United States Government Accountability Office

Report to Congressional Requesters

August 2015

IMMIGRANT INVESTOR PROGRAM

Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits

GAO-15-696

GAO Highlights

Highlights of GAO-15-696, a report to congressional requesters

August 2015

IMMIGRANT INVESTOR PROGRAM

Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits

Why GAO Did This Study

Congress created the EB-5 visa category to promote job creation by immigrant investors in exchange for visas providing lawful permanent residency. Participants are required to invest $1 million in a business that is to create at least 10 jobs—or $500,000 for businesses located in an area that is rural or has experienced unemployment of at least 150 percent of the national average rate. Upon meeting program requirements, immigrant investors are eligible for conditional status to live and work in the United States and can apply to remove the conditions for lawful permanent residency after 2 years.

GAO was asked to review fraud risks and economic benefits for the EB-5 Program. This report examines USCIS efforts under the EB-5 Program to (1) work with interagency partners to assess fraud and other related risks, (2) address any identified fraud risks, and (3) increase its capacity to verify job creation and use a valid and reliable methodology to report economic benefits. GAO reviewed risk assessments and processes to address fraud risks, verify job creation, and report economic benefits.

What GAO Recommends

GAO recommends that, among other things, USCIS conduct regular future risk assessments, develop a strategy to expand information collection, and analyze the data collected on program forms to reliably report on economic benefits. DHS concurred with our four recommendations.

View GAO-15-696. For more information, contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov, or Seto Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov.

What GAO Found

The Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) administers the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) and collaborated with its interagency partners to assess fraud and national security risks in the program in fiscal years 2012 and 2015. Unique fraud risks identified in the program included uncertainties in verifying that the funds invested were obtained lawfully and various investment-related schemes to defraud investors. These assessments were onetime efforts; however, USCIS officials noted that fraud risks in the EB-5 Program are constantly evolving, and they continually identify new fraud schemes. USCIS does not have documented plans to conduct regular future risk assessments, in accordance with fraud prevention practices, which could help inform efforts to identify and address evolving program risks.

USCIS has taken steps to address the fraud risks it identified by enhancing its fraud risk management efforts, including establishing a dedicated entity to oversee these efforts. However, USCIS's information systems and processes limit its ability to collect and use data on EB-5 Program participants to address fraud risks in the program. For example, USCIS does not consistently enter some information it collects on participants in its information systems, such as name and date of birth, a fact that presents barriers to conducting basic electronic searches that could be analyzed for potential fraud, such as schemes to defraud investors. USCIS plans to collect and maintain more complete data in its new information system; however, GAO reported in May 2015 that the new system is nearly 4 years delayed. In the meantime, USCIS does not have a strategy for collecting additional information, including some information on businesses supported by EB-5 Program investments, that officials noted could help mitigate fraud, such as misrepresentation of new businesses. Given that information system improvements with the potential to expand USCIS's fraud mitigation efforts will not take effect until 2017 at the earliest and that gaps exist in USCIS's other information collection efforts, developing a strategy for collecting such information would better position USCIS to identify and mitigate potential fraud.

USCIS increased its capacity to verify job creation by increasing the size and expertise of its workforce and providing clarifying guidance and training, among other actions. However, USCIS's methodology for reporting program outcomes and overall economic benefits is not valid and reliable because it may understate or overstate program benefits in certain instances as it is based on the minimum program requirements of 10 jobs and a $500,000 investment per investor instead of the number of jobs and investment amounts collected by USCIS on individual EB-5 Program forms. For example, USCIS reported 4,500 jobs for 450 investors on one project using its methodology instead of 10,500 jobs reported on EB-5 Program forms for that project. Further, investment amounts are not adjusted for investors who do not complete the program or invest $1 million instead of $500,000. USCIS officials said they are not statutorily required to develop a more comprehensive assessment. However, tracking and analyzing data on jobs and investments reported on program forms would better position USCIS to more reliably assess and report on the EB-5 Program economic benefits.

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Abbreviations:

CLAIMS	Computer Linked Application Information Management System
Commerce	Department of Commerce
DHS	Department of Homeland Security
DOJ	Department of Justice
EB-5	Employment-Based Fifth Preference
EB-5 Program	Employment-Based Fifth Preference Immigrant Investor Program
ESA	Economics and Statistics Administration
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection and National Security
FinCEN	Financial Crimes Enforcement Network
green card	lawful permanent residency
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
iCLAIMS	Intranet Computer Linked Application Information Management System
IIUSA	Association to Invest in USA
IMPLAN	Impact Analysis for Planning
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IPO	Immigrant Investor Program Office
OIG	Office of Inspector General
OMB	Office of Management and Budget
preference benefit	employment-based immigrant visa category
REDYN	Regional Dynamic Models
REMI	Regional Economic Models, Inc.
RIMS II	Regional Input-Output Modeling System
SEC	U.S. Securities and Exchange Commission
State	Department of State
USCIS	U.S. Citizenship and Immigration Services
USCIS ELIS	U.S. Citizenship and Immigration Services Electronic Immigration System

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Congressional Requesters

Congress created an additional employment-based immigrant visa category (preference benefit) as part of the Immigration Act of 1990 to promote job creation and encourage capital investment in the United States by foreign investors in exchange for lawful permanent residency (green card) and a path to citizenship.[1] This category, commonly referred to as Employment-Based Fifth Preference (EB-5), is for employment creation by qualified immigrants seeking to enter the United States to engage in a new commercial enterprise.[2] Upon meeting certain EB-5 Immigrant Investor Program (EB-5 Program) requirements—including investing $1 million (or $500,000 in targeted employment areas) in a new commercial enterprise that will result in the creation of at least 10 full-time jobs—immigrant investors and their eligible dependents are eligible to receive 2-year conditional green cards to live and work in the United

[1]Pub. L. No. 101-649, tit. I, subtit. B, pt. 2, § 121, 104 Stat. 4978, 4989-94 (codified as amended at 8 U.S.C. §§ 1153(b)(5), 1186b). The accompanying report of the Senate Judiciary Committee states that the EB-5 visa category "is intended to create new employment for U.S. workers and to infuse new capital into the country." See S. Rep. No. 101-55, at 21 (1989).

[2]See 8 U.S.C. § 1153(b)(5)(A). A commercial enterprise is any for-profit activity formed for the ongoing conduct of lawful business. Examples of a commercial enterprise include a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity that may be publicly or privately owned. See 8 C.F.R. § 204.6(e). Pursuant to the 21st Century Department of Justice Appropriations Authorization Act of 2002, the term "commercial enterprise" specifically includes a limited partnership. See Pub. L. No. 107-273, div. C, tit. I, subtit. B, ch. 2, § 11036(a)(1)(A), (b)(3), 116 Stat. 1758, 1846-47 (codified at 8 U.S.C. §§ 1153(b)(5)(A), 1186b(f)(3)).

States.[3] Within the 90-day period prior to the second anniversary of the date on which an immigrant investor obtained conditional status, he or she can apply to remove the conditional basis of his or her green card.[4] Approximately 10,000 EB-5 visas per fiscal year are made available to qualified immigrant investors and their families seeking to immigrate to the United States through the EB-5 Program.[5]

[3]See 8 U.S.C. §§ 1153(b)(5)(A) (general EB-5 requirements), (C) (amount of capital required), (D) (full-time employment defined), 1186b(a)(1) (alien entrepreneur receives conditional lawful permanent resident status), 1255(a) (adjustment of status), 1201 (issuance of visas); 8 C.F.R. § 204.6(e) (definitions), (f) (required amounts of capital), (h) (establishment of a new commercial enterprise), (j)(4)(ii) (To show that the new commercial enterprise established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the preinvestment level for a period of at least 2 years). After initial EB-5 Program requirements are met, approval of the adjustment of status application or admission to the United States with an EB-5 visa must occur for immigrant investors and their eligible dependents to obtain conditional permanent resident status. Eligible dependents (or derivative family members) are the immigrant investor's spouse and unmarried children under the age of 21. See 8 U.S.C. §§ 1153(d), (h), 1186b(a), (f). Under 8 U.S.C. § 1186b(f)(1), an immigrant investor who obtains permanent resident status (conditional or otherwise) is considered an alien entrepreneur. For the purpose of this report, we use the term "immigrant investor" to refer to an immigrant investor or alien entrepreneur.

[4]See 8 U.S.C. § 1186b(c)(1) (requirements for removal of permanent resident conditions for an alien entrepreneur, alien spouse, or alien child), (d)(2) (period for filing petition). Where an alien entrepreneur's Form I-829 petition for removal of permanent resident conditions is denied, the U.S. Citizenship and Immigration Services (USCIS) will terminate the status of the alien and his or her spouse and any children, and initiate removal proceedings. See 8 C.F.R. § 216.6(d)(2). If an alien entrepreneur fails to file for removal of conditions within the 90-day period prior to the second anniversary of the date on which conditional status was obtained, such status will automatically terminate and removal proceedings will be initiated. See 8 C.F.R. § 216.6(a)(5).

[5]See 8 U.S.C. §§ 1151(d) (worldwide level for employment-based immigrants), 1153(b)(5)(A) (no more than 7.1 percent of employment-based visas are to be made available to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise).

Under the EB-5 Regional Center Program, first enacted as a pilot in 1992 and reauthorized seven times since,[6] a certain number of the EB-5 visas are set aside annually for immigrant investors in economic units called regional centers, which are established to promote economic growth.[7] Most recently, the Regional Center Program was extended until September 30, 2015, and the term "pilot" was removed from the name of the program.[8] Under the Regional Center Program, immigrant investors can pool their investments with those of other foreign and U.S. investors to fund a new commercial enterprise within a regional center. An immigrant investor in any new commercial enterprise, including under the Regional Center Program, can meet the requirement that he or she be engaged in the management of that enterprise, as opposed to maintaining a purely passive role,[9] if he or she is, for example, a limited partner of a limited partnership.[10] Immigrant investors must demonstrate

[6]See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, tit. I, § 116(a), (b), 111 Stat. 2440, 2467 (1997); Visa Waiver Permanent Program Act, Pub. L. No. 106-396, tit. IV, § 402(a), 114 Stat. 1637, 1647 (2000); Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, § 4(b), 117 Stat. 1944, 1945; Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. A, §§ 106(3), 144, 122 Stat. 3574, 3575, 3581 (2008); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, div. J, § 101, 123 Stat. 524, 988; Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, tit. V, § 548, 123 Stat. 2142, 2177 (2009); Reauthorization of EB-5 Regional Center Program, Pub. L. No. 112-176, § 1(1), (2), 126 Stat. 1325 (2012).

[7]See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, tit. VI, § 610, 106 Stat. 1828, 1874 (1992) (codified as amended as a note under 8 U.S.C. § 1153). Under 8 C.F.R. § 204.6(e), a regional center is defined as any economic unit, public or private, that is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. See also 8 C.F.R. § 204.6(m)(3), (6).

[8]See Pub. L. No. 112-176, § 1(1), (2), 126 Stat. 1325 (2012).

[9]See 8 C.F.R. § 204.6(j)(5). In the final rule implementing section 121 of the Immigration Act of 1990, legacy Immigration and Naturalization Service (INS) noted that "[t]he Senate Committee on the Judiciary specifically endorsed a requirement of some degree of participation on the part of the alien entrepreneur beyond mere passive investment." See Employment-Based Immigrants, 56 Fed. Reg. 60,897, 60,904 (Nov. 29, 1991) (codified at 8 C.F.R. pts. 103, 204); S. Rep. No. 101-55, at 21.

[10]Under 8 C.F.R. § 204.6(j)(5)(iii), if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the petitioner will be considered sufficiently engaged in the management of the new commercial enterprise.

that their investment in a new commercial enterprise will result in the creation or, in the case of a troubled business, preservation or creation (or some combination of the two), of at least 10 full-time positions for qualifying employees.[11] Immigrant investors in a regional center commercial enterprise may meet the statutory employment creation requirement by providing evidence of creating or preserving, either directly or indirectly, 10 full-time positions.[12] In recent years, the Regional Center Program has increased in popularity as a viable source of low-interest funding for major real estate development projects, such as the Barclays Center—a multipurpose indoor arena in Brooklyn, New York—and the Marriott Convention Center Hotel in Washington, D.C. In fiscal year 2014, the maximum number of visas available were allocated for the EB-5 Program—approximately 10,000 annually, with about 95 percent of the investments in regional center projects.

[11]8 U.S.C. § 1153(b)(5)(A)(ii) (statutory employment creation requirement). In the initial petition stage, an immigrant investor must provide documentation of requisite job creation, or a comprehensive business plan showing that the need for not fewer than 10 qualifying employees will result within the 2-year period commencing 6 months after the adjudication of the Form I-526 petition. See 8 C.F.R. § 204.6(j)(4)(i). For an investment in a troubled business, the petitioner must provide evidence that the number of existing employees is being or will be maintained at no less than the preinvestment level for a period of at least 2 years, and that the statutory numeric requirement is met. See 8 C.F.R. § 204.6(j)(4)(ii). In the final I-829 stage, an immigrant investor must show that he or she created or can be expected to create within a reasonable time (defined as within a year of the 2-year anniversary of the alien's admission as, or adjustment to conditional permanent resident) 10 full-time jobs for qualifying employees, and investors in troubled businesses must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the preinvestment level for the previous 2 years and that the statutory numeric requirement is met. See 8 C.F.R. § 216.6(a)(4)(iv), (c)(1)(iv).

