



Testimony Before the Committee on the
Judiciary, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. ET
Thursday, February 11, 2016

IMMIGRANT INVESTOR PROGRAM

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

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Accessible Version

GAO Highlights

Highlights of [GAO-16-431T](#), a testimony before the Committee on the Judiciary, House of Representatives

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.

This statement discusses USCIS efforts under the EB-5 Program to (1) work with interagency partners to assess fraud and other related risks and address identified fraud risks, and (2) increase its capacity to verify job creation and use a valid and reliable methodology to report economic benefits. This statement is based on a report GAO issued in August 2015 ([GAO-15-696](#)), with selected updates conducted in February 2016 to obtain information from DHS on actions it has taken to address the report's recommendations.

What GAO Recommends

In its August 2015 report, GAO recommended that USCIS, among other things, conduct regular future risk assessments, develop a strategy to expand information collection, and analyze data collected on program forms to reliably report on economic benefits. DHS concurred with the recommendations and reported actions underway to address them.

View [GAO-16-431T](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

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What GAO Found

In August 2015, GAO reported that the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), which administers the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program), had collaborated with its interagency partners to assess fraud and national security risks in the program in fiscal years 2012 and 2015. 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 did not have documented plans to conduct regular future risk assessments which could help inform efforts to identify and address evolving program risks. GAO recommended that USCIS plan and conduct regular future fraud risks assessments. DHS agreed, and as of February 2016, USCIS officials stated that they planned to complete an additional risk assessment by September 2016 and a minimum of one annually thereafter. GAO also reported in August 2015 that USCIS had taken steps to address the fraud risks it identified by enhancing its fraud risk management efforts; however, USCIS's information systems and processes limited its ability to collect and use data on EB-5 Program participants to address fraud risks in the program. For example, USCIS did not consistently enter some information it collected on participants in its information systems, such as name and date of birth, and this presented barriers to conducting basic electronic searches that could be analyzed for potential fraud. USCIS planned to collect and maintain more complete data in its new information system; however, the information system improvements with the potential to expand USCIS's fraud mitigation efforts were not to take effect until 2017 at the earliest. Given this time frame and gaps in USCIS's other information collection efforts, GAO recommended that USCIS develop a strategy to expand information collection in order to better position the agency to identify and mitigate potential fraud. DHS concurred, and in February 2016 USCIS officials stated that USCIS plans to develop such a strategy by the end of fiscal year 2016.

In August 2015, GAO reported that USCIS had increased its capacity to verify job creation by increasing the size and expertise of its workforce, among other actions. However, USCIS's methodology for reporting program outcomes and overall economic benefits was 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, total investment amounts are not adjusted downward to account for investors who do not complete the program or upward for investments of \$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. Accordingly, GAO recommended that USCIS track and report data that investors report and the agency verifies on its program forms for total investments and jobs created through the EB-5 Program. DHS agreed and plans to implement this recommendation by the end of fiscal year 2017.

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

I am pleased to be here today to discuss actions taken by the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) to assess fraud risks and economic benefits associated with the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program). Congress created the EB-5 immigrant visa category 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 Upon meeting certain 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 receive 2-year conditional green cards to live and work in the United States.² If investors

¹Pub. 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).

²See 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); 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). Immigrant investors and their eligible dependents are admitted to the United States under EB-5 visas, or if already in the United States, their statuses are adjusted. See 8 U.S.C. §§ 1153(b)(5), 1201, 1255(a). Eligible dependents (or derivative family members) are the immigrant investor's spouse and unmarried children under the age of 21. 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).

meet program requirements within the 2 years, they can apply to remove the conditional basis of their green card.³

