



Testimony

Before the Committee on the Judiciary,  
House of Representatives

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# IMMIGRANT INVESTOR PROGRAM

## Proposed Project Investments in Targeted Employment Areas

Statement of Rebecca Gambler, Director, Homeland  
Security and Justice Issues

Accessible Version

# GAO Highlights

Highlights of [GAO-17-487T](#), a testimony before the Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

About 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. Prospective program participants submit petitions to the Department of Homeland Security's U.S. Citizenship and Immigration Services for adjudication, along with supporting materials. This statement provides information regarding the proportion of petitioners who did or did not elect to invest in a rural or high unemployment TEA; the proportion of petitioners basing a TEA on the unemployment rate for various types of geographic areas; and the types of petitioners' TEA projects and EB-5 investment as a proportion of total project investment.

This statement is based on a GAO report issued in September 2016. For that report, GAO selected and reviewed a random sample of I-526 EB-5 petitions submitted in the fourth quarter of fiscal year 2015. The sample of 200 petitions allowed GAO to generalize the results 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. For estimates of means and medians, the 95 percent confidence interval is within +/- 13 percentage points or less. GAO's sample of petitions from the fourth quarter may not be representative of petitions submitted in other quarters.

## What GAO Recommends

GAO is not making any recommendations.

View [GAO-17-487T](#). For more information, contact Rebecca Gambler, 202-512-8777, [Gambler@gao.gov](mailto:Gambler@gao.gov)

March 8, 2017

## IMMIGRANT INVESTOR PROGRAM

### Proposed Project Investments in Targeted Employment Areas

## What GAO Found

Congress created the Employment-Based Fifth Preference (EB-5) immigrant visa category to promote job creation and encourage capital investment in the United States by foreign investors. EB-5 Immigrant Investor Program (EB-5 Program) requirements include investing \$1 million in a new business that will result in the creation of at least 10 full-time positions for qualifying employees, or a reduced amount of \$500,000 if the investment is made in a targeted employment area (TEA)—defined as an area that is rural or has an unemployment rate at least 150 percent of the national average. GAO estimated from its September 2016 review of a generalizable random sample of unadjudicated I-526 (Immigrant Petition by Alien Entrepreneur) petitions that about 99 percent of the 6,652 EB-5 petitioners who filed a petition in the fourth quarter of fiscal year 2015 elected to invest in a project located in a TEA. The remaining one percent of petitioners elected to invest in a project that was not located in a TEA.

In September 2016, GAO also estimated that about 90 percent of petitioners from the fourth quarter of fiscal year 2015 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. The remaining petitioners (10 percent) based the TEA on the unemployment rate of a single census tract, census block group, or county. 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, GAO estimated that 63 percent combined 2 to 10 census areas, 26 percent combined 11 to 100 census areas, and 12 percent combined more than 100 census areas.

For petitioners from the fourth quarter of fiscal year 2015 who elected to invest in a TEA, GAO estimated in September 2016 that about 74 percent invested or planned to invest in various types of real estate projects including mixed use, hotels and resorts, commercial, and residential developments; while the remaining petitioners invested or planned to invest in projects such as infrastructure projects or transportation, restaurants, medical, and education facility projects. Further, EB-5 investment in projects located in a TEA was generally less than non-EB-5 investment by other foreign or U.S. investors. GAO estimated that the median percentage of total potential EB-5 investment was 29 percent of the total estimated project cost, and the estimated mean percentage was 40 percent.

