

<b>Question#:</b>	5
<b>Topic:</b>	Specific Countries
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The August 2015 GAO report identifies the "uncertain source of immigrant investor funds" as an area at risk of fraud.

The report states that DHS officials "did not have a means to verify self-reported immigrant financial information with many foreign banks," and that State Department officials "said that because the U.S. Government lacks access to many foreign financial systems, there is no reliable method to verify the source of the funds."

The report cites an example in which the Fraud Detection and National Security Directorate at DHS told GAO about a case in which the petitioner did not report financial ties to a number of Chinese brothels.

In which specific countries is it a problem that USCIS cannot verify the banking information of EB-5 applicants? Please identify such countries.

**Response:** USCIS does not have direct access to the information systems of private or public banks and, understandably, banks work to ensure the privacy of their clients' information. While there is difficulty in verifying banking information, USCIS has access to a wide array of government and commercial data sources to further evaluate sources of funds. The EB-5 program has staff that is equipped to conduct searches in the native or official languages of over 90% of EB-5 petitioners. As needed, USCIS will also request that an overseas verification be conducted by USCIS staff stationed abroad or, in locations where USCIS has no personnel, by Consular employees.

<b>Question#:</b>	6
<b>Topic:</b>	Unlawful Means
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Under EB-5 regulations, assets acquired "by unlawful means (such as criminal activities)" cannot count toward satisfying the requirements of the program.

Please define the term "unlawful means."

**Response:** USCIS interprets the term "unlawful means" broadly in accordance with the plain meaning of the words "unlawful" and "means" in order to provide adjudicators with the most flexibility to accurately and fairly adjudicate each case depending on its particular facts.

**Question:** If activity is lawful in a foreign country, but unlawful in the United States, is it "unlawful" for EB-5 purposes? And, if an activity is unlawful in a foreign country, but lawful in the United States, is it "unlawful" for EB-5 purposes?

**Response:** USCIS makes the determination about whether an investor/petitioner has contributed capital on a case-by-case basis. In order to qualify, contributed capital must fall within the regulatory definition, which excludes assets derived from unlawful means.

<b>Question#:</b>	7
<b>Topic:</b>	Specific Activities
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Can you assure this committee that the EB-5 program has never been used to facilitate the investment of funds derived from any of the following activities? Please answer with a yes or no for each one.

Terrorism, or the activities of any designated foreign terrorist organization

Drug trafficking

Sex trafficking

Labor trafficking

Trafficking in arms or military equipment

Organized crime

Government corruption

Gambling

**Response:** As with all petitions and applications that USCIS adjudicates, USCIS makes decisions based on the information it has available at the time of adjudication. USCIS would not approve an EB-5 petition or application if it were known that the investor's funds were derived from any unlawful source that may include the sources listed above. If USCIS becomes aware that the petitioner's funds were derived from unlawful sources, the petition would be denied, or revoked if previously approved, for failure to meet the eligibility requirement of demonstrating lawful source of funds.

**Question:** If you cannot provide an assurance that the EB-5 program has never been used to invest funds derived from a listed category, please provide any examples of how funds derived from that category were invested through the EB-5 program.

**Response:** As stated above, if USCIS discovers that petitioner funds were derived from unlawful sources, the petition would be denied, or a prior approval revoked, for failure to meet the eligibility requirement of demonstrating lawful source of funds. USCIS conducts robust background checks and has a team of skilled immigration officers and intelligence research specialists specifically dedicated to the EB-5 program to identify potential unlawful sources of funds. USCIS refers the committee to the intelligence

<b>Question#:</b>	7
<b>Topic:</b>	Specific Activities
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

assessment published on February 9, 2015 by the DHS Office of Intelligence and Analysis for more detailed information on the first seven categories.

<b>Question#:</b>	8
<b>Topic:</b>	Verify with Other Agencies
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Other than reviewing information submitted by applicants, what steps does USCIS take to verify that the source of funds is lawful? What other agencies does USCIS work with on this issue?

