeping them together will  
3 make it easier to place all the EB-5 players on notice, *en masse*.

4 **IX. CIRRICULUM VITAE & STATEMENT OF INTEREST**

5 I am a former INS/USCIS Adjudications Officer. I joined INS in 1998,  
6 after previous federal service as an archaeologist with the U.S. Forest  
7 Service. Between the two, I learned how to navigate complex statutes and  
8 their complex implementing regulations. I began my adjudications career  
9 at a sensitive time when INS was just getting over the CUSA fiasco at the  
end of the Clinton administration. NQP was new and I couldn't touch an  
A-File as an adjudicator until I got NQP training.

10 As a result of the situation, I spent an extra-long time reading the INA  
11 and 8 CFR, observing others in naturalization interviews, and performing  
12 all manner of clerical tasks. When I did start adjudicating, I got very good,  
13 very fast. I became a trainer, started an in-house law library of  
14 administrative and ninth circuit cases, became the "go-to guy" for my  
office.

15 I pioneered the position of Community Based Organization Liaison  
16 Officer (the forerunner of today's Public Engagement and Community  
17 Relations Officers etc...) and instituted INS' first e-mail inquiry account.  
18 I liaised with other offices, community groups, AILA, other agencies,  
19 Congressional Office staffers, and even the Law Library of the Library of  
20 Congress (I got them to put together international law resources,  
beginning with legitimization laws from around the world). I became an  
21 acting SDAO and then was selected as an SDAO. I occasionally filed in  
for the Director of my office.

22 I went through the San Francisco Bay Area's Federal Executive  
23 Board's Executive Development Program, I transitioned into being a  
24 trainer on many topics. I included in my training materials the non-  
precedent that would become *Matter of Chawathe* before it was adopted  
in January 2006, and before it became Precedent in October 2010. I  
25 instigated INS' first customer service training by suggesting it to then-  
26

1 commissioner Doris Meissner on an inspection to the office where I began.  
2 It was a customer service pilot office which is why she visited it. I did a  
3 lot of outreaches; from pioneering naturalization workshops with mock  
4 interviews, to staffing information booths at ethnic events and even did  
5 some recruiting at county fairs. I officiated at Naturalization Ceremonies  
6 and Citizenship Celebrations/Ceremonies (for N-600 cases). I authored  
7 numerous RFE and denial templates. I became an Adjudications Analyst  
8 at a Service Center as well as the Center NQP Trainer. I critiqued  
9 CLAIMS 4 as it was being introduced and pointed out many needed  
changes. I went to HQ on a variety of details and did beta testing of  
various computer program updates. They trusted me to figure out how to  
break it so they could fix it before it was deployed.

10 When I became a senior adjudications officer (Subject Matter Expert)  
11 at HQ in SCOPS, at one point I was the sole **Regional Center**  
12 **Adjudicator**. I created the Immigrant Investor e-mail and later, wrote  
13 unofficial "How to Apply" instructions that 1.) were spammed out on the  
internet and grew the EB-5 program exponentially, and 2.) later formed  
14 the basis for the Form I-924 instructions. My efforts saw the number of  
15 active and approved Regional Centers grow from 11 approved but only 6  
16 active, to approximately 80 with another 100 or so in the processing queue.  
17 That was when USCIS, after 17 years, finally decided to create a form and  
18 charge a fee. I wrote a Policy Memo for EB-5 about construction jobs and  
19 was listed as POC for program filing changes in the Federal Register. I  
20 suggested the initial I-924 filing fee be \$12,500 but the agency began it at  
21 approximately \$6,300 instead. Today, filing for Regional Center  
22 Designation costs \$17,795 and will soon implement up to \$20,000 annual  
23 participation/recertification fee per Regional Center. IPO was not yet  
24 created when I left the agency the first time after everything EB-5 was  
25 centralized at CSC. I trained the first batch of RC adjudicators. Several  
26 years later I returned to the newly opened Potomac Service Center and  
27 became a valuable resource for mentoring and training sessions. I worked  
28 on some of the most difficult cases in the office.

29 During my first break in employment from USCIS, I consulted as a  
30 freelance paralegal—no license was required in NY State which is where  
31 I was at the time. I have been published in *Immigration Daily* (an online

1 immigration publication) nearly 300 times since March of 2011 through  
2 the present, only taking time off when I *returned* to USCIS employment.  
3 I responded to both of AAO's formal *Amicus Brief* solicitations (in 2011  
4 and 2015) and am glad that they adopted many of my suggestions. I'm  
probably missing something.

5 I developed a keen interest in immigration law while working for the  
6 government, and it remains with me. I was pleased by the recent change  
7 in EB-5 law and glad that many of the suggestions I've made over the  
years finally made it into the March 2022, EB-5 Reform and Integrity Act.

8 **X. CONCLUSION**

9 It is my sincerest wish to provide useful and constructive criticism along  
10 with suggestions for improvements. I only desire to help the agency and  
11 its customers.

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Docket (/docket/USCIS-2022-0010) / Document (USCIS-2022-0010-0001) (/document/USCIS-2022-0010-0001) / Comment

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## Comment Submitted by Robert Divine

Posted by the **U.S. Citizenship and Immigration Services** on Sep 13, 2022

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Please note a corrected supplementary comment with tracked changes, replacing my September 9 supplement to my September 6 original comments. Also I include two articles about the I-956 forms and their implications for background.

Attachments 3



Supplementary Comments of Robert Divine for I-956 forms

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USCIS Publishes Draft Form I-956K for Promoter Registration 4890-6904-7089 v.1

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## Why U.S. EB-5 Investors Should Work Only With USCIS-Registered Promoters



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## **Supplementary Comments of Robert Divine for I-956G and I-956K, as well as I-526E**

This constitutes supplementary comments to U.S. Citizenship & Immigration Services from Robert C. Divine in response to OMB Control Number 1615-NEW, Docket ID USCIS-2022-0010, as referenced at 87 FR 54233 on September 2, 2022. My initial comment was submitted on Sept. 7, 2022, and this supplements those comments.

The commenter, Robert C. Divine, is an attorney who has practiced immigration law for 36 years, authored of *Immigration Practice* (a well respected practical treatise on all aspects of U.S. immigration law) for 15 editions, served as Chief Counsel and Acting Deputy Director of USCIS (2004-2006), and been elected Vice President of IIUSA (the industry association of regional centers) for 7 years in the past. His full bio and contacts are available at [www.bakerdonelson.com/robert-c-divine](http://www.bakerdonelson.com/robert-c-divine).

Following my initial comments, it has come to my attention that many agents selling EB-5 investments are refusing to register with USCIS and to provide written disclosures to investors of the amounts they will receive by virtue of the investor's investment, and that some NCEs and sponsoring RCs are developing arrangements to funnel commissions and ongoing interest to promoters outside of the administrative fees in an effort to avoid the granular disclosures required by INA §§ 203(b)(5)(K)(iv) and 203(b)(5)(F)(i)(IV)(dd).

In addition to writing the attached articles that have been or are being published in various media, I wish to urge USCIS immediately to take all steps possible to clarify the requirements, including correcting several forms relating to this issue.

### **I-526E**

First, as mentioned in my initial comments, Form I-526E should include a question such as, "Have you included with your petition a written disclosure of all fees, ongoing interest, and other compensation paid to any promoter by virtue of your investment?" This question would be to alert the petitioner to the requirement in the instructions, which erroneously do NOT include such written disclosure, clearly required by INA § 203(b)(5)(K)(iv), as required evidence for the I-526E submission.

It is important for USCIS to clarify exactly what that disclosure must require. INA §§ 203(b)(5)(K)(iv) states:

“(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, to the extent not already specifically identified in the business plan filed under subparagraph (F).

Importantly, the statute does not limit the disclosure to any source; therefore, it covers compensation paid from any source, even if the source is not the RC, NCE, or other issuer of the security. The instructions should clarify that the required disclosure must cover payments from any and all sources, so that clever parties trying to get around the statute's intent cannot arrange for payments to come from parties other than the RC, NCE, or other issuer of securities. The reference to "ongoing interest" is meant to capture the very common practice of paying promoters from the NCE manager's share of

profits of the NCE. All that is required to trigger the requirement of disclosure is that the RC or NCE knows about the compensation. Although this particular statute focuses on what must be in the investor's petition, this is part of the RIA's total package of integrity measures and falls under the set of statutes that the RC and the NCE are required to certify continual compliance with by all parties involved.

The I-526E instructions should clarify that the required disclosure must identify each person receiving compensation by virtue of the investor's investment, especially including the individuals and entities interacting directly with the investors. It is obvious that such payments are the most important in the investor's assessment of the conflicts of interest on the part of people persuading the investor to make a particular investment decision. The above statute's words "paid to any person" can be read to mean that each person receiving such compensation should be identified. This interpretation is supported by the specificity in Subsections (F) ("the name and contact information of any such person, if known at the time of filing") and (G) ("an accounting of the entities that received such fees"). Without such clarification, some industry players will set up global clearinghouses through which to funnel all fees and disclose the fees only to such clearinghouses, failing to disclose the promoters closer to the investor and the amounts those promoters receive, and thereby frustrating the purposes of the statute to disclose the most meaningful conflicts of interest of all.

USCIS needs to amend Form I-526E immediately to cure this glaring oversight in the original form and instructions, and in the process it should clarify the nature of the required disclosure.

If USCIS decides that the above interpretation is wrong, then it should publish that fact instead, stating that it is enough for issuers to disclose the total amount of the investor's administrative fees

#### **I-956F and I-956G**

It is curious that the statutes underlying these forms are worded a bit differently than the statute above concerning disclosure to the investor, and differently from each other:

#### **203(b)(5)(F)**

(dd)(AA) any fees, ongoing interest, or other compensation paid, or to be paid by the regional center, the new commercial enterprise, or any issuer of securities intended to be offered to alien investors, to agents, finders, or broker dealers involved in the offering of securities to alien investors in connection with the investment;

(BB) a description of the services performed, or that will be performed, by such person to entitle the person to such fees, interest, or compensation; and

(CC) the name and contact information of any such person, if known at the time of filing;

#### **203(b)(5)(G)**

(ff) to the best of the regional center's knowledge, for all fees, including administrative fees, loan monitoring fees, loan management fees, commissions and similar transaction-based compensation, collected from alien investors by the regional center, the new commercial enterprise, any affiliated job-creating entity, any affiliated issuer of securities intended to be offered to alien investors, or any

promoter, finder, broker-dealer, or other entity engaged by any of the aforementioned entities to locate individual investors-

- (AA) a description of all fees collected;
- (BB) an accounting of the entities that received such fees; and
- (CC) the purpose for which such fees were collected;

Subsection (F) concerning project applications specifies three parties who would be paying the compensation: the RC, NCE, or any issuer of securities. Arguably this limitation arises from an appreciation of the situation, that the parties issuing the security might not know at that point about compensation that might be paid to promoters in the future. More importantly, in fact, parties rarely know for sure what promoters will be paid to originate investors in the future, and we expect most RCs to legitimately indicate in Form I-956F that they don't yet have the information needed to answer that question fully.

Subsection (G) concerning annual reports goes a little further and limits the required information based on where the compensation for promoters came from: "collected from alien investors." It makes some sense for Congress to have framed the annual report requirement in terms of an accounting of all of the capital and administrative fees paid in by investors, with a focus on what made its way to promoters.

As stated in my original comments, the word "or" in the first version of Form I-956G seems to be a mistake. What I did not realize in making that comment is that the nonsensical word "or" comes directly from the statute. Nevertheless, the agency can take note that Congress clearly made a "typo" error and can fix it in implementation. The word "to" makes much more sense and is consistent with the other statutory requirements generally on this topic as quoted above.

An industry colleague brought to my attention a permissible interpretation of Subsection (G) that gives effect to the "or" in a way that furthers Congressional purpose. That is, (G) elicits information regarding any fees "collected by" not only RCs, NCEs, affiliated JCEs, or issuers, but also "collected by" promoters, finders, and broker dealers. This would mean that the RC would need to report on any fees it knows have been received by promoters, whether from investors themselves or from any other source (such as a non-affiliated JCE who is not an issuer). This would be consistent with the "all encompassing" interpretation of subsection (K)(iv) above.

Nevertheless, the issue arises that RCs and NCEs could "hide behind" the Form I-956G reporting requirement and claim that they are required to disclose to investors and report to USCIS only compensation to promoters that originate from investors' administrative fees. Even if USCIS limits the annual reports to what the statute requires (correcting "or" to "to"), USCIS should clarify and publicize that the critical required written disclosure to investors at time of subscription is not limited to payments arising from investor administrative fees and must identify the specific promoters receiving such compensation, including especially the people and entities directly engaging with the investor. Another option is for USCIS to broaden the annual report to include copies of all of the written disclosures given to investors for filing with their I-526 petitions or to summarize those disclosures that are required to be available for USCIS audit.

If not, and USCIS will allow RCs and NCEs to limit the investor disclosures and the annual reports to the payments made to global clearinghouses out of the administrative fees paid by investors, then USCIS should publicize that interpretation so that RCs and NCEs who otherwise might strive for compliance in

the spirit of the RIA can join the trickier and craftier parties who are appealing to fee-thirsty agents who don't want their own compensation disclosed to the investors they are soliciting.

## USCIS Publishes Draft Registration Form for EB-5 Promoters

By [Robert C. Divine](#) of [Baker Donelson](#)

September 4, 2022

USCIS has published for public comment a draft Form I-956K and instructions for use by EB-5 securities “promoters,” implementing a new and unusual statutory requirement for promoters to register with USCIS, certify that they are not “prohibited persons,” and confirm the existence of a written agreement with the securities issuer or related party. Registration of promoters will not be required until the 60-day comment period ends and USCIS considers comments and publishes the final form. The form gives rise to several important questions that the instructions do not answer. Also it gives rise to important obligations for EB-5 securities issuers and sponsoring regional centers.

The EB-5 Reform and Integrity Act of 2022 (“RIA”) enacted INA Section 203(b)(5)(K) that requires promoters to register and requires each EB-5 petition to include a written disclosure of all fees, ongoing interest, and other compensation paid to any agents, finders, or broker dealers. Although USCIS has issued for immediate use other forms implementing RIA, the I-956K is published in draft only for now. Nevertheless, the same [Federal Register notice](#) calls for comment on new EB-5 forms I-956, I-956F, I-956G, and I-956H (not I-526 or I-526E).

Who must register should be clearer. The RIA does not specifically define “promoter.” The provision requiring fee disclosures applies to payments to “agents, finders, or broker dealers.” The form requires the registrant to self-identify whether the person is a “direct promoter,” “third-party promoter,” or “migration agent,” or some combination, without any definition of those terms or any discussion of the implications. The form is for use by individuals and entities. It is not clear whether registration is required only of an individual or entity with an agreement to market EB-5 securities. The form asks if the registrant is employed to work as a promoter or otherwise engaged as a promoter on behalf of another promoter,” which implies that employees or agents of primary registrants must also register, but it is not clear what kind of a role in a promoter organization subjects one to the registration requirement. Also it is not clear how an employee or sub-agent completes the portion of the form collecting information about the registrant’s written agreement with the securities issuer or related party, and explanations in the addendum may be needed.

Also unclear is whether registration is required for a promoter of investments only in regional center sponsored projects or also for “stand alone” projects involving only one investor. The RIA is unclear on this, and the form and instructions make no mention of the issue. Newly published Form I-526 for stand alone investors mentions nothing about several “integrity measures” of RIA that might have been intended only for regional center projects.

Promoters must register or update registration every time they enter or get out of an agreement with any entity to sell or promote EB-5 investments. Each registration lists the promoter’s current agreements in effect.

I-956K should be done online with no filing fee. The written agreement with the securities issuer or related party itself is not submitted but must be available for review. USCIS may require the registrant

to appear for biometrics at an Application Support Center if the registrant is in the U.S. or at a U. S. consulate abroad (or a contractor retained by the consulate) in the registrant's country.

