Congress of the United States

Washington, DC 20515

May 11, 2016

The Honorable James B. Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, DC 20535

Dear Mr. Comey:

In recent years the Federal Bureau of Investigation participated in an interagency working group convened to examine vulnerabilities of U.S. Citizenship and Immigration Services' (USCIS) Fifth-Preference Immigrant Investor (EB-5) Visa Program. According to the attached document obtained by the Committees, the working group included Immigration and Customs Enforcement and the Securities and Exchange Commission (SEC), among others.[1] Since then, enforcement actions by the SEC have been on the rise, with nineteen of the SEC cases filed between February 2013 and December 2015 involving EB-5 offerings.[2] The Committees are examining any additional vulnerabilities identified by the interagency working group and how the program can be further improved.

To assist the Committee, please produce the following records as soon as possible, but no later than noon on May 27, 2016:

1. All documents and communications referring or relating to the Bureau's participation in the interagency EB-5 working group, including documents sufficient to identify the individuals who participated in the working group on the Bureau's behalf; and

2. All documents and communications referring or relating to concerns about the EB-5 program, including communications with other agencies, since January 1, 2010.

Please produce all documents in electronic format and deliver your responses to the Senate Committee on the Judiciary Majority Staff in Room 224 of the Dirksen Senate Office Building and the Minority Staff in Room 152 of the Dirksen Senate Office Building, and to the House Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

The Senate Committee on the Judiciary has oversight and legislative jurisdiction over the EB-5 program. The House Committee on Oversight and Government Reform is the principal

---

[1] Forensic Assessment of Financial Flows Relating to EB-5 Regional Centers (Attached).

[2] *The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (2016) (statement of Stephen L. Cohen, Associate Director, Division of Enforcement, U.S. Securities and Exchange Commission), *available at* https://www.judiciary.senate.gov/imo/media/doc/02-02-17%20Cohen%20Testimony.pdf. Other actions have since been filed; *see, e.g.*, Press Release, U.S. Securities and Exchange Commission, "SEC Case Freezes Assets of Ski Resort Steeped in Fraudulent EB-5 Offerings" (Apr. 14, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-69.html.

PRINTED ON RECYCLED PAPER

oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Should you have any questions regarding this request, please contact Tristan Leavitt of the House Oversight and Government Reform Committee staff at (202) 225-5074, or Katherine Nikas of the Senate Judiciary Committee staff at (202) 224-5225. Thank you for your prompt attention to this matter.

Sincerely,

Jason Chaffetz
Chairman
House Committee on Oversight and Government Reform

Charles E. Grassley
Chairman
Senate Committee on the Judiciary

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick J. Leahy, Ranking Member
Senate Committee on the Judiciary

Forensic Assessment of Financial Flows Relating to EB-5 Regional Centers

The National Security Staff ("NSS") tasked the Departments of Homeland Security ("DHS"), Justice ("DOJ"), Treasury, State ("DOS"), and the Securities and Exchange Commission ("SEC") with drafting a forensic assessment of the role of regional centers in the EB-5 program.

This assessment focuses on vulnerabilities relating to the financial flows and securities offerings that routinely accompany the investment component of the EB-5 program. Vulnerabilities relating to possible infiltration by terrorist groups or foreign operatives are also before the NSS and are being addressed separately by the interagency. This assessment was prepared at the staff level and has not been reviewed or endorsed by agency leadership.

Program Background

The EB-5 program is available to prospective immigrants who invest in a new commercial enterprise and can prove they will create at least 10 full-time jobs in the United States through that investment. EB-5 investors may petition to participate either on their own or in connection with a regional center designated by U.S. Citizenship and Immigration Services ("USCIS"). A regional center is defined broadly as any economic unit, public or private, which is involved in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. The regional center model is significant because it effectively permits investors to make investments in investment pools and business enterprises that are primarily managed by others. Though USCIS does not maintain precise figures in this area, it is estimated that over 90% of EB-5 investments are made through a regional center.