**Response:** Trained USCIS adjudications officers review the I-526 Immigrant Petition by Alien Entrepreneur petitions and all supporting documentation of each EB-5 petitioner, including petitioners associated with a regional center, to determine whether the petitioner has demonstrated, by a preponderance of the evidence, a lawful source of funds.

Pursuant to 8 C.F.R. § 204.6(j)(3), to show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the I-526 petition must be accompanied, as applicable, by:

- (i) Foreign business registration records;
- (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
- (iii) Evidence identifying any other source(s) of capital; or
- (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

If the source of the petitioner's investment is a gift, USCIS will request evidence from the petitioner as to the source of the gift (such as the earnings or assets belonging to the gift-giver). If the source of the petitioner's investment is a loan, USCIS will request evidence to determine whether the loan was obtained by unlawful means (such as fraud on a loan application) and whether the source of the loan proceeds are themselves lawfully derived. Additionally, the presence of a restriction on the use of proceeds may weaken the credibility of the evidence in the record establishing that the loan in question was the actual source for the petitioner's capital investment.

Upon review of each case, if the evidence is insufficient to demonstrate eligibility, adjudicators may issue a Request for Evidence or a Notice of Intent to Deny, refer the case to the Fraud Detection and National Security EB-5 team (FDNS EB-5), and/or deny the petition. FDNS EB-5 has access to a wide array of government and commercial data

<b>Question#:</b>	8
<b>Topic:</b>	Verify with Other Agencies
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

sources to further review the case and associated evidence. The FDNS EB-5 staff is equipped to conduct searches in the native or official languages of over 90% of EB-5 petitioners. As needed, FDNS EB-5 will request overseas verification of a document or evidence submitted by the petitioner.

<b>Question#:</b>	9
<b>Topic:</b>	Unlawful Sources
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The GAO report identified an EB-5 petitioner connected to a series of Chinese brothels. What other unlawful or nefarious sources of attempted or actual EB-5 investments have come to USCIS's attention?

**Response:** USCIS refers the committee to the intelligence assessment published on February 9, 2015 by the DHS Office of Intelligence and Analysis for more detailed information on this issue.

<b>Question#:</b>	10
<b>Topic:</b>	Foreign Government Funding
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Has EB-5 ever been used to channel foreign government funding or funding derived from contracting with a foreign government into a new U.S. business in a way that would enable control of the business by that government or an individual acting on that government's behalf?

**Response:** The Immigrant Investor Program office has offered to arrange for a classified briefing on this topic in response to a similar question posed during the hearing. USCIS looks forward to providing such a briefing at a time convenient for the committee.



<b>Question#:</b>	11
<b>Topic:</b>	Chicago Convention Center
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, I asked you about the \$160 million fraud apparently committed in connection with a convention center project in Chicago. The individual concerned pleaded guilty last month in federal court. You stated during the hearing that no petitions were approved in connection with this project.

Did USCIS ever investigate whether any of the funds that were subject to this fraud scheme may have come from unlawful sources? If so, what was found?

**Response:** The fraud committed in this case was perpetrated by the regional center. All of the intending immigrant investors were victims of the fraud. In addition, each investor was responsible for presenting evidence demonstrating that the source of his or her own invested funds was lawful. Prior to approving any petitions, USCIS reviews all of the evidence in the record in making a source of funds determination as to all petitions filed. In this particular case though, it was not necessary to reach that issue because the petitioners were unable to demonstrate eligibility on other grounds, and their petitions therefore were denied for other reasons.

**Question:** As I detailed during the hearing, and as discussed in Mr. Cohen's testimony, there have been a number of apparent multimillion dollar frauds in connection with this program - and many have resulted in charges by the Securities and Exchange Commission. When such frauds are uncovered, does USCIS investigate whether any of the funds subject to the fraud scheme may have come from unlawful sources? If so, what has been found?

**Response:** As indicated in the previous answer, the source of the individual investor's funds is not examined because it is unrelated to fraud perpetrated by regional centers and their agents at the investors' expense. When issues of regional center fraud arise, the relevant inquiry is how the investors' funds have been spent, rather than their source. That said, as part of adjudication process, USCIS considers whether each investor has demonstrate by a preponderance of the evidence that the source of his or her investment was lawful.

