Form I-526-014 REV - Responses to 30-day FRN Public Comments

Public Comments (regulations.gov): USCIS-2007-0021
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Comment #	Commenter ID	Comment	USCIS Response
1.		**Commenter: American Immigration Lawyers Association**	
	0090 (see attachments)	On behalf of the American Immigration Lawyers Association, enclosed please find our supplemental comment, dated January 23, 2023, to the Proposed Form I-526E, Immigrant Petiton by Regional Center Investor. Also enclosed as an attachment is a copy of our October 22, 2022 comment on the Proposed Form I-526E, which is incorporated into this supplemental comment by reference. Thank you.	**Response:** See Comment Responses below labeled with Commenter ID: 0090. The information in each attachment from the public comment was separated into different sections in this comment matrix to address each portion of information individually. **See Comment # 2 – 11.**
2.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E Instructions** Page 2: General Instruction Section/Biometric Services Appointment The form instructions now establish that the Petitioner may be required to provide biometrics and pay a separate biometric services fee of $85. *AILA Comment:* Nearly all petitioners reside overseas at the time of filing Form I-526E. AILA remains very concerned about the plan to schedule biometrics for a Petitioner living overseas. In our experience, most U.S. Consulates are not sufficiently staffed and equipped to serve as a biometrics processing center. There is no information in either the Federal Register notice or the form instructions to indicate whether USCIS developed protocols with Department of State to capture biometrics abroad. Also, not every Petitioner will have a valid visitor visa to enter the U.S. to comply with any biometrics obligation. For those petitioners, applying for a tourist visa with a pending Form I-526E will likely complicate satisfying nonimmigrant	**Response:** USCIS decided to not require the submission of biometrics from EB-5 regional center investors in connection with the Form I-526E in all circumstances in the 30-Day notice. However, as it is a benefit request, USCIS may request the submission of biometrics from a Form I-526E petitioner as may be necessary under INA 203(b)(5)(H)(iii), 8 CFR 103.2(b)(9), or under other applicable authorities.

		intent requirements. We are concerned that USCIS may deny a petition on grounds of abandonment if the Petitioner is unable to comply with biometrics processing due either to inaccessibility of consular appointments or inability to obtain a visa to attend a biometrics appointment in the United States. AILA urges USCIS to delay implementation of any biometrics requirement until such time as reliable procedures are developed to accommodate the overwhelming majority of Form I-526E petitioners who reside overseas.	
3.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E Instructions** Page 5: Item Number 9. Disclosure of Fees: *AILA Comment* We recommend that the form instructions be modified to include language from the RIA which says that an investor shall sign a disclosure "to the extent not already specifically identified in the business plan filed" with their I-956F. Further, we do not believe that USCIS should penalize petitioners who fall victim to regional centers or new commercial enterprises that do not properly provide investors with compliant disclosure documentation, which may also independently be governed by U.S. Securities Laws and as opposed to the RIA.	**Response:** This question alerts the investor to the regional center's requirement to provide full disclosure of all fees associated with their investment. The question only requires an attestation that the investor received such a disclosure, not that it be provided where it has already been identified in the regional center's project application.
4.		**Commenter: American Immigration Lawyers Association**	
		Form I-526E Instructions Page 7: What Evidence Must You Submit? *AILA Comment*	**Response:** USCIS will consider issuing sub-regulatory guidance on this and other procedural filing issues.

		We again are pleased that USCIS will allow Form I-526E investors to submit their evidence through the myUSCIS portal. Based on our past experience with online filing systems such as the ELIS Case Portal, we recommend that the IPO establish additional options to allow attorneys to email a specific IPO email address in the event there are issues with the myUSCIS portal. We also recommend that USCIS give petitioners a specific period of time, such as 90 days or longer, and list such instructions in the form instructions and on the myUSCIS portal. AILA also requests that USCIS clarify whether petitioners may submit or interfile additional evidence not required as part of the initial petition using the myUSCIS portal. Similarly, we also recommend that the USCIS allow petitioners the option to respond to RFE, NOIDs, or other post-filing requests from USCIS via the myUSCIS portal.	
5.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E** Part 2 Information About You / Question 20: *AILA Comment* AILA appreciates that USCIS has modified the scope of this question from the previous draft, which requested employment history from "all prior employment." AILA still objects to the period of time that the question now asks (i.e. "the last 20 years"). AILA's concern is that USCIS may request information that may need to be supported by primary or secondary evidence which may not be available to investors due to limitations in public or private recordkeeping. The RIA already requests an investor's prior seven (7) years of tax returns, and the scope of	**Response:** The EB-5 Reform and Integrity Act of 2022 requires USCIS to search the alien and any associated employer on the Specially Designated Nationals List of the Department of the Treasury Office of Foreign Assets Control. See INA 203(b)(5)(R). Further, USCIS must ensure that any petitioner seeking to participate in the EB-5 Program is not a threat to the national interest of the United States. See INA 203(b)(5)(N). Consequently, USCIS must be able to review the petitioner's employment history to administer these provisions and determine the petitioner's eligibility to participate in the EB-5 Program. USCIS considered the commenter's suggestion and reassessed the burden to the public with respect to executing the statutory mandates. Accordingly, USCIS modified the requested

