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September 19, 2016

The Honorable Charles E. Grassley  
Chairman  
The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Bob Goodlatte  
Chairman  
The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
House of Representatives

**Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas**

Congress created the Employment-Based Fifth Preference (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.<sup>1</sup> Upon meeting certain EB-5 Immigrant Investor Program (EB-5 Program) requirements—including investing \$1 million (or \$500,000) in a new commercial enterprise that will result in the creation of at least 10 permanent full-time jobs—immigrant investors and their eligible dependents may receive 2-year conditional green cards to live and work in the United States.<sup>2</sup> In order to promote EB-5 investment in geographic areas that struggle to attract development, Congress authorized, and the former U.S. Immigration and

<sup>1</sup>Pub. L. No. 101-649, tit. I, subtit. B, pt. 2, § 121, 104 Stat. 4978, 4989-94 (classified, 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).

<sup>2</sup>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); 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, immigrant investors and their eligible dependents must be admitted to the United States under EB-5 visas, or if already in the United States, have their statuses adjusted in order to obtain conditional permanent residency. 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. See 8 U.S.C. §§ 1153(d), (h), 1186b(a), (f).

Naturalization Service<sup>3</sup> set, the lower investment amount of \$500,000 if the investment is made in a targeted employment area (TEA)—defined as either (1) an area that at the time of investment is either a rural area (rural TEA) or (2) an area that has experienced unemployment of at least 150 percent of the national average rate (high unemployment TEA).<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> Immigrant investors can choose to invest on their own or with others directly in a business, or they may pool their investment with those of other immigrant investors and other foreign and U.S. investors to fund a new commercial enterprise within a regional center. Most recently, the Regional Center Program was extended until September 30, 2016.<sup>7</sup>

Several federal and state agencies are involved to varying degrees in the EB-5 Program. Within the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), the Immigrant Investor Program Office (IPO) administers the EB-5 Program—adjudicating petitions and applications while striving to ensure that program participants, including foreign investors and principals operating U.S. regional centers, comply with requirements of the program. Prospective immigrant investors petitioning to participate in the EB-5 Program submit a Form I-526: Immigrant Petition by Alien Entrepreneur to IPO for adjudication, along with supporting materials including a business plan, information on source of funds, and other documentation.<sup>8</sup> Prospective immigrant investors electing to invest in a high unemployment TEA for a reduced investment threshold of \$500,000, may also include a letter with their Form I-526 certified by the state government's authorized body, or provide alternative evidence, that the geographic or political subdivision in which the commercial enterprise or

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<sup>3</sup>The Homeland Security Act of 2002 (Pub. L. No. 107–296, 116 Stat. 2135) dismantled the former Immigration and Naturalization Service (INS) and distributed its functions across three components within the newly created Department of Homeland Security (DHS). On March 1, 2003, DHS's Bureau of Citizenship and Immigration Services, now known as U.S. Citizenship and Immigration Services (USCIS) officially assumed responsibility for the immigration service functions of the federal government.

<sup>4</sup>See 8 U.S.C. § 1153(b)(5)(B)(ii), (iii); 8 C.F.R. § 204.6(e), (j)(6).

<sup>5</sup>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).

<sup>6</sup>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) (classified, as amended, at 8 U.S.C. § 1153 note). 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 export sales, improved regional productivity, job creation, and increased domestic capital investment. See also 8 C.F.R. § 204.6(m)(3), (6).

<sup>7</sup>See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. F, tit. V, § 575, 129 Stat. 2242, 2526 (2015).

<sup>8</sup>Other petitions and applications adjudicated by USCIS include the Form I-829: Petition by Entrepreneur to Remove Conditions, submitted by immigrant investors to remove the conditional status of green cards for themselves and family members upon completing EB-5 Program requirements; and the Form I-924: Application for Regional Center, submitted by sponsors of prospective regional centers requesting participation in the EB-5 Program.

associated job creating entity is or will be principally doing business, meets a minimum threshold for having an average unemployment rate at least 150 percent of the national rate.<sup>9</sup> USCIS regulations authorize a state government to delegate authority to certify TEAs in a particular state to an agency, board, or other appropriate governmental body of the state. However, such delegation must be reported to USCIS by a state official before the relevant state agency, board, or other appropriate governmental body may designate a TEA and issue TEA certification letters. The state authorized certifying bodies may provide TEA certification based on the unemployment rate for any geographical or political subdivision, such as a single census tract or county where the project is located or, as allowed under the program, the average unemployment rate for a combination of census tracts or block groups<sup>10</sup> that are connected to the project location in a continuous pattern to achieve an average unemployment rate at or above the minimum threshold.

We have previously reported on USCIS's management and oversight of the EB-5 Program.<sup>11</sup> Specifically, in February 2016 and August 2015 we found, among other things, that USCIS's methodology for reporting program outcomes and overall economic benefits was not valid and reliable. We recommended that USCIS track and report data that investors report and that the agency verifies on its program forms for total investments and jobs created through the EB-5 Program. DHS concurred with the recommendation and in August 2016, USCIS anticipated developing a case management system that will enable USCIS to track and report data that immigrant investors report in fiscal year 2017.