<b>Question#:</b>	12
<b>Topic:</b>	Audit Funding
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** EB-5 is a program that, in large part, requires the United States Government to be able to conduct audits and investigations not only here at home, but also abroad.

If this program is to continue, we must make sure that projects in the United States are not shams, that investors are not being swindled, and that funds are coming from lawful sources.

Senators Grassley and Leahy had a provision in their EB-5 bill - Senate Bill 1501 - to create an EB-5 Integrity Fund funded by a fee imposed on the regional centers. The Fund would be used to conduct audits and site visits, as well as investigations outside the United States.

In my view, if this program is to continue, we must have a robust funding stream to pay for agencies to police it - and that means additional fees for the regional centers as well as the visa applicants. It seems to me that this effort will require at least tens of millions of dollars annually, because the program is worldwide and involves huge amounts of foreign money.

If visa applicants can afford \$500,000 for a visa, they can afford fees to ensure the program is not abused and the country is protected.

What amount of funds annually do you believe is necessary to ensure that DHS, the SEC, the State Department, and other agencies can effectively police this program by performing the following activities?

A site visit at every EB-5 project and regional center.

Investigations abroad into the sources of funds to ensure they do not come from nefarious activities like drug trafficking or human trafficking.

Obtaining and checking of references, including professional references, for visa applicants.

Investigations abroad into activities of promoters, marketers, and other agents of regional centers who advertise and market EB-5 investments.

Please state a precise amount of funds you believe is necessary, so the Committee can

<b>Question#:</b>	12
<b>Topic:</b>	Audit Funding
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

craft a fee structure that produces such funds. If you cannot state a precise amount, please state a range.

**Response:** USCIS is unable to offer a full assessment of the costs associated with these provisions. However, it believes that the language included in the S.1501 could provide sufficient funding and authority, as it also includes the authority to increase fees as necessary, for DHS to accomplish these initiatives.

<b>Question#:</b>	13
<b>Topic:</b>	Credit for Jobs Created
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The EB-5 program - for those who believe in it - say it is premised on creating 10 jobs per investor for Americans, particularly in hard-hit urban and rural areas. I do believe that is a worthy goal, but I do not believe it is currently being served.

As I understand it, an EB-5 investor can take credit for all jobs a project creates - even if EB-5 only makes up a very small part of the investment.

In these cases, it seems clear that EB-5 is not creating the required jobs, and certainly not the number claimed.

The August 2015 GAO report says the GAO and DHS Inspector General "have previously raised questions about this practice" because "including non-EB-5 Program investments in the enterprise can inflate the job creation benefit of the immigrant investment."

Is it correct that, if five percent of a project's financing comes from EB-5 sources, and 95 percent comes from other sources, the EB-5 investors can take credit for all of the jobs created - not just five percent of them?

**Response:** That is correct. DHS regulations provide: "The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic." 8 C.F.R. § 204.6(g)(2).

**Question:** The DHS Inspector General report from December 2013 documents a case in which one project received 82 percent of its funding from U.S. investors, and only 18 percent from EB-5 investors, but the EB-5 investors all still satisfied the job-creation requirement.

Please identify the smallest percentage of a project's total capital investment that has come from EB-5 sources in which an EB-5 investor application (I-526) in connection with the project has been approved.

**Response:** While USCIS does not maintain data showing a breakdown of the percentage of funding for capital investment projects between EB-5 investors and other investors into the projects, as discussed in the previous response, under current regulations, the

<b>Question#:</b>	13
<b>Topic:</b>	Credit for Jobs Created
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

total number of full-time positions created for qualifying employees is allocated to the EB-5 investors regardless of which percentage of a project's total capital came from the EB-5 program.

<b>Question#:</b>	14
<b>Topic:</b>	Requirement Satisfaction
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The statute that sets forth the requirements (8 U.S.C. 1153(b)(5)) for the EB-5 program provides that a visa applicant has to show that their investment "will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States."