The organizers of a regional center seeking the regional center designation must file a Form I-924 application with USCIS for review and approval. The filing fee for Form I-924 is $6,230. The statute and regulations permit for a regional center to be approved even if the organizers merely present a concept-stage business plan in the I-924. A shovel-ready project, which would be more easily subject to agency verification, is not required by the statute or regulations.

In order to enhance oversight over regional centers, USCIS recently issued a new Form I-924A, which is used to demonstrate an approved regional center's continued eligibility for the regional center designation. Effective in FY 2011, each designated regional center entity must file the Form I-924A within 90 days after the end of the fiscal year. The I-924A requires regional centers to provide information including the industries and businesses that have received EB-5 capital through the regional center; the aggregate EB-5 capital invested and the number of jobs created; the names and locations of each job creating enterprise; and the total number of approved, denied, or revoked I-526 and I-829 petitions associated with that regional center.

DRAFT

Potential Vulnerabilities Relating to Regional Centers

Regional centers serve a valuable function because they facilitate the pooling of substantial sums of capital from many immigrant investors that can be deployed into large-scale development projects that would likely be out of reach of a single investor. Regional centers have used immigrant investor funds to develop and construct bridges, ski resorts, and hospitals, for example. As in any instance where significant investment funds are raised, however, the regional center model is vulnerable to abuse.

The capital raising activities inherent in the regional center model raise concerns about investor fraud and other conduct that may violate U.S. securities laws. Third-party promoters engaged by regional centers to recruit potential investors overseas fall outside of USCIS's regulatory authority and may make false claims or promises about investment opportunities. Unregistered broker-dealers may operate outside of USCIS's statutory oversight to match prospective investors with project developers. Moreover, the statute and regulations do not expressly prohibit persons with criminal records from owning, managing, or recruiting for regional centers.

Pooling of investment capital from foreign nationals also raises issues within the jurisdiction of the Committee on Foreign Investment in the United States ("CFIUS"). A regional center that is incorporated or formed in the United States may be substantially or entirely owned by foreign nationals. A regional center could theoretically seek to participate in sensitive industries, gain access to sensitive technologies, or acquire real estate proximate to military installations or other strategic locations without voluntarily disclosing its activities to CFIUS.

Additionally, as in any circumstance in which large cash sums are transferred across international borders, there is a risk that EB-5 program participants may attempt to use the program as a tool or channel for money laundering, tax evasion, or other illicit financial conduct.

Case Study I: [redacted]

The [redacted] was approved by USCIS to develop and operate [redacted] in the State of [redacted]. [redacted] attorneys operate the regional center and file petitions on behalf of other EB-5 enterprises, including [redacted], which is represented by the same [redacted] attorneys. [redacted] has filed a total of [redacted] Form I-526 Immigrant Petitions by Alien Entrepreneur and [redacted] Form I-829 Petitions to Remove Conditions. Additionally, there are other enterprises within the Regional Center that have financial ties to [redacted].

When the I-526 petitions were filed, the project was in the early stages of project development, as is the case with many EB-5 projects. Each of the [redacted] investors claims to have invested $500,000. Upon review of subsequent Form I-829 petitions, the General Ledger submitted into evidence did not reflect the total amount of capital invested.

Additionally, upon review of filings of both I-526 and I-829 petitions, in an attempt to substantiate that the company had created sufficient jobs as required in the EB-5 program, the petitioner submitted quarterly wage reports and I-9 Employment Eligibility Verification documents. The quarterly wage reports submitted to USCIS did not appear to be true and correct as certified under the penalty of perjury in Part 7 of Form I-526 and Part 6 of Form I-829. A review of these documents showed discrepancies. As such, USCIS obtained copies of official quarterly wage report submitted by [redacted] to the Department of Labor in the State of [redacted]. A cross review of the Quarterly Wage Reports submitted to USCIS and the official Quarterly Wage Reports submitted to the Department of Labor in the State of [redacted] established that the documents did not match. [redacted] reported different numbers of employees as well as different employee names.