You asked us to provide information on projects that prospective immigrant investors (petitioners) included with their Form I-526 petition for participation in the EB-5 Program. This report provides information we gathered and reviewed from unadjudicated Form I-526 petitions as well as associated documents submitted during the fourth quarter of fiscal year 2015 that describe the (1) proportion of petitioners that did or did not elect to invest in a TEA; (2) proportion of petitioners basing a high unemployment TEA on various types of geographic

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<sup>9</sup>See 8 C.F.R. § 204.6(i), (j)(6)(ii)(B). Instead of a state certification letter, the petitioner may provide his or her own evidence that the metropolitan statistical area, the specific county within such area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise or an associated job creating entity is principally doing business, has experienced an average unemployment rate of 150 percent of the national average rate. See id. § 204.6(j)(6)(ii)(A); 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. Department of Homeland Security, United States Citizenship and Immigration Services, *EB-5 Adjudications Policy*, PM-602-0083 (May 30, 2013).

<sup>10</sup>According to the United States Census Bureau, census blocks are statistical areas bounded by visible features, such as streets, roads, streams, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits and are the basis for all tabulated data. Census blocks are numbered uniquely with a four-digit census block number from 0000 to 9999 within census tract, which nest within state and county. The first digit of the census block number identifies the block group. According to USCIS officials, historically, the use of census block groups has been rare, compared to the more common use of census tracts for TEA designations. Census tracts are small, relatively permanent statistical subdivisions of a county or equivalent entity that are updated by local participants prior to each decennial census. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data.

<sup>11</sup>GAO, *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*, [GAO-16-431T](#) (Washington, D.C.: Feb. 11, 2016) and *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*, [GAO-15-696](#) (Washington, D.C.: Aug. 12, 2015).

areas; and (3) EB-5 investment as a proportion of the total investment in petitioners' TEA projects.

As USCIS does not track information on projects that petitioners included with their Form I-526, we selected and reviewed a simple random sample of 200 of the 6,652 Form I-526 petitions submitted by petitioners to participate in the EB-5 Program in the fourth quarter of fiscal year 2015, from an electronic list USCIS provided of all fiscal year 2015 petitions.<sup>12</sup> We focused our review on petitions filed in that timeframe because of the comparatively larger volume of petitions submitted in the fourth quarter (47 percent) and because those petitions had not yet been adjudicated by USCIS at the time of our review, making them still available for our review.<sup>13</sup> Unless otherwise noted, our sample of 200 petitions allowed us to generalize the results of our review to the universe of 6,652 petitions filed in the fourth quarter of fiscal year 2015 with a confidence interval of +/- 7.5 percentage points or less for percentage estimates at the 95 percent confidence level.<sup>14</sup> For estimates of means and medians, the 95 percent confidence interval is within +/- 13 percentage points or less.

To determine the reliability of the list of Form I-526 files USCIS provided for selecting our sample, we compared the date the petitions were filed, the enterprise name, as well as other information such as the file receipt number of each petition in the list to the actual hard copy files in our sample and determined that the list was sufficiently reliable for selecting the sample. The scope of our work did not include assessing the accuracy or reliability of the information provided in our sample of I-526 petitioner files or USCIS's adjudication process.

To estimate the proportion of petitioners in the fourth quarter of fiscal year 2015 that did or did not elect to invest in a TEA, we first reviewed each Form I-526 in our sample of 200 petitioners, which identified whether a petition was based on the full investment amount of \$1 million or a reduced investment amount of \$500,000 in a commercial enterprise or associated job creating entity in a TEA. If the latter, we then determined if the basis of the proposed TEA qualification was for principally doing business in a rural area or high unemployment area by reviewing the file for a TEA letter issued by the state, city, or other designated entity in the state where the proposed project is or will be located. The presence of a TEA letter in the file indicated that the TEA qualification was based on a high unemployment location.<sup>15</sup> For TEA petition files that did not include a TEA letter, we reviewed the project business plan and other supporting materials to confirm that the petitioner either submitted alternative evidence for a high unemployment TEA or elected to invest in a rural TEA.

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<sup>12</sup>A simple random sample is a sampling design in which distinct units are selected from the population such that every possible sample of a given size is equally likely.

<sup>13</sup>For example, petitions filed in the fourth quarter were more likely to be available at USCIS office premises for our review than petitions filed earlier in the fiscal year which were likely to have already been adjudicated and shipped to the Department of State for visa processing, or to an offsite facility for storage. None of the fourth quarter Form I-526 petitions in our sample had been adjudicated as of May 16, 2016, the date we commenced review of the files.

<sup>14</sup>Our sample of Form I-526 files from the fourth quarter may not be representative of Form I-526 files submitted in other quarters. The margin of error exceeds 7.5 percent when examining some subpopulations.

<sup>15</sup>Under EB-5 Program regulations, TEA state certification letters are not explicitly provided for in relation to TEA qualification based on investment in a rural area. 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).

To estimate the proportion of petitioners in the fourth quarter of fiscal year 2015 that based a high unemployment TEA on various types of geographic areas, we reviewed the Form I-526 and the TEA letter, as well as associated appendices for each high unemployment TEA petition included in our sample. We determined the proportion of petitioners that based a TEA on the unemployment rate for a single census area (tract, block group, or county) or on the average unemployment rate for a combination of census areas; and for TEAs based on a combination of census areas, determined the number of census areas comprising the TEA. For all petitioners who elected to invest in high unemployment TEAs, we calculated the unemployment rate for the census tract or tracts in which every petitioner project was physically located (or primarily doing business)<sup>16</sup> using the census-share methodology outlined by the Bureau of Labor Statistics (BLS), data from the Census Bureau's American Community Survey (ACS) 5-year Estimates, as well as data from BLS Local Area Unemployment Statistics (LAUS) that was available on the date of petitioners' investments<sup>17</sup> Percentage estimates for this analysis are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment TEA and have a margin of error of +/- 8.2 percentage points or less at the 95 percent confidence level.