[12]See Pub. L. No. 102-395, tit. VI, § 610(c), 106 Stat. at 1874 (codified as amended as a noted under 8 U.S.C. § 1153). Under U.S. Citizenship and Immigration Services (USCIS) policy, indirect jobs are those held outside of the new commercial enterprise but created as a result of the investment made by an immigrant investor in such commercial enterprise, which then makes the capital available to a separate job-creating entity. In other words, indirect jobs are any jobs created by the investment but not occupied by individuals with an employee-employer relationship with the new commercial enterprise. Regional center investors are permitted to claim credit for both direct and indirect jobs estimated to have been created through revenues generated from increased exports resulting from the new commercial enterprise, as demonstrated using reasonable methodologies such as multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices that indicate the likelihood that the business will result in increased employment. See Pub. L. No. 102-395, § 610, 106 Stat. at 1874; 8 C.F.R. § 204.6(j)(4)(iii), (m)(3), (7).

Several federal and state agencies are involved to varying degrees in ensuring the integrity of the EB-5 Program. The Immigrant Investor Program Office (IPO), within the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), administers the EB-5 Program—adjudicating applications and petitions while striving to ensure that program participants, including immigrant investors and principals operating U.S. regional centers, comply with program requirements. USCIS also has a Fraud Detection and National Security (FDNS) unit charged with preventing, detecting, and responding to allegations of fraud in the program. States contribute to the EB-5 process—in relation to investors seeking a reduced investment of $500,000 in a targeted employment area—by certifying through the state government's authorized body that the geographic or political subdivision in which the enterprise is, or will be principally doing business, has been designated a high-unemployment area.[13] After USCIS approves initial petitions for immigrant investors to participate in the program, the Department of State (State) adjudicates the immigrant visa applications, conducting background checks and other activities to help ensure investors and their families comply with national security and other requirements for admission to the United States.[14] FDNS refers cases of fraud related to immigrant investors to DHS's U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) for investigation. The U.S. Securities and Exchange Commission (SEC) investigates allegations of fraud or other misconduct in connection with securities offerings related to EB-5 projects by U.S. principals operating regional centers, or others. The Department of Justice's (DOJ) Federal Bureau of Investigation (FBI), as the lead federal agency for combating terrorism, investigates any activity by investors or regional centers that may pose a risk to national security as well as other criminal activities.

[13]See 8 C.F.R. § 204.6(i), (j)(6)(ii)(B). A targeted employment area is an area that, at the time of the investment, is either a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. See 8 U.S.C. § 1153(b)(5)(B)(ii); 8 C.F.R. § 204.6(e).

[14]USCIS adjudicates Form I-485 for EB-5 immigrant investors who are already in the United States under other lawful immigration status, and who are seeking to adjust status to conditional permanent residency. Aliens who are deemed inadmissible under 8 U.S.C. § 1182 are generally ineligible to receive visas, ineligible to be admitted to the United States, and ineligible for adjustment of status. See 8 U.S.C. §§ 1182(a), 1201(h), 1255(a).

In 2005, we reported that, among other things, USCIS had not issued implementing regulations to adjudicate hundreds of pending EB-5 petitions and applications.[15] Specifically, we reported that USCIS suspended about 900 EB-5 applications in 1998 because the financial arrangements in the applications did not comport with the statute and program regulations, and that guidance to adjudicators was unclear on how to determine the type and value of benefit to the U.S. economy for different types of investments. DHS concurred with our recommendation to finalize and issue regulations, publishing a proposed rule in the *Federal Register* in 2011.[16] However, as of June 2015, USCIS officials said that they had not finalized these regulations because of competing priorities.

The DHS Office of Inspector General (OIG) has also issued two reports on the EB-5 Program.[17] Specifically, in December 2013, the DHS OIG reported that several conditions had prevented USCIS from administering and managing the EB-5 Program effectively. These conditions, as cited by the report, included, among other things, laws and regulations that do not give USCIS the authority to prevent a regional center's participation in

[15]GAO, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, GAO-05-256 (Washington, D.C.: Apr. 1, 2005). The 21st Century Department of Justice Appropriations Authorization Act of 2002 required promulgation of regulations in order to implement statutory directives related to two categories of immigrant investors whose initial EB-5 petitions were approved after January 1, 1995, and before August 31, 1998, and for whom a decision was pending on either (1) a petition for removal of permanent residence conditions, or (2) an application for adjustment of status or an EB-5 immigrant visa. See Pub. L. No. 107-273, §§ 11031-33, 116 Stat. at 1837-46.

[16]See Treatment of Aliens whose Employment Creation Immigrant (EB-5) Petitions were Approved After January 1, 1995 and Before August 31, 1998, 76 Fed. Reg. 59,927 (Sept. 28, 2011) (to be codified at 8 C.F.R. pts. 216, 245).

[17]DHS OIG, *United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program.* OIG-14-19 (Washington, D.C.: Dec. 12, 2013); DHS OIG, *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program,* (Washington, D.C.: Mar. 24. 2015).

the program on the basis of fraud or national security concerns.[18] The report concluded that because of difficulties ensuring the integrity of the Regional Center Program, USCIS was limited in its ability to prevent fraud or national security threats and could not demonstrate that the program was benefiting the U.S. economy and creating full-time employment as required by law. Further, in March 2015, the DHS OIG conducted an investigation of employee complaints about the EB-5 Program and reported that the former director's communication with external stakeholders on specific matters outside the normal procedures, coupled with favorable action that deviated from the regulatory scheme, had created an appearance of favoritism and special access.[19] The DHS Secretary, in response to the OIG findings, acknowledged the popularity of the program as an economic development tool but also expressed concerns about the program and asked Congress for help in strengthening the program's integrity.[20] He noted that in the past, DHS had unsuccessfully sought a number of statutory enhancements to the program's integrity and urged Congress to work with the department to strengthen the security and integrity of the program.

You asked us to review the fraud risks and economic benefits for the EB-5 Program. This report addresses the following questions:

- To what extent have USCIS and its interagency partners assessed fraud risks and other related risks in the EB-5 Program and what risks did they identify?

[18]In comments on this OIG report, USCIS stated that it already has authority to deny or terminate a regional center based on fraud or misrepresentation, but the statutory framework leaves other significant gaps in USCIS authorities, especially with regard to national security. USCIS agreed with OIG in that explicit authority under 8 C.F.R. § 205.2 (revocation on notice) to terminate a regional center based upon fraud and national security concerns is needed. However, USCIS asserted that it lacked authority to promulgate such regulations, and pointed out that it designates regional centers pursuant to Public Law 102-395, § 610 (codified as amended as a note under 8 U.S.C. § 1153), and not under INA § 204, 8 U.S.C. § 1154.

[19]DHS OIG, *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program,* (Washington, D.C.: Mar. 24. 2015).

[20]Jeh C. Johnson, "Statement by Secretary Jeh C. Johnson about the DHS Inspector General's Report Concerning Deputy Secretary Mayorkas", accessed August 3, 2015, http://www.dhs.gov/news/2015/03/24/statement-secretary-jeh-c-johnson-about-dhs-inspector-generals-report-concerning-0.

- To what extent has USCIS implemented efforts to address any identified fraud risks in the EB-5 Program?
- To what extent has USCIS increased its capacity to verify job creation and used valid and reliable methodologies for reporting program outcomes and overall economic benefits?

To determine the extent to which USCIS and its interagency partners have assessed fraud risks in the EB-5 Program and what risks they have identified, we examined past audit findings by GAO and DHS OIG, and reviewed fraud risk assessments conducted by DHS, USCIS, State, SEC, FBI, and ICE HSI.[21] We interviewed USCIS, SEC, FBI, and ICE HSI headquarters officials and analyzed USCIS processes, procedures, and training for detecting, preventing, and investigating fraud and compared them against standards in *Standards for Internal Control in the Federal Government*, GAO's *Fraud Risk Management Framework,* and *GAO's Strategies to Manage Improper Payments*.[22] To gain the perspective of Regional Center Program participants on the types and prevalence of fraud in the program, we also interviewed the principals of two regional centers located in proximity to USCIS headquarters and the USCIS California Service Center, which we visited because it was primarily responsible for administering the EB-5 Program prior to the program's transfer to USCIS headquarters' new Immigrant Investor Program Office. We also interviewed officials about fraud risks in the EB-5 Program from a national industry association representing EB-5 Program regional centers and a national immigration lawyers association in Washington, D.C., as well as SEC and ICE officials in California during our site visit to the USCIS California Service Center. Although the information from these interviews and the site visit is not representative of all EB-5 industry stakeholders' perspectives, they provided insights into the fraud risks and vulnerabilities of the program. We also reviewed a nonprobability sample of 28 EB-5 Program files for immigrant investors and regional centers USCIS approved to participate in the program to identify any potential

[21]GAO-05-256 and OIG-14-19.

[22]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999); *Individual Disaster Assistance Programs; Framework for Fraud Prevention, Detection, and Prosecution*, GAO-06-954T (Washington, D.C.: July 12, 2006); and *Strategies to Manage Improper Payments: Learning from Public and Private Sector Organizations*, GAO-02-69G (Washington, D.C.: Oct. 1, 2001). As stated in GAO-02-69G, while the guide focuses on internal controls as they relate to reducing improper payments, the internal control components discussed are applicable to the entirety of an organization's operations, including efforts to manage fraud risks.

fraud indicators and review internal controls. While the files we reviewed are not representative of all completed and approved applications and petitions, they did provide us with information about different immigrant investor and regional center circumstances.

To determine the extent to which USCIS has implemented efforts to address any identified fraud risks in the EB-5 Program, we examined agency action to address past DHS OIG and ICE HSI risk assessment findings and evaluated the information systems and standard operating procedures that USCIS adjudicators use for evaluating EB-5 petitions and applications and that FDNS officials use for identifying, preventing, and addressing fraud risks. We also evaluated USCIS's internal quality assurance capabilities as well as its records management and data storage capabilities. To gain perspective on how EB-5 Program processes have changed over time to address fraud risks, during our site visit to the USCIS California Service Center, we interviewed six officials who formerly adjudicated EB-5 Program petitions and applications. We also interviewed a nonprobability sample of 16 current adjudicators and 8 economists in IPO to identify efforts taken to identify and address fraud in the program. We selected the adjudicators and economists based on factors such as length of employment with USCIS, grade level, and the type of EB-5 Program forms they adjudicate. While the adjudicators and economists we interviewed are not representative of all EB-5 adjudicators and economists, from the interviews we were able to gain insights into USCIS's efforts to identify and address fraud, among other aspects of EB-5 Program adjudication. We also interviewed FDNS and IPO supervisory officials to identify specific corrective actions USCIS has taken or plans to take to address fraud risks in the program. We compared the results with standards identified in *Standards for Internal Controls in the Federal Government* and *GAO's Fraud Framework*, which have established requirements and identified leading practices for addressing fraud risks.[23]

To determine the extent to which USCIS has increased its capacity to verify job creation and uses valid and reliable methodologies to report program outcomes and overall economic benefit, (1) we assessed the changes in USCIS workforce, guidance, training, and the petition adjudication process to address past audit findings reported by GAO and the DHS OIG; (2) reviewed the methodology used by USCIS to report the

[23] GAO/AIMD-00-21.3.1 and GAO-06-954T.

total amount of investment and number of jobs created through the program; and (3) reviewed the statement of work for a contracted study on the program's economic impact. We interviewed IPO management as well as a nonprobability sample of 24 adjudicators, including 8 economists chosen for the reasons previously discussed, about their views on the adequacy of the guidance and training provided by USCIS, and their access to the data and information they needed to verify job creation reported by immigrant investor petitioners and regional center applicants. The views of these adjudicators and economists cannot be generalized to all USCIS adjudicators and economists, but provided us with insights into the quality of the guidance and training on verifying job creation estimates. For the process USCIS used to adjudicate immigrant investor petitions associated with regional center projects, we also reviewed economic models used by immigrant investors and USCIS to estimate the number of jobs to be created by the project when petitioning to participate in the program as well as other methods for verifying the number of jobs created when a petitioner seeks to remove the conditional basis of his or her green card. To assess the models, we reviewed the underlying economic assumptions and data as well as past studies and audits identifying limitations in use of the models for the EB-5 Program.[24] We also interviewed subject matter experts to include academic researchers in urban and economic development, a policy research think tank, a state economic development agency, and Department of Commerce (Commerce) officials responsible for administering the Regional Input-Output Modeling System (RIMS II model). This system is widely used across the private and public sectors, including USCIS, and is considered to be among those valid for verifying job creation estimates reported by program participants within regional centers.[25] We selected these experts to interview because they have reviewed various aspects of

[24]ICF International, *Study of the United States Immigrant Investor Pilot Program (EB-5)* (May 18, 2010). IIUSA (Association to Invest in USA), *Economic Impact of the EB-5 Immigrant Program 2012* (January 27, 2014). Bureau of Economic Analysis (Department of Commerce), RIMS II: *An Essential Tool for Regional Developers and Planners* (December 2013). Dan S Rickman and R Keith Schwer, "A Comparison of the Multipliers of IMPLAN, REMI, and RIMS II: Benchmarking Ready-Made Models for Comparison," *The Annals of Regional Science*, vol. 29 (1995), 363-374. We reviewed the reports' methodologies and discussed the reports with USCIS. We determined that the conclusions in these reports were reasonable for use in our report, and we discuss limitations of these reports later in our report.