The Center Fraud Detection Office of USCIS determined that the regional center, the attorneys, and/or the petitioners had likely engaged in Form I-9 document fraud as well as Quarterly Wage Report document fraud.

Additionally, USCIS learned through investigation that there is no ongoing construction at this time for the proposed [redacted]. USCIS employed publicly available materials to determine that the addresses listed for the supposed business house buildings that are plainly unsuitable for [redacted]. USCIS issued requests for additional evidence and the petitioner maintained that construction was underway; however, all evidence suggested that no construction had commenced. The unexplained failure to even break ground on the project suggests that the regional center developers may have defrauded individual EB-5 investors.

Given the apparent investment and immigration fraud associated with the case, USCIS referred the case to ICE, the U.S. Attorney's Office for [redacted] (the regional center's office is in [redacted]), and the SEC.

Case Study II: [redacted]

USCIS review of petitions filed regarding the [redacted] enterprise also provides instructive lessons about potential misfeasance in the EB-5 program. Though [redacted] is a commercial enterprise not associated with a regional center, the suspected misconduct is of a type that could also arise in the context of a business controlled by a regional center.

Although the petitioner claimed that the proposed site for the enterprise was to be located at an address in [redacted], the address is a tentative address and no location had been permanently established. Further, the enterprise had not undertaken actual business activity and there was no indication that the petitioner was conducting any business.

Unable to demonstrate any ongoing business activity or use of the property, it was not reasonable to believe that the investment project could proceed in a timely manner or that

sufficient new jobs could be created within the two year period as required. Further review revealed that the property slated for the petitioner's enterprise is currently the subject of litigation.

A search of the internet revealed [redacted] relating to the purported enterprise and the corporation's president, [redacted]. Additionally, a review of the file showed an Earnest Money Agreement. USCIS contacted one of the signatories on the Earnest Money Agreement in an effort to establish that the business entity existed. The signatory provided USCIS with information indicating that to this date, there has not been any development of the enterprise. The earnest money agreement submitted as evidence is in litigation due to the signing of the document by [redacted], with other than his legal name. As such the enterprise does not formally exist.

All of this raised doubt as to the validity of the Form I-9's submitted as evidence to establish the enterprise is in operation. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

USCIS's Center Fraud Detection Office ran additional system checks which found the following:

[redacted] had an address [redacted], listing [redacted] as the CEO. The business was registered as a for profit corporation in the State of [redacted] on [redacted]. The Dun & Bradstreet ("D&B") database lists [redacted], as president and [redacted] as Secretary, with [redacted] employees, and is in the business of manufacturing [redacted], however, no information of financial business activity provided. A query of Google maps displays the above address as occupied by [redacted], information that is inconsistent with that provided by D&B.

A query of the social security number for [redacted] revealed a name variation of [redacted], believed to be his real name. Additionally, numerous business entities were displayed associated with [redacted]'s name. One of the addresses listed is [redacted], same address listed above with different storage number.

TECS records reveal the following:

Business query [redacted] of [redacted] revealed TECS record [redacted], Closed Case. [redacted] is active in [redacted] and exporting to [redacted]. [redacted] claims it is a [redacted] but its warehouse/factory has no such capability.

A query of [redacted] for [redacted], revealed a TECS record [redacted] subject owns and operates [redacted] and is suspected of importing

[redacted] from [redacted]. [redacted], uses his son's name [redacted] and is listed as president of [redacted]

Forensic Assessment of Case Studies and Overall Assessed Program Risks

The case studies reveal that one of the primary program vulnerabilities is that regional center developers may take immigrant investor money under false pretenses and fail to undertake to execute on the business plans presented to both the investor and to USCIS. The consequences are possible violations of federal immigration laws, securities laws, and criminal laws, in addition to possible state law violations. As with any immigration classification, no particular remedy can provide absolute assurance of program integrity, but the interagency has identified a number of proposed solutions, as set forth in part below, that can help mitigate risk to acceptable levels, especially when administered in ongoing cooperation with the agencies that bring focused expertise to the table.