Approximately 10,000 EB-5 visas per fiscal year are made available to qualified immigrant investors of the EB-5 Program.⁴ Under the EB-5 Regional Center Program, which was first enacted as a pilot in 1992 and reauthorized numerous times since, 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.⁵ Most recently, the Regional Center Program was extended until September 30, 2016.⁶ Under this program, immigrant investors can pool their investment with those of other foreign and U.S. investors to fund a new commercial enterprise within a regional center. These regional center investors may meet the statutory employment creation requirement by using reasonable methodologies to show that 10 full-time positions were

³See 8 U.S.C. § 1186b(c)(1), (d)(2). Where an alien entrepreneur's petition for removal of lawful permanent resident conditions is denied, 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 he or she obtained conditional status, such status will automatically terminate and removal proceedings will be initiated. See 8 C.F.R. § 216.6(a)(5).

⁴See 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).

⁵See 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, which is involved with the promotion of economic growth, including increased exports sales, improved regional productivity, job creation, and increased domestic capital investment. See 8 C.F.R. § 204.6(m)(3), (6).

⁶See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. F, tit. V, § 575, 129 Stat. 2242 (2015).

created either directly or indirectly.⁷ 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.

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 USCIS, administers the EB-5 Program—adjudicating applications while striving to ensure that program participants, including foreign investors and principals operating U.S. regional centers, comply with requirements of the program. Application materials adjudicated by IPO staff include the Form I-526: Immigration Petition by Alien Entrepreneur; the Form I-485: Application to Register Permanent Residence or Adjust Status; the Form I-829: Petition by Entrepreneur to Remove Conditions; and the Form I-924: Application for Regional Center. 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.⁸ After USCIS approves initial petitions for overseas 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

⁷See Pub. L. No. 102-395, tit. VI, § 610(c), 106 Stat. at 1874 (8 U.S.C. § 1153 note). Under 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 having 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 8 U.S.C. § 1153 note; 8 C.F.R. § 204.6(j)(4)(iii), (m)(3), (7).

⁸See 8 C.F.R. § 204.6(i), (j)(6)(ii)(B).

requirements for admission to the United States.⁹ FDNS refers cases of fraud related to foreign 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 fraud allegations of marketing or manipulation of 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.

My statement today is based on our August 2015 report on USCIS efforts under the EB-5 Program and updated information on the status of DHS efforts to address the report's recommendations.¹⁰ Like that report, my statement discusses the extent to which USCIS has (1) worked with interagency partners to assess fraud risks and other related risks and addressed identified fraud risks, and (2) increased its capacity to verify job creation and use valid and reliable methodologies to report program outcomes and economic benefits. For our report, we reviewed past GAO and DHS Office of Inspector General (DHS OIG) reports, as well as fraud risk assessments conducted by USCIS, State, the SEC, the FBI, and ICE HSI since the program's inception, to identify efforts taken to identify and address fraud as well as assess EB-5 Program outcomes and economic benefits. We also analyzed USCIS processes, procedures, and training for detecting, preventing, and investigating fraud and compared them against *Standards for Internal Control in the Federal Government*.¹¹ Additionally, we reviewed the methodology used by USCIS to report the total amount of investment and jobs created through the EB-5 Program; the statement of work for a contracted study on the program's economic impact; and economic models used by regional center investors and USCIS to forecast the number of jobs estimated to be created by the project when

⁹USCIS 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).

¹⁰GAO, *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*, [GAO-15-696](#) (Washington, D.C.: Aug. 12, 2015).

¹¹GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington D.C.: November 1999).

petitioning to participate in the program. Further, we interviewed USCIS, SEC, FBI, and ICE HSI headquarters and field officials to identify efforts taken to identify and address fraud in the program as well as assess and report program outcomes and economic benefits. For the updates, we reviewed documents and interviewed USCIS officials regarding the status of actions taken in response to the recommendations made in our 2015 report. Our August 2015 report provides further details on our scope and methodology. We conducted the work on which this statement is based 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.