[25]RIMS II is used to estimate the impact of changes in spending, such as increased investment, on economic activity (including job creation) in a region of the country.

the program, written published articles, or have a role in the EB-5 Program.

To determine the extent to which USCIS's methodology for reporting program outcomes is valid and reliable, we compared how USCIS compiles numbers for total jobs created by the EB-5 Program and the dollar amount of EB-5 Program investments against the information included in EB-5 Program petitions and verified by USCIS throughout the adjudication process. We compared USCIS's methodology against guidance in GAO's *Standards for Internal Control in the Federal Government* and requirements in the Project Management Institute's *The Standard for Program Management* for programs to establish monitoring and controlling activities to report on program performance.[26] In regard to USCIS's plans to fund a contracted study reporting on the overall economic impact of the EB-5 Program, we also interviewed USCIS officials as well as officials at Commerce with whom USCIS has established a memorandum of agreement to study the program's economic impact, to identify the study methodology and data inputs. We compared the planned methodology for this study against Office of Management and Budget (OMB) Circular A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,* which applies to all analyses used to support government decisions to initiate, renew, or expand programs or projects that would result in a series of measurable benefits or cost.[27]

We conducted this performance audit from October 2014 through August 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[26]Project Management Institute, *The Standard for Program Management*, third edition (Newtown Square, Pa.: 2013).

[27]OMB Circular No. A-94 Revised, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (Oct. 29, 1992).

Background

Individuals seeking to establish a regional center under the EB-5 Program must submit an initial application and supporting documentation as well as an update for each fiscal year (or as otherwise requested by USCIS) showing that the regional center continues to meet the program requirements to maintain its regional center designation.[28] Prospective regional center sponsors apply to the program by submitting Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program. On this form, applicants are to provide a proposal, supported by economically or statistically valid forecasting tools, that describes, among other things, how the regional center (1) focuses on a geographic area of the United States; (2) will promote economic growth through increased export sales and improved regional productivity, job creation, and increased domestic capital investment; and (3) investors will create jobs directly or indirectly. Applicants must also include a detailed statement regarding the amount and source of capital committed to the regional center, as well as a description of the promotional efforts they have taken and planned. Once a regional center has been approved to participate in the program, a designated representative of the regional center must file a Form I-924A, Supplement to Form I-924, for each fiscal year, to provide USCIS with updated information demonstrating that the regional center continues to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. USCIS is to issue a notice of intent to terminate the participation of a regional center if it fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth.[29] As of July 2015, USCIS had approved approximately 689 regional centers spread across 49 states, the District of Columbia, and 4 U.S. territories; and USCIS terminated the participation of 34 regional centers for not filing a Form I-924A or not promoting economic growth.

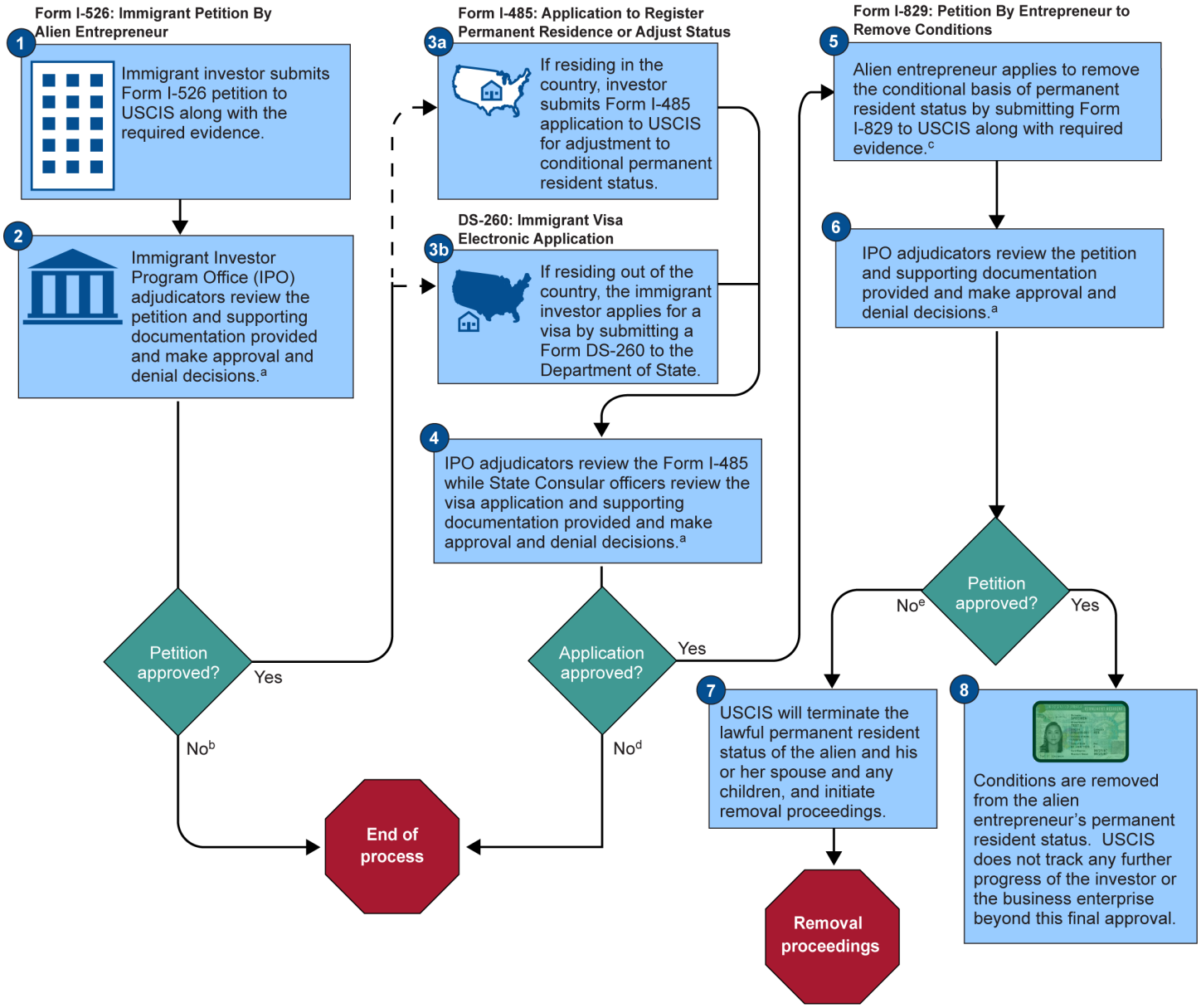
Prospective immigrant investors seeking to participate in the EB-5 Program must complete three forms and provide supporting documentation that USCIS or State officials, as appropriate, assess to ensure that they have met (1) the terms of participation for the program, (2) conditions for lawful admission for permanent residence on a

[28]See 8 C.F.R. § 204.6(m)(3) (Requirements for regional centers), (6) (Termination of participation of regional centers).

[29]See 8 C.F.R. § 204.6(m)(6).

conditional basis either through adjustment of status if already in the United States under other lawful immigration status or the immigrant visa process if abroad, and (3) requirements of the program to have lawful permanent resident conditions removed. (See fig. 1.)

Figure 1: U.S. Citizenship and Immigration Services' (USCIS) Immigrant Investor Program Investor Petition and Application Process



Source: GAO analysis of USCIS data. | GAO-15-696R

[a]USCIS adjudicators may request additional supporting documents, if needed. See 8 C.F.R. § 103.2(b)(8).

[b]If the immigrant investor's Form I-526 petition is denied, the investor may appeal, or file a motion to reopen or reconsider the unfavorable decision by filing Form I-290B, Notice of Appeal or Motion, in accordance with Form I-290B filing instructions. See 8 C.F.R. §§ 103.3, 103.5. The appeal of an

unfavorable decision on a Form I-526 petition is forwarded to the Administrative Appeals Office at USCIS headquarters for review. Administrative Appeals Office adjudicators use the same criteria when reviewing immigrant investor petitions as those used by Immigrant Investor Program Office (IPO) adjudicators. The Administrative Appeals Office unit may approve, deny, or remand the case to the IPO, or reject the appeal as filed improperly, for example, where the appeal is untimely. If the appeal is denied, there are no further administrative appeal rights within USCIS. The only remaining appeal option for the immigrant investor is through the U.S. court system. If the appeal is remanded, the Administrative Appeals Office directs the IPO to review the case again consistent with its decision. The remanded case would be reviewed again following the same procedures as if it had been initially received.

[c]If an alien entrepreneur does not timely file a petition to remove the conditional basis of permanent residence, his or her conditional permanent resident status automatically terminates and removal proceedings are to be initiated. See 8 C.F.R. § 216.6(a)(5).

[d]Consular officers may return the I-526 petition to USCIS, in which case USCIS may commence revocation proceedings pursuant to 8 U.S.C. § 1155; 8 C.F.R. § 205.2; and where approval of the petition is revoked, the immigrant investor may appeal to the Administrative Appeals Office. With respect to USCIS's denial of a Form I-485 application, the immigrant investor may file a motion to reopen or reconsider the decision. See 8 C.F.R. § 103.5.

[e]According to 8 C.F.R. § 216.6(d)(2), denial of a Form I-829 petition may not be appealed; however, the alien may file a motion to reopen or reconsider the decision by filing a Form I-290B, Notice of Appeal or Motion, or seek review of the decision in removal proceedings. See 8 C.F.R. §§ 103.5, 216.6(d)(2).

USCIS and Others Have Identified Unique Fraud Risks to the EB-5 Program and Could Benefit from Planning and Conducting Regular Future Risk Assessments

USCIS has identified fraud and national security risks in the EB-5 Program in various assessments it conducted over time and in collaboration with its interagency partners. For example, in 2012, USCIS met with its interagency partners and National Security Staff to assess fraud and national security risks in the EB-5 Program.[30] An internal memo discussing this effort also highlighted steps that USCIS was undertaking to mitigate fraud risks to the program, such as improving collaboration with law enforcement agencies such as SEC and FBI. In response to this assessment, later in 2012, USCIS worked with FBI and the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN),[31] among others, to better understand the scope of EB-5 Program fraud risks and to assess the benefits of incorporating enhanced security screenings to improve its vetting of EB-5 Program petitioners. FDNS officials told us that one key determination of the study was the need to

[30]The stakeholders included DHS components such as ICE; U.S. Customs and Border Protection; the Office of Intelligence and Analysis; and DHS Office of Policy; the Departments of Justice, the Treasury, State, and Commerce; the Office of Director of National Intelligence; and SEC. On February 10, 2014, the National Security Staff name was changed to the National Security Council staff by executive order. See Exec. Order No. 13657, 79 Fed. Reg. 8823 (Feb. 10, 2014).

[31]FinCEN is a bureau within the Department of the Treasury that, among other things, is tasked with safeguarding the U.S. financial system from money laundering, terrorist financing, and other abuses.

provide dedicated fraud personnel to the EB-5 Program, which, as discussed later, USCIS implemented. Most recently, in early 2015, DHS's Office of Intelligence and Analysis prepared a classified report updating the program's 2012 risk assessment, in response to congressional and USCIS requests, which assessed the fraud risks to the EB-5 Program.

In addition to conducting these risk assessments, USCIS officials told us that they identify potential fraud stemming from the EB-5 Program through regular oversight work such as producing reports on investors' sources of funds. Additionally, law enforcement agencies such as ICE HSI, SEC, and FBI may also uncover fraud through their own investigative efforts and, as appropriate, will share this information with USCIS.

FDNS officials noted that fraud risks and schemes in the EB-5 Program were constantly evolving, and that updating their 2015 risk assessment helped them better understand the nature and scope of fraud risks to the program. Further, FDNS officials stated that the office constantly identifies new fraud schemes, and that they must work to stay on top of emerging issues. SEC training materials for EB-5 Program staff on securities fraud also stated that fraud scams are creative and constantly changing, and may make use of new distribution channels such as social media. Moreover, as noted previously, the program has grown substantially over time—the total number of EB-5 visas issued increased from almost 3,000 in fiscal year 2011 to over 9,000 in fiscal year 2014, according to State data; this creates additional opportunities for fraud.