The law requires promoters to register, but regional centers are required to make sure that all persons involved in the securities offering are complying with the immigration, securities, and other laws, and that includes promoters. Agreements with promoters must be written and should require the promoter and all agents, sub-agents, and employees interacting with prospective investors to register with USCIS using Form I-956K. Agreements may also require promoters to provide evidence of such registration. Issuers considering a particular investor's subscription should consider requiring proof of USCIS registration for all persons (individuals and entities) who interacted with the investor in the sales process and up the chain to the person having the written promoter agreement with the issuer. Failure of registration of such parties could lead to termination of the sponsoring regional center and debarment of the issuing entity. A promoter whose misbehavior contributes to termination or debarment by USCIS of a regional center, new commercial enterprise, or job creating entity can be permanently debarred from promoting EB-5 investments.

USCIS needs to clarify several issues above in the final form and instructions.

## Why U.S. EB-5 Investors Should Work Only With USCIS-Registered Promoters

By [Robert C. Divine of Baker Donelson](#)

September 7, 2022

Investors in the U.S. EB-5 program should only work with agents and brokers who have committed to register as “promoters” with USCIS once that registration program has rolled out, and only with agents who already have registered once the program is active.

The U.S. Congress learned that sellers of opportunities to investors under the U.S. EB-5 immigrant program have been paying huge commissions, often adding back-end participation interests, to agents and brokers (collectively, “promoters”) originating those investors. Sellers typically disclosed in their private placement memorandums the possibility of such compensation in general, but almost never specifically. Agents have a huge conflict of interest arising from the temptation to steer investors to sellers who pay the highest commissions, and they have a serious disinclination to disclose to their investors just how much they are getting. Often the promoter is being paid multiples of the return on investment the investor can hope for. Congress concluded that this has tended to contribute to investment into poorly run projects that sometimes experienced fraudulent “diversion” of capital into undisclosed projects or into lavish personal expenditures of organizers.

Thus, in addition to requiring independent third-party fund administration by the investment sellers, the EB-5 Reform and Integrity Act of 2022 (“RIA”) imposes several requirements on EB-5 promoters and the parties who sell through them:

1. Each promoter who participates in offering EB-5 investment must register with USCIS using new Form I-956K, in which the promoter must confirm that the promoter has not been involved in certain types of misconduct.
2. The investor’s I-526E petition must include a written disclosure, signed by the investor, of all fees, ongoing interest, and other compensation paid by seller and related parties to any promoters.
3. A promoter and the seller of the securities must have a written agreement with each other that requires the promoter to register with USCIS and to follow USCIS guidance (yet to be issued). Sellers and sponsoring regional centers are required by the RIA to certify that everyone involved in their EB-5 offerings are complying with securities laws of the U.S. and of the investor’s country of residence and that they have in place policies and procedures to ensure such compliance. Securities laws prohibit any misleading of investors, including failing to disclose conflicts of interest.

In a [Federal Register notice](#), USCIS published a draft Form I-956K with instructions to solicit public comment for 60 days, due November 1, 2022. It is expected that USCIS will finalize and implement the form soon after that.

Promoters who want big commissions are going to tend to want to get around these requirements. Investors need to realize that it is in the investor’s interest not to let that happen. First, the investor is

required to include in the I-526E with USCIS the written disclosure of promoter compensation.<sup>1</sup> Failure to include that could result in denial of the I-526E. Why not get that disclosure up front to consider in making the investment decision? Second, USCIS is likely to cross check the promoters whose compensation is disclosed in the I-526E to make sure the promoters are registered with USCIS on Form I-956K, and if not then USCIS is likely to require such registration before the I-526E is adjudicated. Third, USCIS could investigate the failure of promoters of a seller's and regional center's offerings to register with USCIS and use adverse findings as a basis to "terminate" the regional center or "debar" the seller or related party. Such termination or debarment triggers denial or revocation of the investor's immigration approvals unless the investor quickly associates with another regional center and/or seller and makes amended filings, which could be very complicated and uncertain. So promoters' compliance is critical to investors' immigration success.

Investors should be informed clearly and early who will earn what money because of their investment, because this reveals to investors the true extent of the conflicts of interest that may be involved in the advice they are receiving. Investors should require any promoter seeking to sell them an investment to provide copies of:

1. The promoter's proof of registration with USCIS (once such registration becomes possible).
2. The promoter's registration with securities agencies, if required, under the laws of the countries where the agent and investor are located.
3. Written disclosure of any fees, ongoing interests, or other compensation that each and every person involved in the promotion will receive as a result of the investor's subscription.
4. If the investor senses any hesitation about item 3, the promoter's actual written agreement with the seller or at least all sections having to do with compensation.

Commissions to securities promoters are normal, just as they are for real estate salespeople. But they should be disclosed. And the promoters should be registered with USCIS and with any securities agencies that local law requires. Failure by investors to insist on these matters could contribute not only to financial loss but also to immigration failure.

---

<sup>1</sup> USCIS first version of Form I-526E, for investors sponsored by regional centers, does not mention the requirement of the written disclosure of compensation, but this is an oversight that will be fixed in subsequent versions, and meanwhile USCIS is likely to issue Requests for Evidence from investors who use the initial version of the form to have them supply the written disclosure that the statute clearly requires.

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## Comment Submitted by Marko Issever

Posted by the U.S. Citizenship and Immigration Services on Oct 14, 2022

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Having signed a foreign finder agreement with a US broker-dealer, following Rule 2040, must foreign real estate agents, accountants, financial advisors, teachers, education consultants, and other similar foreign professionals file Form I-956K even if their primary business is not EB5? It would be very cumbersome if they must. It would be hard to monitor and force them to comply. Therefore, would it be sufficient to list them in the I-956K registration of the broker-dealer?

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## Comment Submitted by American Immigration Lawyers Association

Posted by the **U.S. Citizenship and Immigration Services** on Oct 27, 2022

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Comment

On behalf of the American Immigration Lawyers Association, we submit herewith our comments with respect to the USCIS information collection in connection with Forms I-956, Form I-956F, Form I-956G, Form I-956H and Form I-956K.

Attachments 5



AILA Comment on Form I-956

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AILA comment on Form I-956F

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AILA comment on Form I-956G

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## AILA comment on Form I-956H

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## AILA comment on Form I-956K

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October 25, 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-956, Application for Regional Center Designation**

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-956, Application for Regional Center Designation (USCIS OMB Control No. 1615-NEW; Docket ID USCIS-2022-0010) (hereinafter “Proposed Form I-956”) published in the Federal Register on September 2, 2022.

Established in 1946, AILA is a voluntary bar association of more than 16,000 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.

We submit the following comments with respect to the proposed Form I-956, Application for Regional Center Designation.

**AILA National Office**

1331 G Street NW, Suite 300, Washington, DC 20005  
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### **General Comments and Issues Requiring Additional Instructions or Policy Guidance**

1. **Amending Geographic Boundaries:** Please clarify in the instructions whether Form I-956 or Form I-956F is needed to expand the scope of a Regional Center's Geographic Designation.
2. **Amendments for previously filed Form I-956:** Regional Centers that filed a Form I-956 prior to the effective date of the Behring settlement should be allowed to seek any additional amendments permitted by said form, including amendments to the Regional Center's name, organizational structure, ownership, administration, or geographic boundaries. Otherwise, Regional Centers in this category will be prejudiced for having acted in good faith, while not initially knowing they could use the Form to amend their previously approved designations.
3. **Responding to Courtesy Requests for Clarification (CRC) for Form I-956 Filings:** Regional Centers that filed a Form I-956 prior to the effective date of the Behring settlement have been receiving CRCs from USCIS in connection with those filings. Each CRC asks whether the application is an amendment or an initial application and allows the opportunity to provide additional information and documentation to supplement the pending Form I-956 application. In response to the CRC, a Regional Center should be allowed to submit additional information and documentation to support a request to amend its name, organizational structure, ownership, administration, or geographic boundaries. Moreover, USCIS should confirm that a CRC response by the Regional Center is sufficient to supplement the Form I-956 filing. Any additional documentation provided with the response should be deemed filed as of the original filing date of the Form I-956.
4. **Evidence Needed for Amendments to Geographic Boundaries:** USCIS should clarify the evidence needed to amend a geographic boundary, including (1) what evidence should be submitted to expand a Regional Center's geographic scope (e.g., confirm that it is the same standard as pre-RIA adjudications), (2) what standard USCIS will use to adjudicate such requests, and (3) an estimated timeline for adjudicating amendments for geographic boundaries. These are urgent and critical issues because they affect the timing and structuring of upcoming EB-5 offerings.
5. **Inactive Regional Centers:** Please confirm what forms/filings/notices a Regional Center must file if they have no intention of operating under the RIA and wish to wind down or otherwise cease operations. Please clarify what policies/procedures have been implemented for Regional Centers in this scenario.
6. **EB-5 Integrity Fee:** Please confirm that the "Integrity Fee" for Regional Centers will not be collected for Fiscal Year 2022.

7. **Securities Laws/Compliance:** AILA recommends that USCIS publish acceptable guidelines/procedures for compliance with applicable securities laws. Can USCIS confirm whether USCIS or the SEC will oversee such regulatory or enforcement issues? Has there been any inter-agency discussion or coordination?
8. **Evidence Required to Maintain Regional Center Designation:** For I-956 filings submitted before December 29, 2022, can USCIS confirm the required evidence needed to maintain designation? Based on the Form I-956's instructions and information thus far, it seems at a minimum, Regional Centers should include previous designation letters to comply with Form I-956 (Parts 4, 5, and 6), an economic impact report, and an operations plan/manual. Is this sufficient?
9. **Form I-956G:** Please confirm whether Regional Centers must file this form before December 29, 2022.

#### **Form Specific Questions/Issues**

#### **Part 7. Information about all persons involved with the Regional Center**

- A. Please clarify the scope of persons "involved" or "indirectly involved" with the Regional Center who must be listed and file a Form I-956H. USCIS' scope seems to be overly broad and appears to include people serving in tangential roles who are merely listed on the Regional Center's website even though they lack significant involvement.

#### **Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956 and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

October 25, 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-956F, Application for Approval of an Investment in a Commercial Enterprise**

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-956F, Application for Approval of an Investment in a Commercial Enterprise (USCIS OMB Control No. 1615-NEW; Docket ID USCIS-2022-0010) (hereinafter “Proposed Form I-956F”) published in the Federal Register on September 2, 2022.

Established in 1946, AILA is a voluntary bar association of more than 16,000 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.

## **Instructions for Form I-956F, Application for Approval of an Investment in a Commercial Enterprise**

### **Comments:**

- The instructions to Form I-956F state that its purpose is to be “used by a regional center designated after March 15, 2022 to request approval of a project.” This should be amended to indicate the form is to be “used by a regional center designated by USCIS to request approval of a project.”
- The instructions to Form I-956F require Form I-956H, Bona Fides of Persons Involved with Regional Center Program from “(e)ach person involved with the NCE and affiliated-JCE.” Given the ability of USCIS to use previously captured biometrics, we suggest modification of the instructions to require *either* submission of Form I-956H, *or* a copy of a USCIS receipt evidencing the submission of Form I-956H to USCIS in connection with another filing within a reasonable period of time (e.g., the 12 months) preceding the date of filing of Form I-956F.
- Instructions for Item Number 17 – The reference to “Form I-526” should be changed to “Form I-526E.”

### **Page 1, Part 1 – Application Type**

USCIS should clarify which circumstances necessitate the filing of an amendment of Form I-956F. It is common for offering documents to be amended by the new commercial enterprise; however, those changes or supplements to an offering may not be material to the Form I-956F.

### **Part 5, page 6, Item 3 – Infrastructure Projects**

USCIS should clarify in the form instructions to Form I-956F whether a public-private partnership would qualify as an “infrastructure” project or whether the JCE must solely be a government agency.

### **Part 5, page 6, Item 4 – High Employment Projects**

USCIS should clarify what this section means, as it does not appear to be part of the RIA. Moreover, in item 5, petitioners can check if the project is a Non-TEA/Non-Infrastructure, Non-High Unemployment project. It appears Items 4 and 5 are asking for the same information.

### **Part 5, page 6, Item 7 - Number of expected EB-5 Investors into the NCE**

The instructions state that each Form I-956F may only include one commercial enterprise, but it is common for a regional center to support two commercial enterprises engaged in a collaborative effort to raise EB-5 funds to support the same project. In certain situations, parallel funds/new commercial enterprises may also be required under securities laws. Form I-956F should be modified to allow for the possibility of a companion capital raise by expanding the question in item 7 to the number of expected EB-5 investors into NCEs supporting the same capital investment project.

**Part 5, page 6, item 9 Nature of Activity of Project (for example, furniture manufacturer), and**

**Part 5, page 6, item 10 Primary Included Industries for Project (provide North American Industry Classification System (NAICS) codes)**

Comments:

Items 9 and 10 are unclear and require the regional center to guess what information is required in response to the request for the “Nature of Activity of Project” and “Primary Included Industries for Project”. Item 9 gives the example of “furniture manufacturer,” which suggests USCIS seeks to identify the industry or industries that will be the focus of operations once any development and construction activities are completed, and not necessarily the business activities that will be the primary source of job creation, e.g., the expenditures required to construct a furniture manufacturing factory.

Items 9 and 10 should be modified to clarify whether USCIS, in asking for the “Nature of Activity of Project,” seeks to identify the industry or industries that will be the primary source of job creation, or the industry or industries that will be the focus of operations once any development and construction activities are completed, regardless of whether job creation primarily occurs during the construction phase.

We also note that item 11 asks for the number of estimated jobs to be created by the project, broken down by industry sector and associated NAICS codes, which would be identified in the economist’s economic impact and job creation analysis as the industries impacted by the project.

• **Page 12, Part 10 – Fund Administration**

USCIS needs to edit Form I-956F to provide for the mandatory waiver of fund administrator requirements where the new commercial enterprise procures audited financial statements. At present, the Form I-956F only contemplates a scenario in which a fund administrator is hired, although the RIA allows for a mandatory waiver of this requirement when audited financial statements will be prepared. Specifically, INA 203(b)(5)(Q)(v)(II) states, “The Secretary of Homeland Security shall waive the requirements under clause (iv) for any new commercial

enterprise that commissions an annual independent financial audit of such new commercial enterprise or job creating entity conducted in accordance with Generally Accepted Auditing Standards, which audit shall be provided to the Secretary and all investors in the new commercial enterprise.”

Also, USCIS must clarify the use of the word “or” in this context. The instructions to Form I-956F should clarify whether both the new commercial enterprise and the job creating enterprise are required to commission audited financial statements to waive the fund administrator requirements.

**Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956F and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION



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IMMIGRATION  
LAWYERS  
ASSOCIATION

October 25, 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-956G, Regional Center Annual Statement**

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-956G, (USCIS OMB Control No. 1615-NEW; Docket ID USCIS-2022-0010) (hereinafter “Proposed Form I-956G) published in the Federal Register on September 2, 2022.

Established in 1946, AILA is a voluntary bar association of more than 16,000 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.

AILA hereby submits the following comments to Form I-956G, Regional Center Annual Statement.