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

I am pleased to be here today to discuss our past work reviewing proposed project investments in Targeted Employment Areas (TEA) by foreign investors seeking admission to the United States under the Employment-Based Fifth Preference (EB-5) immigrant investor classification established by the Immigration Act of 1990, and administered by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS).<sup>1</sup> Under the EB-5 category, approximately 10,000 immigrant visas are made available each fiscal year to foreign nationals and their eligible dependents providing them a path to citizenship if the requisite investment is made in a new commercial enterprise that will result in the creation of at least 10 full time positions for qualifying employees, among other requirements.<sup>2</sup> Once accepted into the EB-5 Immigrant Investor program (EB-5 Program), immigrant investors and their eligible dependents may apply for, and receive, 2-year conditional green cards to live and work in the United States, and may subsequently apply to remove the conditional basis of their green cards upon successful completion of the program.<sup>3</sup>

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<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. §§ 1151(d) (worldwide level for employment-based immigrants), 1153(b)(5)(A) (general EB-5 requirements; 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), (C) (amount of capital required), (D) (full-time employment defined); 8 C.F.R. § 204.6 (Petitions for employment creation aliens). The term "foreign national" refers to an alien, defined as any person not a U.S. citizen or national. See 8 U.S.C. § 1101(a)(3). 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).

<sup>3</sup>After initial EB-5 Program requirements are met, immigrant investors and their eligible dependents abroad 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), 1186b(a)(1) (alien entrepreneur receives conditional lawful permanent resident status), (c) (requirements of timely petition and interview for removal of condition), (d) (details of petition and interview), 1201 (issuance of visas), 1255(a) (adjustment of status); 8 C.F.R. §§ 204.6, 216.6. A person may be eligible for naturalization after residing continuously in the United States as a lawful permanent resident for at least five years (three years for a U.S. citizen's spouse), and meeting other requirements. See 8 U.S.C. § 1427.

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A \$1 million investment is generally required to participate in the EB-5 program; however, in order to promote investment in geographic areas that struggle to attract development, Congress authorized, and the former U.S. Immigration and Naturalization Service<sup>4</sup> set, a lower investment amount of \$500,000 if the investment is made in a TEA defined as (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>5</sup> Immigrant investors can choose to invest on their own or with others directly in a business, or more commonly, 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—which is an economic unit, public or private, involved in the promotion of economic growth.<sup>6</sup> Prospective immigrant investors electing to invest in a high unemployment TEA may include a letter certified by the state government’s authorized body, or

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

<sup>6</sup>Under the Regional Center Program, which was first enacted as a pilot in 1992, and extended through the present day, a certain number of EB-5 visas are set aside annually for immigrant investors in regional centers. 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). The Regional Center Program was last extended in December 2016. See EB-5 Immigrant Investor Program Modernization, Notice of Proposed Rulemaking, 82 Fed. Reg. 4738, 4742 (Jan. 13, 2017) (citing Further Continuing Appropriations Act, 2017, Pub. L. No. 114-254, div. A, 130 Stat. 1005, 1005-22 (2016)). 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).

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provide alternative evidence, that the proposed project is located in a high unemployment TEA.<sup>7</sup>

In September 2016, we reported information about projects that immigrant investors included with their petitions to participate in the EB-5 Program submitted to USCIS during the fourth quarter of fiscal year 2015.<sup>8</sup> This statement summarizes the information in that report, including the proportion of petitioners who did or did not elect to invest in a rural or high unemployment TEA; the proportion of petitioners basing a TEA on the unemployment rate for various types of geographic areas; and the types of petitioners' TEA projects and EB-5 investment as a proportion of a project's total investment.

This information from our prior work was obtained by selecting and reviewing a simple random sample of 200 of the 6,652 petitions submitted by petitioners to participate in the EB-5 program in the fourth quarter of fiscal year 2015, and associated documents.<sup>9</sup> The sample of 200 petitions allowed us to generalize the results 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. For estimates of means and medians, the 95 percent confidence interval was within +/- 13 percentage points or less. GAO's sample of petitions from the fourth quarter may not be representative of petitions submitted in other quarters. In reporting on unemployment rates, we used the census-share methodology outlined by the Bureau of Labor Statistics (BLS), data from the Census Bureau's American Community

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<sup>7</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>8</sup>GAO, *Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas*, [GAO-16-749R](#) (Washington, D.C.: Sept. 19, 2016). We provide information on projects that prospective immigrant investors (petitioners) included with their Form I-526: Immigrant Petition by Alien Entrepreneur.

<sup>9</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.