In other words, the law requires the applicant to show their investment "will create not fewer than 10" jobs.

Please explain how allowing an investor of a very small portion of a project's capital to take credit for all jobs a project creates satisfies this requirement, when the vast majority of a project's capital comes from other sources.

**Response:** 8 U.S.C. 1153(b)(5) provides that visas will be made available to "qualified immigrants seeking to enter the United States for the purpose of engaging in a new enterprise ... (i) in which such alien has invested ... and (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 [qualifying employees]." USCIS has interpreted this statutory language to mean that while the immigrant's investment must result in the creation of jobs, it is the new commercial enterprise that creates the jobs.

**Question:** Does USCIS have the authority to apply the law in a way that ensures that each investor's contribution is directly tied to the investor's proportional contribution to the project, so Congress can be sure the money is actually creating jobs?

**Response:** Applying the law in this manner would require USCIS to change its regulations in order to tie the assignment of jobs to the EB-5 investor's proportional contribution to the project. However, USCIS believes the existing regulatory framework promotes the use of non-EB-5 funding in EB-5 investment projects, which adds a layer of additional independent vetting and, in turn, adds to the credibility of the proposal overall, particularly in terms of the project's long-term success, and may help to limit the potential for fraud or misuse of investor funds. USCIS also has cases involving independent third-party financing where the ultimate success of the project led to far more than 10 jobs being created for each investor despite their investments not accounting for 100% of project financing.

<b>Question#:</b>	15
<b>Topic:</b>	Show Cause
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The DHS IG report referenced above notes cases in which EB-5 financing was used to pay off loans for construction had already been completed - including one case in which EB-5 funding was 16 percent or less of the total financing. In these cases, it appears EB- 5 did not create the jobs, either because the projects would have happened anyway or because EB-5 represented only a small portion of project financing.

Does USCIS have the authority to require that regional centers or I-526 applicants demonstrate that their EB-5 investments actually cause the requisite ten jobs per investor, and will it exercise such authority?

**Response:** Since it is the commercial enterprise that creates the jobs, USCIS permits the developer or the principal of the new commercial enterprise, either directly or through a separate job-creating entity, to utilize interim, temporary or bridge financing – in the form of either debt or equity – prior to receipt of EB-5 capital. If the project commences based on the interim or bridge financing prior to the receipt of the EB-5 capital and subsequently replaces it with EB-5 capital, the new commercial enterprise may still receive credit for the job creation under the regulations. Generally, the replacement of bridge financing with EB-5 investor capital should have been contemplated prior to acquiring the original non-EB-5 financing. However, even if the EB-5 financing was not contemplated prior to acquiring the temporary financing, as long as the financing to be replaced was contemplated as short-term temporary financing that would be subsequently replaced, the infusion of EB-5 financing could still result in the creation of, and credit for, new jobs. For example, the non EB-5 financing originally contemplated to replace the temporary financing may no longer be available to the commercial enterprise as a result of changes in availability of traditional financing.

USCIS supports the current policy because the jobs created by the job-creating entity are still tied to the EB-5 investment. In cases where temporary financing is replaced with EB-5 investments, jobs would not have been created but for the EB-5 investment that replaced the temporary financing.

**Question:** Could USCIS require any attestation or evidence from the regional center that a particular project would not go forward without EB-5 financing? Will USCIS do so?

**Response:** Currently, the statute and regulations do not require this type of evidence by an investor or regional center.

<b>Question#:</b>	16
<b>Topic:</b>	Direct vs. Indirect
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The program is meant to link the issuance of an immigrant visa to the creation of 10 jobs for Americans. The program counts jobs created "directly or indirectly."

A direct job means a person actually working at the company where the investment occurs.

According to a 2015 report from the Stern School of Business, an "indirect" job would include those who work in an entirely different state, providing things like plumbing fixtures, metal studs, or linens to a project.

It would also include people like accountants and lawyers. And, it would include jobs that are generated when workers spend part of their compensation on consumer goods and services, such as at gas stations or supermarkets.