## **Instructions to Form I-956G**

1. The USCIS website says “*Regional centers approved after May 14, 2022 use this form to provide required information, certifications and evidence to support their continued eligibility for regional center designation.*” The website should clarify that Form I-956G also should be used for those regional centers that filed Form I-956 as an “amendment” application for a regional center approved prior to May 14, 2022 that wishes to continue operating under the EB-5 Reform and Integrity Act of 2022 (the “RIA”).
2. In the form instructions at page 1, USCIS should clarify the filing deadlines for regional centers to file Form I-956G. The instructions and the name of the form indicate that this Form I-956G must be filed annually by approved regional centers. The form instructions contain the following deadlines:

<b>A Designated Regional Center</b>	
<b>With a designation letter dated:</b>	<b>Must file Form I-956G and submit the appropriate annual fee:</b>
On/before September 30	On/before December 29 of the <b>same</b> calendar year
On/after October 1	On/before December 29 of the <b>following</b> calendar year

AILA finds these instructions confusing. For example, for a regional center approved on September 29, 2022, the Form I-956G would be due December 29, 2022 and each year thereafter. For a regional center approved on October 2, 2022, the Form I-956G would be due December 29, 2023, but for the same fiscal year period. The use of the word “following” calendar year would give some regional centers approved between October 1 and December 31 *an entire year of extra time to file an annual compliance form* on the same fiscal year data as those regional centers approved between January 1 and September 30. This is confusing and creates disparities in deadlines for regional centers to provide relevant information about a fiscal year. It is not clear whether USCIS is giving extra time for the filing of Form I-956G for just the *first* year of approval of the regional center. In any event, the current language appears to give on its face certain regional centers an extra year to file data about the fiscal year in question. AILA suggests having one deadline as was the case with the former Form I-924A.

3. The I-956G form instructions state the following:

### **Part 3. Information About the Regional Center’s Operations**

**Item Number 1. Accounting of All Alien Investor Capital Invested in the Regional Center.** Provide the total EB-5 investor capital invested in the regional center and its associated new commercial enterprise(s) and job-creating entity(ies) since the date of regional center designation.

USCIS should clarify that the amount of “total investor capital” should be provided since May 14, 2022 for previously designated regional centers that continue to operate under the RIA. For all *new* regional centers not previously designated before May 14, 2022, this amount should be provided since the date of approval of the regional center by USCIS. This clarification is needed so that regional centers designated prior to the RIA passage that still choose to operate under the RIA are not required to provide data for fiscal years prior to RIA passage.

4. The Instructions to Form I-956G Attachment 1 state:

**Item Number 13. Aggregate Amount of Investor Capital Invested in the NCE.** Provide the aggregate amount of EB-5 investor capital invested in the NCE for the capital investment project since the NCE’s Form I-956F was filed. The amount must be supported by an “accounting” of the aggregate capital investment described here which may include, but is not limited to, NCE bank statements and/or wire transfers.

**Item Number 14. Use of the Investor Capital.** Describe how the alien investor capital described in **Item Number 13.** is being used to execute the capital investment project.

**Item Number 15. Commitment of the Investor Capital.** Provide evidence that 100 percent of alien investor capital has been committed to the capital investment project. Describe the evidence provided (exhibit number, document name).

**Item Number 16. Progress of the Capital Investment Project.** Provide detailed evidence of the progress made toward the completion of the NCE’s capital investment project described in Form I-956F. Describe the evidence provided (exhibit number, document name).

**Item Number 17. Job Creation.** Provide the aggregate number of direct jobs created or preserved by the capital investment project since Form I-956F was filed.

**Item Number 18. Fees.** Provide a description of all the fees collected. The description of the fees should include the amount collected. Provide the names of the entities that received such fees, and the purpose for which the entities collected the fees.

Item 13 asks for an accounting of capital invested into the NCE since the Form I-956F was filed, not for the federal fiscal year. There is no temporal instruction found in Items 14-18. USCIS should clarify whether the regional center must report (on investor capital, commitment of capital to the JCE, project progress, job creation and fees collected and paid) for the fiscal year OR since the time of filing of the I-956F. This was a common issue on Form I-924A, as it was not clear if the fiscal year data or cumulative data should be reported annually. The instructions should be clarified and one temporal standard should be used for all data.

## **Form I-956G**

5. Form I-956G states the following on page 4:

<i>Certifier's Signature</i>	
12. Certifier's Signature	Date of Signature (mm/dd/yyyy)
 <input type="text"/>	<input type="text"/>
13. At any time in the previous fiscal year, was the regional center or any party associated with the regional center not in compliance with the securities laws of the United States or the securities laws of any State in which the securities activities were conducted?	<input type="checkbox"/> Yes <input type="checkbox"/> No

If you answered “Yes” to **Item Number 13.**, describe the activities that led to noncompliance and describe the actions taken to remedy the noncompliance in **Part 8. Additional Information**.

Complete **Item Number 14.** only if you answered “Yes” to **Item Number 13.**

I certify, under penalty of perjury, to the best of my knowledge, after due diligence investigation, the regional center and all parties associated with the regional center are currently in compliance with the securities laws of the United States or the securities laws of any State in which the securities activities were conducted.

USCIS should clarify if “any party associated with the regional center” means also the new commercial enterprise, or if this certification is just for the principals or other persons of authority in the regional center entity.

## **Attachment 1 to Form I-956G**

6. Attachment 1 at page 14 requires the regional center to provide information about the Fund Administrator hired by the NCE. USCIS needs to edit the Form I-956G, Attachment 1, to allow for the mandatory waiver of fund administrator requirements where the new commercial enterprise procures audited financial statements. At present, the Form I-956G, Attachment 1, only contemplates that a fund administrator can be hired, but the RIA allows for a mandatory waiver of this requirement when audited financial statements will be prepared. INA 203(b)(5)(Q)(v)(II) states, “The Secretary of Homeland Security shall waive the requirements under clause (iv) for any new commercial enterprise that commissions an annual independent financial audit of such new commercial enterprise or job creating entity conducted in accordance with Generally Accepted Auditing Standards, which audit shall be provided to the Secretary and all investors in the new commercial enterprise.” Moreover, USCIS must clarify the use of the word “or” in this context. The instructions to Form I-956G should clarify whether both the new commercial enterprise and the job creating enterprise are required to commission audited financial statements to waive the fund administrator requirements.

**Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956G and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION



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October 25, 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-956H, Bona Fides of Persons Involved with Regional Center Program**

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-956H, Bona Fides of Persons Involved with Regional Center Program (USCIS OMB Control No. 1615-NEW; Docket ID USCIS-2022-0010) (hereinafter “Proposed Form I-956H”) published in the Federal Register on September 2, 2022.

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AILA hereby submits the following comments to Form I-956H, Bona Fides of Persons Involved with Regional Center Program:

- 1. Definition of terms within the definition of “Personals Involved with a Regional Center, New Commercial Enterprise, or Job-Creating Entity” at INA 203(b)(5)(H)(v).** The INA does not define a number of terms within this definition, such as “indirect”, “substantive authority”, “operational decisions” or “managerial decisions”, nor does it define what constitutes “pooling...of any funding,” “securitization...of any funding,” “investment...of any funding,” “release...of any funding,” “acceptance...of any funding,” “control...of any funding,” or “use...of any funding.” Most pressing for purposes of understanding compliance obligations is the definition of “substantive authority”, “operational decisions” and “managerial decisions.” Because the form instructions simply restate INA 203(b)(5)(H)(v), it is not clear which individuals are actually covered by this form and who is required to complete the form.

We would like to note that, from a drafting perspective, the terms highlighted above run together, such that in order to be required to complete the form, the person must satisfy all of the following conditions: (a) directly or indirectly (b) in a position of substantive authority, (c) to make operational or managerial decisions over (d) pooling, securitization, investment, release, acceptance, control or use of any funding (e) that was procured under the “Regional Center Program.”

Noteworthy in this definition is that any person involved with a regional center, new commercial enterprise, or affiliated-job creating entity which possesses substantive authority to make operation or managerial decisions over monies that were not procured under the Regional Center Program (e.g. nonimmigrant investor capital) is not required to complete a Proposed Form I-956H. For instance, the head of Human Resources at a regional center, new commercial enterprise, or affiliated-job creating entity would not be covered, neither would positions such as investor relations, business operations, business development, communications, etc.

In another example, this plain language would also not require an individual with a minority ownership percentage in a regional center, new commercial enterprise, or affiliated-job creating entity that does not provide the individual with the right to make operational or managerial decisions over immigrant investor capital. For instance, arrangements exist wherein an individual owns 49.9% or less of a regional center, new commercial enterprise, or affiliated-job creating entity, and such ownership interest does not permit the individual to make any operational or managerial decisions without the consent of the majority.

In addition to addressing the critical lack of definitions referenced above, DHS should also clarify the scope of “indirect” in the definition of “Persons Involved with a Regional Center, New Commercial Enterprise, or Job-Creating Entity” at INA 203(b)(5)(H)(v). In a

modification of the example in the paragraph directly above, an individual could own 49.9% of a new commercial enterprise or affiliated-job creating entity, and under the terms of that entity, be required to consent to major decisions on the winding up, disposition of property, etc., that affects immigrant investor capital. However, this individual would clearly not be in a position of “substantive authority” as that term is colloquially understood, and thus despite their ability to block dispositions of immigrant investor capital, such an individual would not be required to complete the Proposed Form I-956H under the law.

- 2. Clarification regarding the Secretary’s discretion to require non-affiliated JCE’s to complete a Proposed Form I-956H.** Pursuant to the INA, the Secretary’s discretion is not unlimited, and the Proposed Form I-956H should be clarified to reflect this fact. Rather, INA 203(b)(5)(h)(iii)(III) states the Secretary may request the information and documentation in INA 203(b)(5)(h)(iii)(I)-(II) “...if there is a **reasonable basis to believe** such entity or person is not in compliance with” INA 203(b)(5)(h)(i)-(ii) [emphasis added]. Indeed, the definitional section of INA 203(b)(5)(H)(v) does not include non-affiliated job creating entities. Therefore, the statements in the Proposed Form I-956H and form instructions that “A person involved with a JCE that is not an affiliated JCE may, at the Secretary’s discretion, be required to answer the questions below” and “[a] person involved with a JCE that is not an affiliated JCE may, at the Secretary’s discretion, be required to complete Form I-956H” are not accurate because they fail to include the restriction on the Secretary’s discretion that a “reasonable basis to believe” such entity or individual is not in compliance with the relevant portions of law. Furthermore, we believe DHS should provide examples of what would constitute a “reasonable basis to believe” an entity or individual is not in compliance with the relevant portions of law.

DHS should also provide guidance as to who will be required to complete a Proposed Form I-956H in situations where DHS has a “reasonable basis to believe” a non-affiliated job creating entity is not in compliance with the relevant portions of law. Many large-scale developments have multiple job creating entities and may have partners or equity investors with certain standard development rights entitling them to consent over various decisions related to the development. To the extent DHS believes a non-affiliated job creating entity is not in compliance with the relevant portions of law, DHS should be required to specify the reasonable basis so that the non-affiliated job creating entity can choose the appropriate person to complete the Form I-956H, similar to the derogatory evidence standard already employed by USCIS.

- 3. DHS should permit the designation of a “Persons Involved with a Regional Center, New Commercial Enterprise, or Job-Creating Entity.”** Given the confusion from the various provisions of law, DHS should permit a regional center, new commercial enterprise, affiliated-job creating entity or non-affiliated job creating entity to designate one individual who meets the definition of INA 203(b)(5)(H)(v) and will be held responsible under the RIA for compliance with law. If DHS simply allows designation of

this individual, it avoids the problems discussed in this comment because the individual would be voluntarily self-identifying to DHS.

As a matter of law, nothing in INA 203(b)(5)(H) requires DHS to receive this Form I-956H as a means of conducting name checks on individuals involved in the regional center, new commercial enterprise, affiliated-job creating entity or non-affiliated job creating entity. While INA 203(b)(5)(H)(i) is clear that the Secretary “may not permit” any person to be involved in a regional center, new commercial enterprise, or affiliated-job creating entity if the person is determined to be subject to subsections (I)-(IV), INA 203(b)(5)(H)(v) grants the Secretary the power to “otherwise determine[d]” whether a person is involved. Similarly, INA 203(b)(5)(H)(iii)(I)-(II) include qualifiers that the Secretary “shall perform” criminal checks, and receive attestations, among others, … “as may be necessary to determine whether such entities” are in compliance with the law [emphasis added]. Accordingly, the Secretary could determine that the individuals appointed by each regional center, new commercial enterprise, affiliated-job creating entity or non-affiliated job creating entity must complete the Proposed Form I-956H, as determined by the Secretary to ensure such entities are in compliance with the law (provided the individuals fall within the definition at INA 203(b)(5)(H)(v)). DHS would still retain its authority to require certifications of other individuals through the issuance of a Request for Evidence or Notice of Intent to Deny for an entity or individual, as every entity and individual related to the EB-5 Program would be covered by at least one regional center’s annual filing.

Finally, we note that FINRA Rule 3110 requires each member to establish and maintain a system to supervise its activities, including compliance with laws and regulations, that includes the *designation an individual with authority to carry out supervisor responsibilities*. Similarly, we believe the designation of one individual (or multiple, if the entity desired) would be more efficient for USCIS’ operations and would help shorten adjudication timelines without sacrificing oversight.

- 4. DHS should not require submission of a Proposed Form I-956H with *each* Form I-956 and Form I-956F.** The form instructions currently require the submission of a Proposed I-956H with *every Form I-956 and Form I-956F*. The form instructions make this clear by explicitly stating that a person must file a Proposed I-956H *even where* the individually previously filed the Proposed Form I-956H with Form I-956 and is now filing a Form I-956F. This is wholly unnecessary and completely duplicative. The information and attestations requested in the Proposed Form I-956H generally will not change with sufficient frequency to justify additional burdens on EB-5 Program participants and the agency in adjudicating the same form repeatedly. Indeed, as USCIS is currently permitting scanned copies of signatures on forms, the inclusion of a previously signed and submitted form without any updates would be both lawful and sufficient.

Instead, DHS should require a Proposed I-956H only in three (3) scenarios: (1) accompanying an initial application for a regional center on Form I-956 (the check box in Part 1 of this form would alert the mailroom that a Proposed I-956H should be attached);

(2) accompanying a Form I-956F where (a) the individual qualifies under the definition at INA 203(b)(5)(H)(v) and (b) has never filed a Proposed I-956H previously; and (3) with each Form I-956G. In this way, DHS does not ask for the same information, repeatedly, especially given that the filing of a Proposed I-956H contains personal information sufficient to run, and re-run background checks, as well as authority of USCIS to verify that information through “any means determined appropriate by USCIS.” Furthermore, it is more logical to require a Proposed I-956H annually as part of the various certifications and attestations required to maintain compliance with the law.

5. **DHS needs to follow applicable rule-making as required by law before including Part 4 on the Proposed Form I-956H.** Part 4 of the Proposed Form I-956H includes questions seemingly designed to address INA 203(b)(5)(H)(ii); however, INA 203(b)(5)(H)(ii)(III) requires the Secretary to issue regulations implementing INA 203(b)(5)(H)(ii)(I)-(II), and no such regulations have been implemented (“Not later than 270 days after the date of the enactment of the EB-5 Reform and Integrity Act of 2022, the Secretary shall issue regulations implementing subparagraphs (I) and (II).”).
6. **DHS needs to define “bona fide foreign sovereign wealth fund or a foreign state owned enterprise” and what constitutes “administration of a job-creating entity.** As generally discussed above, when an entity or individual makes an equity investment, either directly or indirectly, into a real estate development project or other business, such entity or individual will receive certain rights to consent on major decisions of that investment. This typically includes consent over the disposition of property, winding up, etc. Accordingly, DHS should take a narrow view of “administration” to encompass only the practical management and direction of day-to-day workings of a job-creating entity. If DHS defines “administration” broadly to include situations of indirect control over certain major decisions, the exception would swallow the rule and no Regional Center sponsored project could accept investment by a bona fide foreign sovereign wealth fund or a foreign state-owned enterprise otherwise permitted to do business in the United States.
7. **Individuals with sealed, cleared, or otherwise non-existent criminal records.** Without any support in the INA, the Proposed Form I-956H requires individuals to mark “Yes” to any question where the record was “sealed or otherwise cleared.” This is overly broad and appears to require individuals with “expunged” records to mark “Yes” to the question. The plain language of the INA 203(b)(5)(H)(i)(I) does not support this requirement. INA 203(b)(5)(H)(i)(I) is a condition precedent to subsections (aa)-(cc) and states “the person has been **found to have committed...** [emphasis added].” Accordingly, Questions 1, 2 and 3 in Part 3 are worded too broadly and are *ultra vires*. Questions 1, 2 and 3 each begin with “Have you ever committed.” That phrasing is not consistent with the INA, which is clear that the questions should read “Have you **been found to have committed...**[emphasis added].” For instance, under state law in California, all prior marijuana convictions that are no longer considered crimes, including those with punishments of more than 1 year in prison, were required by law to be reopened, dismissed and sealed. Individuals in this example, as a matter of law, have no longer been found to have committed the offense.