To estimate EB-5 investment as a proportion of the total investment for projects located in TEAs that were included in fourth quarter fiscal year 2015 Form I-526 petitions, we reviewed the business plans included in our sample of Form I-526 petition files. To estimate the percentage of petitioners that elected to invest in different types of TEA projects, we reviewed the Form I-526 and business plan for information on the type of business (e.g., mixed use real estate development).<sup>18</sup> We categorized the business type for projects in our sample using seventeen business type categories developed based on a pilot review of EB-5 petition files as well as on previous related GAO work.<sup>19</sup> However, insufficient information was available to generalize other attributes to this population, including EB-5 investment locations, the number of EB-5 investors by project, and total estimated project costs. While we could not estimate the results for these attributes to the population of fourth quarter fiscal year 2015 petitioners, we were able to present results for all or some of the 114 unique projects included in 198 of our sample 200 petitions that were based in a TEA. Additional details on our scope and methodology are contained in enclosure I.

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<sup>16</sup>We determined the physical location of the projects based on census tract information petitioners provided in their TEA letters, or by looking up the census information using the project address in petitioners' files.

<sup>17</sup>For more information on the census-share methodology, see Department of Labor (DOL), *Memorandum for: State Workforce Agency Administrators and BLS Regional Commissioners*, DOL Local Area Unemployment Statistics (LAUS) Technical Memorandum No. S-10-20. (July 21, 2010). Department of Homeland Security, United States Citizenship and Immigration Services, *EB-5 Adjudications Policy*, PM-602-0083 (May 30, 2013). For projects that were physically located in more than one census tract and for which we had location information, we averaged the unemployment rate of up to four tracts. As the timeframe of petitioners' investments ranged from fiscal year 2013 to fiscal year 2015, to calculate the census tract unemployment rate we used the ACS and LAUS employment data that were available on the date of a petitioner's investment. Depending on the date of a petitioner's investment, we used ACS 5-year employment estimates for calendar years 2008-2012 or 2009-2013 as well as calendar years 2012, 2013, or 2014 annual employment averages from BLS LAUS.

<sup>18</sup>For our purposes we defined mixed use development as a type of development that blends residential and commercial uses.

<sup>19</sup>GAO, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, [GAO-05-256](#) (Washington, D.C.: Apr. 1, 2005).

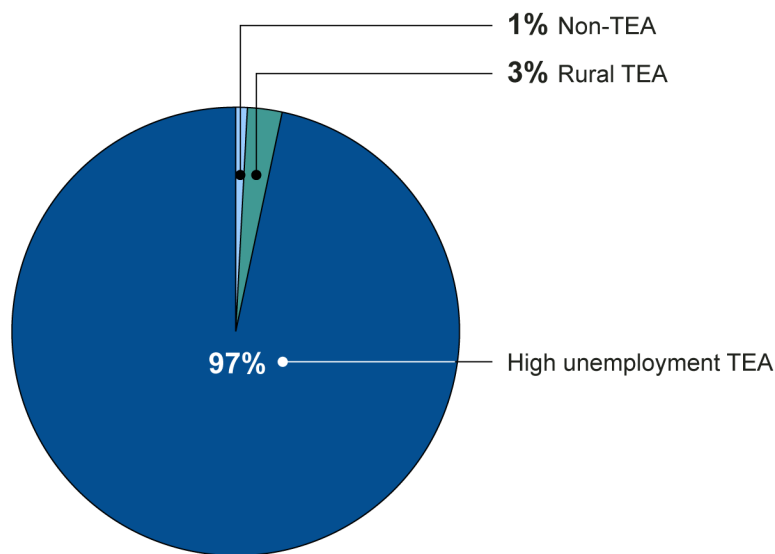
We conducted our work from March 2016 to September 2016 in accordance with all sections of GAO’s Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

In summary, most EB-5 petitioners from the fourth quarter of fiscal year 2015 elected to invest in a TEA, and of these petitioners, most used the average unemployment rate for a combination of census areas to qualify for a high unemployment TEA, as allowed under the program. EB-5 investment in projects located in TEAs was generally less than non-EB-5 investment by other foreign or U.S. investors to the total estimated project cost, with most petitioners investing or planning to invest in various types of real estate projects.

### Most EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 Elected to Invest in a TEA

We estimate from our review of Form I-526 petition files from the fourth quarter of fiscal year 2015, that almost all (99 percent) of the 6,652 EB-5 petitioners who filed a Form I-526 petition in the fourth quarter of fiscal year 2015 elected to invest in a project located in a TEA to qualify for the reduced investment threshold of \$500,000. The remaining 1 percent of petitioners elected to invest at least \$1 million in a project that was not located in a TEA (See fig. 1).

**Figure 1: Estimated Percentage of EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 Electing to Invest in a Targeted Employment Area (TEA)**



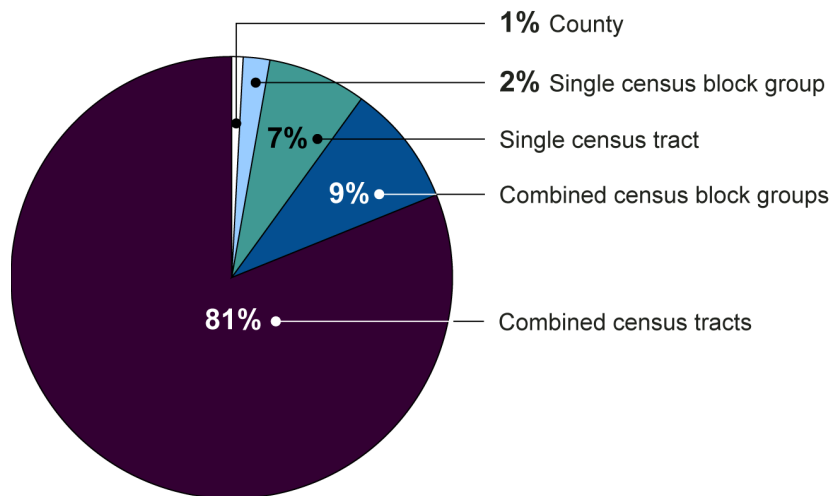
Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