GAO has said that, in some respects, this modeling is reliable - but not reliable in other respects.

Can you please explain the difference between how USCIS verifies job creation under the basic EB-5 program (enacted in 1990) and under the regional center program (enacted in 1992 as a pilot)?

**Response:** The basic EB-5 program requires that the investor invest into a new commercial enterprise that directly creates at least 10 jobs per investor, while the regional center program allows investors to be credited with both direct and indirect job creation. *Direct jobs* are those jobs that establish an employer-employee relationship between the new commercial enterprise and the persons that they employ. *Indirect jobs* are the jobs held by persons who work outside the new commercial enterprise, including employees of a separate job-creating entity, jobs further down the supply chain, and induced jobs (jobs created when direct and indirect employees go out and spend their increased incomes on consumer goods and services).

Under the basic EB-5 program and the regional center program, USCIS requires petitioners to provide documentation showing the new commercial enterprise has employed or will employ at least 10 qualified U.S. workers in full-time positions. For investors in the basic EB-5 program, 8 C.F.R. §§ 204.6(j)(4)(i) and (ii) require "documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents" to demonstrate employees already hired, or a comprehensive business plan showing how jobs will be created within the required time period.



<b>Question#:</b>	16
<b>Topic:</b>	Direct vs. Indirect
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

For investors in the regional center program, 8 C.F.R. § 204.6(j)(4)(iii) permits petitioners to rely on “reasonable methodologies” to demonstrate job creation. Typically, petitioners provide economic models that estimate the total job creation based on the inputs into the model (e.g. expenditures) as well as evidence demonstrating that such inputs are reasonable (e.g. receipts). GAO’s recent audit of the EB-5 program found that the use of data from such economic models, namely the Department of Commerce’s Regional Input-Output Modeling System (RIMS II), “is a reasonable methodology to verify job creation as permitted in law and program regulation.”

**Question:** Is it correct that, in the basic EB-5 program, jobs must be direct jobs, meaning they must be created at the enterprise where the investment occurs, and they can be verified through employment forms like the I-9 or through wage statements?

**Response:** That is correct.

**Question:** Is it correct that an "indirect job" under the program need not be proven through employment forms like the I-9 or through wage statements?

**Response:** That is generally correct. Note that, where the petitioner is utilizing an economic model to derive indirect job creation totals and where the inputs into that model are “direct jobs” (direct hires at the job-creating entity), USCIS can require documentation to evidence those “direct job” inputs, such as Forms I-9, tax records, wage statements, etc.

**Question:** Is it true that an EB-5 applicant in the regional center program can meet the 10-jobs test without creating a single, verifiable job held by an actual person at the project itself or the business where the money is invested?

**Response:** In the sense that such jobs are not verified by documented proof of Forms I-9, tax records, wage statements, etc, this situation may be possible. The legislation creating the regional center program provides that USCIS *shall* permit immigrant investors to rely upon “reasonable methodologies for determining the number of jobs created . . . including such jobs which are estimated to have been created indirectly.”

<b>Question#:</b>	17
<b>Topic:</b>	Jobs Created in a Targeted Employment Area
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The EB-5 program has two investment thresholds. The normal threshold is \$1 million. The investment amount is discounted to \$500,000 for those whose investments are "made in a targeted employment area."

In addition, the statute provides that 3,000 EB-5 visas shall be set aside for applicants whose investments "will create employment in a targeted employment area."

The idea behind these provisions is to encourage investment in areas where job creation is needed most - whether that is a rural area or a depressed area in one of America's cities.

Yet the GAO has indicated that the economic model used by USCIS - called the "RIMS II" system - is unable to determine where jobs will be created.

Here is a quote from GAO's August 2015 report: "Use of RIMS II data alone does not provide USCIS with the capacity to determine the location of jobs created, such as the number of jobs created in targeted employment areas."

Given the limitation in the data highlighted by GAO, how does USCIS go about determining whether jobs will be created in a targeted employment area, as required for the set aside of 3,000 visas discussed above?