USCIS Had Taken
Some Steps to
Assess and Address
Fraud Risks, but
Regular Risk
Assessments and
Additional Controls
Could Improve Fraud
Prevention and
Detection

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

In August 2015, we reported that USCIS had 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 interagency partners and National Security Staff to assess fraud and national security risks in the EB-5 Program.¹² An internal memo discussing this effort also highlighted steps to enhance the program's ability to mitigate fraud such as through improved collaboration with the SEC and the FBI.¹³ Further, later in 2012, USCIS worked with FBI and the Department of Treasury Financial Crimes Enforcement Network, among others, to assess the benefits of incorporating enhanced security screenings to improve its vetting of EB-5 Program petitioners, including the need to provide dedicated fraud personnel to the EB-5 Program, according to FDNS personnel. Most recently, in early 2015, DHS's Office of Intelligence and Analysis prepared a classified report, which updated the program's 2012 assessment of the fraud risks to the EB-5 Program. USCIS officials said that they also identify potential fraud risks in the EB-5 Program through their day-to-day oversight work, and that law enforcement agencies such as HSI, the SEC, and the FBI may also uncover fraud through their own investigative efforts and may share the information with USCIS, as appropriate.

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, as we reported in August 2015, USCIS did 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. However, FDNS officials noted that fraud risks and schemes in the EB-5 Program were constantly evolving, and stated that the office regularly identifies new fraud schemes and that they must work to stay on top of emerging issues. We also reported that the EB-5 program has grown substantially over time—the total number of EB-5 visas issued increased from almost 3,000 in fiscal

¹²On February 10, 2014, the National Security Staff returned to being known as the National Security Council staff by executive order. See Exec. Order No. 13657, 79 Fed. Reg. 8823 (Feb. 10, 2014).

¹³The 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 the Director of National Intelligence; and SEC.

year 2011 to over 9,000 in fiscal year 2014, according to State data, which creates additional opportunities for fraud.

According to the risk assessments and FDNS officials, the EB-5 Program possesses several risks that are generally not present in other types of immigration programs. Specifically, a senior FDNS official noted that, as is the case with other immigration benefits, EB-5 adjudications center on the eligibility of the petitioner or applicant, however, the EB-5 Program also has an investment component that creates increased program complexity and the potential for fraud risks.¹⁴ Fraud risks which USCIS and other agencies have identified for the EB-5 Program included those related to both the investors and regional centers, such as the following.¹⁵

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. As previously discussed, 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 job-creating enterprise, and investors must provide documentation showing that these funds come from a lawful source.¹⁶ USCIS officials said that some petitioners may have strong incentives to report inaccurate information about the sources of their funds on their petitions or use fraudulent documents 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. USCIS and State officials noted that verifying a lawful source of funds was difficult as they did not have authority to access and verify banking information with many foreign countries, and USCIS officials said

¹⁴EB-5 is not the only immigration program with an investment feature. The nonimmigrant treaty investor (E-2) visa category also has an investment component. See 8 U.S.C. § 1101(a)(15)(E); 8 C.F.R. § 214.2(e).

¹⁵Because of the sensitive nature of this information, we do not discuss national security concerns such as threats from terrorism or espionage in this report.

¹⁶See 8 C.F.R. § 204.6(e), (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 Employment-Based Immigrants, 56 Fed. Reg. 60,897, 60,902 (Nov. 29, 1991) (codified at 8 C.F.R. pts. 103, 204).

that therefore IPO and FDNS did not have a means to verify self-reported immigrant financial information stated to come from these foreign banks.

Legitimacy of investment entity. The amount of investment required to participate in the EB-5 Program, coupled with the fact that investors are making an investment in order to obtain an immigration benefit (i.e., green card), can create fraud risks tied to regional center operators and intermediaries. For example, SEC officials noted that immigrant investors may be vulnerable to fraud schemes because they may be primarily focused on obtaining their visas. As of May 2015, FDNS documentation tracking investigations by program stakeholders such as the SEC and HSI showed that over half (35) of the 59 open investigations were primarily focused on securities fraud.¹⁷ Moreover, in January 2016, the SEC's Office of Inspections and Examinations identified the EB-5 Program in its examination priorities for 2016.