Note: Percentage estimates are generalizable to the population of 6,652 petitioners requesting to participate in the EB-5 Program in the fourth quarter of fiscal year 2015, and have a margin of error of +/- 7.5 percentage points or less at the 95 percent confidence level. Percentages do not sum to 100 due to rounding. An estimated 96.5 percent of EB-5 petitioners in the fourth quarter of fiscal year 2015 elected to invest in a high unemployment TEA, 2.5 percent elected to invest in a rural TEA, and 1 percent elected not to invest in a TEA.

## Most EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 Based a High Unemployment TEA on a Combination of Census Areas

We also estimate from our review of Form I-526 files from the fourth quarter of fiscal year 2015 that nearly all (90 percent) petitioners electing to invest in a high unemployment TEA, based the TEA on the average unemployment rate for a combination of census areas as allowed under the program (see fig. 2). The remaining petitioners (10 percent) based the TEA on the unemployment rate of a single census tract, census block group, or county.

**Figure 2: Extent EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 Based a High Unemployment Targeted Employment Area (TEA) on a Single Census Area or a Combination of Census Areas**



Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

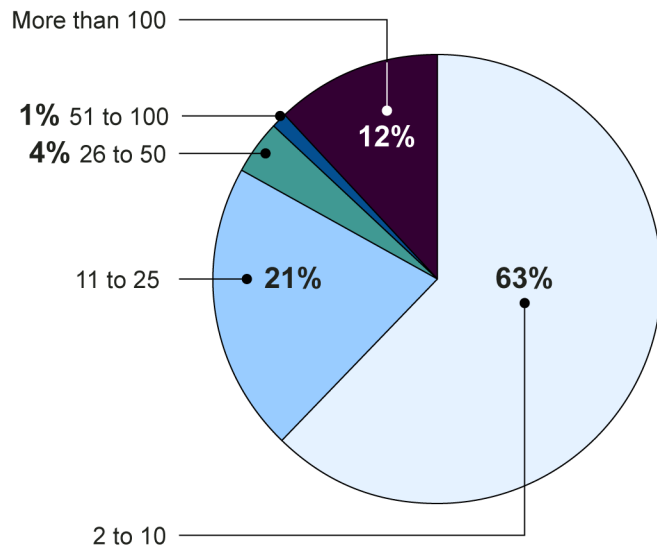
Note: Percentage estimates are generalizable to the population of EB-5 Program petitioners from the fourth quarter fiscal year 2015 electing to invest in a high unemployment TEA and have a margin of error of +/- 7.5 percentage points or less at the 95 percent confidence level.

We further estimate that of the 90 percent of petitioners from the fourth quarter of fiscal year 2015 who based a high unemployment TEA on the average unemployment rate of a combination of census areas, most combined 2 to 10 census areas (tracts or block groups), as shown in figure 3. Specifically, we estimated that 63 percent of petitioners combined 2 to 10 census areas, 26 percent combined 11 to 100 census areas, and the remaining 12 percent combined more than 100 census areas, as allowed under the program (percentages do not sum to 100 due to rounding).<sup>20</sup>

<sup>20</sup>Eighteen petitioners in our sample invested in projects that were physically located in more than one census area and used those census areas and others to create a combined TEA. For example, a railway project based a TEA on more than 100 census tracts and was physically located in many of those tracts.



**Figure 3: Estimated Percentage of EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 That Elected to Invest in High Unemployment Targeted Employment Areas (TEA) Using Combined Census Areas by Number of Census Areas**



Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

Note: Percentage estimates are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment TEA using combined census areas and have a margin of error of +/- 7.5 percentage points or less at the 95 percent confidence level. Percentages do not sum to 100 due to rounding. Of EB-5 petitioners who elected to invest in a high unemployment TEA using combined census areas, 63.2 percent used 2 to 10 census areas, 20.7 percent used 11 to 25 census areas, 4 percent used 26 to 50 census areas, .6 percent used 51 to 100 census areas, and 11.5 percent used more than 100 census areas.

Our review of unemployment rates for the physical census tract locations of petitioner projects included in high unemployment TEAs showed that petitioners from the fourth quarter of fiscal year 2015 most commonly (an estimated 41 percent) invested in projects physically located in census tracts having an unemployment rate in the range of greater than 4 percent to 6 percent at the time of investment.<sup>21</sup> We estimate that about 36 percent of the petitioners from the fourth quarter of fiscal year 2015 invested in projects located in census tracts with an unemployment rate below this range, and 24 percent of petitioners invested in projects located in census tracts with an unemployment rate above this range.<sup>22</sup> (See table 1 showing estimated unemployment rates for EB-5 petitioner project locations included in our sample.)

<sup>21</sup>Petitioners electing to invest in a high unemployment TEA are not limited to using the unemployment rate for the project location to qualify for the reduced investment threshold, and generally use the unemployment rate for the overall TEA as allowed under the EB-5 program. We included this analysis on the unemployment rate for project locations in high unemployment TEAs at the time petitioners submitted their respective Form I-526s for context and perspective.