**Response:** USCIS believes that focusing on the location of where the new commercial enterprise or job-creating entity is principally doing business is a reasonable indicator in determining the location of where jobs are being created, and is permissible under the regional center statute allowing petitioners to use reasonable methodologies to comply with job creation requirements. Therefore, USCIS requires investors seeking the targeted employment area discount to show that the investment is being made in a new commercial enterprise or job-creating entity that is principally doing business in a targeted employment area. Under USCIS policy, a new commercial enterprise or job-creating entity is "principally doing business" in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be deemed to be "principally doing business" in the location that is most significantly related to the job creation. Factors to be considered in making this determination may include, but are not limited to, (1) the location of any jobs directly created by the new commercial enterprise; (2) the location of any expenditure of capital related to the creation of jobs; (3) where the new commercial enterprise conducts its day-to-day operation; and (4) where the new commercial enterprise maintains its assets that

<b>Question#:</b>	17
<b>Topic:</b>	Jobs Created in a Targeted Employment Area
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

are utilized in the creation of jobs. *See Matter of Izummi*, 22 I&N Dec. 169, 174 (Assoc. Comm’r 1998).

**Question:** In cases in which the investments are "made in a targeted employment area," as required to trigger the \$500,000 investment threshold, does USCIS attempt to determine whether the jobs are actually created in that area?

**Response:** Please refer to the answer to the previous question explaining how USCIS determines whether jobs are being created in a targeted employment area.

**Question:** Is USCIS able to, and does USCIS, determine whether EB-5 investments are, in fact, contributing to development in depressed parts of urban areas or to the creation of jobs for individuals who live in such areas?

**Response:** As explained above, USCIS does an analysis as part of the adjudication process to determine whether or not jobs are being created in a targeted employment area. USCIS’ mandate is to adjudicate EB-5 cases according to the eligibility criteria, including the statutory job creation requirements, and not to conduct assessment of the program’s overall economic impact.

<b>Question#:</b>	18
<b>Topic:</b>	Investment Amounts
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As I understand it, one way that has been suggested to reduce fraud is to significantly raise the program investment amounts.

In addition, other countries that have similar programs have much higher investment levels. According to a report from the Migration Policy Institute from October 2014, investment levels higher than the United States include Malta (\$1.5 million), the United Kingdom (just over \$1.5 million), Singapore (\$2 million), Hong Kong (\$1.3 million), Australia (\$1.5 million to \$5 million), and France (\$12.7 million). Many of these amounts depend on exchange rates.

The \$1 million and \$500,000 investment thresholds have been static for over 20 years. Had they been regularly adjusted for inflation, today they would be over \$1.8 million and \$900,000, respectively. The statute provides the authority for the Administration to increase these levels.

Why not fully raise these investment amounts retroactively for inflation, or go even higher, to help deter fraud?

**Response:** USCIS is currently reviewing the minimum investment amounts, but must do so in consultation with the Departments of State and Labor as part of any proposed regulatory change to the investment amount per the statute.

<b>Question#:</b>	19
<b>Topic:</b>	I-526 Applications
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Page 3 of your written statement provides a variety of statistics about how many I-529, I-829, and I-924 applications were approved in FY2013, FY2014, and FY2015. But it does not include denials.

I would like you to put these numbers in context of the submissions the agency receives, so the committee can have a full picture of activity in this area. Please provide the following numbers:

Total I-526 applications received in FY2012, FY2013, FY2014, and FY2015. Please break the number apart by year.

Of those, how many were approved, how many were denied, and how many were the subject of other action (such as withdrawal)? Please break the number apart by the year the application was received.

Please provide the numbers above for each approved regional center, as well as for all regional centers combined.

**Response:** USCIS is working to query the requested data and will provide this information in a separate response as soon as these reports are complete.

<b>Question#:</b>	20
<b>Topic:</b>	I-829 Applications
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Total I-829 applications received in FY2012, FY2013, FY2014, and FY2015. Please break the number apart by year.