A regime of site inspections of regional centers and commercial enterprises could help address program vulnerabilities. Site inspections could detect facial deficiencies in regional center plans, such as instances in which the regional center purports to intend to build its business on property patently not suited to the purpose (such as building an ethanol plant in a city, for example, or on property that is in active use by someone else). This capability alone could root out some of the most blatant instances of fraud. Moreover, site inspections could be a substantial tool in assessing a regional center's continuing requirement to promote job creation and economic development, bolstering the significant antifraud measure undertaken recently by USCIS in introducing the annual Form I-924A filing requirement. Lastly, even a limited site inspection regime would likely have a powerful deterrent effect across the entire community of EB-5 program participants, furthering reducing incentives to commit fraud and thus enhancing program integrity as well as security for immigrant investors. Site inspection alone will not provide sufficient fraud and abuse detection capabilities, but, in concert with other reviews and actions, they may be one of the more valuable fraud detection tools.

The case studies also reveal that enhanced auditing and inspection of regional center books and records, by both DHS and SEC, could improve program oversight. USCIS has broad authority to audit and inspect approved regional center records. Notice is provided in the Form I-924 (and also in the supplement Form I-924A). This authority permits USCIS to review public records and information, contact the regional center via written correspondence, conduct unannounced physical site inspections of residences and places of employment as well as conduct interviews to verify the information submitted on the form. These actions are authorized to the extent such activities relate to verifying the regional center's information for the purposes noted on the form.

Increased oversight of regional centers and associated participants by the SEC would yield substantial benefits. SEC has significant authorities to maintain oversight of regional centers and affiliated actors insofar as their activities bring them within the scope of U.S. securities laws. SEC authorities in this area are considerably broader than

DRAFT

those possessed by USCIS and can therefore complement well the safeguards already in place at USCIS. [INSERT SEC PIECE]

Department of Treasury also has significant enforcement authorities and investigative tools that can be brought to bear to monitor the integrity of financial flows associated with the EB-5 program. [INSERT TREASURY PIECE]

Enhanced vetting of regional center participants could also enhance the integrity of the program by identifying those who have criminal records, a history of transfer of sensitive technologies to foreign governments, or other derogatory information in their backgrounds. USCIS recently enhanced its screening protocols by mandating the running of [redacted] background checks on regional center applicants, principals, and associated entities identified on the Form I-924. USCIS is also in the process of extending its [redacted] process to cover all EB-5 form types to allow for heightened scrutiny of cases in which derogatory information is received.

Ultimately, the interagency may best be able to address program vulnerabilities in the short term by developing a list of targeted and narrowly tailored indicators that USCIS adjudicators and other agency subject-matter experts can use to identify cases of potential concern, while allowing for the continuing and timely adjudication of EB-5 cases. This indicators list should be informed by analysis of actual EB-5 filings and case studies.

In the longer term, DHS should identify systems that should be expanded or developed to allow for electronic filing and collection of EB-5 data, which will better support a system of electronic targeting and data sharing within the interagency.

Sanctions for Fraud and Other Misconduct

Collectively, the various agencies convened by the NSS have a range of enforcement authorities that can help deter misconduct in the EB-5 program and punish those who engage in it.

USCIS has regulatory authority to terminate a regional center that no longer serves the program's mission of promoting substantial job creation and economic growth. USCIS also has authority to refer suspected misconduct on the part of business entities and individuals to other agencies for criminal and civil enforcement action. USCIS has proactively referred a number of such cases, and continuing awareness and vigilance on the part of the agencies involved in the NSS process will further enhance program integrity.

The Department of Justice has broad authorities to bring criminal actions against perpetrators of investment or immigration frauds. [INSERT DOJ/FBI PIECE]

The SEC [insert SEC piece]

Immigration and Customs Enforcement [insert ICE piece].

Department of Treasury [insert Treasury piece].

Department of State [insert DOS piece]

DHS [INSERT OTHER DHS PIECES, INCLUDING CFIUS]

DRAFT

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.