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Survey (ACS) 5-year estimates, as well as data from BLS Local Area Unemployment Statistics (LAUS) that were available on the date of the petitioners' investments.<sup>10</sup> Additional details on our scope and methodology are contained in our September 2016 report.<sup>11</sup> The work upon which this statement is based was conducted 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 to 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 brief, we reported in September 2016 that most EB-5 Program petitioners from the fourth quarter of fiscal year 2015 elected to invest in a TEA, and of these petitioners, most qualified for a high unemployment TEA by using the average unemployment rate for a combination of census areas, as allowed under the program. Most petitioners were investing or planning to invest in various types of real estate projects, and the proportion of EB-5 investment to the total estimated project cost was generally less than by other foreign or U.S. investors. Details from our review of fourth quarter fiscal year 2015 petitions that USCIS had not yet adjudicated for EB-5 program participation were as follows:

- **Proportion and type of TEA investment.** We estimated that almost all petitioners, 99 percent, elected to invest in a TEA qualifying for a lower investment threshold of \$500,000—about 97 percent elected to invest in a high unemployment TEA and about 3 percent elected to invest in a rural TEA (these percentages do not add to 99 due to

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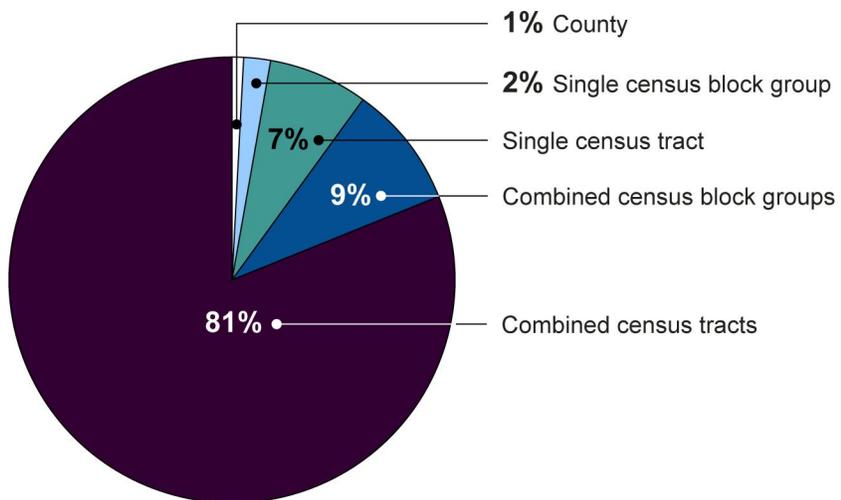
<sup>10</sup>For more information on the census-share methodology, see Department of Labor (DOL), *Memorandum for: State Workforce Agency Administrators and BLS Regional Commissioners*, DOL Local Area Unemployment Statistics (LAUS) Technical Memorandum No. S-10-20. (July 21, 2010). Department of Homeland 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>11</sup>[GAO-16-749R](#).

rounding.) The remaining 1 percent of petitioners elected to invest at least \$1 million in a project that was not located in a TEA.

- **High unemployment TEA qualification using combined census areas.** We estimated that nearly all petitioners—90 percent— 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. The remaining 10 percent of petitioners based the TEA on the unemployment rate for a single census tract, census block group, or county, as shown in figure 1.<sup>12</sup>

**Figure 1: Extent EB-5 Program 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-17-487T

<sup>12</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.

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**Data Table for Figure 1: Extent EB-5 Program 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**

	<b>Percentage</b>
County	1
Single census block group	2
Single census tract	7
Combined census block groups	9
Combined census tracts	81