Accordingly, individuals with valid expungements or other legal relief that results in, as a matter of law, no commission of a crime, should not have to answer “Yes” to Questions 1, 2 and 3 in Part 3.

**Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956H and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

October 25, 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-956K, Registration for Direct and Third-Party Promoters**

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-956K, Registration for Direct and Third-Party Promoters (USCIS OMB Control No. 1615-NEW; Docket ID USCIS-2022-0010) (hereinafter “Proposed Form I-956K”) published in the Federal Register on September 2, 2022.

Established in 1946, AILA is a voluntary bar association of more than 16,000 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.

AILA’s comments with respect to the draft Form I-956K are as follows:

**General Form Comments:**

- As an initial point, USCIS should clarify whether the Form I-956K applies to “promoters” for stand-alone Form I-526s as well as regional center-based Form I-526Es. This appears to be implied by the instruction that “[e]ach direct or third-party promoter (including migration agents) of a regional center, *any new commercial enterprise*, an affiliated job-

creating entity, or an issuer of securities to be offered to immigrant investors in connection with a particular capital investment project must register ....” but additional clarification would be helpful.

- Biometrics Services Requirements for overseas promoters. It is unclear as to how USCIS is planning to capture biometrics for overseas individuals who may be acting as a direct or third-party promoter. Will USCIS establish a process to accomplish this using U.S. Department of State resources? It should be clarified that for any individual residing overseas that any such biometrics requirement would also be scheduled overseas.
- The Form instructions indicate that USCIS will review the form for “completeness” and if it is not complete, it may be rejected. The form instructions must make clear what factors USCIS will use to “reject” a registration and whether such a rejection impacts the ability of the promoter to raise capital for the contracted entity (i.e. the NCE). The form instructions are not clear as to whether promotional activities can begin without a registration’s approval by USCIS.
- Under the RIA Section (K), direct or third-party promoters must enter into a “written agreement” which must be maintained by the NCE and the regional center. The RIA Section (K) also requires that the finder comply with all DHS regulations established by USCIS for the accurate presentation of the visa process to investors. AILA urges USCIS to publish these standards for public comment immediately so that these standards may be outlined in the required third-party agreements.

#### Specific Form Comments:

**Part 1, Page 1, Item 1 (Type of Registration):** USCIS should clearly define the terms “Direct Promoter,” “Third-party Promoter” and “Migration Agent.” It is imperative that stakeholders clearly understand who is required to complete the Form I-956K. Neither the form nor its accompanying instructions currently provide this guidance. This clarification can be accomplished either in the instructions to the Form I-956K or separately through the issuance of policy guidance. For example, does the term “direct promoter” encompass the Manager or General Partner of a new commercial enterprise, which would subject that entity to filing Form I-956K? Similarly, does this term include employees of the new commercial enterprise or the new commercial enterprise itself? AILA urges USCIS to adopt clear definitions, such as limiting this registration requirement to those who receive transaction-based compensation derived from sales to EB-5 investors.

- **Part 2, Page 3, Item 20 (Registrant Employment or Association):**
  - In item 20.A, the term, “promoter” is used without any further definition or explanation of such term. USCIS should define the term “promoter” or at least

change the reference to the one of the registration types described in Part 1 (i.e. Direct Promoter, Third-Party Promoter, Migration Agent).

- The Form I-956K should clarify whether employee(s) of a “promoter” (requires definition per comment above) must complete a separate Form I-956K. We urge USCIS to limit the scope of the Form I-956K to the person or entity who enters into the written agreements as required by the RIA. Should USCIS require additional details on those individuals with substantive authority at the promoter entity, then those details or registration should be limited to the main principals of the “promoter” since these individuals would have the substantive authority to enter into agreements with the regional center and/or new commercial enterprise. Every employee who merely interacts with a prospective investor on behalf of his/her employer-promoter should not be required to separately register.
- The Form I-956K should also clarify whether every sub-agent retained by a “promoter” (requires definition per comment above) must complete a separate Form I-956K, even in instances where the sub-agent does not contract directly with the regional center and/or new commercial enterprise.

- **Part 3. Page 4, Items 1-2 (Written Agreement(s)):**

- Under "Entity Type" in the table, USCIS should clarify the difference between an "NCE" and "Issuer of Securities." In almost all instances, the issuer of securities is the NCE.
- To the extent employees or sub-agents of a “promoter” (requires definition per comment above) are required to separately register, and to the extent such persons or entities are not contracting directly with the regional center and/or new commercial enterprise, USCIS should clarify the manner in which such downstream persons or entities should complete the table. For example, should the downstream persons or entities input the agreement(s) they have with the main “promoter” (if any)?
- **On Page 3, Part 3**, USCIS asks for the individual or organization filing the Form I-956K to answer if they have entered into a “written agreement for each regional center, new commercial enterprise and affiliated job creating entity.” The wording of this question is confusing and suggests that each direct or third-party promoter must enter into a written agreement with all of these parties, i.e. the regional center, the NCE and the affiliated JCE. However, this would seem incorrect as a matter of law and practice. Other areas of law may limit who should contract with a direct and third-party promoter, and in most instances, only the NCE would be a party to such agreement. For example, a foreign migration agent may contract directly with the NCE, but never with the regional center or the job creating entity. Moreover,

only the NCE would contract with a licensed broker-dealer in the U.S. While the regional center may have an obligation to maintain a copy of the agreement, there should not be an implication by USCIS that the direct or third-party promoter must enter into a written agreement with each of these parties, as other laws, including U.S. securities laws, may prohibit such an agreement. Instead, USCIS can ask the individual or entity filing Form I-956K to indicate who are the relevant parties to the agreement being listed in this part. It should be the obligation of the parties to determine who should be entering into the finder's agreement.

### **Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956K and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

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## Comment Submitted by Second Wind LLC

Posted by the U.S. Citizenship and Immigration Services on Oct 31, 2022

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Comment

Feedback from Second Wind LLC, EB5 Promoter for Form I956K - Registration for Direct and Third-Party Promoters.

Please kindly find attached file with our comments on the USCIS form I-956K.

Attachments (1)



Form I956K - Feedback from Second Wind LLC



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## **Feedback from Second Wind LLC, EB5 Promoter for Form I956K - Registration for Direct and Third-Party Promoters**

OMB Control Number 1615-NEW  
Docket ID USCIS-2022-0010

### **Part 1. General Feedback**

The registration of the Promoters is a very important step, and as a member of the IIUSA which operates in Russia and CIS countries, we believe that it will increase transparency and help investors.

However, we have concerns that the way Form I956K is done now: it will bring too much unnecessary burden on the USCIS agency and IPO office particularly and would have a negative effect on I526 processing time which is a huge issue today.

In our opinion, even a simplified version of the form would greatly increase transparency in the process.

We propose the following:

**1) Reduce the frequency of form submission, from each time a new contract is signed, terminated or amended to once per year.**

Instructions provided for form I956K state that a Promoter should submit the form before promoting any project, upon signing, terminating or amending any contract with an entity.

Our company is a small agency in the undeveloped EB5 market. In order to maintain the work the way we do it now, we will have to file at least 15 - 30 amendments of the form per year.

The reason for this is that we aim to provide a choice of projects to our clients, and therefore we need to offer at least 5 - 8 projects at once since projects are changing and we have 2 legal entities registered in different locations. If we look at the bigger markets, the Promoters there would submit even more files per year and each form will require time to manually go through the list of agreements to figure out which Regional Center, NCE, JCE is involved, comparing it with the previous form and this involves extra time to figure out what has been changed since the last form was submitted.

This process is in our opinion inefficient and overly time consuming.

We propose that forms can be submitted once per year and should have 2 sections:

- Section 1 - should include all projects promoted in the previous year;
- Section 2 - should include all projects which are being promoted at the moment of the form's submission.

**2) Remove NCE, JCI from the form and keep only the regional center ID to identify the promoted projects.**

Form I956K states that all third-party Promoters, new commercial entity (NCE) or affiliated job creating entity (JCE) should be registered with USCIS. Additionally, part three of Form I956K requires listing all contracts with RC, NCE or JCE involved.

This means that both Promoters and USCIS will need to spend extra time to go into layers of information to reach the same goal - to find a responsible Regional Center.

According to the USCIS website, the definition of a Regional Center is:

“An EB-5 regional center is an economic unit, public or private, in the United States that is involved with promoting economic growth. Regional centers are designated by USCIS for participation in the Immigrant Investor Program.”

All projects involving more than 1 investor must have a Regional Center involved. All Regional Centers must file their I956 F registration prior to offering the project and have their ID. Therefore **each regional center's project** can be identified by a Regional Center ID.

By knowing the Regional Center ID we also know the responsible management for the promotion activities.

EB5 RIA was aimed at increasing the transparency of the process and putting more pressure on the regional center for compliance. Why complicate things by including Direct Promoters and Registration as Promoter requirements for NCEs and JCEs? We believe this process is overly bureaucratic and complicated to implement.

-----

## **Part 2. Feedback related to the actual form.**

### **2.1. Types of registrations are missing definitions.**

#### PART OF THE FORM 956 F

“Part 1 - Type of registration

**Point 1** - This is the initial registration for (select all that apply)  
Direct Promoter  
Third Party Promoter  
Migration agency“

In this part of the form, there is no definition of each type and it's not described in the instructions either.

Our assumption is that the Direct Promoter is a company representing the project itself - such as a Regional Center, JCE or NCE. But in the case of the Regional Center, does it mean that they have to Register twice? Both as a Regional Center and as a Promoter? If a Regional Center is registered and we sign a contract with that Regional Center should we ask them for their Promoter registration as well? And, if we are a third-party Promoter, do we need to have a contract with an entity that pays us a commission? Do we also need to receive their copy of the Promoter registration?

It is also not clear what is the difference between a Third Party promoter and a Migration agency.

Our first guess is that the Migration agency is a company with a special registration which is applicable in some countries, but not in all countries. Therefore, does this mean that all the other companies are considered to be Third Party Promoters? Or do they differ in some other terms?

A detailed explanation covering types of registration would be very helpful here.

## **2.2. Amendments to remove and to add - do not have a clear way to identify the changes.**

### PART OF THE FORM 956 F

Point 3 If you are amending to edit information in part 3 below, select the appropriate box to indicate the type of amendment

Amendment to add

Amendment to remove

Amendment to revise

Point 20 of Part 3 - gives the possibility only to list all agreements. It means extra time for USCIS to review it. So they have to manually compare all agreements in the previously submitted form and compare it with a new one. Why not add sections - to add, to remove etc. - so it would be easier for USCIS to check the information?

Another question connected with this point - is when should Promoters remove an agreement? Many regional centers have separate agreements for separate projects and these agreements have been rarely terminated. Instead, the majority of cases became invalid as there are no places left in the project. So if the contract is not terminated but the project is no longer accepting investors - should the Promoter submit the new form or not?

## **2.2. Additional identification of the Promoters engagement**

### PART OF THE FORM 956 F

#### Part 2 - Registrant information

**Point 20** Are you employed to work as a Promoter or otherwise engaged as a Promoter on behalf of another Promoter?

This point is very confusing and it is not clear how it should be approached.

Imagine that we are a third-party Promoter who is working with multiple regional centers: We will have agreements with all of those regional centers and they are all Direct Promoters - so we need to list all of them in point 20 - but there is not sufficient space to do that.

Or let's imagine that I am an individual working in a company (assuming it is a third-party Promoter) and I want to register myself as an agent - then the question is - why would I need to do so? Should I do so in case I plan to sign separate agreements with Regional Centers and receive commissions directly to my personal bank account? Or should all individuals working in Third Party Promoters working with clients be registered as individuals?

-----

We sincerely hope our feedback would help in the process of establishing an improved version of the program which would eventually benefit both the US economy and EB5 investors.

Thank you for your consideration.

Respectfully,

Varvara Latytseva  
Second Wind LLC  
Email: varvara.lat@secondwindeb5.com

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## Comment Submitted by Klasko Immigration Law Partners LLP

Posted by the U.S. Citizenship and Immigration Services on Oct 31, 2022

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Please see attached comments submitted by Klasko Immigration Law Partners LLP.

Attachments 4



2022.10.31 Comments to Form I-956 (Klasko Immigration Law Partners LLP)

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2022.10.31 Comments to Form I-956F (Klasko Immigration Law Partners LLP)

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2022.10.31 Comments to Form I-956G (Klasko Immigration Law Partners LLP)

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## 2022.10.31 Comments to Form I-956H (Klasko Immigration Law Partners LLP)

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October 31, 2022

Samantha L. Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
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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-956, Application for Regional Center Designation**

Dear Ms. Deshommes:

Klasko Immigration Law Partners LLP (“Klasko”, or “KILP”) 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-956 (OMB Control No.:1615-NEW; Docket ID: USCIS-2022-0010) (hereinafter “Form I-956”) published in the Federal Register on September 2, 2022.

Klasko is the counsel for all plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)), and plaintiff Invest in the USA (“IIUSA”) in *Behring Regional Center LLC vs. Alejandro Mayorkas et al*, Case No. 3:22-cv-2487VC (ND Cal.). Klasko’s seasoned and renowned EB-5 immigration lawyers have helped thousands of foreign nationals successfully navigate the EB-5 investor program to obtain conditional and permanent residency in the United States. In addition, Klasko’s EB-5 team is adept at navigating the complexities of the EB-5 program for regional centers and developers. Klasko works with an accomplished network of securities lawyers, economists, business plan writers, and other professionals to structure projects that are EB-5 compliant.

The plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)) are:

USA EB5 Immigration, LLC d/b/a EB5 Capital, CanAm Enterprises, LP, Civitas Capital Management, LLC, Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global, and Pine State Regional Center, LLC.

USA EB5 Immigration, LLC, d/b/a EB5 Capital, owns and operates five regional centers that serve 14 states. Since its founding in 2008, it has funded over \$800 million in EB-5 funds for

32 completed and current projects. It has a 100% project approval rate from USCIS. It is headquartered in Bethesda, Maryland.

CanAm Enterprises, LP owns and operates seven regional centers. In its thirty-five years of experience, it has raised over \$3 billion in EB-5 funds for 63 projects from more than 5,800 EB-5 investors. It has more than 5,000 I-526 petition approvals, and more than 2,500 I-829 petition approvals have been issued to its EB-5 investors. It has a 100% project approval rate from USCIS. It is headquartered in New York, NY.

Civitas Capital Management, LLC owns and operates several regional centers, including the Civitas Texas Regional Center. Since its founding in 2009, it has raised more than \$700 million in EB-5 investments. It has a 100% project approval rate from USCIS. It is headquartered in Dallas, Texas.

Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global owns and operates several regional centers. Since its founding in 2011, it has raised over \$650 million in EB-5 funds, which account for over 22,000 jobs created. It has a 100% project approval rate by USCIS. It is headquartered in San Francisco, California.

Pine State Regional Center, LLC was designated by USCIS as an EB-5 regional center in 2014. With a focus on rural manufacturing EB-5 projects, Pine State provides financing to highly impactful job-creating projects, deploying over \$100 million of foreign investor capital to date. It is headquartered in Little Rock, Arkansas.