Although the risk assessments conducted by USCIS and other agencies have helped provide information to USCIS to better understand and manage risks to the EB-5 Program, these assessments were onetime exercises, and USCIS does not have documented plans to conduct regular future risk assessments of the program because, according to USCIS officials, the agency would perform them on an "as needed" basis. *Standards for Internal Control in the Federal Government* provides guidance on the importance of identifying and analyzing risks, and using that information to make decisions.[32] These standards address various aspects of internal control that should be continuous, built-in components of organizational operations. One internal control standard, risk

[32]GAO/AIMD-00-21.3.1.

assessment, calls for identifying and analyzing risks that agencies face from internal and external sources and deciding what actions should be taken to manage these risks. The standards indicate that conditions governing risk continually change and mechanisms are required to ensure that risk information, such as vulnerabilities in the program, remains current and relevant. Such mechanisms could include periodic risk assessment updates. Moreover, our executive guide for helping agencies identify effective strategies to manage improper payments notes the importance of periodically updating risk assessments because of constant changes in governmental, economic, industry, regulatory, and operating conditions that can affect program risks in their programs.[33] Information collected through periodic reviews, as well as daily operations, can inform the analysis and assessment of risk. Furthermore, *DHS's Risk Management Fundamentals* states that DHS and its component agencies should use a risk-based approach when managing programs that includes, among other things, identifying potential risks, assessing and analyzing identified risks, and using risk information and analysis to inform decision making.[34] Planned regular or updated future risk assessments could help better position USCIS to identify, evaluate, and address fraud risks given the potential for changing conditions.

The risk assessments conducted by USCIS and others, as well as our interviews with USCIS, ICE HSI, FBI, and SEC officials, identified ongoing and changing fraud risks to the EB-5 Program. According to the risk assessments and FDNS officials, the EB-5 Program possesses several unique risks that are generally not present in other types of immigration programs. Specifically, a senior FDNS official noted that while adjudication of petitions in the EB-5 Program, like other immigration programs, centers on the eligibility of the petitioner, the EB-5 Program also has an investment component that creates increased program complexity and the potential for fraud risks. The program's risk assessments, FDNS officials, and stakeholders from agencies that play a

[33]GAO-02-69G. While *Strategies to Manage Improper Payments* focuses on internal controls as they relate to reducing improper payments, the guide states that the internal control components discussed are applicable to the entirety of an organization's operations, including efforts to manage fraud risks.

[34]Department of Homeland Security, *Risk Management Fundamentals: Homeland Security Risk Management Doctrine* (Washington, D.C.: April 2011).

role in addressing potential fraud identified unique fraud risks that involve the following aspects of the EB-5 Program:[35]

Unlawful Source of Petitioner Funds

As one example, Fraud Detection and National Security (FDNS) Directorate officials told us about a case in which a petitioner did not report potential financial ties to a number of brothels in China, which would have raised questions about the legitimacy of the petitioner's source of funds. FDNS's fraud detection efforts ultimately identified this connection and the U.S. Citizenship and Immigration Services (USCIS) denied the petition.

Source: FDNS officials. | GAO-15-696

Uncertain source of immigrant investor funds. USCIS's 2012 risk assessment identified the source of EB-5 petitioner funds as an area at risk for fraud. To be eligible for the EB-5 Program, immigrant investors must invest a minimum of $1 million, or $500,000 in a targeted employment area, in a new commercial enterprise, and must provide documentation showing that these funds come from a lawful source.[36] This investment is not a feature in most other immigration programs and, as a consequence, it creates unique risks in the EB-5 Program.[37] When submitting their petitions, immigrant investors are required to submit evidence that the investment funds were obtained through lawful means such as foreign business registration records or tax returns. As part of its adjudication process, and as required by regulation, program staff review the evidence submitted by immigrant investors to make a determination on the lawfulness of their source of funds. However, according to USCIS officials, it can be difficult to verify the sources of immigrant investors' funds and such verification difficulties could pose fraud risks to the program. For example, USCIS officials told us that some petitioners may have strong incentives to report inaccurate information about the source of their funds on their applications in instances when the funds come from illicit—and thus ineligible—sources, such as funds obtained through drug trade, human trafficking, or other criminal activities. Moreover, FDNS selected a targeted sample of about 150 high-risk petitions referred by

[35]Because of the sensitive nature of this information, we do not discuss national security concerns such as threats from terrorism or espionage in this report.

[36]See 8 C.F.R. § 204.6(e), (f), (g)(1), (j); 8 C.F.R. § 216.6(c)(2). In the Senate Judiciary Committee report accompanying the Immigration Act of 1990, it is stated that "the committee intends that processing of an individual visa not continue under this section if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs)." S. Rep. No. 101-55, at 21. This committee report was cited as a basis for changing the definition of capital to exclude assets directly or indirectly acquired by unlawful means. See 56 Fed. Reg. at 60,902.

[37]EB-5 is not the only immigration program with an investment feature. The nonimmigrant treaty investor (E-2) visa category also has an investment feature. See 8 U.S.C. § 1101(a)(15)(E); 8 C.F.R. § 214.2(e).

EB-5 Program adjudicators to FDNS for fraud concerns.[38] As of May 2015, on the basis of detailed reviews by FDNS staff located in headquarters and overseas, FDNS determined that the sources of funds in many of these petitions contained a high risk for fraud. In addition, ICE HSI headquarters officials provided us with cases of immigrant investors using overseas preparers to submit counterfeit documentation to fraudulently show that funds were lawfully obtained, which can make determining the legitimacy of the source of funds challenging. Further, ICE HSI officials stated that they are concerned that overseas document preparers and recruiters may try to use increasingly sophisticated methods to circumvent program controls. USCIS officials said that IPO and FDNS did not have a means to verify self-reported immigrant financial information with many foreign banks. In addition, both USCIS and State officials noted that they did not have authority to verify banking information with many foreign countries. For example, State 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 of petitioners.

Securities Fraud in the EB-5 Program

In 2014, various companies associated with the construction of the Chicago Convention Center were found liable for the fraudulent sale of over $145 million in securities to Chinese investors seeking a pathway to citizenship in the United States. Using the Regional Center Model, each investor was told to wire a minimum of $500,000, along with an administrative fee of $41,500, to a U.S. bank account in exchange for a provisional visa obtained by providing falsified documents to the U.S. Citizenship and Immigration Services (USCIS). Defendants collected over $11 million in administrative fees, which were spent despite knowledge that the project would not be completed.

According to another 2013 Securities and Exchange Commission (SEC) complaint, a couple created a regional center and solicited immigrant investors with promises of investing in a local energy company. Instead of investing in that project, the couple used investor funds to (1) buy cars for themselves and regional center employees, (2) make Ponzi payments to an existing investor, (3) settle an existing lawsuit, and (4) invest in a financially troubled restaurant.

Source: GAO analysis of SEC documents. | GAO-15-696

Legitimacy of investment entity. The amount of investment required to participate in the EB-5 Program, coupled with the fact that EB-5 investors are making an investment in order to obtain an immigration benefit, can create fraud risks tied to unscrupulous regional center operators and intermediaries. According to SEC officials, they have identified instances of fraudulent investment schemes, including securities fraud, related to EB-5 investments. From January 2013 through January 2015, SEC officials reported receiving over 100 tips, complaints, and referrals related to possible securities fraud violations and the EB-5 Program. Just over

[38]According to FDNS officials, FDNS EB-5 randomly sampled all immigrant investor I-526 filings in its pending inventory from a subset of preparers known to have submitted fraudulent documents related to the source of funds for the petitioners. The sampling methodology included an expected response distribution of 50 percent, a confidence level of 80 percent, and an acceptable margin of error of 5 percent.

half of these tips, complaints, and referrals resulted in further investigation by SEC staff or were referred to other state, local, or federal law enforcement agencies for further review.[39] According to an SEC official, as of July 2015, SEC has initiated four civil enforcement actions alleging securities law violations by EB-5 Program participants.[40] Moreover, according to FDNS documentation, as of May 2015, over half (35) of the 59 open investigations tracked by the program primarily involved securities fraud issues.[41] In addition, SEC officials noted that immigrant investors may be vulnerable to fraud schemes because they may be primarily focused on obtaining their visas. SEC officials noted that, anecdotally, immigrant investors often accepted lower rates of return on their investment relative to other non-EB-5 Program investors in the same project as well as non-EB-5 Program investment opportunities. A 2015 academic study reported that EB-5 Program loans bear a lower overall interest rate than conventional loans because the immigrant investors are

[39]According to SEC officials, all EB-5 tips, complaints, and referrals are preserved in an SEC database for future consideration in conjunction with any additional information or related materials that may be received by SEC.

[40]See *SEC v. A Chicago Convention Center, LLC*, Case No. 1:13-cv-982 (N.D. Ill. Filed Feb. 6, 2013) (Intercontinental Regional Center Trust of Chicago); *SEC v. Ramirez*, Case No. 7:13-cv-00531 (S.D. Tx. Filed Sept. 30, 2013) (USA Now Regional Center); *SEC v. Lee*, Case No. 2:14-cv-06865 (C.D. Cal. Filed Sept. 3, 2014) (Kansas Biofuel Regional Center LLC). All three complaints alleged violations of 15 U.S.C. §§ 77q(a) (use of interstate commerce for purpose of fraud or deceit), 78j(b) (use of manipulative or deceptive device or contrivance in violation of SEC rules and regulations); and Rule 10b-5, 17 C.F.R. § 240.10b-5 (employment of manipulative and deceptive devices). According to USCIS's public list of terminated regional centers, USCIS has terminated the participation of the regional centers involved in the above-mentioned SEC civil enforcement actions. In July 2015, SEC initiated another EB-5-related civil enforcement action alleging that defendants ran a Ponzi-like scheme and affinity fraud targeting, among others, Chinese citizens seeking to obtain permanent residence under the EB-5 Program. See *SEC v. Luca Int'l Group, LLC, et al.*, Case No. 3:15-cv-03101 (N.D. Cal. Filed July 6, 2015). Additionally, in June 2015, SEC instituted administrative and cease-and-desist proceedings and imposed sanctions on respondents who, according to SEC, acted as unregistered broker-dealers in connection with the sales of securities involving the EB-5 Program. See *In the Matter of Ireeco, LLC & Ireeco Ltd.*, Release No. 75268, Admin. Proceeding File No. 3-16647 (SEC June 23, 2015).

[41]The investigations include those performed by law enforcement agencies such as SEC, FBI, and ICE. The remaining investigations related to other criminal activities such as money laundering as well as national security concerns and immigration fraud.

motivated by the visa rather than the maximization of financial returns.[42] SEC officials said that investors sometimes did not exercise due diligence about their investment decisions, thus increasing the likelihood that immigrant investors could be taken advantage of by unscrupulous regional centers through fraud schemes or by being steered toward poor investments. Moreover, SEC officials told us that the U.S. government is limited in its ability to investigate foreign-based sales and marketing practices of EB-5 Program investment opportunities and that unrealistic or patently false promises are sometimes made to investors. For example, SEC cases have uncovered incidents of regional center principals defrauding prospective immigrant investors by misrepresenting the business investment. Additionally, USCIS and ICE HSI officials all reported that it can be difficult to verify whether funds are being invested in projects and commercial enterprises as reported in immigrant investor petitions and regional center applications and immigrant investors may also be involved in schemes to fraudulently portray job creation or economic activity. For example, ICE HSI officials reported on a 2014 investigation related to a business enterprise that did not provide employees any work and told the employees to sit in an office during business hours. In another example cited by ICE HSI, in 2013, an alleged future EB-5 Program hotel project site was actually a vacant lot; the owner of the location was not aware of any plans to build a hotel there.

Appearance of favoritism and special access. The DHS OIG reported in March 2015 that a previous USCIS director had created an appearance of favoritism by providing certain petitioners and stakeholders with special access to DHS leadership and preferential treatment for their EB-5 Program applications or petitions.[43] The OIG report also stated that according to USCIS whistleblower allegations, which the OIG corroborated in some cases, the former director created special processes and revised existing policies in the EB-5 Program to accommodate specific parties. According to the OIG, if not for the intervention of the then director, the career staff at USCIS would have decided adjudication matters differently. According to the OIG report,

[42]Professor Jeanne Calderon and Guest Lecturer Gary Friedland, Esq., *A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects* (New York University: Stern School for Business Center for Real Estate Finance Research. May 22, 2015).

[43]DHS OIG, *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program*.

some USCIS employees felt uncomfortable and pressured to comply with managers' instructions that appeared to have come from the former director or those working directly for him. Not consistently following standard processes designed to identify potential fraud and other risks in adjudicating applications can increase the likelihood that those with criminal ties or those making fraudulent investments will go unnoticed. It may also create a control environment tolerant of not adhering to risk mitigation processes and could reduce trust and transparency in the overall adjudication process. Although the OIG report did not make specific recommendations, following its issuance, the DHS Secretary expressed further concerns about the program and asked Congress for help to strengthen the security and integrity of the program, stating that the EB-5 Program was frequently contacted by outsiders on behalf of those with an interest in the outcome of a particular EB-5 Program case. The DHS Secretary also announced the creation of a new protocol to help prevent the reality or perception of improper outside influence in the EB-5 Program. As of June 2015, USCIS officials had developed the protocol and anticipate that it will be fully implemented by August 2015.

Given these identified fraud risks, and the constantly evolving nature of risks to the program, planning and conducting regular fraud risk assessments of the EB-5 Program could better position USCIS to identify and evaluate emerging fraud risks to the program and address and mitigate these risks.

USCIS Has Taken Some Steps to Address Fraud Risks, but Additional Controls Could Improve Fraud Prevention and Detection

USCIS Has Taken Some Steps to Enhance Its Fraud Risk Management Efforts

USCIS has taken some steps to enhance its fraud risk management efforts, including creating an organizational structure conducive to fraud risk management, establishing a dedicated entity to design and oversee its fraud risk management activities, conducting fraud awareness training, and establishing collaborative relationships with external stakeholders, including law enforcement agencies.