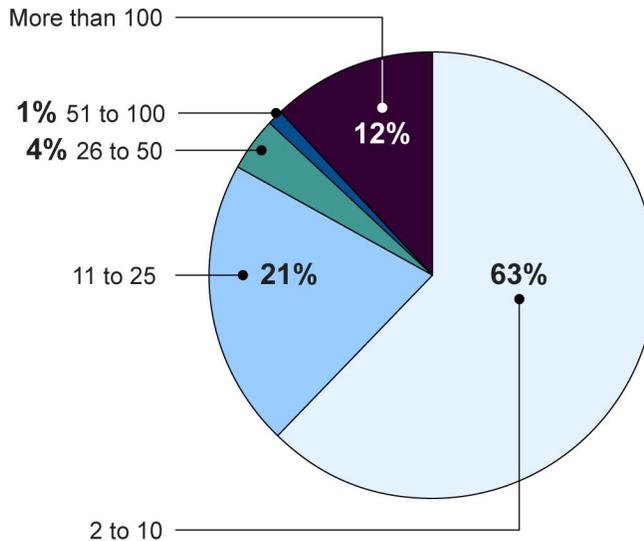
Note: Percentage estimates are generalizable to the population of EB-5 Program petitioners from the fourth quarter of fiscal year 2015 electing to invest in a high unemployment TEA and have a margin of error of +/- 7.5 percentage points or less at the 95 percent confidence level.

As shown in figure 2, we estimated that of the 90 percent of petitioners who used an average unemployment rate for a combination of census areas to qualify for a high unemployment TEA, most (63 percent) combined from 2 to 10 census areas, while others (26 percent) combined from 11 to 100 census areas or more than 100 census areas (12 percent), as allowed under the program (percentages to do not add to 100 due to rounding).<sup>13</sup>

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<sup>13</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 2: 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-17-487T

**Data Table for Figure 2: 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**

	Percentage
2 to 10	63
11 to 25	21
26 to 50	4
51 to 100	1
More than 100	12

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.

Further, as we reported in September 2016, petitioners electing to invest in a high unemployment TEA 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>14</sup> We estimated that 36 percent of the remaining petitioners invested in project locations with an unemployment rate below this range, and 24 percent invested in project locations with an unemployment rate above this range, as shown in table 1.<sup>15</sup>

**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**

Unemployment Rate (Percent)	Petitioners (Percent)
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-17-487T]

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.

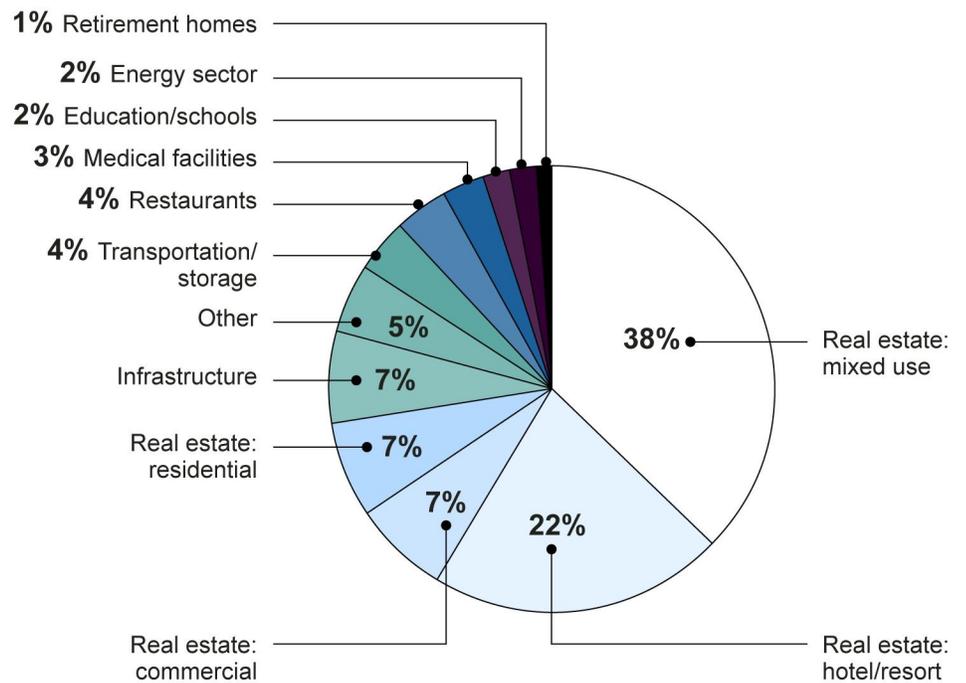
- **Types of projects.** We estimated that nearly three fourths (74 percent) of petitioners electing to invest in a TEA invested or planned to invest in various types of real estate projects including mixed use, hotels and resorts, commercial, and residential developments; while the remaining petitioners invested or planned to invest in infrastructure projects, such as railways and highways, or