Invest in the USA (“IIUSA”) is the national membership-based 501(c)(6) non-profit trade association for the EB-5 Regional Center Program. IIUSA represents over a hundred regional center members serving forty-seven states and territories. Its mission is to advocate for EB-5 stakeholders, including its regional center members, to foster U.S. economic development and domestic job creation. It is headquartered in Washington, D.C.

### **Form I-956, and its Instructions**

- Page 2, Part 2, Item Number 6: Other States or Territories Where the Regional Center Entity is Registered to do Business.

**KILP Comment:** It seems the question is asking the regional center to list the states where it is registered to do business as a foreign entity. However, the Form I-956 Instructions (the “Instructions”) provide that the regional center should “list any other state or territory where the regional center entity is lawfully qualified to do business.” This question is unnecessary and confusing, as many businesses registered in the U.S. presumably are “lawfully qualified” to do business in the states other than the state where the business was formed, unless otherwise proscribed by law. Suppose a regional center was formed in Delaware, is authorized to sponsor EB-5 projects in California and headquartered in Massachusetts, and has investors who are physically living in New York, is the regional center doing business in New York simply

because some of its EB-5 investors happen to live in New York? Is the regional center doing business in California just because it provides financing to job-creating projects in California but otherwise has no presence in California?

Whether the regional center is doing business in one state or all states in America should have no impact on the regional centers eligibility to promote economic growth in its designated geographic area, and therefore, this question is redundant and should be eliminated.

- Page 3, Part 4, Item Number 1 – 5: The Instructions require the regional center applicant to describe the economic and statistically valid tools to be used to demonstrate that the regional center will have a substantive economic impact on the geographic area being requested, and describe the amount of investment to be pooled, the types of new commercial enterprises and projects to be sponsored, and the jobs that will be created.

**KILP Comment:** The instructions are too vague, and it is impossible to answer these questions accurately from a practical standpoint. We understand that regional centers are allowed to use hypothetical projects to demonstrate substantive economic impact or to expand geography, the same as Pre-RIA. However, it is impossible for regional centers to predict the amount of investment capital it will raise, the number of jobs it will create and the types of projects it will sponsor in the future. At most, the regional center can only provide information relating to projects that it is presently sponsoring.

In addition, the wording or language used in these questions can easily cause confusion. For example: Item #3 requires the regional center to “describe the **kinds** of commercial enterprise that will receive such investments”. “Kind” is a very vague word. Does it mean the organization structure of the NCE (corporation, LLC, LP), or the type of the business that it will conduct (fund raising, real estate development, senior care facility)? Item #5 asks the regional center to “describe **other positive economic effects** such investments will have,” without any further instructions. It is unclear as to what “other positive economic effects” comprehends, and what specific information the USCIS is looking for.

- Page 4 - 5, Part 5 and Part 6: regional centers are required to submit policies and procedures to monitor new commercial enterprises and job-creating entities, as well as to ensure program compliance.

**KILP Comment:** Some regional centers that filed a Form I-956 prior to the effective date of the settlement have been receiving RFEs from USCIS in connection with those filings. Many RFEs raise questions and concerns about the regional center’s policies and procedures to ensure compliance with securities laws. However, the RFEs do not specify what documents or additional information should be submitted to clarify the questions or address the concerns raised by USCIS. Many of those questions indicate a lack of understanding by adjudicators of the applicable securities laws and regulations. KILP urges the USCIS to publish clear

guidelines and parameters for regional centers to design their policies and procedures that comply with the program.

USCIS should educate adjudicators on relevant securities matters, including the issuer exemption, commissions/transaction-based fees vs. other types of fees, Reg S and Reg D investors, etc.; this will enable adjudicators to evaluate securities compliance and effectively review policies and procedures submitted by regional centers with their applications. Failure to do so will inevitably create confusion, result in undue burdens, and cause unnecessary delays. USCIS should also commit to ensuring that adjudicators are timely informed of all industry alerts so that RFEs are not issued disregarding those alerts.

Some RFEs state that the policies and procedures submitted by regional centers are not program-compliant simply because they did not state how the regional centers plan to pay the annual integrity fund mandated by the RIA, which is unreasonable as the USCIS has not published any instructions as of the date of this letter for paying the fees. Regional centers simply do not know how to pay or where to mail the checks. Any payments made to the USCIS are supposed to be filed with a corresponding USCIS form, and as of today, there is no such form published to indicate whether a regional center is required to pay \$20,000, or \$10,000 (in the event that the regional center has 20 or fewer investors), and which USCIS service center is going to process the payments.

- Page 6, Part 7, Item 7: Some regional centers that filed a Form I-956 prior to the effective date of the settlement have been receiving RFE from USCIS in connection with those filings. Many RFEs raise questions and concerns about regional center's staff being "involved" based on their job descriptions posted on the regional centers' websites, yet not treated as such in the Form I-956 applications.

**KILP Comment:** It appears USCIS is not adhering to the narrow definition of people "involved" outlined in the RIA, thus, creating unnecessary burdens and confusion amongst regional centers and alien investors.

USCIS should commit to training adjudicators to apply the statutory definition of "involved" based on the information provided and certified by the regional center and/or alien investor when completing Form(s) I-956. For example, the "director" title does not render an individual "involved" if the statutory definition is not met. The key is actual substantive authority, not titles or job descriptions that do not encompass the "involved" specific requirements.

USCIS should confirm that Form I-956H does not need to be filed for entities so long as the individual(s) behind the entity file a separate Form I-956H. Moreover, the \$85 biometrics services fee should not be required for a Form I-956H filed by an "entity", whose biometrics cannot be taken.

USCIS should confirm that once taken, biometrics will be good for a certain period of time (2 years, for example) and that a person “involved” with a regional center or NCE does not need to attend biometrics appointments each time a Form is filed within that period of time.

### **Other General Comments**

- General Comment: Format Control, Format Errors, and Page Number Errors

**KILP Comment:** KILP urges the USCIS to eliminate format control so that regional centers could provide accurate answers for complex situations. At present, many fields in the form are read-only, or do not allow numbers and punctuations to be inserted. Below are only some of the examples:

- Page 3, Part 3, Item 1: commas are not allowed. What if the regional center has multiple states or census tracks it needs to provide, which is very common?
- Page 5, Part 7, Item 1: punctuations such as commas and periods are not allowed. What if the regional center has multiple persons involved, which is very common?
- Page 12: This page needs to be re-formatted by the USCIS because it loses the original format once the data is being inserted. At present, regional centers have to submit this page with inconsistent multiple font/font size for multiple data entries due to this format inconvenience.
- The page numbers are incorrect. There are no pages 2 – 5, and there is more than one page 10, 11, and 12.

### **Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956 and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,



H. Ronald Klasko, Esq.  
Klasko Immigration Law Partners, LLP

October 31, 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-956F, Application for Approval of an Investment in a Commercial Enterprise**

Dear Ms. Deshommes:

Klasko Immigration Law Partners LLP (“Klasko”, or “KILP”) 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-956F (OMB Control No.:1615-NEW; Docket ID: USCIS-2022-0010) (hereinafter “Form I-956F”) published in the Federal Register on September 2, 2022.

Klasko is the counsel for all plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)), and plaintiff Invest in the USA (“IIUSA”) in *Behring Regional Center LLC vs. Alejandro Mayorkas et al, Case No. 3:22-cv-2487VC (ND Cal.)*. Klasko’s seasoned and renowned EB-5 immigration lawyers have helped thousands of foreign nationals successfully navigate the EB-5 investor program to obtain conditional and permanent residency in the United States. In addition, Klasko’s EB-5 team is adept at navigating the complexities of the EB-5 program for regional centers and developers. Klasko works with an accomplished network of securities lawyers, economists, business plan writers, and other professionals to structure projects that are EB-5 compliant.

The plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)) are:

USA EB5 Immigration, LLC d/b/a EB5 Capital, CanAm Enterprises, LP, Civitas Capital Management, LLC, Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global, and Pine State Regional Center, LLC.

USA EB5 Immigration, LLC, d/b/a EB5 Capital, owns and operates five regional centers that serve 14 states. Since its founding in 2008, it has funded over \$800 million in EB-5 funds for

RE: Agency Information Collection Activities; Form I-956F, Application for Approval of an Investment in a Commercial Enterprise

October 31, 2022

Page | 2

32 completed and current projects. It has a 100% project approval rate from USCIS. It is headquartered in Bethesda, Maryland.

CanAm Enterprises, LP owns and operates seven regional centers. In its thirty-five years of experience, it has raised over \$3 billion in EB-5 funds for 63 projects from more than 5,800 EB-5 investors. It has more than 5,000 I-526 petition approvals, and more than 2,500 I-829 petition approvals have been issued to its EB-5 investors. It has a 100% project approval rate from USCIS. It is headquartered in New York, NY.

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Pine State Regional Center, LLC was designated by USCIS as an EB-5 regional center in 2014. With a focus on rural manufacturing EB-5 projects, Pine State provides financing to highly impactful job-creating projects, deploying over \$100 million of foreign investor capital to date. It is headquartered in Little Rock, Arkansas.

Invest in the USA (“IIUSA”) is the national membership-based 501(c)(6) non-profit trade association for the EB-5 Regional Center Program. IIUSA represents over a hundred regional center members serving forty-seven states and territories. Its mission is to advocate for EB-5 stakeholders, including its regional center members, to foster U.S. economic development and domestic job creation. It is headquartered in Washington, D.C.

## **Instructions**

“What is the purpose of Form I-956F?”

The Instructions state that an I-956F is used by a regional center designated after March 15, 2022. In fact, pursuant to the Settlement Agreement<sup>1</sup> the Instructions should state that Form I-956F is used by a regional center designated prior to the EB-5 Reform and Integrity Act of 2022 (“RIA”) that files Form I-956 on or before December 29, 2022. It is also used by a regional center that was not designated prior to the RIA but is designated after March 15, 2022.

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<sup>1</sup> The Settlement Agreement refers to the Settlement Agreement approved by the Court on September 1, 2022, in the case of EB5 Capital, et al vs. US Department of Homeland Security, et al.

RE: Agency Information Collection Activities; Form I-956F, Application for Approval of an Investment in a Commercial Enterprise

October 31, 2022

Page | 3

Part 7

The Instructions refer to numbers 1 through 3 in Part 7. The form itself only contains number 1.

Part 9

The Instructions contain no instructions regarding Part 9.

Part 10

Neither the Form nor the Instructions reference the annual audit as a mandatory waiver of the fund administration requirement. This should be added as an option in lieu of the fund administrator questions.

## **Form I-956F**

Part 1 question 1.

The I-956F can be used as an amendment to a previously approved I-956F. However, neither the Form nor the Instructions provide guidance on when an amendment is necessary. Changes to projects occur routinely. The Form should make clear that only potentially material changes to the project documents require an amendment to Form I-956F. Material change should be defined as a change that materially impacts the requisite job creation, use of the EB-5 capital or sustainment of investment requirements. Other non-material changes can be included with the Form I-956G, filing. There should be no filing fee for notifying USCIS of changes to a project.

Part 3 question 6.

The form asks the “state or territory where the NCE was established.” The question should be rephrased to request where the NCE’s principal place of business is located. Otherwise, a regional center might properly indicate that the NCE was “established” in the jurisdiction in which it was incorporated, which presumably is not of interest to USCIS.

Part 3 question 7.

The question should ask where the NCE does business, not where it is “registered” to do business. Many NCEs are not “registered” anywhere or are registered in multiple jurisdictions.

Part 4 question 4.

There are two errors in the question that need to be corrected. First, the question asks: “Is the JCE comprised of holding company and its wholly owned subsidiaries?”. Presumably, the appropriate verb should be “comprised”.

Secondly, the question asks to “describe the overall organization structure of the NCE”. The question appears to be requesting the organization structure of the JCE, not the NCE.

RE: Agency Information Collection Activities; Form I-956F, Application for Approval of an Investment in a Commercial Enterprise

October 31, 2022

Page | 4

Part 5 question 4.

The question asks whether the project is based on an investment in a “high employment area”. The question appears to divide geographic areas into rural areas, high employment areas, high unemployment areas and non-TEA/non-high employment areas. The form does not define “high employment area” and does not explain the distinction between a “high employment area” and a “non-high employment area” that is not a “high unemployment area.” The question should remove any reference to “high employment area.” If the purpose of the question is to determine minimum investment amount or reserved visa set aside qualification, the question should ask whether the project (a) is in a rural/TEA, (b) is in a non-rural (high unemployment) TEA, (c) is an infrastructure project or (d) none of the above.

Part 6 question 2.

It is inappropriate to request “drafts” of marketing materials. There may be many drafts, most of which would routinely be discarded or if retained may contain attorney-client privileged communications or attorney work product. Only final versions of marketing materials presented or provided to the market are relevant.

Part 7 question 1.

The question asks for the “policies and procedures” “designed to monitor the regional center and any issuer of securities to ensure compliance with all applicable laws”. This is duplicative of the same question, and requests the same documentation, as Form I-956.

Part 9

The definition of “persons involved” requires “substantive authority” to make operational or managerial decisions ***over pooling, securitization, investment, release, acceptance, or control or use of any funding.*** This clearly means people with actual authority with respect to the enumerated activities - - not just apparent authority based on a job title. USCIS is making assertions in RFC’s that people with certain job titles are “persons involved” when, in fact, their job descriptions reveal that they are not “in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance, or control or use of any EB-5 capital from immigrant investors.”

Part 9 question 1.

We incorporate by this reference our comments to Form I-956H regarding the information requested about “persons involved” with the NCE and affiliated JCE.

**Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956F and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,



H. Ronald Klasko, Esq.

Klasko Immigration Law Partners, LLP

October 31, 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-956G, Regional Center Annual Statement**

Dear Ms. Deshommes:

Klasko Immigration Law Partners LLP (“Klasko”, or “KILP”) 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-956G (OMB Control No.:1615-NEW; Docket ID: USCIS-2022-0010) (hereinafter “Form I-956G”) published in the Federal Register on September 2, 2022.

Klasko is the counsel for all plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)), and plaintiff Invest in the USA (“IIUSA”) in *Behring Regional Center LLC vs. Alejandro Mayorkas et al, Case No. 3:22-cv-2487VC (ND Cal.)*. Klasko’s seasoned and renowned EB-5 immigration lawyers have helped thousands of foreign nationals successfully navigate the EB-5 investor program to obtain conditional and permanent residency in the United States. In addition, Klasko’s EB-5 team is adept at navigating the complexities of the EB-5 program for regional centers and developers. Klasko works with an accomplished network of securities lawyers, economists, business plan writers, and other professionals to structure projects that are EB-5 compliant.

The plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)) are:

USA EB5 Immigration, LLC d/b/a EB5 Capital, CanAm Enterprises, LP, Civitas Capital Management, LLC, Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global, and Pine State Regional Center, LLC.

USA EB5 Immigration, LLC, d/b/a EB5 Capital, owns and operates five regional centers that serve 14 states. Since its founding in 2008, it has funded over \$800 million in EB-5 funds for

RE: Agency Information Collection Activities; Form I-956G, Regional Center Annual Statement  
October 31, 2022  
Page | 2

32 completed and current projects. It has a 100% project approval rate from USCIS. It is headquartered in Bethesda, Maryland.

CanAm Enterprises, LP owns and operates seven regional centers. In its thirty-five years of experience, it has raised over \$3 billion in EB-5 funds for 63 projects from more than 5,800 EB-5 investors. It has more than 5,000 I-526 petition approvals, and more than 2,500 I-829 petition approvals have been issued to its EB-5 investors. It has a 100% project approval rate from USCIS. It is headquartered in New York, NY.

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Pine State Regional Center, LLC was designated by USCIS as an EB-5 regional center in 2014. With a focus on rural manufacturing EB-5 projects, Pine State provides financing to highly impactful job-creating projects, deploying over \$100 million of foreign investor capital to date. It is headquartered in Little Rock, Arkansas.