		this question as currently written may leave investors unable to comply due to the unavailability of records. AILA believes that the statutory provisions of the RIA provide a reasonable period of seven years, which reflects similar foreign recordkeeping requirements for employment, banking, and tax records. Separately, AILA notes that the reporting requirements for military service added to this question are distinct and apart from regular employment. AILA recommends that the requirement to report government or military foreign service would be best collected in a separate question.	employment history to the last 20 years of the petitioner's employment as well as any government or military service that has occurred at any time, not just within their last 20 years of employment. Note, however, that USCIS may request information or evidence related to any employer as needed on a case-by-case basis regardless of when the petitioner was employed by such employer.
6.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E** Part 3 Information About Your Spouse and Children: *AILA Comment* AILA remains very concerned by the broad language of Part 3 which requires the Petitioner indicate the present intent of each family member to seek derivative immigrant classification. It is entirely appropriate for the Petitioner to list all family members for identification purposes. However, a family member's individual decision to ultimately apply/not apply for derivative immigrant benefits is frequently the subject of a complex analysis of personal and business issues and may change over time. For example, it is not uncommon for the investor and children to seek EB-5 benefits, while the investor's spouse intentionally elects to not pursue any immigrant benefits. In current form, Part 2 demands the reporting of the name of such non-participating spouse and such listing could impute immigrant intent, complicating future nonimmigrant visa	**Response:** This question is consistent across USCIS petitions for an immigrant visa where the petitioner is asked to identify any spouse or children that may immigrate with or follow to join the petitioner in the United States and indicate how they would seek to obtain permanent resident status, either through consular processing if residing abroad or through adjustment of status if residing in the United States. For example, this question is asked on the Form I-130, Petition for Alien Relative, and Form I-140, Immigrant Petition for Alien Workers. Selecting consular processing or adjustment of status is not binding on how the spouse or children ultimately receive status, but provides USCIS the ability to route the petition correctly for further processing if approved.

		applications and admissions. Moreover, a non-binding statement of future intent is of no evidentiary value and should not be required upon submission of the Form I-526E Petition. AILA recommends the Form be modified to simply direct Petitioner to list and provide basic biographical information on spouse and children, and not be required to provide speculative information about their individual intent to ultimately pursue benefits and how that might be accomplished.	
7.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E** Part 4 Information About Your Regional Center and Project Application: *AILA Comment* AILA recommends the elimination of "High Unemployment Area" category option. However, the phrase "significantly below" is not defined. In the absence of a specific and objective measurement criteria, this classification should be removed.	**Response:** USCIS may consider rulemaking to address this issue. USCIS notes the investment amount for a high employment area remains the same as the standard investment amount. DHS has added this response to collect data on investments that are being made in high employment areas.
8.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E** Part 5 Information About Your Investment: *AILA Comment* AILA finds the table response formatting for Question 1 potentially confusing. Petitioner is directed to consolidate into a single table both completed investment activities and prospective activities. AILA recommends the table separate completed activities from prospective activities.	**Response:** Part 5, Question 1 asks the petitioner to consolidate their investment in one location to ensure the petitioner has met the requirement to have invested or be in the process of investing the required amount of capital. Separating actual investment from prospective investment would not help identify that the total of the capital invested meets the amounts required by INA 203(b)(5)(C). USCIS modified the term to "Cash" in Part 5, Question 2, based on the suggestion made.

		AILA appreciates that USCIS modified Question 2 as provided in our comment. However, we note that the proper term to utilize in this question is "cash", as "Capital" is defined by INA §203(b)(5)(D)(ii) which provides in part: "(ii) CAPITAL. —The term 'capital'— "(I) means cash and all real, personal, or mixed tangible assets owned and controlled by the alien investor, or held in trust for the benefit of the alien and to which the alien has unrestricted access; (Emphasis added.)	
9.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E:** Part 5 Administrative Costs and Fees / Question 8: *AILA Comment* The Form and Instructions use overly broad language of "all" and "any" to mandate Petitioner's disclosure of administrative fees and costs. AILA is concerned that the instructions fail to provide any meaningful guidance defining the terms "administrative fees and costs." Petitioner is only left to speculate at the scope of the request. For example, under the language of the current Question, must the Petitioner report all immigration legal fees? All corporate lawyer legal fees for due diligence review of offering? All translation fees? Interpreter fees? All accounting professional fees for lawful source of funds analysis? Any Investment Advisor fees? AILA urges additional clarification be added to this question and accompanying instructions.	**Response:** USCIS may consider rulemaking to address this issue.
10.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E**	**Response:** USCIS has consistently asked for this information on the Form I-526, dating back to 2003. Congress occasionally