Given these identified fraud risks, and the constantly evolving nature of risks to the program, we recommended in our August 2015 report that USCIS plan and conduct regular fraud risk assessments of the EB-5 Program to better position it to identify, address, and mitigate emerging fraud risks to the program. DHS concurred, stating that the EB-5 Branch of USCIS's FDNS would continue to conduct a minimum of one fraud, national security, or intelligence assessment on an aspect of the program annually. In February 2016, USCIS officials stated that they had completed the data collection for their first review, which they estimated completing by September 2016. This review will focus on all identified national security concern cases initiated in the Fraud Detection and National Security Detection System from fiscal years 2011 through 2015.¹⁸ They also provided draft policy documents demonstrating their intention to require a minimum of one fraud assessment annually; however, these documents had not yet been finalized. To fully address the intent of our recommendation, USCIS needs to conduct at least one review, as planned, and document plans for future assessments.

¹⁷The investigations include those performed by law enforcement agencies such as the SEC, the FBI, and ICE. The remaining investigations related to other criminal activities such as moneylaundering as well as national security concerns and immigration fraud.

¹⁸The Fraud Detection and National Security Data System is the case management system USCIS uses to record, track, and manage immigration inquiries, investigative referrals, law enforcement requests, and case determinations involving benefit fraud, criminal activity, public safety, and national security concerns.

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

In August 2015, we reported that USCIS had taken some steps to enhance its fraud risk management efforts. These included establishing a dedicated entity to design and oversee its fraud risk management activities, creating an organizational structure conducive to fraud risk management, conducting fraud-awareness training, and establishing collaborative relationships with external stakeholders, including law enforcement agencies. In November 2013, USCIS established a fraud specialist unit for the EB-5 Program within FDNS. 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, bringing the total FDNS EB-5 Program staff to 21. According to FDNS officials, as of January 2016, the FDNS EB-5 Division included 22 full-time equivalent staff, of which 18 positions were currently occupied. We further reported in August 2015 that in 2013 USCIS also colocated staff who screen and adjudicate EB-5 petitions within IPO and began having FDNS officers and intelligence professionals work alongside EB-5 Program adjudicators to facilitate fraud-related information sharing. FDNS established training opportunities to include specialized fraud training at the Federal Law Enforcement Training Center related to money laundering and an internal “EB-5 University” to provide staff with monthly presentations on specific fraud-related topics believed to be immediately relevant to EB-5 Program adjudication. According to SEC, ICE, FBI, and USCIS officials, USCIS also increased its level of coordination with law enforcement agencies to cross-train staff with additional expertise and increase communication and collaboration on investigations and enforcement actions that can be taken when potential fraud, criminal activity, or national security threats are detected in the EB-5 Program.

However, in our August 2015 report we also reported that USCIS faced significant challenges in its efforts to detect and mitigate fraud risks. Specifically, we found that 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 risk trends across the program. USCIS relies heavily on paper-based documentation. While USCIS personnel 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-924 used to

apply for regional center participation in the EB-5 Program. USCIS officials stated that the agency will be able to collect and maintain more complete data on EB-5 Program petitioners and applicants through the deployment of electronic forms in its new system, the Electronic Immigration System (ELIS). However, USCIS has faced long-standing challenges in implementing ELIS, which, as we reported in May 2015, was nearly 4 years delayed and \$1 billion over budget.¹⁹

As we reported in August 2015, USCIS has taken alternative steps to gather information to mitigate fraud risk while improvements to its information systems are delayed, 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. 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.²⁰ However, USCIS also has the statutory authority to waive the requirement for such interviews.²¹ As of April 2015, USCIS officials stated that USCIS IPO had not conducted an interview at the I-829 stage. We reported that 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. USCIS officials said they anticipate conducting these interviews in the near future, but had not developed plans or a strategy for conducting interviews at this stage primarily because IPO was relatively new and began adjudicating I-829 petitions in September 2014.