USCIS established an organizational structure to better address fraud risks. In 2013, USCIS restructured the organization of its EB-5 Program operations to help better detect fraud, moving EB-5 Program activities from its California Service Center office and centralizing these operations in USCIS headquarters' new Immigrant Investor Program Office in Washington, D.C. As of June 2015, nearly all EB-5 adjudication operations are now colocated in Washington, D.C., with the exception of adjudication for Form I-485 applications from immigrant investors who are already in the United States under other lawful immigration status and who are applying to adjust their status to conditional permanent residency under the EB-5 visa category. USCIS officials indicated they plan to move adjudication of the Form I-485 applications from the California Service Center to the National Benefits Center in Lee's Summit, Missouri, by the end of 2015. These officials stated that because USCIS is primarily paper-driven, colocation also allows for relatively more efficient handling and examination of files for fraud and other risks. In November 2013, USCIS also established a fraud specialist unit for the EB-5 Program within FDNS. FDNS officials said that they increased the number of fraud specialists and hired individuals with specialized skill sets in areas that they consider critical to fraud prevention, including economics, finance, immigration, and national security, as well as relevant language skills. As of May 2015, FDNS was in the process of hiring an additional 8 dedicated staff with specialized fraud expertise to enhance its EB-5 Program fraud

detection capabilities and oversight, which will bring the total authorized FDNS EB-5 staff from 13 to 21.

USCIS established fraud awareness training. GAO's fraud control framework states that providing training on fraud awareness and potential fraud schemes to all key government staff is important in stopping fraud.[44] FDNS's training of its employees includes specialized fraud training. For instance, as of May 2015, FDNS had sent 8 of its 12 staff to Federal Law Enforcement Training Centers for specific training on detecting money laundering following an introductory course provided in headquarters in May 2014.[45] FDNS has also developed an "EB-5 University" to provide staff with monthly presentations on specific fraud-related topics believed to be immediately relevant to adjudication of EB-5 Program petitions and applications. USCIS held six sessions from August 2014 through January 2015, each of which addressed a different issue, including an overview of FinCEN and the use of external agency data for investigating potential fraud.

USCIS took steps to improve law enforcement collaboration. USCIS took steps to improve its level of coordination related to EB-5 fraud risk with SEC, ICE HSI, and FBI. USCIS does not generally conduct enforcement actions and therefore coordinates with, and also makes referrals to, law enforcement when it detects potential fraud, criminal activity, or national security threats. According to SEC, ICE HSI, FBI, and USCIS officials, USCIS has increased its level of coordination with law enforcement agencies to cross-train staff with additional expertise. For example, in September 2014 USCIS held an interagency symposium to encourage collaboration among the government partners that have a stake in the EB-5 Program. These officials also said that USCIS has established more reliable avenues of communication among the agencies, which has led to increased communication and collaboration on referrals, investigations, and enforcement actions that can be taken when potential threats and fraud are detected in the EB-5 Program. As of May 2015, USCIS was also finalizing a memorandum of understanding with the Department of the Treasury's FinCEN to improve USCIS's ease of access to information related to financial fraud and related criminal

[44]GAO-06-954T.

[45]FDNS currently has 21 authorized positions; the office had 12 employees onboard as of May 2015.

activity. Moreover, since consolidating operations in Washington, D.C., USCIS officials stated that they have expanded the scope of their background checks to include a greater number of individuals associated with EB-5 investments and have increased the number of databases used to examine individuals considered high risk.[46] These officials said that they are currently working with stakeholders to further enhance and automate checks across law enforcement databases.

Limitations in USCIS's Information Collection and Use Hamper Its Ability to Detect and Mitigate Fraud Risks

USCIS faces significant challenges in its efforts to detect and mitigate fraud risks. Specifically, USCIS's information systems and processes limit its ability to collect and use data on the EB-5 Program to identify fraud related to individual investors or investments or to determine any fraud trends across the program. While improvements to USCIS information systems are delayed, USCIS has taken alternative steps to gather information to mitigate fraud risk, such as expanding its site visits program to include random checks of the operation of EB-5 Program projects. However, opportunities remain to expand information collection through interviews with immigrant investors and expanded EB-5 Program petition and application forms.

Limitations in electronic data on EB-5 Program regional center applicants and immigrant investors. USCIS relies heavily on paper-based documentation. While USCIS contractors and employees are to enter certain information from these paper documents into various electronic databases, these databases have limitations that reduce their usefulness for conducting fraud-mitigating activities. For example, information that could be useful in identifying program participants linked to potential fraud is not required to be entered into USCIS's database, such as the applicant's name, address, and date of birth on the Form I-

[46]USCIS conducts checks primarily using the TECS system, which is a database owned and operated by U.S. Customs and Border Protection that includes information such as temporary and permanent enforcement, inspection, and operational records relevant to the antiterrorism and law enforcement mission of the federal agencies that the TECS system supports. USCIS also uses several commercial databases managed by companies such as Dun and Bradstreet and LexisNexis, which contain global information about individuals and entities used for screening.

924 used to apply for regional center participation in the EB-5 Program.[47] Moreover, FDNS officials told us that some data fields are also not standardized, a fact that presents significant barriers to conducting basic fraud-related searches. For example, the "geographic location" field, which USCIS personnel use to record where a regional center intends to operate, variously contains counties, parishes, cities, states, ZIP codes, census tracts, and other abbreviations. USCIS's rules guiding data entry leave many form fields "optional" in USCIS data-systems because, according to USCIS officials, the adjudication is completed from the paper application forms, so USCIS considers entering these data unnecessary. However, including such information in USCIS databases could better position USCIS to use information on investors to assess whether any potential fraud may exist with individual investors or across the program and initiate appropriate mitigating actions. For example, including in USCIS databases information on regional center principals and other Regional Center Program participants that is not consistently recorded in those databases, such as name and date of birth, could help USCIS better identify specific individuals who may be targeted for or are under investigation. Further, more standardized information in USCIS databases, such as for the geographic locations of regional centers, could help the agency better identify and assess any potential regional center fraud trends, for example, within and across geographic areas.

USCIS officials stated that the agency will be able to collect and maintain more readily available data on EB-5 Program petitioners and applicants through the deployment of electronic forms in its new system, the Electronic Immigration System (USCIS ELIS). USCIS officials told us in May 2015 that they expect USCIS ELIS capabilities for the EB-5 Program to become functional in 2017. However, USCIS has faced long-standing challenges in implementing USCIS ELIS, a fact that raises questions about its eventual deployment and thus the extent to which it will position USCIS to collect and maintain more readily available data. As we reported in May 2015, USCIS ELIS is nearly 4 years delayed and program costs increased by over $1 billion.[48] In March 2012, USCIS

[47]Organizations use data for many different forms of fraud-related prevention and detection techniques, the nature of which is dictated by specific questions or concerns identified by managers as presenting the most significant concerns. For example, data sharing can be particularly useful in confirming initial or continuing eligibility of participants in benefit programs. See GAO-02-69G.

[48]GAO, *Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program,* GAO-15-415 (Washington, D.C.: May 18, 2015).

began to significantly change its acquisition strategy to address various technical challenges with the system, and these changes have significantly delayed the program's planned schedule.[49] Changes made to the program's acquisition strategy were intended to help mitigate past technical and programmatic challenges; however, at the time of our review, the plans had not yet been approved and USCIS was operating without a current and approved acquisition program baseline. USCIS subsequently approved the plans for an acquisition program re-baseline in May 2015.[50] However, as we reported in May 2015, USCIS's ability to effectively monitor USCIS ELIS program performance and make informed decisions about its implementation has been limited because department-level governance and oversight bodies were not using reliable program information to inform their program evaluations.[51] While USCIS ELIS is under development, other actions could help USCIS mitigate fraud, as discussed below.

FDNS's project site visits are limited in number and scope, but FDNS has taken steps to expand them. FDNS presently conducts EB-5 Program site visits when IPO staff have identified a material concern such as indicators that a project is behind schedule or nonexistent and that cannot be verified through other means such as database searches or

[49]USCIS disagreed that changes to the acquisition strategy delayed the program and added $1 billion to the overall cost, citing changes in the time period covered by each program cost estimate. In our response, we maintained that the acquisition program baseline approved in May 2015 reflects delays of nearly 4 years and approximately $1 billion in additional cost when compared against the program's July 2011 program baseline. Our report also documented that cost increases and delays in achieving full operational capability were due, in part, to unexpected or greater than expected challenges in implementing the program's new approach. See GAO-15-415.

[50]We recommended that USCIS re-baseline cost, schedule, and performance expectations for the remainder of the program. DHS fully implemented this recommendation. See GAO-15-415.

[51]We recommended, among other things, that to improve governance of its technology transformation program (which includes USCIS ELIS), DHS should ensure that its Acquisition Review Board and Executive Steering Committee are effectively monitoring the program's performance and progress toward a predefined cost and schedule and relying on complete and accurate program data to review the performance of the program against stated expectations. DHS concurred with these recommendations and identified planned actions to address them, including steps to ensure that cost and schedule data are presented and evaluated against its Acquisition Program Baseline. See GAO-15-415.

requests for evidence from the petitioner or applicant.[52] FDNS officials told us that during a site visit, they typically look for evidence to corroborate petitioner and applicant information such as loan documentation and invoices showing that a business project's management staff use of investment funds is consistent with the approved business plan. USCIS, SEC, and ICE HSI officials and members of the national industry association representing regional centers said that additional site visits could enhance program integrity. In one example, USCIS officials stated that an EB-5 Program site visit was conducted because three stand-alone businesses claimed they were operating at the same address on their EB-5 petition materials. The businesses had placards on the door, but the owner of the property did not know the petitioners were using the space to run businesses. As a result, USCIS rejected these EB-5 Program petitions. GAO's fraud control framework states that inspections and physical validations are important tools to help mitigate fraud.[53] Further, according to SEC and ICE HSI officials, even relatively simple site examinations, limited to a physical visit of the investment site, may catch indicators of fraud risk when the site is obviously unsuitable for the stated business purpose or when the petition or application includes falsified information. According to these officials, more comprehensive site examinations are staff intensive but sometimes necessary for detecting fraud. ICE HSI officials said that this includes cases when a business has not invested in physical property or is inactive even though the EB-5 documents show that spending is taking place. These more comprehensive examinations include gathering

[52]FDNS standard operating procedures state that during the course of its work, FDNS may uncover evidence of criminal misconduct, public safety threats, or national security concerns. In those instances, FDNS refers the case to ICE or notifies other government agencies as appropriate. If a case is referred to another organization for criminal investigation or prosecution and it is declined, FDNS may pursue an administrative investigation that may lead to the denial or revocation of a benefit and initiation of removal proceedings. An administrative investigation may include additional systems checks, telephone inquiries, overseas verifications, field site visits, interviews of witnesses, or other research necessary to validate or invalidate the suspicion of fraud. According to this document, "the objective of an administrative investigation is to produce information that USCIS Adjudications can use to determine an individual's eligibility for an immigration benefit. FDNS performs administrative investigations that are narrowly tailored to verify relationships that are the basis for the transmission of an immigration benefit as well as to identify violations of section 212(a)(6)(C)(i) of the INA and/or other grounds of admissibility or removability."

[53]GAO-06-954T.

sources of information related to the project site such as mortgage documents and local city records.

Recognizing the potential benefits of site visits, USCIS plans to expand the EB-5 Program site visits, which could enhance fraud detection and deterrence. FDNS officials stated that they would like to conduct additional scrutiny of cases based on indications of fraud risk, which may include site visits; however, because of the EB-5 Program data limitations described above, FDNS has been unable to develop risk indicators and therefore cannot conduct risk-targeted site visits. However, officials plan to pilot random site visits, which may also help to identify and deter fraud. According to FDNS officials, USCIS approved their request for EB-5 Program random site visits in 2015, but they were not granted the staff positions required to administer these site visits. As of May 2015, FDNS had received authorization to hire 8 additional EB-5 Program staff, a level that FDNS officials stated is sufficient to begin administering a random site visit program. FDNS requested an expanded site visit budget for fiscal year 2016, which is now pending approval. FDNS officials stated that if the request is approved, a pilot random site visit program will begin sometime in fiscal year 2016. While improvements to USCIS information systems are delayed, piloting a random site visit program is a step that could provide USCIS valuable information in its efforts to mitigate fraud.

USCIS does not interview immigrant investors seeking removal of permanent residency conditions. USCIS is statutorily required to conduct interviews of immigrant investors within 90 days after they submit the Form I-829 petition to remove conditions on their permanent residency.[54] However, USCIS also has the statutory authority to waive the requirement for such interviews.[55] As of April 2015, USCIS officials stated that USCIS IPO has not conducted an interview at the I-829 stage. Conducting interviews at this stage to gather additional corroborating or contextual information could help establish whether an immigrant investor is a victim of or complicit in fraud—a concern shared by both ICE HSI and SEC officials, who noted that gathering additional information and context about individual investors could help to inform investigative work. For example, interviews could present an opportunity to gather additional

[54]See 8 U.S.C. § 1186b(c)(1)(B) (INA interview requirement), (d)(3) (period for conducting interview); 8 C.F.R. § 216.6(a)(3).