Invest in the USA (“IIUSA”) is the national membership-based 501(c)(6) non-profit trade association for the EB-5 Regional Center Program. IIUSA represents over a hundred regional center members serving forty-seven states and territories. Its mission is to advocate for EB-5 stakeholders, including its regional center members, to foster U.S. economic development and domestic job creation. It is headquartered in Washington, D.C.

## **Instructions**

The Instructions to Form I-956G should clarify which regional centers are obligated to file this Form. We suggest that a regional center that wishes to continue to exist solely to meet its contractual and fiduciary obligations relating to pre- RIA projects, but does not intend to file form I-956 to sponsor new post-RIA projects, should not be required to file Form I-956G, which requests information and references forms that do not apply to these regional centers.

The Instructions should clarify whether the Form should be required, and how it should be completed, for regional centers that have not had any capital invested in an NCE during the relevant reporting period (the fiscal year ending September 30).

The Instructions should clarify that documentation is not required each year for prior projects, which would be unduly burdensome on regional centers and require redundant documentation, which would appear to be contrary to the Paperwork Reduction Act.

## **Form I-956G**

### *Page 1, Part 2. Regional Center Mailing Address*

The form should indicate that, if the mailing address of the regional center entity is different from its physical address, then the physical address of the regional center should be provided under Part 8. Additional Information.

### *Page 1, Part 2, Item 1.*

The form does not allow numbers or punctuation marks to be typed.

### *Page 2, Part 3, Item 1.*

The Instructions make clear that the expectation is that the regional center will provide the total amount of invested capital “since the date of regional center designation”. The question itself is not clear on this point. “Since the date of designation” should be added to the question if that is the intention of USCIS. We suggest that the language in the Instructions is inconsistent with the purpose of the I-956G, which is reporting on activity of the regional center during the previous fiscal year. It is confusing if the Form requests reporting on the previous fiscal year in some questions and historical reporting in others. In addition, in the event of a change of ownership of a regional center, new ownership may not be aware of pre-RIA investors who ever invested in projects in the regional center, even if such projects have long been completed.

### *Page 2, Part 3, Item 2.*

The question in its present form presumes there is material litigation or bankruptcy proceedings. There is no opportunity for the regional center to indicate that there have been no material litigation or bankruptcy proceedings. Question 2 should begin by asking: “(1) Does the regional center have any pending material litigation or bankruptcy proceedings? (2) Has the regional center resolved any material litigation or bankruptcy proceedings during the preceding fiscal year?” The present Item 2 relating to documentation should be preceded by: “If the answer to either of the preceding questions is yes.”

### *Page 6, Part 6, Item 2.*

The form does not allow numbers or punctuation marks to be typed.

## **Attachment 1**

### *Page 10, Item 1.*

The form does not allow numbers or punctuation marks to be typed.

### *Page 10, Item 5. NCE Mailing Address*

RE: Agency Information Collection Activities; Form I-956G, Regional Center Annual Statement  
October 31, 2022  
Page | 4

The form should indicate that, if the mailing address of the NCE is different from its physical address, then the physical address of the NCE should be provided under Part 8. Additional Information.

*Page 11.*

Attachment 1 references Form I-956F, which presumes that Form I-956F has been filed for the project. However, as previously indicated, other parts of the Form request historic information about projects, including pre-RIA information. The Form should clarify that the questions in Attachment 1 only apply to projects for which I-956Fs were filed, and not projects completed prior to the RIA. Presumably, that is the case based on the title of Attachment 1.

*Page 11, Item 9. JCE Mailing Address*

The form should indicate that, if the mailing address of the JCE is different from its physical address, then the physical address of the JCE should be provided under Part 8. Additional Information.

*Page 11, Item 16.*

The Instructions should clarify what evidence and what documentation USCIS is seeking in response to this question. Is a link to a web camera sufficient? Is documentation of expenditures sufficient? Is a construction progress report from a contractor sufficient?

*Page 11, Items 13 and 17.*

Many “capital investment projects” were initiated prior to the RIA and are continuing subsequent to the RIA. Such projects presumably filed Form I-956F. The question should clarify that the two indicated questions seek information about capital investments and direct jobs since the I-956F was filed.

*Page 11, Item 27.*

The form should list the annual audit as a mandatory waiver of the fund administration requirement.

**Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956G and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,



H. Ronald Klasko, Esq.  
Klasko Immigration Law Partners, LLP

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 Number 1615-NEW  
Docket ID: USCIS-2022-0010

**Re: Agency Information Collection Activities; Form I-956H Bona Fides of Persons Involved with Regional Center Program**

Dear Ms. Deshommes:

Klasko Immigration Law Partners LLP (“Klasko”, or “KILP”) 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-956H (OMB Control No.:1615-NEW; Docket ID: USCIS-2022-0010) (hereinafter “Form I-956H”) published in the Federal Register on September 2, 2022.

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The plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)) are:

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RE: Agency Information Collection Activities; Form I-956H Bona Fides of Persons Involved with Regional Center Program

October 31, 2022

Page | 2

funds for 32 completed and current projects. It has a 100% project approval rate from USCIS. It is headquartered in Bethesda, Maryland.

CanAm Enterprises, LP owns and operates seven regional centers. In its thirty-five years of experience, it has raised over \$3 billion in EB-5 funds for 63 projects from more than 5,800 EB-5 investors. It has more than 5,000 I-526 petition approvals, and more than 2,500 I-829 petition approvals have been issued to its EB-5 investors. It has a 100% project approval rate from USCIS. It is headquartered in New York, NY.

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## General Issues

### 1) Persons required to file the I-956H

The statutory definition of persons involved with a regional center, new commercial enterprise (“NCE”), or job creating entity (“JCE”) is limited to a very specific group of people with very specific functions. 8 U.S.C. § 1153(b)(5)(H)(v) provides:

For the purposes of this paragraph, unless otherwise determined by the Secretary of Homeland Security, a person is involved with a regional center, a new commercial enterprise, any affiliated job-creating entity, as applicable, if the person is, directly or indirectly, in a position of substantive

October 31, 2022

Page | 3

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 program described in subparagraph (E). 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.

The language clearly indicates that only people “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 program described in subparagraph (E)” are “involved” with a regional center. This is a narrow subset of people. While the statute goes on to state that 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,” *Id.*, (*emphasis added*), not all individuals holding such positions will have any control at all over “pooling, securitization, investment, release, acceptance, or control or use of” the EB-5 funds. Indeed, of this list, only a General Partner stands out as likely to always or nearly always have control or management of the listed activities. As the statute indicates, the others may, or may not, have any management or control over the listed activities.

For example, owners of a company may or may not have any control over its activities. For instance, Limited Partners, Members in a manager managed LLC, and minority shareholders in a corporation have no right or ability to manage or control any of a company’s activities, other than through voting on limited issues. They almost certainly have no control over “pooling, securitization, investment, release, acceptance, or control or use of” the EB-5 funds.”

Thus, USCIS needs to limit the number of individuals it expects to file the I-956H to only those included in the statutory definition.

## 2) Entities

The current I-956H appears to contemplate use by entities and individuals. While there may be several entities involved with the management of a regional center, NCE, or JCE, ultimately, control is exercised by natural persons. Entities do not have fingerprints, and cannot appear for biometrics collection.

Entities should not be required to pay the \$85 biometric fee.

RE: Agency Information Collection Activities; Form I-956H Bona Fides of Persons Involved with Regional Center Program

October 31, 2022

Page | 4

We suggest either a separate form for entities, if USCIS' goal is to have the entities register so they can be entered into a database via the form- or no form at all for entities, which can be listed in the form I-956 or I-956F, as applicable.

### **3) Biometric fees and appointments for individuals**

An individual affiliated with multiple regional centers, NCEs, or JCEs or other entities should not have to pay a biometric fee or appear multiple times for biometrics collection. USCIS routinely reuses biometrics in other cases, and should do so here. Additionally, it seems wasteful for USCIS to run security checks multiple times for one individual in a short period of time. For instance, a person involved with multiple regional centers, all filing I-956F applications within a short time, or filing I-956 applications and I-956F applications within a short time, does not need to have a separate background check for each application. The same background check can be used for multiple applications.

### **4) Multiple I-956H forms for the same transaction**

An individual should only have to file one I-956H listing all entities he or she is involved with for a specific application. For example, if a regional center is managed by ABC LLC, which is owned by DEF LLC, and the NCE, XYZ LLC, has a Manager, UVW LLC, and that manager is owned by DEF LLC, and John Doe is the owner and Manager of DEF LLC, it would appear under the current instructions that John Doe would need to submit 6 I-956H forms- one for each of the 5 different entities, and a second one for DEF LLC because it is involved in both the regional center and the NCE. Similarly, it seems that the regional center would have to submit 6 different forms I-956H for each of the entities (including two for DEF LLC because it is involved in both the regional center and the NCE).

This is horribly inefficient and wasteful, and will likely lead to processing backlogs, while not enhancing program integrity or providing any net benefit.

## **Specific Form Issues**

Page 1, Part 5, Question 1:

We note that pre-RIA NCEs do not have an NCE ID, and we have yet to see one for applications filed after 9/1/2022. Additionally, the NCE ID number comes only *after* the I-956F is filed and a receipt issued. Thus, except in the case of an amendment, applicants will never have the NCE ID number at the time this form is filed.

Page 2, Part 2, Question 10:

As discussed above, it is not clear what entities need to submit an I-956H. In structures with multiple layers of mostly disregarded entities, for instance, where the regional center

RE: Agency Information Collection Activities; Form I-956H Bona Fides of Persons Involved with Regional Center Program

October 31, 2022

Page | 5

entity is owned by another entity, which is owned by two or more entities that are ultimately owned by individuals, it would not seem to be meaningful for all of those entities to submit forms and pay biometrics fees.

Page 2, Part 2, Question 15:

We suggest reformatting this to list each EB-5 entity the individual is involved in, and then their role. We contemplate this as similar to the way the I-956G has addenda for each NCE affiliated with the regional center.

### **Conclusion**

We appreciate the opportunity to comment on the Proposed Form I-956H and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,



H. Ronald Klasko, Esq.  
Klasko Immigration Law Partners, LLP

Docket (/docket/USCIS-2022-0010) / Document (USCIS-2022-0010-0001) (/document/USCIS-2022-0010-0001)  
/ Comment

 PUBLIC SUBMISSION

## Comment Submitted by Anonymous

Posted by the U.S. Citizenship and Immigration Services on Nov 1, 2022

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Comment

USCIS has requested comments on the forms I-956, I-956F, I-956G, I-956H, and I-956K. These forms, and the interpretation of them, is of utmost importance to the EB-5 industry. Pursuant to the settlement agreement reached in the Behring Regional Center LLC, et al. v. Alejandro Mayorkas, et al., Case No. 3:22-cv-02487-VC case, USCIS is having closed-door meetings with only a select number of industry participants. Such closed-door meeting with those select few is giving an unfair advantage to those in the meeting, in direct violation of the EB-5 Reform and Integrity Act of 2022 (the “RIA”).

One of the requirements of the RIA is that USCIS be transparent in their dealings and ensure that all parties have a level playing field and equal access to the agency. Section 107(a) of the RIA provides that all employees of the Department of Homeland Security “may not give preferential treatment to any entity, organization or individual in connection with any aspect of the immigrant visa program . . . .” Additionally, Section 107(b)(2) of the RIA prohibits employees of USCIS from “meeting or communicating with persons associated with [a regional center, a new commercial enterprise, a job-creating entity, or any person or entity associated with such regional center, new commercial enterprise, or job-creating entity], at the request of such persons, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under such immigrant visa program.” Moreover, Section 107(c)(3) the RIA states that “[n]ot later than 30 days after a person or entity inquiring . . . generally about the immigrant visa program . . . receives, as a result of a communication with an official of the Department of Homeland Security, generally applicable information that is not case-specific about program requirements or administration that has not been made publically available by the Department, the Director of U.S. Citizenship and Immigration Services shall publish such information on the U.S. Citizenship and Immigration Services website as an update to the relevant Frequently Asked Questions page or by some other comparable mechanism.” Although we fully agree that USCIS needs to continue having these meetings, pursuant to Section 107(c)(3), they need to be publically available. At a minimum, the information discussed in those meetings need to be added to the Frequently Asked Questions section of the USCIS website. Although a better method would be to publish the agenda of these meetings prior to their occurrence, and the minutes should be published within a reasonable time after the meetings have occurred. To the extent such discussions include the selection of forms on which USCIS is currently seeking guidance, these select few should not have the

advantage of face-to-face meetings while everyone else being forced to go through a formal notice and comment period, especially since the closed-door meetings are a direct violation of the RIA. These closed-door meetings are required to be made public by the RIA so as not to give any unfair advantage to the participants.

The meetings are necessary, and required by a judge, however USCIS has to be transparent about the attendance and publicize what is discussed in the meetings.

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USCIS-2022-0010-0024

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## Comment Submitted by EB-5 Securities Roundtable

Posted by the **U.S. Citizenship and Immigration Services** on Nov 1, 2022

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Attachments 1



EB-5 Securities Roundtable Comments to Form I-956K 20221101Transmission



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November 1, 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 Number: 1615-NEW

Docket ID: USCIS-2022-0010

Publication Date: September 2, 2022

**Re: Agency Information Collection Activities; Form I-956K, Registration of Direct and Third-Party Promoters**

Dear Ms. Deshommes:

The EB-5 Securities Roundtable respectfully submits the following comments to the above-referenced Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activities: Form I-956K (Docket ID: USCIS-2022-0010) (hereinafter “Form I-956K”) published in the Federal Register on September 2, 2022.

The EB-5 Securities Roundtable was initially organized by Kurt Reuss, the founder of eb5Marketplace, in 2014 and is an informal, independent group of EB-5 securities attorneys organized to facilitate best practices in the offerings of EB-5 securities. The EB5 Securities Roundtable is not affiliated with any EB-5 industry organization, regional center, offeror of EB-5 securities or job-creating recipient of EB-5 funds, and it receives no outside financial contributions. The following industry leading securities attorneys are its current members: Robert Cornish, Ronald Fieldstone, Lulu Gordon, Douglass Hauer, Michael Homeier, Catherine DeBono Holmes, Mark Katzoff, Charles Kaufman, Mariza McKee, Jay Rosen, Bruce Rosetto, John Tishler, and Osvaldo F. Torres. The Securities Roundtable supports the enhanced integrity measures of the EB-5 Reform and Integrity Act of 2022 and, in that spirit, offers the following comments for your consideration.

Sincerely,

**// EB-5 Securities Roundtable**

**PROPOSED DEFINITIONS OF  
PROMOTER, DIRECT PROMOTER, AND THIRD-PARTY PROMOTER  
UNDER THE EB-5 REFORM AND INTEGRITY ACT OF 2022**

**1. “Promoter”**

The term “**Promotor**” means any natural person or organization that (i) presents, markets, or provides advice regarding the merits of investment opportunities or identifies and refers alien investors to participate in investment opportunities in connection with the offer or sale of securities to alien investors wishing to emigrate to the U.S. through the EB-5 program (“**Promoter Services**”), and (ii) receives or expects to receive any compensation based on the outcome, size or success of the securities transaction, including fees, percentage fees, equity interests, or other such forms of compensation (collectively, “**Transaction-based Compensation**”) from a new commercial enterprise, affiliated job creating entity, regional center, (each referred to as an “**EB-5 Entity**” and referred to collectively as “**EB-5 Entities**”) or any Affiliate of an EB-5 Entity, in consideration for providing any Promoter Services (“**Promoter Compensation**”); provided, however that an officer, director, or employee of an EB-5 Entity who meets the safe harbor requirements commonly referred to as the “*issuer exemption*,” as set forth in Securities and Exchange Commission Rule 3a4-1, including the requirement that such person does not receive Transaction-based Compensation, shall not be deemed a Promoter.