<sup>22</sup>These estimates for the percentages of petitioners investing in projects located in census tracts with unemployment rates in ranges above and below greater than 4 percent to 6 percent have a margin of error within +/- 8.5 percentage points at the 95 percent confidence level.



**Table 1: Estimated Percentage of EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 That Elected to Invest in a High Unemployment Targeted Employment Area (TEA), by Unemployment Rate of Census Tract(s) Where Project Is Physically Located**

<b>Unemployment Rate (Percent)</b>	<b>Petitioners (Percent)</b>
0 to 2	7
>2 to 4	29
>4 to 6	41
>6 to 8	12
>8 to 10	3
>10 to 12	3
>12	6

Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

Note: For projects physically located in more than one census tract and for which we had project location information, we averaged the unemployment rate of up to four tracts. Percentage estimates are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment TEA and have a margin of error of +/- 8.2 percentage points or less at the 95 percent confidence level.

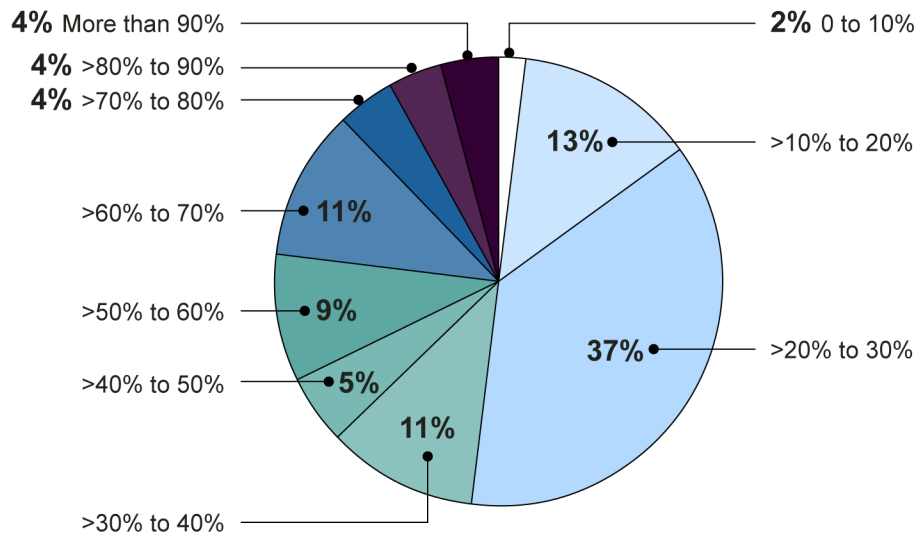
**Proportion of EB-5 Investment in Projects Submitted by Petitioners for TEAs in the Fourth Quarter of Fiscal Year 2015 Was Smaller Than Proportion of Non-EB-5 Investment**

Our review of information from EB-5 petitioner business plans from the fourth quarter of fiscal year 2015 showed that EB-5 investment by one or more immigrant investors who have invested or plan to invest in projects located in a TEA was generally less than non-EB-5 investment by other foreign or U.S. investors to the total estimated project cost. Specifically, we estimate that the median percentage of total potential EB-5 investment in petitioner projects from the fourth quarter of fiscal year 2015 is 29 percent of the total estimated project cost, and the estimated mean percentage is 40 percent.<sup>23</sup> (See fig. 4 for the estimated percentage of petitioners by reported percentage of EB-5 investment in total project cost.) For projects in our sample, examples of sources of non-EB-5 capital included developer equity, bank loans, land contributions, tax credits, cash from operations, and government loans and grants. (See enc. II for the number of EB-5 projects and petitioners by location, estimated number of EB-5 investors, and the total estimated planned project costs for all or some projects in our sample located in a TEA.)<sup>24</sup>

<sup>23</sup>These estimates of means and medians have a relative margin of error within +/- 13 percentage points at the 95 percent confidence level.

<sup>24</sup>Potential investment amount reflects estimates in the business plan for the amount of funding for the project that will potentially be provided by EB-5 investors if the developer is able to attract the number of EB-5 investors required to raise that amount.

**Figure 4: Estimated Percentage of EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 Electing to Invest in Targeted Employment Areas (TEA) by Reported Percentage of EB-5 Investment in Total Project Cost**