[55]See 8 U.S.C. § 1186b(d)(3) (discretionary waiver authority); 8 C.F.R. § 216.6(b)(1).

information on the extent to which the initial investment proposal offered to potential immigrant investors differed from the actual investments made and interest returned on investments. Further, these interviews could gather additional information from immigrant investors in cases where their associated regional center or commercial enterprise is suspected of fraud, such as whether investors were asked to recruit other investors as a condition of receiving a return on their investment. Thus, USCIS's use of its authority to conduct interviews under the program could help collect information that would otherwise be difficult to obtain from investors. USCIS officials agreed that conducting interviews at this stage could be a source of relevant information and said they anticipate conducting these interviews in the near future. However, USCIS officials explained that they have not developed plans or a strategy for conducting interviews at this stage primarily because IPO is relatively new and began adjudicating I-829 petitions in September 2014. These officials added that IPO is in the process of determining whether or not to schedule an interview with a current immigrant investor but does not have a general strategy for conducting these interviews. While we recognize the establishment of IPO is relatively new, developing a strategy for conducting interviews on investors at the I-829 stage could, for example, help corroborate information those investors originally submitted to demonstrate that the investors have met program requirements before having their conditions for lawful permanent residency removed. Given that IPO is relatively new, this strategy could include an approach to focus on those investors at the I-829 stage who may be at higher risk for fraud.

USCIS does not collect certain applicant information that could help mitigate fraud. In fiscal year 2011, USCIS expanded reporting requirements to gather information about ongoing regional center activities such as information on the active projects managed by each regional center. According to USCIS and SEC officials, this information has helped identify potential incidents of fraud. However, USCIS does not require information on the Form I-924 about the businesses supported by the regional center and program investments coordinated by the regional center, such as the names of principals or key officers associated with the business, or information on advisers to investors such as foreign brokers, marketers, attorneys, and other advisers receiving fees from investors. According to USCIS officials, USCIS is drafting revised Forms I-924 and I-924A that will seek to address many of these concerns. However, as these revisions have not been completed, it is too early to tell the extent to which they will position USCIS to collect additional applicant information. SEC and FDNS stakeholders with whom we spoke emphasized that collecting additional information could be useful for

USCIS to combat fraud. For example, according to these officials, the absence of information about businesses supported by regional centers limits USCIS's ability to identify potential fraud such as misrepresentation of a new commercial enterprise. USCIS officials agreed that some additional information collection would enhance program integrity but have not done so because the process to add questions to application forms to capture information requires USCIS to document the rationale for such changes by directly connecting new questions to statutory eligibility criteria, and USCIS has dedicated its regulatory group to other priorities pending potential new legislation or expiration of the Regional Center Program in September 2015. We recognize these competing priorities currently exist; while these priorities are being addressed by USCIS's regulatory group, the agency could also develop a strategy for identifying and collecting additional information on its petition and application forms to help mitigate fraud risks to the program, such as information on the businesses supported by regional centers.

GAO's fraud control framework states that fraud prevention can be achieved by requiring registrants to provide information that is sufficient to provide reasonable assurance against fraud risks.[56] Further, *Standards for Internal Control in the Federal Government* states that identified program risks, including fraud risk, should guide management's planning and development of internal controls.[57] Given that information system improvements with the potential to expand USCIS's fraud mitigation efforts will not take effect until 2017 at the earliest and that gaps exist in USCIS's other information collection efforts, developing a strategy to capitalize on existing opportunities for collecting additional information would better position USCIS to identify and mitigate potential fraud.

USCIS Has Made Efforts to Enhance Its Statutory Authority to Help Mitigate Risks Associated with the EB-5 Program

USCIS has recognized that the connection between national security concerns and specific EB-5 Program eligibility criteria may, at times, be tenuous. Specifically, USCIS has determined that it cannot terminate participation of regional centers, or deny immigrant investor petitions or regional center applications solely on the basis of national security concerns, unless such concerns lead an adjudicator to determine that the petitioner or applicant does not meet one or more EB-5 Program eligibility

[56] GAO-06-954T.

[57] GAO/AIMD-00-21.3.1.

criteria by a preponderance of evidence.[58] The preponderance of evidence standard requires petitioners or applicants to establish eligibility by demonstrating that it is more likely than not that they meet all EB-5 Program requirements.[59] USCIS's authority with respect to fraud or misrepresentation identified by an adjudicator in the petition or application process is less uncertain than that for national security concerns in that petitioners or applicants must show that their claims for EB-5 Program eligibility are more likely true than not (i.e., probably true), and potential fraud would generally bear on the truthfulness of petitioner or applicant claims. USCIS officials noted that USCIS has authority to deny a Form I-485 application based on fraud, misrepresentation, and national security concerns as these constitute grounds of inadmissibility that would render an immigrant investor ineligible for adjustment to conditional permanent residency.[60]

According to FDNS officials, some regional centers continue to operate despite concerns of fraud or associations with criminal activity. For example, FDNS officials cited a case involving a regional center principal against whom a federal grand jury returned a multiple count wire fraud indictment, and who was, at the time, in custody in a foreign country.

[58]Under 8 C.F.R. § 103.2(b)(18), USCIS has the authority to withhold adjudication of a visa petition or other application if it determines that there is an ongoing investigation involving eligibility, in connection with the benefit request, and disclosure of information to the applicant or petitioner concerning the adjudication would prejudice the investigation.

[59]In administrative immigration proceedings (including visa petition proceedings), the petitioner or applicant bears the burden of establishing that he or she is eligible for the benefit sought based on a preponderance of the evidence, except where a different standard is specified by law. *Matter of Chawathe*, 25 I. & N. Dec. 369, 375-76 (A.A.O. 2010); *Matter of Martinez-Gonzalez*, 21 I. & N. Dec. 3329, 1997 WL 602544, at *1 (B.I.A. 1997); *Matter of Soo Hoo*, 11 I. & N. Dec. 151, 152 (B.I.A. 1965). The "preponderance of the evidence" standard requires that the applicant demonstrate his or her eligibility claims to be more likely than not, or probably true. See *Matter of Chawathe*, 25 I. & N. Dec. at 376. "The 'preponderance of the evidence' standard requires that the evidence demonstrate that the applicant's claim is 'probably true,' where the determination of 'truth' is made based on the factual circumstances of each individual case." Id. (citing *Matter of E-M-*, 20 I. & N. Dec. 77, 79-80 (B.I.A. 1989)). The statute and regulations governing the EB-5 Program do not specify a different standard; therefore, EB-5 petitioners or applicants must establish eligibility for participation in the EB-5 Program based on a preponderance of evidence.

[60]For grounds of inadmissibility based on fraud, misrepresentation, and national security concerns, see 8 U.S.C. § 1182(a)(3), (6)(C)(i). Under 8 U.S.C. § 1255(a), an alien is eligible for adjustment of status where, among other things, he or she is eligible to receive an immigrant visa and is admissible to the United States.

According to FDNS officials, USCIS terminated this regional center because the principal failed to file the Form I-924A application supplement as required by regulation rather than, for example, on grounds related to the charges upon which the regional center principal was indicted.

USCIS officials noted that if fraud or national security concerns either alone or in combination with other factors lead an adjudicator to determine, based on a preponderance of the evidence, that a regional center is failing to fulfill the statutory requirement of promoting economic growth, adjudicators can under those circumstances terminate the regional center or deny an application for regional center designation. However, USCIS believes that unless a connection can be made that the regional center is failing to promote economic growth, it does not have the authority to terminate a regional center.[61] According to USCIS officials, the lack of authority to terminate a regional center or deny an immigrant investor petition or regional center application based solely on national security or fraud concerns is a major challenge and requires a significant amount of time to link findings to the statutory criteria.

In June 2012, USCIS provided technical assistance to congressional committees concerning legislation that would make changes to the EB-5 Program statute. This technical assistance proposed, among other things, giving the Secretary of Homeland Security discretionary authority to deny or revoke EB-5 Program petitions, regional center applications, and other petitions or benefits flowing from those petitions or benefits, when deemed necessary in the national interest or for other good cause. USCIS also provided technical assistance on the American Job Creation and Investment Promotion Reform Act of 2015, S.1501, which was introduced in the Senate in June 2015.[62] This bill would provide a 5-year reauthorization of the Regional Center Program through September 30, 2020, and would make substantial changes to the EB-5 Program statutory framework. For example, the proposed bill brings the Regional Center Program under the Immigration and Nationality Act (INA), as amended;

[61]Under 8 C.F.R. § 204.6(m)(6), a regional center may also be terminated where it fails to submit required information.

[62]In addition to S.1501, in January 2015 the American Entrepreneurship and Investment Act of 2015, H.R.616, was introduced in the House of Representatives, and would provide a permanent authorization of the regional center program.

explicitly requires that fraud, misrepresentation, criminal misuse, and threats to public safety or national security be considered in establishing eligibility criteria for regional centers; and states that the Secretary of DHS shall deny or revoke approval of a regional center business plan application with any particular investment or business arrangement that, in his or her unreviewable discretion, presents a public safety or national security threat or significant risk of criminal misuse, fraud, or abuse.

USCIS Has Increased Its Capacity for Verifying Job Creation but Does Not Use a Valid and Reliable Methodology for Reporting Program Outcomes and Economic Benefits

USCIS Strengthened Its Workforce, Guidance, Training, and Process for Verifying Job Creation

USCIS has taken action to increase its capacity to verify job creation in response to past GAO and DHS OIG reports that found that USCIS did not have staff with the expertise to verify job creation estimates and that the agencies' methodologies for verifying such estimates were not rigorous.[63] Specifically, in April 2005, GAO reported that USCIS adjudicators lacked the expertise to adjudicate EB-5 Program petitions, and were not sufficiently trained to properly adjudicate EB-5 Program petitions because of the complex business and tax issues involved.[64] More recently, in December 2013, the DHS OIG reported that USCIS lacked meaningful economic expertise to conduct independent and thorough reviews of economic models used by investors to estimate

[63]OIG-14-19 and GAO-05-256.

[64]USCIS officials subsequently changed the EB-5 training curriculum to provide adjudicators with training that addressed the complexities of EB-5 applications and helped to ensure that appropriate decisions would be rendered in accordance with applicable statutes, regulations, and agency policy.

indirect job creation for regional center projects, and recommended that USCIS coordinate with other federal agencies to provide expertise in the adjudication process.

USCIS took action over time to increase the size and expertise of its workforce, provide clarifying guidance and training, and revise its process for assigning petitions and applications for adjudication. For example, in 2014, USCIS began increasing its staffing from 9 adjudicators to 58 adjudicator officers and 22 economists as of June 2015, and in May 2013, issued a policy memorandum clarifying existing guidance to help ensure consistency in the adjudication of petitions and to provide greater transparency for the EB-5 Program stakeholder community, according to IPO officials. In addition, USCIS improved its training curriculum to better ensure consistency and compliance with applicable statutes, regulations, and agency policy, including an update in 2014 of the new employee EB-5 training program and the establishment of an ongoing training focusing on recurring issues and petition cases that are novel in nature. IPO program managers stated that USCIS revised its application assignment process in 2015 to help improve the consistency and efficiency of its adjudication of large-scale, multi-investor regional center projects. Under the new approach, the same economist is assigned to review the business plan, economic analysis, and organizational documents for each project involving multiple regional center investors. We interviewed 8 EB-5 Program economists who reported that they were satisfied with the guidance and that the training provided them with a high degree of confidence in adjudicating EB-5 petitions and applications.[65]

Further, IPO program managers reported that USCIS has provided its economists with access to data from the RIMS II economic model since fiscal year 2013 that increased their capacity to verify job creation estimates reported by immigrant investors for investments in regional center projects. IPO program managers estimated that as of fiscal year 2015, about 95 percent of EB-5 Program petitioners used economic models to estimate job creation, with about 90 percent of those petitioners

[65]In regard to guidance, we asked “What is your level of satisfaction with guidance and standard operating procedures/checklist USCIS provided?” The 8 economists we interviewed responded “very satisfied” (5), “somewhat satisfied” (2), and “neither satisfied nor dissatisfied” (1). In regard to training, we asked “To what degree has the training you received sufficiently provided you with all the information and resources you need to adjudicate EB-5 applications?” The 8 economists we interviewed responded “to a very high degree” (5) and “to a high degree” (3).

using RIMS II.[66] The RIMS II model is widely used across the public and private sectors and is considered to be valid to verify estimates of indirect and induced jobs reported for investments in regional center projects, according to USCIS and Commerce economists, as well as industry and academic experts.[67] Indirect jobs include jobs that are not directly created by the new commercial enterprise, but may result from increased employment in other businesses that supply goods and services to the regional center business as well as induced jobs created from workers' spending of increased earnings on consumer goods and services.[68] Under the law establishing the Regional Center Program, regional center investors are permitted to meet the job creation requirement using reasonable methodologies to estimate the number of jobs created, including jobs estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment.[69] Further, the EB-5 Program regulation permits regional center investors to estimate direct and indirect jobs for regional center projects using reasonable methodologies, including multiplier tables that are based on input-output economic models—coefficients that when used in conjunction with inputs

[66]The remaining 10 percent of program applicants who used economic models used other standard commercially developed input-output models such as Impact Analysis for Planning (IMPLAN), Regional Dynamic Models (REDYN), and Regional Economic Models, Inc. (REMI).