**2. “Direct Promoter”**

The term “**Direct Promoter**” means a Promoter that is an Affiliate of an EB-5 Entity, or any manager or general partner of any such EB-5 Entity, that receives Promoter Compensation. For purposes of this definition:

- (a) The term “**Affiliate**” means any person or organization that directly, or indirectly through one or more intermediaries or Family Members, controls, is controlled by, or is under common control with any EB-5 Entity or other issuer of securities.
- (b) The term “**Family Member**” means (i) any natural person who has a familial relationship by blood, marriage, adoption, or otherwise, with an owner or employee of an EB-5 Entity or other issuer of securities or (ii) any trust in which such Family Member has a beneficial interest or in which such Family Member serves as trustee or in a similar capacity.
- (c) The term “**Control**,” when used with respect to any specified person or organization, means the power to direct the management and policies of such person or organization, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

### 3. “Third-party Promoter”

The term “**Third-party Promoter**” means any Promoter who is not a Direct Promoter as defined herein and includes migration agents.\*

\*The term “**Migration Agent**” should not be a separate category.

- The relevant text of the RIA does not create three categories. The title of subsection (K) is Direct and Third-Party Promoters. Moreover, “migration agent” is referenced only once, as an example, not a category in and of itself. *“Direct and third-party promoters (including migration agents) of a regional center, any new commercial enterprise, an affiliated job-creating entity....”*
- Therefore, USCIS should revise Form I-956K to eliminate “migration agents” as a category. Since a “migration agent” is a subset of one of the promoter categories and will also need to check the box for Direct Promoter or Third-Party Promoter. This will only create confusion in the market. A migration agent, whether an individual or organization, should register in the appropriate promoter category and not in two categories.
- If USCIS keeps “Migration Agent” as a separate category in the Form, we suggest that the term be defined to mean “any person who both (1) meets the definition of “migration agent” under any applicable law or regulation of the jurisdiction in which such person conducts business, and (2) meets the definition of Promoter as defined herein.”

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## Comment Submitted by Klasko Immigration Law Partners LLP

Posted by the U.S. Citizenship and Immigration Services on Nov 2, 2022

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Please see attached comments submitted by Klasko Immigration Law Partners LLP on behalf of all the plaintiffs in EB5 Capital, et al. v. DHS, et al., (No. 3:22-cv-3948-VC (N.D. Cal.)): USA EB5 Immigration, LLC d/b/a EB5 Capital, CanAm Enterprises, LP, Civitas Capital Management, LLC, Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global, and Pine State Regional Center, LLC.

Attachments 1



2022.11.01 Comments to Form I-956K (Klasko Immigration Law Partners LLP)



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November 1, 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; Draft Form I-956K,  
Registration for Direct and Third-Party Promoters**

Dear Ms. Deshommes:

Klasko Immigration Law Partners LLP (“Klasko”, or “KILP”) respectfully submits the following comments on behalf of all the plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)), to the above-referenced Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activities: Draft Form I-956K (OMB Control No.:1615-NEW; Docket ID: USCIS-2022-0010) (hereinafter “Form I-956K”, or the “Form”).

Klasko is the counsel for all plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)). Klasko’s seasoned and renowned EB-5 immigration lawyers have helped thousands of foreign nationals successfully navigate the EB-5 investor program to obtain conditional and permanent residency in the United States. In addition, Klasko’s EB-5 team is adept at navigating the complexities of the EB-5 program for regional centers and developers. Klasko works with an accomplished network of securities lawyers, economists, business plan writers, and other professionals to structure projects that are EB-5 compliant.

The plaintiffs in *EB5 Capital, et al. v. DHS, et al.*, (No. 3:22-cv-3948-VC (N.D. Cal.)) are: USA EB5 Immigration, LLC d/b/a EB5 Capital, CanAm Enterprises, LP, Civitas Capital Management, LLC, Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global, and Pine State Regional Center, LLC (hereinafter and collectively, “We”).

USA EB5 Immigration, LLC, d/b/a EB5 Capital, owns and operates five regional centers that serve 14 states. Since its founding in 2008, it has funded over \$800 million in EB-5

funds for 32 completed and current projects. It has a 100% project approval rate from USCIS. It is headquartered in Bethesda, Maryland.

CanAm Enterprises, LP owns and operates seven regional centers. In its thirty-five years of experience, it has raised over \$3 billion in EB-5 funds for 63 projects from more than 5,800 EB-5 investors. It has more than 5,000 I-526 petition approvals, and more than 2,500 I-829 petition approvals have been issued to its EB-5 investors. It has a 100% project approval rate from USCIS. It is headquartered in New York, NY.

Civitas Capital Management, LLC owns and operates several regional centers, including the Civitas Texas Regional Center. Since its founding in 2009, it has raised more than \$700 million in EB-5 investments. It has a 100% project approval rate from USCIS. It is headquartered in Dallas, Texas.

Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global owns and operates several regional centers. Since its founding in 2011, it has raised over \$650 million in EB-5 funds, which account for over 22,000 jobs created. It has a 100% project approval rate by USCIS. It is headquartered in San Francisco, California.

Pine State Regional Center, LLC was designated by USCIS as an EB-5 regional center in 2014. With a focus on rural manufacturing EB-5 projects, Pine State provides financing to highly impactful job-creating projects, deploying over \$100 million of foreign investor capital to date. It is headquartered in Little Rock, Arkansas.

### **Comments to Form I-956K**

#### **Definitions:**

The Form calls for the registration of “direct promoters,” “third-party promoters,” and “migration agents.” Neither the statute, the regulations, nor the instructions to the Form define these terms, and they are not self-defining. The instructions should indicate USCIS’ definition of these terms before individuals or entities are required to register.

We suggest that USCIS pull from securities law definitions to the extent applicable and appropriate. We know that the EB-5 Securities Roundtable (a group of highly experienced EB-5 securities lawyers) has submitted formal comments to Form I-956K with proposed definitions consistent with securities laws. We endorse these definitions and urge USCIS to consideration of their recommendations.

It is also important to review other statutory terms. Specifically, the disclosure requirements for the regional center annual statement reference fees paid to “any promoter, finder, broker-dealer engaged by any of the aforementioned entities to locate individual investors.” In addition, in describing the disclosure required by an investor, the statute

includes “compensation to agents, finders or broker-dealers involved in the offering.” As a matter of statutory construction, the use of “direct and third-party promoters, including migration agents” in subparagraph K of the statute should not be interpreted to include other terms used elsewhere in the statute, such as “finders,” “other entities engaged to locate investors” and “broker-dealers.” USCIS should confirm whether it will treat finders and broker-dealers as a subset of promoters (as with migration agents) - contrary to the usual canons of statutory construction – and if not, it should provide other guidance. USCIS should also clarify if it intends to interpret “agents” referred to in the fee disclosure requirements section of the statute to be the same as “migration agents” referred to in the Form I-956K, and if not, provide guidance on the difference.

### **Part 2: Registrant Employment or Association**

The next issue to be determined is which individuals employed or engaged by a promoter entity are required to register. We strongly urge that only individual promoters not associated with an entity, or promoter entities (and not their executives, officers, employees, agents, subagents, contractors, or subcontractors) be required to register. We would propose the deletion of Part 2. 20.

### **Part 3: Written Agreements**

This section asks, “have you entered into a written agreement....” It is not entirely clear who the “you” is referencing. We strongly urge that only individual promoters not associated with an entity, or promoter entities (and not their executives, officers, employees, agents, subagents, contractors, or subcontractors) be required to have a written agreement with either the regional center, new commercial enterprise or affiliated job-creating entity.

Part 3 (based on the instructions and not clear on the Form) also requires the submission of each contract. In addition, Part 1 number 3 seems to require an amendment filing every time there is a new written agreement, a written agreement is terminated, or a written agreement is revised. This requirement will result in voluminous and repetitive filings placing an unreasonable and unnecessary burden on the regulated public and USCIS.

### **Miscellaneous Considerations**

Part 3, number 2 requires specification of “entity type,” with the choices being “regional center, NCE, JCE, or issuer of securities.” How should this be completed in the typical situation where the NCE is the issuer of securities?

The I-956K filings may result in promoters and agents overseas being required to provide biometrics. USCIS must ensure the logistics of implementing this requirement before the Form is made final.

The Form is unclear regarding whether the filing of the Form is sufficient to enable a promoter to raise capital or whether pre-approval is required. If the latter, the industry will face unreasonable delays working with contracted promoters. USCIS should confirm that filing the Form I-956K is sufficient to enable the promoter activities to commence.

### **Conclusion**

We appreciate the opportunity to comment on the Draft Form I-956K and look forward to a continuing dialogue with DHS on this important matter.

Very truly yours,



H. Ronald Klasko, Esq.  
Klasko Immigration Law Partners LLP

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## Comment Submitted by CMB Regional Centers

Posted by the U.S. Citizenship and Immigration Services on Nov 2, 2022

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## General Comments for all Forms

USCIS has created six new forms to date pertaining to the newly passed EB-5 Reform and Integrity Act of 2022 (“RIA”) and has requested comment on such forms. The published forms are as follows:

1. I-526E – Immigrant Petition by Regional Center Investor
2. I-956 – Application for Regional Center Designation
3. I-956F – Application for Approval of an Investment in a Commercial Enterprise
4. I-956G – Regional Center Annual Statement
5. I-956H – Bon Fides of Persons Involved with Regional Center Program
6. I-956K – Registration for Direct and Third-party Promoters

Each of the above forms has been introduced by USCIS in an effort to properly operate under the RIA legislation passed in 2022. Given the importance of these documents in providing guidance and operating standards for all parties wishing to participate in the EB-5 program, we provide the below comments.

### General Comments on All Forms

- A. These forms are a significant burden to each regional center, promoter, immigrant, commercial enterprise, and all involved with the regional center program. The first comment for consideration would be to improve the fillable functionality of these forms. In many instances, the forms have blocked filling them out on a computer without downloading and creating a separate fillable type file. When forms have been made fillable, it is often so restrictive as to be unworkable. For example, many of the forms would require numerical answers when a more in depth answer is necessary. Creating a form that is only fillable in the simplest of cases adds unnecessary work both for the petitioner and for the adjudicator, leading to unneeded questions, and man hours wasted.
- B. Why has USCIS created an entirely unnecessary step in providing an “acknowledgement letter” in addition to the already standard receipt notice? The acknowledgement letter does not provide tracking information, or any way to later provide any correspondence to the specific case in question. This step was added at a time when USCIS was likely unable to process the dearth of petitions and respond with receipt notices (and tracking numbers). As the program moves forward, this regrettable step should be removed.
- C. In the past, USCIS has only made certain forms specifically trackable down to a case number, and only certain forms could be checked via case processing times website (<https://egov.uscis.gov/processing-times/>). It is understandable that aggregate case processing times cannot exist for a brand new form, but we hope that USCIS is able to improve this process and allow all forms to be specifically trackable via case number, and all forms can have average processing times published and regularly updated.

### I-526E Comments

In addition to the above mentioned concerns that relate to all new forms, the new I-526E form is also in need of a few critical changes and specific improvements to assist the industry and reduce a barrier to the immigration process.

First, USCIS has recently acknowledged their slow approach to providing receipt notices. In response USCIS has begun accepting other forms of proof that an I-956F has been received in order for an I-526E to be accepted. Unfortunately, the form still asks specifically for an I-956F receipt number. It is unlikely that USCIS will be able to immediately improve the process of issuing receipt numbers, and thus the form should request not just the I-956F receipt number, but any other accepted forms of proof of the filing of the I-956F.

Second, one of the most significant improvements to the EB-5 program introduced in the RIA is the intention for disclosure of fees directly to the immigrant investors. However, under the RIA there is a caveat that the signed disclosure by the investors is only needed to the extent not already specifically identified in the business plan. Therefore the intent for investor disclosure is only as good as USCIS's implementation, which thus far has not risen to require the disclosures as part of a form (regardless of what is included in the business plan). USCIS needs to incorporate this requirement into each alien investors Form I-526E to ensure disclosure. Absent the requirement in the I-526E, regional centers and NCEs can remain in compliance with the requirement by having the disclosure included in documents the investor never sees.

The disclosure is a very significant part of the protections being afforded the investors filing post RIA, one that was explained to congress and senators. We believe this is the reason that the intent of investor disclosure was so prevalent in the RIA. Up until the RIA, regional centers, NCEs, those persons or entities managing the NCEs, affiliated JCEs (all those involved with the EB-5 project offering, hereinafter collectively or individually referred to as the "EB-5 Project Issuers") and their direct and third party promoters (see comments on 956F for definition of these terms) were never specifically required by EB-5 laws to disclose the amount of fees paid in connection with an EB-5 participant's investment. This has led to established practices in the EB-5 industry whereby the EB-5 Project Issuers would motivate promoters with unconscionable fee structures (a combination of upfront fees, bonuses, paying percentage points of the EB-5 participant's investment each year, giving equity interest in the underlying project, etc.) for referring EB-5 investors to their EB-5 projects. Previously, the lack of required transparency lead most direct and third party promoters to present only the EB-5 project that paid the most money to them rather than the most well suited EB-5 project for the EB-5 participant. As a result, the investor was essentially sold to the highest bidder.

Investors have spent far too long in the dark with regards to where their fees are going. The USCIS needs to do everything in their power to increase the transparency of these fees to protect investors. This should include fees paid by the regional center, NCE, those persons or entities managing the NCEs, and must also include fees paid by the target project or JCE of their investment. This must include fees that are a one-time transaction as well as any profits participation, interest, or other ongoing fees.

In the case of the I-526E, there should be a specific exhibit that is signed by the investor stating exactly how much they are investing, how much they are paying in fees (and to whom), and how much the EB-5 Project Issuers is paying to any direct promoters with whom the EB-5 Project Issuers is contracted. An example is included below.

#### Exhibit to Form I-526E: DISCLOSURE OF FEES AND INTEREST PAID

Investor: \_\_\_\_\_ [INVESTOR NAME] \_\_\_\_\_ (the "Investor")

A. As part of Investor's investment in [insert New Commercial Enterprise name] ("NCE") and pursuant to 8 U.S.C. 1153(b)(5)(K)(iv), the following amounts reflects all fees, ongoing interest, and other compensation paid to any person that has received, or will receive, in connection with your investment, including compensation to agents, finders, marketers, promoters, servicers, or broker dealers involved in the offering that is known by the NCE and/or [insert Regional Center name] and/or affiliated JCE to have been paid or will be paid in connection with the Investor's investment in the NCE (the below are example, use as many lines to ensure full disclosure).

Payor Name	Payee Name	Type of Fee	Amount	Comment
[Name of Entity Paying Promoter]	[Name of Direct/Third Party Promoter]		[Description of all fees paid to Promoter by Payor, including but not limited to any bonus, annual, marketing, or ongoing payments]	If more than one entity pays a fee to the promoter, and/or if more than one promoter is paid a fee, include separate entries for each
[Investor Name]	[General Partner/Manager of NCE]		[Description of all fees paid to GP/Manager by the Investor]	Include a separate entry for each fee
[Name of New Commercial Enterprise]	[General Partner/Manager of NCE]		[Description of all fees paid to GP/Manager by the NCE]	Include a separate entry for each fee
[Name of Borrower/JCE]	[General Partner/Manager of NCE]		[Description of all fees paid to GP/Manager by the Borrower/JCE]	Include a separate entry for each fee
[Name of Entity Paying Regional Center]	[Regional Center]		[Description of all fees paid to Regional Center by Payor]	Include a separate entry for each Payor and/or fee

B. Additionally, Investor must insert below all fees paid by Investor to any direct or third-party promoter, his or her immigration attorney, investment advisor, and/or other consultant utilized by Investor as part of their investment and immigration decision making process (the below are examples, use as many lines to ensure full disclosure).