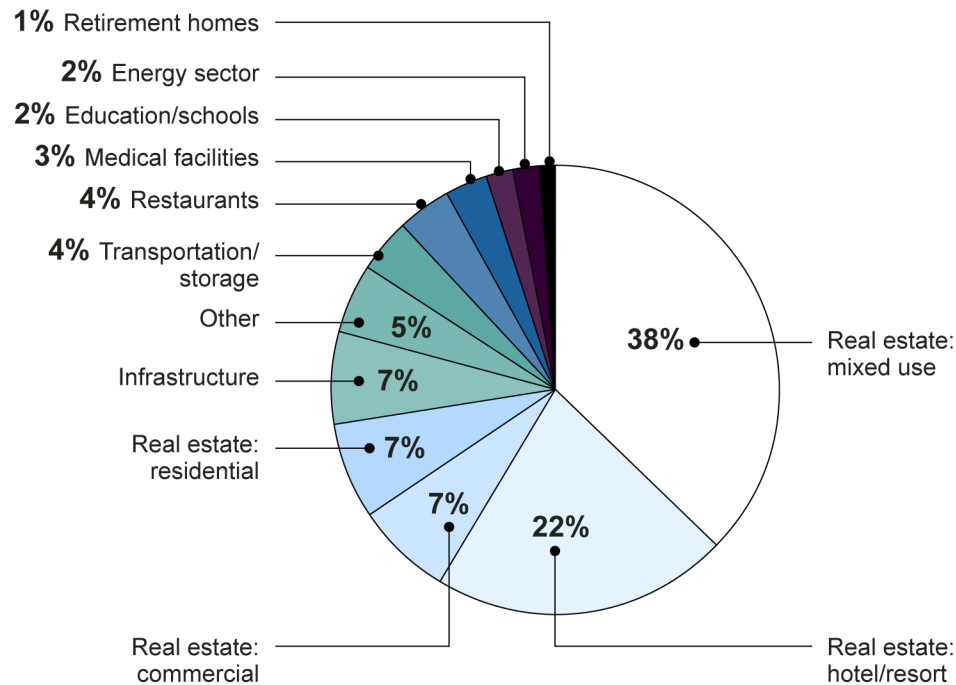


Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

Note: Percentage estimates are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment or rural TEA and have a margin of error of +/- 7.5 percentage points or less at the 95 percent confidence level.

We also estimate, based on our sample file review that nearly three-fourths of petitioners from the fourth quarter of fiscal year 2015 who elected to invest in a TEA invested or planned to invest in various types of real estate projects. Specifically, an estimated 74 percent of petitioners from the fourth quarter of fiscal year 2015 invested or planned to invest in projects including mixed use, hotels and resorts, commercial, and residential developments; while the remaining 28 percent invested or planned to invest in infrastructure projects, such as railways and highways, or transportation, restaurants, medical, and education facilities as shown in figure 5 (percentages do not sum to 100 due to rounding).

**Figure 5: Estimated Percentage of EB-5 Petitioners from the Fourth Quarter of Fiscal Year 2015 That Elected to Invest in Targeted Employment Areas (TEA) by Type of Investment Project**



Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

Note: None of the petitioners in our sample invested in projects in 5 of our 17 categories: “Technology,” “Farms,” “Manufacturing,” “Domestic Sales,” or “Import Export”; however, it is still possible that these types of projects exist among the population of petitions. Percentages do not sum to 100 due to rounding. Percentage estimates are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment TEA and have a margin of error of +/- 7.5 percentage points or less at the 95 percent confidence level.

## Agency Comments

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We provided a draft of this report for review and comment to the Secretary of Homeland Security. DHS provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Homeland Security, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have questions concerning this report, please contact me at 202-512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report were Cindy Ayers (Assistant Director); David Alexander; John Mingus; Krista Mantsch; Jon Najmi; Anna Maria Ortiz; and Edith Sohna (Analyst-in-Charge).



Rebecca Gambler  
Director, Homeland Security and Justice  
Enclosure(s) – 2

## Enclosure I: Objectives, Scope, and Methodology

This report provides information on projects that prospective immigrant investors (petitioners) included with their Form I-526 petition for participation in the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program). Specifically, this report provides information we gathered and reviewed from petitioners' Form I-526 as well as associated documents submitted during the fourth quarter of fiscal year 2015 that describe the (1) proportion of petitioners that did or did not elect to invest in a Targeted Employment Area (TEA); (2) proportion of petitioners basing a high unemployment TEA on various types of geographic areas; and (3) EB-5 investment as a proportion of the total investment in petitioners' TEA projects.

To address all three objectives we selected and reviewed a simple random sample of 200 of the 6,652 Form I-526 petitions submitted by petitioners of the EB-5 Program in the fourth quarter of fiscal year 2015 from an electronic list the U.S. Citizenship and Immigration Services (USCIS) provided of all fiscal year 2015 petitions. We focused our review on petitions filed in that timeframe because of the comparatively larger volume of petitions submitted in the fourth quarter—about 47 percent of the total filed in fiscal year 2015—and because those petitions had not yet been adjudicated by USCIS at the time of our review, making them still available for our review.<sup>1</sup> Unless otherwise noted, our sample of 200 petitions allowed us to generalize the results of our review to the universe of 6,652 petitions filed in the fourth quarter of fiscal year 2015 with a confidence interval of +/- 7.5 percentage points or less for percentage estimates at the 95 percent confidence level.<sup>2</sup> For estimates of means and medians, the 95 percent confidence interval is within +/- 13 percentage points or less.

To determine the reliability of the list of Form I-526 files that USCIS provided to us for selecting our sample, we compared the date the petitions were filed, the enterprise name, as well as other information such as the file receipt number of each petition in the list to the actual hard copy files in our sample and determined that the list was sufficiently reliable for selecting the sample. The scope of our work did not include assessing the accuracy or reliability of the information provided in our sample of I-526 petitioner files or USCIS's adjudication process. For example, we did not contact states to ensure that the TEA certification letters included in the files were valid, or assess whether the unemployment rates provided in the files matched the unemployment rates in the Census Bureau's American Community Survey (ACS) or Bureau of Labor Statistics Local Area Unemployment Statistics (BLS LAUS) data sets at the time of filing.<sup>3</sup> We used a two-stage process to review the sample of 200 Form I-526 petitions. First, an analyst reviewed and completed a standardized and pretested data collection instrument (DCI) for each petition. Next, a second analyst reviewed the completed DCI and the associated petition for accuracy of each coded item, and made any necessary corrections. All DCI data were double

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<sup>1</sup>For example, petitions filed in the fourth quarter were more likely to be available at USCIS office premises for our review than petitions filed earlier in the fiscal year which were likely to have already been adjudicated and shipped to the Department of State for visa processing, or to an offsite facility for storage. None of the fourth quarter Form I-526 petitions in our sample had been adjudicated as of May 16, 2016, the date we commenced review of the files.

<sup>2</sup>Our sample of Form I-526 files from the fourth quarter may not be representative of Form I-526 files submitted in other quarters. The margin of error exceeds 7.5 percent when examining some subpopulations.