<sup>14</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>15</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.

transportation, restaurants, medical and education facilities, as shown in figure 3.<sup>16</sup>

**Figure 3: 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-17-487T

**Data Table for Figure 3: 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**

	Percentage
Real estate: mixed use	38
Real estate: hotel/resort	22
Real estate: commercial	7
Real estate: residential	7
Infrastructure	7
Other	5

<sup>16</sup>For our purposes we defined mixed use development as a type of development that blends residential and commercial uses.

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	<b>Percentage</b>
Transportation/storage	4
Restaurants	4
Medical facilities	3
Education/schools	2
Energy sector	2
Retirement homes	1

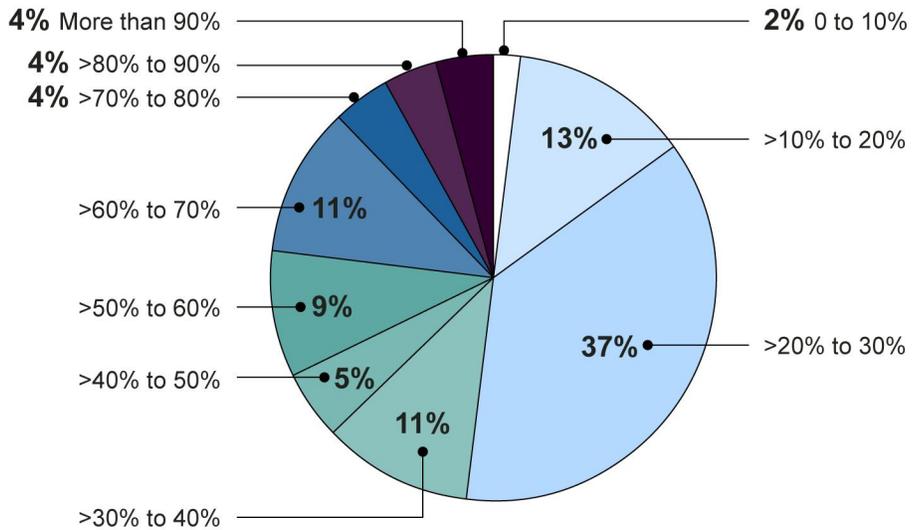
Note: None of the petitioners in our sample invested in projects in 5 of our 17 categories: "Technology," "Farms," "Manufacturing," "Domestic Sales," or "Import Export"; however, it is still possible that these types of projects exist among the population of petitions. Percentages do not sum to 100 due 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.

Further, as we reported in September 2016, the median percentage of EB-5 investment was 29 percent of the total estimated project cost and the mean percentage was 40 percent, as shown in figure 4.<sup>17</sup> Examples of non-EB-5 investment capital included developer equity, bank loans, land contributions, tax credits, cash from operations, and government loans and grants.

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<sup>17</sup>These estimates of means and medians have a relative margin of error within +/- 13 percentage points at the 95 percent confidence level.

**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-17-487T

**Data Table for 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**

	Percentage
0 to 10%	2
>10% to 20%	13
>20% to 30%	37
>30% to 40%	11
>40% to 50%	5
>50% to 60%	9
>60% to 70%	11
>70% to 80%	4
>80% to 90%	4
More than 90%	4

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.

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

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## GAO Contacts and Staff Acknowledgments

For questions about this statement, please contact Rebecca Gambler 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 statement. Individuals making key contributions to past work supporting this statement include Cindy Ayers (Assistant Director), David Alexander, John Mingus, Krista Mantsch, Sasan “Jon” Najmi, Anna Maria Ortiz, and Edith Sohna.

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U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548