Of those, how many were approved, how many were denied, and how many were the subject of other action (such as withdrawal)? Please break the number apart by the year the application was received.

Please provide the numbers above for each approved regional center, as well as for all regional centers combined.

**Response:** USCIS is working to query the requested data and will provide this information in a separate response as soon as these reports are complete.

<b>Question#:</b>	21
<b>Topic:</b>	I-924 Applications
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Total I-924 applications received in FY2012, FY2013, FY2014, and FY2015. Please break the number apart by year.

Of those, how many were approved, how many were denied, and how many were the subject of other action (such as withdrawal)? Please break the number apart by the year the application was received.

Please provide the numbers above for each approved regional center, as well as for all regional centers combined.

**Response:** USCIS is working to query the requested data and will provide this information in a separate response as soon as these reports are complete.

<b>Question#:</b>	22
<b>Topic:</b>	Visa Backlogs
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As I understand it, because of the overwhelming demand from Chinese nationals, there is now a date cut-off for the issuance of EB-5 visas for them - creating a growing backlog for them to wait about two years before a visa can be issued.

For example, the most recent State Department Visa Bulletin has a cut-off date for those born in mainland China of January 15, 2014 for EB-5 visas.

I am sure this committee will hear from many who argue that Congress should act to address this backlog issue to ensure a continued flow of EB-5 financing.

It seems to me that there is not enough pressure to fix backlogs for families or temporary workers or to fix other aspects of our broken immigration system. Millions of ordinary people and families are affected by these problems, and yet there is a push to make a special path for wealthy foreign nationals even easier.

Some individuals have been waiting as long as 23 years for a family-based visa and that the current wait for some temporary worker visas is almost 12 years. Is that correct?

**Response:** Congress sets the annual immigrant visa numbers, the Department of State issues visas and is best equipped to respond to questions regarding visa availability and visa wait times. The Administration supports clearing the immigrant visa backlogs as a part of commonsense, comprehensive immigration reform legislation, including legislation that passed the Senate with bipartisan support in June 2013.

**Question:** For how many years have visa backlogs in the family-based and temporary-worker visa categories existed?

**Response:** The Department of State issues visas and is best equipped to respond to questions regarding visa availability and visa wait times.

**Question:** Isn't it correct that today there is no backlog for an EB-5 visa for a person who isn't from China?

**Response:** The Department of State issues visas and is best equipped to respond to questions regarding visa availability.

**Question:** The State Department Visa Bulletin from as recently as April 2015 indicated that, at that time, there was no cutoff date at all for EB-5 visas, even from mainland



<b>Question#:</b>	22
<b>Topic:</b>	Visa Backlogs
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

China. Doesn't that mean that even the short backlog for Chinese nationals for an EB-5 visa is a phenomenon that has existed for less than one year?

**Response:** The Department of State issues visas and is best equipped to respond to questions regarding visa availability.

<b>Question#:</b>	23
<b>Topic:</b>	Transparency
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The USCIS website provides a list of approved regional centers, organized by State. These regional centers are listed by name. And, USCIS provides each regional center with a unique identification number, which also is provided on the USCIS website.

However, the USCIS website provides no information concerning the following specific information, some of which would be collected through the I-924A form:

The identity of the principal of the regional center, other individuals with roles of responsibility on a regional center, and principal shareholders in the regional center;

Commercial enterprises receiving EB-5 capital through the regional center;

Specific projects or businesses that are claimed to create jobs as a result of EB-5 investments through the regional center;

Addresses and other contact information for regional centers, new commercial enterprises, and entities claimed to create jobs;

The identity of marketers and promoters who promote EB-5 investments on behalf of a regional center;

The numbers of approvals and denials of I-526 and I-829 forms.

Without having this data in an easily-available and digestible location, it is difficult to get a full window into EB-5 activity in the United States.

Does USCIS plan to make any of the information above public, to the extent such information already is collected?

**Response:** USCIS is making plans to revise its current webpage to support a database application that would allow for search functions and contemplating the inclusion of more details regarding designated and terminated regional centers in its website.