<sup>3</sup>Administered by the U.S. Census Bureau, the American Community Survey (ACS) is an ongoing survey that provides annual information, such as on employment, housing, and educational attainment that helps determine how federal and state funds are distributed each year. The Local Area Unemployment Statistics (LAUS) program produces monthly and annual employment, unemployment, and labor force data for census regions and divisions, states, counties, metropolitan areas, and many cities, by place of residence.

key-entered into an electronic file in batches (that is, the entries were 100 percent verified), and all data in the electronic file were verified again for completeness and accuracy.

To estimate the proportion of petitioners in the fourth quarter of fiscal year 2015 that did or did not elect to invest in a TEA, we first reviewed each Form I-526 in our sample of 200 petitioners, which identified whether a petition was based on the full investment amount of \$1 million or a reduced investment amount of \$500,000 in a commercial enterprise or associated job creating entity in a TEA. If the latter, we then determined if the basis of the proposed TEA qualification was for principally doing business in a rural area or high unemployment area by reviewing the file for a TEA letter issued by the state, city, or other designated entity in the state where the proposed project is or will be located. The presence of a TEA letter in the file indicated that the TEA qualification was based on a high unemployment location.<sup>4</sup> For TEA petition files that did not include a TEA letter, we reviewed the project business plan and other supporting materials to confirm that the petitioner either submitted alternative evidence for a high unemployment TEA or elected to invest in a rural TEA.

To estimate the proportion of petitioners in the fourth quarter of fiscal year 2015 that based a high unemployment TEA on various types of geographic areas, we reviewed the Form I-526 and the TEA letter, as well as associated appendices (for example, letters from the designated entity responsible for determining the employment rates for the jurisdiction where the project is located) for each high unemployment TEA petition included in our sample. We determined the proportion of petitioners that based a TEA on the unemployment rate for a single census area (tract, block group, or county) or on the average unemployment rate for a combination of census areas; and for TEAs based on combined census areas, determined the number of census areas comprising the TEA. For all petitioners who elected to invest in high unemployment TEAs, we calculated the unemployment rate for the census tract or tracts in which every petitioner project was physically located (or primarily doing business)<sup>5</sup> using the census-share methodology outlined by the Bureau of Labor Statistics (BLS) and data from the Census Bureau's American Community Survey (ACS) 5-year Estimates as well as data from BLS Local Area Unemployment Statistics (LAUS) that was available on the date of petitioners' investments.<sup>6</sup> Percentage estimates for this analysis are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment

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<sup>4</sup>Under EB-5 Program regulations, TEA state certification letters are not explicitly provided for in relation to TEA qualification based on investment in a rural area. 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).

<sup>5</sup>We determined the physical location of the projects based on census tract information petitioners provided in their TEA letters, or by looking up the census information using the project address in petitioners' files.

<sup>6</sup>For more information on the census-share methodology, see Department of Labor (DOL), *Memorandum for: State Workforce Agency Administrators and BLS Regional Commissioners*, DOL Local Area Unemployment Statistics (LAUS) Technical Memorandum No. S-10-20. (July 21, 2010). Department of Homeland Security, United States Citizenship and Immigration Services, *EB-5 Adjudications Policy*, PM-602-0083 (May 30, 2013). For projects that were physically located in more than one census tract and for which we had location information, we averaged the unemployment rate of up to four tracts. As the timeframe of petitioners' investments ranged from fiscal year 2013 to fiscal year 2015, to calculate the census tract unemployment rate we used the ACS and LAUS employment data that were available on the date of a petitioner's investment. Depending on the date of a petitioner's investment, we used ACS 5-year employment estimates for calendar years 2008-2012 or 2009-2013 as well as calendar years 2012, 2013, or 2014 annual employment averages from BLS LAUS.

TEA and have a margin of error of +/- 8.2 percentage points or less at the 95 percent confidence level. While petitioners electing to invest in high unemployment TEAs are not limited to using the unemployment rate of the project location to qualify for the reduced investment threshold, we included this analysis to provide context and perspective. We used this methodology and these data sources because they are cited in EB-5 policy as the acceptable data sources for calculating unemployment. To assess the reliability of the ACS and BLS datasets, we reviewed the agencies' online documentation of the methodology used to determine unemployment rates for census areas and reliability assessments conducted for these datasets. We determined based on the steps taken that the data were sufficiently reliable for deriving the unemployment rate of each census area.

To estimate EB-5 investment as a proportion of the total investment for projects located in TEAs that were included in fourth quarter fiscal year 2015 Form I-526 petitions, we reviewed the business plans included in the Form I-526 petition files. Sufficient information was available in our sample files to estimate the EB-5 investment as a proportion of the total investment for all petitioner projects in the fourth quarter of fiscal year 2015.

To estimate the percentage of petitioners that elected to invest in different types of TEA projects, we reviewed the Form I-526 and business plan for information on the type of business (e.g., mixed use real estate development).<sup>7</sup> We categorized the business type for projects in our sample using seventeen business type categories developed based on a pilot review of EB-5 petition files as well as on previous related GAO work.<sup>8</sup> However, insufficient information was available to generalize other attributes to this population, including EB-5 investment locations, the number of EB-5 investors by project, and total estimated project costs. While we could not estimate the results for these attributes to the population of fourth quarter fiscal year 2015 petitioners, we were able to present results for all or some of the 114 unique projects included in 198 of our sample 200 petitions that were based in a rural TEA or high unemployment TEA.