In August 2015, we also reported that USCIS does not collect certain applicant information that could help mitigate fraud. Specifically, USCIS does not require information on the Form I-924 about the businesses supported by the regional center and program investments coordinated

¹⁹GAO, *Immigration Benefits System: Better Informed Decision Making Needed on Transformation Program*, [GAO-15-415](#) (Washington, D.C.: May 18, 2015).

²⁰See 8 U.S.C. § 1186b(c)(1)(B) (Immigration and Nationality Act interview requirement), (d)(3) (period for conducting interview); 8 C.F.R. § 216.6(a)(3).

²¹See 8 U.S.C. § 1186b(d)(3) (discretionary waiver authority); 8 C.F.R. § 216.6(b)(1).

by the regional center, such as the names of principals or key officers associated with the underlying businesses, or information on advisers to investors such as foreign brokers, marketers, attorneys, and other advisers receiving fees from investors. According to USCIS officials, at the time of our August 2015 report, USCIS was drafting revised Forms I-924 and I-924A that would seek to address many of these concerns.²² 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. 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, we concluded that collecting additional information would better position USCIS to identify and mitigate potential fraud. We recommended 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, as of February 2016, officials reported that USCIS continues to take steps to develop and implement a strategy to expand information collection that includes revisions to the Form I-924, I-924A, I-526, and I-829 applications and petitions to capture more information. In addition, these officials stated that USCIS had not yet conducted an interview at the I-829 stage, but they were finalizing an interview process and planned to begin conducting interviews in the third quarter of fiscal year 2016.

²²Once 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 Had Increased Capacity for Verifying Job Creation but Did 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

We reported in August 2015 that USCIS had 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 agency's methodologies for verifying such estimates were not rigorous.²³ In particular, 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 indirect job creation for regional center projects, and recommended that USCIS coordinate with other federal agencies to provide expertise in the adjudication process.²⁴ 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 applications for adjudication. For example, in fiscal year 2013, USCIS increased its staffing from 9 adjudicators to 58, including 22 economists, and 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

²³The Department of Homeland Security, Office of Inspector General, *United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program* OIG-14-19 (Washington, D.C.: Dec. 12, 2013); and GAO, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, [GAO-05-256](#) (Washington, D.C.: Apr. 1, 2005).

²⁴OIG-14-19.

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.

Further, as we reported in August 2015, USCIS provided its economists with access to data from the Regional Input-Output Modeling System (RIMS II) economic model in fiscal year 2013 that increased their capacity to verify job creation estimates reported by investors for investments in regional center projects. IPO program managers estimated that as of fiscal year 2015, about 95 percent of EB-5 Program participants used economic models to estimate job creation, with about 90 percent of those investors using RIMS II.²⁵ The RIMS II model is widely used across the public and private sectors and is considered to be among those valid to verify estimates of indirect and induced jobs reported for investments in regional center projects, according to USCIS and Department of Commerce (Commerce) economists, as well as industry and academic experts.²⁶ Indirect jobs include jobs that are not directly created by a regional center business, 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.²⁷

However, we also reported in August 2015 that the 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 that most immigrant investors use to qualify for a lower

²⁵The remaining 10 percent of program applicants use other standard commercially developed input-output models such as Impact Analysis for Planning (IMPLAN), Regional Dynamic Models (REDYN), and Regional Economic Models, Inc. (REM).

²⁶In 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.