Payor Name	Payee Name	Type of Fee	Amount
[Investor Name]	[Name of Direct/Third Party Promoter]		[Description of all fees paid to Promoter by the Investor]
[Investor Name]	[Name of Immigration Attorney]		[Description of all fees paid to Immigration Attorney by the Investor]

[Investor Name]	[Name of other Investment Advisor/Consultant, if applicable]		[Description of all fees paid to other Investment Advisor/Consultant by the Investor, if applicable]
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I, [INVESTOR NAME], hereby acknowledge that I have received this Disclosure of Fees and Interest Paid, and also certify that the payments that I have included above are accurate to the best of my knowledge.

---

[INVESTOR NAME]

---

DATE

I, [REGIONAL CENTER CERTIFIER NAME], on behalf of [NAME OF REGIONAL CENTER] hereby certify that the payments that included in this Disclosure of Fees and Interest Paid above reflect all compensation paid in connection with the above Investor's investment, and are accurate to the best of my knowledge.

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[CERTIFIER NAME]

---

DATE

I, [NCE CERTIFIER NAME], on behalf of [NAME OF NCE] hereby certify that the payments that included in this Disclosure of Fees and Interest Paid above reflect all compensation paid in connection with the above Investor's investment, and are accurate to the best of my knowledge.

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[CERTIFIER NAME]

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DATE

I, [AFFILIATED JCE CERTIFIER NAME], on behalf of [NAME OF AFFILIATED JCE] hereby certify that the payments that included in this Disclosure of Fees and Interest Paid above reflect all compensation paid in connection with the above Investor's investment, and are accurate to the best of my knowledge.

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[CERTIFIER NAME]

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DATE

The instructions for the I526E disclosure Exhibit should include the intent of disclosure and sanctions for noncompliance:

The intent of the requirements in the RIA and disclosure requirement set forth by the Form are to provide transparency to the investor and the USCIS through disclosure of all fees paid. Any attempt or scheme by a regional center, NCE, JCE, or any of their affiliates, and/or any direct or third party promoter or any of their affiliates to evade or disguise the requirements set forth above or otherwise frustrate the intent of requirements should result in sanctions as follows:

1. Subsection (K)(ii) of the RIA states that if a promoter has violated the rules and standards prescribed by USCIS, then the USCIS shall suspend or permanently bar the promoter from participation in the EB-5 program.
2. The EB-5 Project Issuers should be sanctioned in accordance with 203(b)(5)(G)(II) since it is not conducting itself in a manner inconsistent with its designation under subparagraph (E) as it did not provide a disclosure statement as required. Permissible sanctions include (i) fines (not to exceed 10% of the total capital invested by alien investors in the regional center's new commercial enterprises or job-creating entities directly involved in such violations); (ii) temporary suspension from participation in the program; (iii) permanent bar from participation in the program for 1 or more individuals or business entities associated with the regional center, new commercial enterprise, or job-creating entity; or (iv) termination of regional center designation.

#### I-956 Comments

In the I-956, and many of the subsequent forms, USCIS has overstepped their interpretation of the requested documents. Throughout this form, USCIS asks the petitioner to "describe" certain things. Examples include on Page 3 Part 4 Number 1 where we are asked to "[D]escribe the economically and statistically valid and transparent forecasting tools used." This doesn't require an economic model in order to set up a regional center, but merely to describe what forecasting tool will be used. Likewise on Page 4 Part 4 Number 3 we are asked to "[d]escribe the kinds of commercial enterprises that will receive such investments." Here again, if a specific project is identified that is fine, but this merely asks for a description of the types of commercial enterprises. Another example is on Page 4 Part 4 Number 5. In each of these examples, USCIS has shown a clear understanding that a description should suffice.

In Part 5 and Part 6, USCIS again asks for the applicant to "describe" a set of policies and procedures to monitor new commercial enterprises and job creating entities (in Part 5), and to "describe" a set of policies and procedures to ensure program compliance. The form even invites (Number 2 in Part 5 and Part 6) a description (in a minimal four lines) if policy documents are not provided. This invitation in the form seems to imply (if not directly state) that policy documents are not necessary, but an adequate (even brief) description, should suffice. These documents very sensitive to many regional centers, and not every regional center will want to hand over their policies and procedures without confidence that the policies and procedures will remain confidential. However, our experience to date shows that USCIS does not want descriptions of these policies and procedures, but wants to, in fact, see those policy documents from the regional center.

### I-956F Comments

The Form I-956F is an application for an approval of an investment in a commercial enterprise. This form essentially serves as a business related petition to USCIS with which an investor can associate their individual petition. A significant hope in the industry is that USCIS will effectively use this tool to minimize contradictory adjudications whereby some investors are approved and others receive RFEs based on the same project information that has already been adjudicated. USCIS should seek to ensure that the I-956F and the affiliated I-526Es can be properly associated, so that it will eliminate double adjudication of the project related components.

The definition of affiliated job creating entity is left open for interpretation. The law states that an affiliated JCE means, “[A]ny job-creating entity that is controlled, managed, or owned by any of the people involved with the regional center or new commercial enterprise...” This definition does not clarify in any way what the terms controlled, managed, or owned actually mean. By any interpretation, certain thresholds have to be met, however what those thresholds are have not been identified. It should be clarified at what point (percentage ownership, managerial responsibilities, controlling authority) is this threshold exceeded, and the JCE is considered affiliated. Without thresholds one would assume the minimum but that does not seem to be the intent of the RIA. For instance is a 1% passive, non-management, owner that is a person involved with the regional center or new commercial enterprise considered affiliated? Or rather, does a threshold requiring some management level need to be obtained before it is considered affiliated?

Page 8 Part 7 Number 1 again goes down the path of requesting a description of policies and procedures, but USCIS adjudication appears to show that this is not enough. Here again, USCIS invites a brief description in place of the actual policy documents from the regional center.

Here, as mentioned above in the I-526E, USCIS needs to improve the efficiency of providing a receipt notice rather than the roundabout method of providing a useless acknowledgement letter. This serves only to delay the beneficial impacts of EB-5, and cause administrative burden.

### I-956G Comments

Here, as in many of the previous forms, USCIS asks for descriptions of policies and procedures while expecting a submission of the actual policies and procedures. Page 2 Part 3 Number 3 specifically asks for descriptions of policies to ensure compliance with federal labor laws. Although we have not yet submitted any Form I-956G, we want to ensure that USCIS does not create an unnecessary burden on program participants by requiring policy documents when descriptions should suffice.

Page 2 Part 3 Number 4 asks for an attachment pertaining to each I-956F that has been submitted under the regional center. What this section doesn't take into account is that many regional centers have been reauthorized and existed prior to the passage of RIA. Will there be no effort to track the information on projects that occurred prior to RIA?

What is more, prior to RIA there was not a requirement that all projects file a Form I-924 seeking approval of their project. These projects were able to simply have their investors file I-526 petitions containing all project documents. USCIS needs to consider how best to obtain information on ALL NCEs and capital investment projects under any regional center, pre or post RIA.

The form contains Attachment 1 – Information About Each New Commercial Enterprise and Capital Investment Project. This form is to be filled out for each NCE and Form I-956F associated with the regional center. As mentioned above, this needs to take into consideration both pre- and post-RIA investment projects. Further, Page 12 Number 18 on the attachment needs to require a more robust representation of fees being collected by the regional center or NCE, and the use of those funds. Currently the question only asks for disclosure of fees collected from alien investor to be offered to locate individual investors. The question fails to account for fees paid by anyone other than the alien investor. Most often those fees are collected by the regional center or NCE from the borrower or JCE, and then used to further pay direct and third party promoters. These second transactions are currently not required as part of the disclosure.

However, rather than a more robust representation of fees, with the suggested disclosure exhibit for all Form I-526E, Number 18 (on page 12) becomes irrelevant as all fees have been disclosed directly to each alien investor as part of their I-526E. Therefore we suggest number 18 becomes a certification that the regional center has accurately represented all fees in each investor's disclosure exhibit for their I-526E. Part of the instructions for number 18 would include the same intent of disclosure and sanctions for noncompliance noted in our comments on the I-526E.

#### I-956H Comments

The USCIS needs to refer back to the definition of “involved”, as discussed below, and the concept of substantive authority as the requirement for those that are required to fill out Form I-956H. Multiple RFEs have been issued suggesting this form is a requirement of nearly every employee. That interpretation is overly burdensome and inappropriate. USCIS has asked for everybody from the president down to the “case managers” to submit bona fides. At CMB, by policy that has existed many years, no individual may commit CMB to anything other than a very small selection of individuals in upper management.

The definition of “involved” in RIA is clear on this point. Individuals who are involved with these entities include those who are

“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 program described in subparagraph (E). A person 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....”

A few things to note in this definition is that it first provides areas where substantive authority must exist, and then gives a list of titles that MAY be in such a position. To be clear, it does not list a mere employee as someone that would automatically have substantive authority. Additionally, an employee's title may not be indicative of their capacity to make decision on behalf of the company. USCIS needs to refer back to this definition and the concept of substantive authority as the requirement for those that are required to fill out Form I-956H.

How often does USCIS intend to collect the same information from the same individuals? This could potentially create hundreds of hours of extra burden both on the participants as well as on the agency. The form should be required for anyone that meets the definition of being "involved" (as quoted above) that has not already filed a bona fide; if such person has already filed a bona fide, then the person should be able to reference the receipt number of the bona fide previously submitted. Of course regular background checks should be performed to ensure that individuals have not become ineligible for participation, but their finger prints will not change every year.

#### I-956K Comments

It cannot be said enough. USCIS has to take advantage of this opportunity to place stringent rules to properly implement the integrity provisions in the RIA.

In the introduction to the form (prior to Part 1) the form states that all direct and third-party promoters (including migration agents) must register with USCIS. Page 1 Part 1 Number 1 then separates migration agent out from direct and third-party promoters. What is a migration agent, if not a direct or third-party promoter? The law doesn't talk about migration agents. A migration agent can be either a direct promoter or a third-party promoter.

The form does not define a direct promoter, third-party promoter or a migration agent. Additionally the form does not identify the difference between a direct promoter and a third-party promoter, and, if there is a difference, a migration agent. Without definitions it is left up to interpretation what each term means. We would like to suggest the following for your consideration: A direct promoter is an entity with whom the regional center, new commercial enterprise, or affiliated JCE has a direct contract to source investors. These fees must be disclosed on the disclosure Exhibit for all I-526E. On the other hand, a third-party promoter would be a sort of sub-agent of the direct promoter (this is very common). The third-party promoter's contract is with the direct promoter, but they are sourcing investors for the regional center, new commercial enterprise, or affiliated-job creating entity. It is common place that the regional center, new commercial enterprise, or affiliated-job creating entity is unaware of these subagent as they only have direct communication and contracts with the direct promoter. Third-party fees do not need to be disclosed on the disclosure Exhibit of the I-526E since there is no contractual relationship and many times no knowledge of their existence with/by the regional center, new commercial enterprise, or affiliated JCE. Migration agents can be either of these categories, but are not a separate entity apart from the previous two. Alternatively, USCIS needs to provide a clear definition of what a migration agent is outside of a direct or third-party promoter.

USCIS needs to use this form to ensure that regional centers are being held responsible for working with registered direct promoters. Likewise, USCIS needs to use this form to ensure that direct promoters are being held responsible for working with registered third-party promoters. This registration needs to ask whether the registrant is working only with other direct and third-party promoters who have likewise registered with the USCIS.

Additionally, subsection (K) of the RIA requires that DHS prescribe rules and standards relating to direct and third party promoters, including providing guidelines for accurately describing the visa process to investors. The registration needs to, at a minimum, specifically ask if the registrant is properly representing the immigration process, risks, etc. to the immigrant investor. As with the other forms,

there needs to be a certification that the registrant (be it a direct promoter or third-party promoter) is properly representing the immigration process, risks, etc. to the immigrant investor.

The attestations in this registration need to be enforced by USCIS. One third of the integrity fund must be used overseas. This is exactly where it should be used. USCIS can hire individuals that act as potential EB-5 investors to find out what each direct and third-party promoter is telling prospective clients. If an entity has attested to properly representing, and then is found to not be doing so, it needs to be investigated and depending on the outcome of the investigation, they need to be severely punished. USCIS has the authority to entirely ban individuals and entities from the program (including their own personal immigration benefits). This ban needs to not simply be enforced on the individual or the entity but also on the principals of the entity so that they cannot go file under a new entity name and continue lying to prospective clients.

Further, regional centers need to be held responsible for the actions of their direct promoters, and direct promoters need to be held responsible for the actions of the third-party promoters. If a regional center, direct promoter, or third-party promoter is found to have known about misrepresentations by an entity with whom they have a contract, there needs to be punishment. These punishments should also go up to banning from participation for the entity and the principals of the entity.

Subsection (K) of the RIA requires DHS to establish permissible fee arrangements. Projects need to be presented to the investor based on the merits of the project itself, not based on the price direct and third party promoters are being paid. These merits are the likelihood of EB-5 success (obtaining a green card) and the likelihood of financial success of the project. While a form might not be the appropriate implementation we suggest the following: Add a certification to the I-956K that the direct and/or third party promoter certify they accept and will comply with the permissible fee arrangement described in the instructions of the I-956K. The instructions should outline the permissible fee which we suggest be dependent upon the actual services being rendered by the entity receiving the payment. Any compensation that a promoter receives must be reasonable in light of the services that the promoter actually performs. In making this determination, USCIS should look to how FINRA regulates how much transaction-based compensation can be legally earned by a broker-dealer in a securities transaction. This cap which we would suggest, based on the factors surrounding EB-5 investments is 10% of the investor's EB-5 investment. This is in line with the FINRA suggested "5% policy" which allows broker-dealers to receive reasonable and not excessive commissions. Given the complexity of an EB-5 related transaction, and its intersection with immigration law, the 10% cap would still be reasonable and should be adopted by USCIS.

The instructions should also include the intent of permissible fee arrangements and sanctions for noncompliance:

The intent of the requirements in the RIA and USCIS's implementation of permissible fee arrangements are to ensure that exorbitant fees are not used to bypass the important role of due diligence on the part of the investor, and instead simply sell to the highest bidder. The promoters of EB-5 are not fiduciaries for the EB-5 participant, and many have proven to not have the best interests of the investor in mind. Many of the provisions in the RIA exist as protections to the investor, and subsection (K) is no different. Any attempt or scheme by a regional center, NCE, JCE, or any of their affiliates, and/or any direct or third party promoter or any of their affiliates to evade or disguise the requirements set forth above or otherwise frustrate the intent of requirements should result in sanctions as follows:

1. Subsection (K)(ii) of the RIA states that if a promoter has violated the rules and standards prescribed by USCIS, then the USCIS shall suspend or permanently bar the promoter from participation in the EB-5 program.
2. The EB-5 Project Issuers should be sanctioned in accordance with 203(b)(5)(G)(II) since it is not conducting itself in a manner inconsistent with its designation under subparagraph (E) as it did not provide a disclosure statement as required. Permissible sanctions include (i) fines (not to exceed 10% of the total capital invested by alien investors in the regional center's new commercial enterprises or job-creating entities directly involved in such violations); (ii) temporary suspension from participation in the program; (iii) permanent bar from participation in the program for 1 or more individuals or business entities associated with the regional center, new commercial enterprise, or job-creating entity; or (iv) termination of regional center designation.

### Conclusion

The recent efforts of USCIS to implement the important changes to the EB-5 program are greatly appreciated. Accepting these comments is an important step in the direction of providing a transparent path to participation in the EB-5 regional center program.

We look forward to your consideration, and hopeful implementation, of the above comments. We always make an effort to be forward looking while acting today. This five year reauthorization cannot be misused if we want another reauthorization. We look forward to the many further engagements of USCIS on the EB-5 program and the impacts of the Reform and Integrity Act.