		Part 5 Administrative Costs and Fees / Question 10: *AILA Comment* AILA strongly objects to this question for multiple reasons. First, the Instructions provide no guidance or clarification on how to answer Question 10. Second, and more importantly, a Petitioner's net worth is not a requirement or factor appearing in the RIA, regulations or Policy Manuel. Moreover, net worth is not naturally connected to lawful source of funds or path of funds eligibility requirements. For example, why is net worth relevant to any Form I-526E adjudication if the Petitioner is receiving a gift or loan to make the investment? Further, this inquiry is an unnecessary and overly broad intrusion into the privacy of the Petitioner by demanding highly confidential information unrelated to any eligibility criteria. This question should be eliminated in its entirety.	asks for data regarding the net worth of individuals participating in the EB-5 Program, making this data important for USCIS to be responsive to such requests. Further, this information provides USCIS information to determine how the investor obtained their funds and provides insight in to situations where the investment capital may not be lawfully obtained, as required by INA 203(b)(5), and conduct sufficient inquiry to make a determination on the investor's eligibility for an EB-5 immigrant visa. The EB-5 Reform and Integrity Act of 2022 strengthened these requirements on USCIS to ensure an investor's eligibility and their investment capital is lawfully obtained, directly or indirectly, and remained lawful throughout the time of investment.
11.		**Commenter: American Immigration Lawyers Association**	
	0090	**Form I-526E** Part 7. Bona Fides of Persons Involved With Regional Center Program: *AILA Comment* A vast majority, if not all, of the Petitioners in the regional center setting serve only as a limited partner in the NCE with no role in its daily management or operations. As a result, a position of "limited authority (as limited partner) does not therefore meet the definition of a "position of substantial authority." Accordingly, USCIS should revise Part 7 to begin with a "Yes/No" question akin to "Does the Petitioner's role in the NCE or JCE exceed that of a limited partner?" If you answer No to the above, skip to Part	**Response:** USCIS disagrees with the commenter regarding application of the statutory definition of "person involved" under INA 203(b)(5)(H)(v) to EB-5 investors in regional center-associated new commercial enterprises. USCIS notes that the definition includes any person directly or *indirectly* in a position of substantive (rather than "substantial" as the commenter notes) authority. This definition further specifically indicates that it may include owners, who in many circumstances would exercise authority indirectly such as through voting rights or other means, and provides no explicit exception for owners who are EB-5 regional center investors specifically or limited partners more generally. In addition, the definition also provides broad authority to the Secretary to

		8. If you answered Yes, answer the below questions." Additionally, Questions 12 and 13 seem totally without merit and appears only to target a Petitioner-Investor seeking immigrant classification who a practicing lawyer in the United States is also. It is hard to imagine such a fact pattern exists, but in the rare instance it does – there is insufficient justification to further expand the Form to include two separate questions to that extraordinarily small universe of potential petitioners. AILA urges the removal of Questions 12 and 13.	"otherwise determine[]" who may or may not be a person involved for purposes of compliance with the new provisions of INA 203(b)(5)(H). The commenter also suggests that Questions 12 and 13 be removed. INA 203(b)(5)(H)(i)(IV) precludes the individuals specified by these two questions from being involved with a regional center, new commercial enterprise, or job-creating entity. No matter how small the population may be, USCIS is asking these questions in line with the statutory exclusion.
12.		**Commenter: Suzanne Lazicki**	
	0091 (see attachment)	Please see my attached comment regarding OMB Control Number 1615-0026, USCIS Docket ID USCIS-2007-0021, Form I-526 and Form I-526 Instructions, Part 3 "NCE Ownership and Capital Investments (Questions 15-19). **Comment Summary:** The Form I-526 Instructions should be updated with instructions for Part 3 "NCE Ownership and Capital Investments (Questions 15-19). The Instructions should specify what supporting evidence--if any--the petitioner is required to provide regarding the identity and capital contributions of non-EB-5 investors in the NCE. Both petitioners and USCIS adjudicators need to be on the same page as to whether or not this extremely consequential claim is true: "A petitioner in a standalone case must demonstrate the lawful source of funds for all non-EBS capital that is invested in the NCE." If USCIS holds to this claim, then Form I-526 should specify the source of funds evidence required to demonstrate lawful source of non-EB-5 capital. If the claim is not justified (as I would argue), then the Form is correct to request no such demonstration, but in that case USCIS	**Response:** USCIS may consider rulemaking to address this issue.

		needs to correct its adjudicator training materials (the source of the quoted claim) and adjudication worksheets so that internal guidance matches the public Form instructions and petitioners are no longer surprised with idiosyncratic non-EB-5-source-of-funds evidence requests at the I-526 RFE stage.	