[67]In the public sector, for example, the Department of Defense uses RIMS II to estimate the regional impacts of military base closings, and state departments of transportation use RIMS II to estimate the regional impacts of airport construction and expansion. In the private sector, analysts, consultants, and economic development practitioners use RIMS II to estimate the regional impacts of a variety of projects, such as the development of theme parks and shopping malls.

[68]IPO officials stated that the sum of the indirect and induced jobs from an input-output model is defined as "indirect jobs".

[69]See Pub. L. No. 102-395, tit. VI, § 610(c), 106 Stat. at 1874 (codified as amended as a note under 8 U.S.C. § 1153). Under 8 C.F.R. § 204.6(m)(7), an alien seeking an immigrant visa as an alien entrepreneur under the regional center program must demonstrate that his or her qualifying investment is within an approved regional center and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise. To show that 10 or more jobs are actually created indirectly by the business, reasonable methodologies may be used, such as multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices that indicate the likelihood that the business will result in increased employment. See 8 C.F.R. § 204.6(m)(7)(ii).

such as a specified investment amount, can estimate economic outputs, such as job creation.[70] USCIS economists said that the use of the RIMS II multipliers in combination with other information, including the eligible project investment amount, the code that identifies the project industry, and project location, has provided them with the necessary capacity to better ensure investors meet program requirements for job creation. We conducted a technical review of articles and other documents on the model as well as interviewed subject matter experts, including industry and academic researchers who published studies of the EB-5 Program structure, Commerce officials with the Bureau of Economic Analysis who administer the RIMS II model, and USCIS IPO officials who review the various economic models used by EB-5 investors. On the basis of our reviews and interviews, we determined that IPO's use of RIMSII data is a reasonable methodology to verify job creation as permitted in law and program regulation.

However, 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[71] that most immigrant investors use to qualify for a lower investment amount.[72] USCIS's May 2013 policy memorandum notes that Congress expressly provided for a reduced investment amount in a rural area or an area of high unemployment in order to spur immigrants to invest in new commercial enterprises that are principally doing business in—and creating jobs in—areas of greatest need. IPO program managers stated that approximately 90 percent of immigrant investors qualify for a reduced investment

[70]See 8 C.F.R. § 204.6(j)(4)(iii), (m)(3)(v).

[71]A targeted employment area is defined as a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. A rural area is defined as any area not within either a metropolitan statistical area (as defined by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). See 8 U.S.C. § 1153(b)(5)(B)(ii), (iii); 8 C.F.R. § 204.6(e), (j)(6)(ii). A technical limitation of input-output models as a whole is that they cannot predict when and where indirect jobs will be created.

[72]8 U.S.C. § 1153(b)(5)(B)(i) (a certain number of the EB-5 visas made available each fiscal year are reserved for qualified immigrants who invest in a new commercial enterprise that will create employment in a targeted employment area), (C)(ii) (a reduced capital requirement may be set for investments made in targeted employment areas); 8 C.F.R. § 204.6(f) (amount of capital necessary to make a qualifying investment in a targeted employment area is $500,000).

amount—$500,000 instead of $1 million—to participate in the EB-5 Program because they are claiming investment in a commercial enterprise that will create employment in a targeted employment area.[73] The remaining 10 percent of immigrant investors pay twice that amount to participate in projects that are not limited to these locations. The IPO Economics Division Chief said that USCIS has not identified a need to verify the creation of jobs in a targeted employment area because the law permits regional center investors to use reasonable methodologies such as input-output models that do not have this capacity, and because program regulation and policy address the issue by requiring that capital be invested in a job-creating enterprise that is principally doing business in a targeted employment area.[74] IPO economists we interviewed also said that given the relative ease of proving job creation through economic modeling compared with documentation requirements to prove creation of direct jobs, immigrant investors generally claim indirect jobs, rather than direct jobs, to qualify for the program.

USCIS's Methodology for Reporting Program Outcomes Is Not Valid and Reliable in Certain Instances

USCIS's methodology for reporting EB-5 Program outcomes and economic benefits is not valid and reliable because it may overstate or understate results in certain instances as it is based on the minimum program requirements for job creation and investment instead of the number of jobs and actual investment amounts investors report on EB-5 Program forms. To estimate job creation, USCIS multiplies the number of immigrant investors who have successfully completed the program with an approved Form I-829, by 10—the minimum job creation requirement per immigrant investor. To estimate overall investment in the economy, the agency multiplies the number of immigrant investors approved to participate in the program with an approved Form I-526, by $500,000—the minimum investment amount, assuming all investments were made for projects in a targeted employment area. Accordingly, USCIS reported that from program inception in fiscal year 1990 through fiscal year 2014, the EB-5 Program has created a minimum of 73,730 jobs and more than $11.2 billion in investments.

[73]See 8 U.S.C. § 1153(b)(5)(B)(i), (C)(ii); 8 C.F.R. § 204.6(f).

[74]USCIS's May 30, 2013, policy memorandum states that for the purpose of the EB-5 Program, a new commercial enterprise is "principally doing business" in the location where it regularly, systematically, and continuously provides goods or services that support job creation.

Our review and past GAO and DHS OIG audits of the program have pointed out the limitations of this methodology to report reliable program outcomes in that the data can be understated or overstated in certain instances.[75] For example, USCIS officials stated that the majority of immigrant investors reported creating more than the 10-job minimum, and 10 percent of immigrant investors pay $1 million instead of $500,000 because they invest in projects outside of a targeted employment area. Estimating economic outcomes using the minimum program requirements in these circumstances would lead to an underestimate of the program's benefits. For example, we reviewed one project with about 450 immigrant investors that created over 10,500 jobs, or about 23 jobs per immigrant investor, while USCIS counted only the 10-job minimum per immigrant investor (totaling 4,500), a difference of 6,000 jobs. Additionally, according to DHS's 2013 *Yearbook of Immigration Statistics*, about 32 immigrant investors paid $1 million instead of $500,000 into the EB-5 Program in fiscal year 2013, a total difference of $16 million not counted by USCIS.[76]

Conversely, USCIS's methodology may, in certain instances, overstate some economic benefits derived from the EB-5 Program. For example, the methodology assumes that all immigrant investors approved for the program will invest the required amount of funds, and that these funds will be fully spent on the project. According to our analysis of EB-5 Program data, there are fewer immigrant investors who successfully complete the program than were approved for program participation, and the actual amount invested and spent in these circumstances is unknown. For example, our analysis showed that approximately 26 percent of all EB-5 Program immigrant investors who entered the program from its inception

[75]The DHS OIG reported in 2013 that USCIS officials estimated the benefits of the EB-5 Program assuming the minimum requirements of the program had been met, and could therefore only speculate about how foreign investments affect the U.S. economy. See OIG-14-19. We reported in 2005 that USCIS officials "did not have reliable data indicating the total number of jobs created solely as a result of investments by EB-5 participants". See GAO-05-256.

[76]These immigration data are published in the *Yearbook of Immigration Statistics* by the Office of Immigration Statistics in the Policy Directorate of the Department of Homeland Security. According to the yearbook, statistical data on immigration have been published annually by the U.S. government since the 1890s. Data on immigrant investors is included under the lawful permanent resident section of the yearbook. These data were obtained from USCIS's Computer Linked Application Information Management System (CLAIMS) and USCIS ELIS.

year through fiscal year 2011 may not have completed the process to show funds spent and jobs created with an approved I-829 as of the fiscal year ending in 2014.[77]

USCIS collects more complete information on EB-5 Program forms, but does not track or analyze this information to more accurately report program outcomes. Specifically, immigrant investors are required to report (and USCIS staff are to verify) the amount of their initial investment on the Form I-526, and to report the number of new jobs created (or expected to be created within a reasonable time) by their investment on the Form I-829. However, USCIS officials said that they report EB-5 Program outcomes using minimum program requirements because these are the required economic benefits stated in law, and that they are not statutorily required to develop a more comprehensive assessment of overall program benefits.

The Project Management Institute's *The Standard for Program Management* states that programs need to establish monitoring and controlling activities to report on program performance.[78] This includes collecting, measuring, and disseminating performance information so program management has the data necessary to report on the program's state and identify areas in need of improvement. Additionally, *GAO's Standards for Internal Control in the Federal Government* states that activities need to be established to monitor performance, managers need

[77]Specifically, we compared the number of immigrant investors who filed an approved Form I-526 to participate in the program from program inception through fiscal year 2011 (approximately 10,000), with the number of immigrant investors who filed an approved Form I-829 through fiscal year 2014 to report successful completion of the program requirements (approximately 7,400). The remaining immigrant investors fall into an aggregated category made up of investors who chose not to file a Form I-829, had their petition denied, or a decision on their petition was pending (approximately 2,600). Additionally, according to USCIS officials, this category could include immigrant investors who are not yet eligible to file a Form I-829 because investors are eligible to file only within 90 days of the end of the 2-year period of their conditional resident status, which begins only after they adjust status or are admitted to the United States with an EB-5 visa, and not upon approval of an initial I-526 petition. We counted approved Form I-526 petitions through the end of fiscal year 2011 to account for (1) Form I-485 (adjustment of status) and DS-260 (immigrant visa) application processing times, (2) the fact that an immigrant investor does not become eligible to file a Form I-829 petition until 90 days before the expiration of his or her 2-year conditional residency period, and (3) Form I-829 petition-processing time.

[78]Project Management Institute, *The Standard for Program Management.*

to compare actual performance against planned or expected results, and controls should aim at validating the propriety and integrity of performance measures.[79] Further, transactions should be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions throughout the entire process of an event from initiation through final classification. Tracking and reporting the investment and job creation data it collects on the Forms I-526 and I-829 would better position USCIS to more accurately assess and report on the EB-5 Program's outcomes, in line with the program's mission to bring new investment capital and jobs into the country and to help Congress and others better evaluate the benefits of the program.

Views differ on whether USCIS methodology, as defined in EB-5 Program regulations, should allow immigrant investors to claim all jobs created by projects with EB-5 and non-EB-5 investors.[80] We and the DHS OIG have previously raised questions about this practice because immigrant investors are to create 10 jobs based on their investment in the new commercial enterprise, and therefore including non-EB-5 Program investments in the enterprise can inflate the job creation benefit of the immigrant investment.[81] The IPO Economics Division Chief and IPO program managers said that while they do not have resources to verify this fact for each project, it is possible that a regional center project would not occur or be viable without EB-5 Program investment funds, which provide an alternative source of capital for projects that might not be able to attract or afford investments from other foreign or U.S. sources. In the final rule implementing section 121 of the Immigration Act of 1990, legacy Immigration and Naturalization Service (INS) contemplated multiple investor scenarios in promulgating EB-5 regulations, and on the basis of

[79]GAO/AIMD-00-21.3.1.

[80]Under 8 C.F.R. § 204.6(g)(1), the establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons not seeking classification under INA § 203(b)(5), 8 U.S.C. § 1153(b)(5). 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 INA § 203(b)(5) or among non-natural persons (e.g., corporations), either foreign or domestic. See 8 C.F.R. § 204.6(g)(2).

[81]The DHS OIG (14-19) and GAO-05-256 reported that allowing investors to take credit for jobs created with non-EB-5 funds makes it impossible for USCIS to determine whether the funds actually created U.S. jobs.

comments in response to the proposed rule, permitted the practice of allocating only to immigrant investors the jobs created as a result of the establishment of a new commercial enterprise by multiple investors, some of whom may not be seeking EB-5 visas.[82]

Additionally, according to the IPO Economic Division Chief, his analysis showed that projects in many industries could not generate the required number of jobs based on the minimum EB-5 investment alone, and otherwise would not be able to use and benefit from the EB-5 Program.[83] Specifically, his analysis showed that about 160 industries, including manufacturing, are unable to create the required 10 jobs per investor based solely on the EB-5 Program minimum investment of $500,000.[84] According to IPO officials, without the practice of allowing immigrant investors to claim jobs generated by investments from other sources, a higher investment amount would be required for investors to meet the job creation requirements in these industries and qualify for removal of their permanent residency conditions.

Our review of IPO documentation for one regional center project showed that many immigrant investors would not have qualified to remove conditions for lawful permanent residency without the practice of allowing them to claim jobs created by all investments in the commercial enterprise. In one case, about 450 immigrant investors contributed 30 percent (approximately $225 million) of the capital toward a nearly $750 million total investment in a regional center project, and all 450 immigrant investors were able to achieve lawful permanent residency by claiming 100 percent of the nearly 10,500 jobs created.[85] However, if the jobs were distributed on a pro rata basis, only 315 of the 450 investors would have

[82]56 Fed. Reg. at 60,903.

[83]GAO did not independently corroborate the outcomes of this analysis.

[84]For example, IPO's Economics Division Chief said that an investment of $500,000 in the pharmaceutical industry yields about 5 jobs per investor, compared with 10 to 12 jobs per investor in larger-scale construction projects.