²⁷IPO officials stated that in the EB-5 Program regulations, the sum of the indirect and induced jobs from an input-output model is defined as "indirect jobs." Under USCIS policy, indirect jobs are any jobs created by the qualifying investment but not occupied by individuals having an employee-employer relationship with the new commercial enterprise.

investment amount. 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.²⁸ IPO program managers stated that approximately 90 percent of immigrant investors qualify for a reduced investment amount—\$500,000 instead of \$1 million—to participate in the EB-5 Program because they are claiming investment in a commercial enterprise which will create employment in a targeted employment area.²⁹ 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 input-output models that do not have this capacity and program regulation and policy require that the investment capital be made available to the job creating entity which is principally doing business in the targeted employment area.³⁰ 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 Did Not Have a Valid and Reliable Methodology for Reporting Program Outcomes and Economic Benefits

In August 2015, we reported that USCIS's methodology for reporting EB-5 Program outcomes and economic benefits was not valid and reliable because it is based on the minimum program requirements for job creation and investment. 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

²⁸A "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.

²⁹See 8 U.S.C. § 1153(b)(5)(B)(i), (C)(ii); 8 C.F.R. § 204.6(f).

³⁰USCIS'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.

requirement per 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.

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 circumstances.³¹ For example, USCIS officials stated that 90 percent 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 investor, while USCIS counted only the 10-job minimum per investor, a total difference of 6,000 jobs. Additionally, according to DHS's 2013 Immigration Statistics Yearbook, about 32 investors paid \$1 million instead of \$500,000 into the program in fiscal year 2013, a total difference of \$16 million not counted by USCIS.

Conversely, USCIS's methodology may overstate some economic benefits derived from the EB-5 Program. For example, the methodology assumes that all 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 IPO officials and our analysis of EB-5 Program data, there are far fewer 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

³¹The 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](#).

showed that approximately 26 percent of all EB-5 investors who entered the program from its inception 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 2014.³²

As we reported in August 2015, 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 by their investment on the Form I-829. However, USCIS officials said that they reported 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 program benefits. We concluded that 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. We therefore recommended in our August 2015 report 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, as of February 2016, officials anticipated developing a data system that will enable USCIS to track and report data immigrant investors report in fiscal year 2017.

³²Immigrant investors who did not complete program requirements as of the end of fiscal year 2014 fall into an aggregated category made up of investors who were not yet eligible to file Form I-829, did not timely file, or filed their I-829 petitions which were denied or decisions were still pending. 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.

USCIS-Commissioned Study to Assess Overall Program Benefits Addressed Some Past Limitations but not the Costs of the EB-5 Program

We reported in August 2015 that USCIS had commissioned the Economics and Statistics Administration (ESA) of the Department of Commerce (Commerce) to conduct a study of the economic impact of the EB-5 Program. 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 outlined a preliminary methodology and study steps that would address some, but not all, shortcomings of prior studies of the overall EB-5 Program benefits. We reported that ESA officials planned to finalize the study methodology once they completed a review of the program data submitted by IPO, and to issue a final report in November 2015.

However, the study was 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 would be an economic valuation which, unlike an evaluation, considers only the benefits of economic activity, and does not assess the program costs. USCIS officials said the decision was made not to assess the program costs due to associated challenges and because the information may not justify the investment. Our review of the draft methodology, however, showed some potential to include some cost information. Specifically, ESA officials said that after consulting with USCIS officials, they planned to collect information related to the permanent residence of the immigrant investors and their dependents to estimate the value of household spending. IPO officials said that ESA may also collect information that may help to estimate or disclose some of the costs associated with the program. To help provide Congress and other stakeholders with more comprehensive information on the overall economic benefits of the program, we recommended in our August 2015 report that USCIS include a discussion of the types and reasons any relevant program costs were excluded from the Commerce study. DHS concurred and said that USCIS IPO would recommend to Commerce that a description of potential costs not assessed as a part of the study be included when the study is published. In February 2016, USCIS officials stated that the study had not yet been published and estimated it would be completed by May 2016.

Chairman Goodlatte, Ranking Member Conyers, and members of the committee, this completes my prepared statement. I would be happy to respond to any questions you or members of the committee may have.

GAO Contact and Staff Acknowledgments

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