**Question:** Does USCIS have any other plans to create an easily accessible and searchable database of information collected about regional centers, new commercial enterprises, and entities claimed to create jobs?

<b>Question#:</b>	23
<b>Topic:</b>	Transparency
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Response:** USCIS is making plans to revise its current webpage to support a searchable database application that would provide more information about regional centers.

**Question:** How does USCIS plan to update the I-924A form to ensure more information is collected that will help guard against fraud and abuse?

**Response:** USCIS is currently in the process of revising all of the forms associated with the EB-5 program, including Form I-924A. These revisions will result in increased data collection that will assist USCIS in better detecting and safeguarding against fraud, abuse and national security concerns.

<b>Question#:</b>	24
<b>Topic:</b>	California
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Please provide a list of the following:

All regional centers operating in California, along with addresses and contact information.

**Response:** The attached listing shows all approved regional centers as of April 5, 2016, that include California, or a portion thereof, within their geographic scope. Contact and address information for each regional center, as provided by the regional center on recent filings with USCIS, is also included.

**Question:** All such entities USCIS believes are "inactive," in the sense that the regional center both is not connected to an I-526 filing in the last year and is not actively soliciting new EB-5 investments. If USCIS has a different definition of "inactive," please describe that definition and answer the question accordingly.

**Response:** USCIS does not have a definition for "inactive", but is working to conduct the requested analysis and will provide this information in a separate response as soon as the analysis is complete.

**Question:** All projects in California facilitated by EB-5 investments through regional centers in the last four years, along with addresses of those projects and a description of whether the project is completed, incomplete, in progress, or no longer in progress.

**Response:** USCIS is not able to provide this level of specificity in large volume data requests at this time. USCIS is working on a new version of the Form I-924 which would capture more basic information than currently collected and USCIS anticipates that its systems may be updated to capture this additional data as well. USCIS will have more ability to provide detailed reports upon completion of these updates. As explained above, we are diligently working to revise all of the forms associated with the EB-5 program and seek to collect additional data through these form revisions as well as systems upgrades to ensure a higher level of detailed volume reporting in the future.

<b>Question#:</b>	25
<b>Topic:</b>	Review of Existing Regional Centers
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Your written testimony states that "USCIS undertook a robust review of existing regional centers and terminated those that failed to submit required information and/or promote economic growth."

Did this robust review include all regional centers that existed at the time of the review? When was the review completed? What did this review focus on, and what did it conclude?

**Response:** USCIS annually reviews all regional centers that are in an "approved" status during a given fiscal year. For instance, regional centers were required to file Form I-924A, Supplement to Form I-924, for activity that occurred in FY 2014, on or before December 29, 2014. USCIS begins its review of each regional centers activity after the December 29 deadline passes, or sooner as forms are received. The regional center review focuses on a regional center's I-924A filing, USCIS records, and other sources to determine: (1) if the regional center submitted all information required on the form, and (2) if the regional center is promoting economic growth pursuant to 8 CFR 204.6(m)(6). Additionally, the IPO Regional Center Compliance Unit conducts further review of each regional center to identify issues of concern. At the conclusion of the review of a regional center, an individual determination is made about the regional center. The review may result in the issuance of a Notice of Intent to Terminate a regional center and, ultimately, issuance of a Notice of Termination.

In addition to the annual review of regional centers, USCIS will conduct a review of any regional center at any time, if warranted. USCIS may also request that a regional center file the Form I-924A on other occasions, such as when a regional center informs USCIS of a management change without filing an I-924 amendment, at the agency's discretion.

<b>Question#:</b>	26
<b>Topic:</b>	Single Year Increase
<b>Hearing:</b>	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Your written testimony also states that there are now 796 regional centers, up from 588 at the end of FY 2014 - a 35% increase in a single year. What explains this huge spike in the number of regional centers, just in a single year?

**Response:** The increase in the number of regional centers designated corresponds with the increase in Form I-924 filings that USCIS received in FY2014 and FY2015. Between FY 2013 and FY 2015, USCIS saw an 84% increase in the number of Form I-924 applications filed.