We conducted our work from March 2016 to September 2016 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

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<sup>7</sup>For our purposes we define mixed use development as a type of development that blends residential and commercial uses.

<sup>8</sup>GAO, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, [GAO-05-256](#) (Washington, D.C.: Apr. 1, 2005).





## Enclosure II: Characteristics of Sample Projects

This enclosure describes various characteristics of all or some of the 114 unique projects from 198 of the 200 Form I-526 petition files in our sample where immigrant investors elected to use high unemployment (109 projects) or rural (5 projects) Targeted Employment Areas (TEAs) to request participation in the Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) in the fourth quarter of fiscal year 2015.<sup>1</sup> These characteristics for TEA projects include the number of EB-5 projects and petitioners by location, estimated number of EB-5 investors, and the total estimated planned project costs. We did not have the information necessary to select a random sample of projects that would allow us to generalize results to all projects in which petitioners in the fourth quarter of fiscal year 2015 invested.<sup>2</sup> Therefore, our results are limited to describing characteristics of all or some of these 114 unique projects.

### Sample EB-5 Projects and Petitioners by Location

The 114 unique TEA projects we reviewed were located in 20 states, the District of Columbia, and the Northern Mariana Islands with most petitioners investing in projects located in three states: New York, California and Florida (see table 1). Petitioner files for 108 of the 109 unique projects in high unemployment TEAs included information on city location, with petitioners investing in projects located in a total of 65 cities, including a high of 20 projects in New York City,<sup>3</sup> between three and six projects in Dallas, TX; Houston, TX; Los Angeles, CA; San Francisco, CA; Miami, FL; and Seattle, WA; and two or fewer projects in each of 58 other cities and towns such as Akron, OH; Sicklerville, NJ; and Kernersville, NC.<sup>4</sup> Petitioners for the five projects in a rural TEA invested or planned to invest in projects located in North Dakota, Mississippi, Utah, Wisconsin, and the Northern Mariana Islands.

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<sup>1</sup>Of the 198 petitioners electing to invest in a high unemployment or rural TEA from our sample of 200 EB-5 I-526 files, 111 petitioners invested in the same project as one or more other petitioners in our sample.

<sup>2</sup>Because USCIS does not maintain an electronic list of projects contained in the I-526 petitions, we based our random sample on the available list of petitions.

<sup>3</sup>New York City includes projects in the boroughs of Manhattan, Staten Island, and Brooklyn.

<sup>4</sup>Petitioners did not include information on city location for 1 of the 109 projects in high unemployment TEAs. This project was an infrastructure project that spanned more than one city.

**Table 1: Number of EB-5 Projects and Petitioners in Targeted Employment Areas (TEAs) by Project Location for GAO Sample Selected from the Fourth Quarter of Fiscal Year 2015**

State	Projects	Petitioners
New York	29	43
California	23	54
Florida	17	25
Texas	10	14
Washington	9	16
Pennsylvania	4	8
New Jersey	3	4
Ohio	3	3
Georgia	2	2
North Carolina	2	6
Illinois	1	1
Massachusetts	1	6
Minnesota	1	1
Mississippi	1	1
Nevada	1	2
North Dakota	1	1
Northern Mariana Islands	1	1
South Carolina	1	1
Utah	1	1
Vermont	1	1
Washington, D.C.	1	6
Wisconsin	1	1
<b>Total</b>	<b>114</b>	<b>198</b>

Source: GAO analysis of Employment-Based Fifth Preference Immigrant Investor Program (EB-5 Program) petition files. | GAO-16-749R

### Sample Project Investors and Project Costs

We found substantial variation in the reported count of potential EB-5 investors across projects in our sample for the 198 petitioners who elected to invest in TEAs.<sup>5</sup> Petitioners for five projects in our sample reported 500 or more potential EB-5 investors on the project, including a commercial real estate project in New York (1,300 potential EB-5 investors), two mixed use real estate development projects in California (900 and 600 potential investors, respectively), a railway project in Florida (600 potential investors), and a hotel project in New York (500 potential investors). Nine petitioners in our sample reported that the project they invested or planned to invest in would have fewer than ten potential EB-5 investors. For example, one petitioner in our sample invested in a chain restaurant in Ohio that reported four potential EB-5 investors.

<sup>5</sup>We did not calculate estimates for the population of petitions because information on the number of EB-5 investors per project was not always consistent across petitions for the same project. Examples in this paragraph include only projects for which reported information on the count of potential EB-5 investors was consistent across the petitions that fell into our sample.

The total reported project costs in the business plans included in the petition files we reviewed for the 198 petitioners who elected to invest in a TEA ranged from \$500,000 to \$12 billion.<sup>6</sup> Among the projects with the largest reported costs in business plans in our sample were an energy sector project in North Dakota with a total reported cost of \$12 billion (4 percent EB-5 funded), a commercial real estate development project in New York with a total reported cost of \$5.9 billion (11 percent EB-5 funded) and a hotel renovation and expansion project in California with a total reported cost of \$1.8 billion (25 percent EB-5 funded). The three projects with the lowest costs reported in business plans in our sample were a pizzeria in Texas with a total reported cost of \$500,000 (100 percent EB-5 funded), an urgent care medical facility in California with a total reported cost of \$1.1 million (91 percent EB-5 funded), and a restaurant in South Carolina with a total reported cost of \$1.2 million (83 percent EB-5 funded).

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<sup>6</sup>Information on the potential cost of projects was not always consistent across petitions in our sample when multiple petitioners were investing in the same project, and may change as the nature of the project evolves over time. Examples in this paragraph include only projects for which reported information on the total project cost was consistent across the multiple petitions for a project that fell into our sample.

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