[85]Economic modeling for the project showed that 10,500 jobs were created by the total project spending. All 10,500 jobs were distributed on a pro rata basis such that each of the 450 investors was allocated 23 jobs each. This represents a "job cushion" of approximately 130 percent over the USCIS-required 10 jobs per investor. According to an IPO economist we interviewed, most projects build in a job cushion to ensure that all investors meet the job creation requirements and to increase the likelihood that investors achieve approval for lawful permanent residency.

met the job creation criteria necessary to achieve lawful permanent residency.[86]

USCIS-Commissioned Study to Assess Overall Program Benefits Addresses Some Past Limitations, but Not the Costs, of the EB-5 Program

USCIS has commissioned Commerce's Economics and Statistics Administration (ESA) to conduct a study of the economic impact of the EB-5 Program. According to the IPO Economics Division Chief, USCIS undertook this action in response to a December 2013 DHS OIG recommendation that USCIS conduct a comprehensive review of the EB-5 Program to demonstrate how investor funds have stimulated the U.S. economy. As of June 2015, USCIS and ESA had not yet finalized the methodology for the new study; however, ESA and USCIS approved a statement of work in November 2014 that outlines a preliminary methodology and study steps that would address some, but not all, shortcomings of prior studies of the overall EB-5 Program benefits. Past studies, for example, included small sample sizes that were not representative of the total population and may have overstated economic impact because of the use of national, instead of regional, multipliers in the analysis. ESA's study is to assess the value of the EB-5 Program beginning at the EB-5 project level for all projects completed (or at least lasting 2 years) for fiscal years 2012 and 2013. According to Commerce officials, the study findings will include (1) the immigrant investor investments as well as the non EB-5 investments used in each job creation estimate; (2) the number of jobs created as well as the value of the jobs from each project, citing the geographic area for which the job creation was claimed in the economic impact assessment; and (3) the likely household spending of immigrant investor families while living in the United States. Commerce officials indicated that for the study, all projects within a state will be added to derive a state total and then the state totals will be aggregated to determine a national total. ESA will review a majority of the economic impact assessments that led to the job creation estimates for each of the projects to determine whether the models used for estimating job creation were applied correctly. ESA also plans to use information submitted by immigrant investors on EB-5 Program forms and

[86]Our analysis is based on the assumption that the 30 percent of EB-5 investments out of total project funding contributed to only 30 percent of the total jobs created. Therefore, the investors would receive credit for creating 3,150, which would not meet the job creation requirements for all 450 investors that contributed to the project. Instead, only 315 investors would qualify for permanent residency (3,150 jobs divided by 10 jobs required for each investor).

entered into the Intranet Computer Linked Application Information Management System (iCLAIMS) to more specifically and reliably report program benefits. USCIS has provided ESA with data from the iCLAIMS database, including information from forms immigrant investors and regional centers use to meet program participation requirements—Forms I-526, I-829, I-924, and I-924A—which, according to an ESA official, ESA is beginning to examine in greater detail.[87] ESA will review DHS's data collection and reporting system prior to using the iCLAIMS data to determine the value of the program. USCIS officials said that ESA plans to finalize the study methodology once it completes a review of the program data submitted by IPO, and to issue a final report in November 2015.

However, the ESA study is not intended to address the program's costs, which are important for assessing a program's net economic impact. Both USCIS and ESA officials confirmed the study will be an economic valuation, which, unlike an evaluation, considers only the benefits of economic activity and does not assess or discuss the program costs. The IPO Economic Division Chief said that he consulted with ESA about including program costs in the study, and decided that the study will not include the program's costs primarily for two reasons. First, academic research suggests that such high-income/net worth individuals who USCIS assumes participate in the EB-5 Program generally contribute far more in taxes (income and consumption) than they receive in social benefits funded from those taxes.[88] Second, on an aggregate level, the costs of a maximum 10,000 EB-5 visas in a population of 316 million persons would be relatively insignificant, difficult—if not impossible—to aggregate on an individual level—and would be subject to the variability in that individual's place of residence, tax structure, and the level and mechanisms of social support that person would be likely (and eligible) to receive, all of which are far beyond the abilities of the data that IPO

[87]According to USCIS, iCLAIMS is its dedicated EB-5 database. IPO's data entry group inputs data from Forms I-924 and I-924A into iCLAIMS, which are then linked to related Forms I-526 and I-829. iCLAIMS data are also reviewed by EB-5 adjudicators to ensure accuracy.

[88]Additionally, the level and mechanisms of the most prevalent forms of social support (the transfers made through Social Security payments and various forms of income assistance) in the United States are inversely related to income, and since incomes for an accredited investor are in, at minimum, the top 5 percent of incomes in the United States, it is unlikely that they receive any form of social assistance.

currently collects to support. USCIS officials said that for these reasons, the costs to gather the information may not justify the investment.

The Office of Management and Budget Circular A-94 Revised, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*, which applies to all analyses used to support government decisions to initiate, renew, or expand programs or projects that would result in a series of measurable benefits or costs extending for 3 or more years into the future, identifies actions agencies can take in cases where costs cannot be quantified when measuring the impact of a program.[89] Specifically, OMB Circular A-94 provides that in analyses where not all benefits or costs can be assigned a monetary value, a comprehensive enumeration of the different types of benefits and costs can help identify the full range of program effects. For example, DHS costs to track and remove immigrant investors (and their families) from the United States who do not successfully complete the program, and costs to social programs such as Medicaid, Medicare, and Social Security may be associated with the program but difficult to quantify. Ensuring that the ESA study includes a discussion of costs that should be considered but cannot be quantified for the program would provide Congress and other stakeholders with more information on the overall value of the program.

Conclusions

The EB-5 Program seeks to stimulate the economy by promoting job creation and encouraging capital investment by foreign investors in the United States. However, these features of the program that can provide economic benefit to the United States can also create unique fraud and national security risks that must be identified and addressed. Planning to conduct risk assessments on a more regular basis would better position USCIS to identify, evaluate, and address future and changing risks to the program. This may be of particular importance as USCIS is unable to comprehensively identify and address fraud trends across the program because of its reliance on paper-based documentation and because it faces certain limitations with using available data and with collecting additional data on EB-5 immigrant investors or investments. Developing a strategy to expand its data collection efforts, such as interviewing investors who apply to remove conditions on their permanent resident

[89]OMB Circular No. A-94 Revised, at PAGE 4.

status and requesting additional information on applicant and petitioner forms, could better position USCIS to address these limitations.

USCIS's ability to apply a valid and reliable methodology for reporting EB-5 Program outcomes and economic benefits is important for program accountability and to provide the public and Congress with more complete information to evaluate the program and make reauthorization decisions. Tracking and using more comprehensive information it collects on project investments and job creation on the Forms I-526 and I-829 submitted by immigrant investors and verified by USCIS would enable USCIS to more reliably report on EB-5 Program outcomes and economic benefits. Additionally, taking steps to ensure that the valuation it commissioned Commerce to conduct includes a discussion of the types of costs that should be considered, but could not be quantified by the study, would provide Congress and other stakeholders with more comprehensive information on the overall economic benefits of the program.

Recommendations for Executive Action

To strengthen USCIS's EB-5 Program fraud prevention, detection, and mitigation capabilities, and to more accurately and comprehensively assess and report program outcomes and the overall economic benefits of the program, we recommend that the Director of USCIS take the following four actions:

- plan and conduct regular future fraud risk assessments of the EB-5 Program;
- develop a strategy to expand information collection, including considering the increased use of interviews at the I-829 phase as well as requiring the additional reporting of information in applicant and petitioner forms;
- track and report data that immigrant investors report, and the agency verifies on its program forms for total investments and jobs created through the EB-5 Program; and
- include a discussion of the types and reasons any relevant program costs were excluded from the Commerce study of the EB-5 Program.

Agency Comments and our Evaluation

We provided a draft of this report to Commerce, DHS, DOJ, SEC, and State for their review and comment. DHS provided written comments, which are reproduced in appendix I, and Commerce, DOJ, SEC, and State did not provide written comments. In its comments, DHS concurred with the four recommendations and described actions under way or planned to address them. Commerce and DHS provided technical comments, which we incorporated as appropriate.

With regard to the first recommendation, that USCIS plan and conduct regular future fraud risk assessments of the EB-5 Program, DHS concurred, stating that the EB-5 Branch of USCIS's FDNS will continue to conduct a minimum of one fraud, national security, or intelligence assessment on an aspect of the program annually, as it has done since 2012. DHS further requested that GAO consider this recommendation resolved and closed. While we believe that planning to continue conducting a minimum of one assessment on an aspect of the program annually is a positive step, to fully address the intent of our recommendation, USCIS needs to conduct at least one review, as planned. Thus, we continue to consider this recommendation open.

With regard to the second recommendation, that USCIS develop a strategy to expand information collection, including considering the increased use of interviews at the I-829 phase as well as requiring the additional reporting of information in applicant and petitioner forms, DHS concurred and estimated that actions to develop such a strategy would be completed by September 30, 2016. Upon completion of the strategy, these actions should address the intent of the recommendation to strengthen USCIS's ability to prevent, detect, and mitigate fraud in the EB-5 Program.

With regard to the third recommendation, that USCIS track and report data that immigrant investors report, and the agency verifies on its program forms for total investments and jobs created through the EB-5 Program, DHS concurred and estimated that a plan to collect and aggregate additional data, including revisions to USCIS data systems and processes, would be completed by September 30, 2016. When USCIS implements this plan, this action should address the intent of the recommendation to more comprehensively assess and report program outcomes of the EB-5 Program.

With regard to the fourth recommendation, that USCIS include a discussion of the types and reasons any relevant program costs were excluded from the Commerce study of the EB-5 Program, DHS concurred and said that USCIS IPO will recommend to Commerce that a description of potential costs not assessed as a part of the study be included when the study is published later this year. Should Commerce include such a discussion of relevant program costs in its study that USCIS estimates will be completed November 30, 2015, this action should address the intent of our recommendation to more comprehensively assess and report the overall economic benefits of the EB-5 Program.

We are sending copies of this report to interested congressional committees; the Secretaries of Commerce, Homeland Security, and State; the Attorney General of the United States; as well as the U.S. Securities and Exchange Commission Chair. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov or Seto Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.

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The Honorable Bob Corker
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The Honorable Charles E. Schumer
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Appendix I: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

July 24, 2015

Ms. Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-15-696, "IMMIGRANT INVESTOR PROGRAM: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of some of the important steps the U.S. Citizenship and Immigration Service (USCIS) has taken to improve the integrity and administration of the Immigrant Investor Visa Program (program). Specifically, the report affirms that USCIS has taken action to address fraud risks in the program, including establishing a dedicated division in the USCIS Fraud Detection and National Security Directorate for the program. This division designs and oversees the program's fraud risk management activities and fraud-awareness training, and establishes and enhances collaborative relationships with external stakeholders, including law enforcement agencies.

In addition, the report affirms that USCIS has improved the administration and integrity of the program by enhancing its capacity to verify job creation by increasing the size and expertise of its workforce as well as providing clarifying guidance and training. These independent acknowledgements demonstrate DHS' commitment to preventing fraud and ensuring the integrity of this unique immigration program.

The draft report contained four recommendations with which the Department concurs. Specifically, GAO recommended that the Director of USCIS:

Recommendation 1: Plan and conduct regular future fraud risk assessments of the EB-5 Program.

Response: Concur. The EB-5 Branch of USCIS' Fraud Detection and National Security Directorate will continue to conduct a minimum of one fraud, national security, or intelligence assessment on an aspect of the program annually, as it has since 2012. DHS requests that GAO consider this recommendation resolved and closed.

Recommendation 2: Develop a strategy to expand information collection, including considering the increased use of interviews at the I-829 phase as well as requiring the additional reporting of information in applicant and petitioner forms.

Response: Concur. USCIS' Immigrant Investor Program Office (IPO) will develop a strategy to enhance and expand information collection, including publishing revised EB-5 application and petition forms, and considering the use of interviews. Estimated Completion Date (ECD): September 30, 2016.

Recommendation 3: Track and report data that immigrant investors report, and the agency verifies on its program forms for total investments and jobs created through the EB-5 Program.

Response: Concur. USCIS IPO will develop a plan to collect and aggregate additional data regarding investment amounts and job creation through the EB-5 program. This will include revisions to USCIS data systems and processes, as appropriate.
ECD: September 30, 2016.

Recommendation 4: Include a discussion of the types and reasons any relevant program costs were excluded from the Commerce study of the EB-5 Program.

Response: Concur. USCIS IPO will recommend to the Department of Commerce that a description of potential costs not assessed as part of the study be included when the study is published later this year. ECD: November 30, 2015.

Again, thank you for the opportunity to comment on this draft report. Technical comments were previously provided under separate cover. We look forward to working with you in the future.

Sincerely,

Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix II: GAO Contacts and Staff Acknowledgments

GAO Contacts

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In addition to the contacts named above, Cindy Ayers, Joah Iannotta, David Alexander, Christopher Hayes, John Karikari, Andrew Kurtzman, Natalie Maddox, Jan Montgomery, Jon Najmi, Brynn Rovito, Edith Sohna, and Nick Weeks made key contributions to this report.

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