

A request for initial designation as a Regional Center under the Immigrant Investor Pilot Program ("Pilot Program") or an amendment to an existing Regional Center designation, may involve:

1. A request for review of an exemplar Form I-526, Immigrant Petition by Alien Entrepreneur, prior to the filing of Form I-526 petitions by individual alien entrepreneurs with USCIS and/or;
2. In the case of a Regional Center amendment request, a review of a new specific capital investment project where the Regional Center designation involved a review of an exemplar capital investment project.

It appears that you are requesting initial designation as a Regional Center under the Pilot Program.

**Background:**

The proposed Regional Center entity, [REDACTED], was established on September 27, 2010 in [REDACTED] and is structured as a corporation. [REDACTED] is requesting jurisdiction over a geographic area within the State of [REDACTED], including [REDACTED] counties. [REDACTED] plans to offer EB-5 capital investment opportunities in affiliated new commercial enterprises, organized as LLCs, focusing on projects in the following industry categories:

1. [REDACTED]
  - NAICS [REDACTED]
2. [REDACTED]
  - NAICS [REDACTED]

The capital investment projects will involve a combination of an equity investment and loan to job creating enterprises located within the proposed bounds of the Regional Center.

**Evidentiary Requirements for Regional Center Proposals**

Title 8 Code of Federal Regulations ("8 C.F.R.") § 204.6 (m)(3) describes the evidence that must be submitted in support of a Regional Center proposal. After review of your proposal, the following documentary evidence is required. Please note that in response to this notice, it is helpful to provide a cover letter that acts as an executive summary, followed by a table of contents with sections that are tabbed at the bottom of the page.

**Job Creation (8 C.F.R. § 204.6(m)(3)(ii)):**

Section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended, allows aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including jobs which are estimated to have been created indirectly through revenues, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

8 C.F.R. § 204.6(m)(3)(ii) requires that a Regional Center proposal must provide in verifiable detail how jobs will be created indirectly, while 8 C.F.R. § 204.6(m)(3)(v) describes the analytical tools that the Regional Center must employ when making economic and job creation predictions. It is also noted in 8 C.F.R. § 204.6(m)(1) in pertinent part that except as provided herein, aliens seeking to obtain immigration benefits under this paragraph continue to be subject to all conditions and restrictions set forth in section 203(b)(5) of the Immigration and Nationality Act and this section.

The reliability of job creation estimates provided by an economic impact analysis is dependent upon the validity of the information and assumptions that form the basis for the analysis. Any business plan, exemplar or actual, provided in support of a Regional Center initial proposal must contain sufficient specificity to provide valid and reasoned inputs into the economic input-output model, if such a model is used to demonstrate job creation for EB-5 purposes. Otherwise, a determination cannot be made that the Regional Center proposal demonstrates in "verifiable detail" that the requisite jobs will be created. The ability of [REDACTED] to address the issues regarding the feasibility of each capital investment project, the validity of the economic analysis, and the timing of the EB-5 job creation is critical to the success of the immigrant investors' immigration process.

In the instant Regional Center proposal, the regional center proposes to create jobs in the following industry categories and NAICS codes based on RYDYN economic input-output model:

<u>NAICS Codes</u>	<u>Industry Category Description</u>
[REDACTED]	[REDACTED]

[REDACTED] seeks to use EB-5 capital to construct a [REDACTED] and employment creation projections are based on estimated construction expenditures and projected revenues of businesses occupying office space. However, a review of the cover letter, Economic Impact Analysis and Business Plans associated with these industry categories and NAICS codes indicates [REDACTED] will be leasing commercial office to future tenants subsequent to construction.

**Page 5 of the Attorney's Cover Letter states:**

[REDACTED] will sponsor projects that will involve the target industry economic clusters of [REDACTED] [REDACTED]. [REDACTED] first possible project is the development and construction of the [REDACTED] [REDACTED] (the "Project").

**Page 4 of the Economic Impact Analysis states:**

The exemplar project, [REDACTED] exemplar project, would be located within a Targeted Employment Area (TEA), within the boundaries of the proposed regional

center. The project would provide necessary [REDACTED] mixed use space to facilitate the development of [REDACTED] companies. The project includes total construction and project development expenditures totaling \$ [REDACTED] million over a 3 year period for a 110,000 square foot LEED AP Gold certified facility.

**Page 1 of the Business Plan for the [REDACTED] Project states:**

The [REDACTED] will provide leasable [REDACTED] mixed-use space for developing [REDACTED] companies. The project will provide this necessary [REDACTED] space at competitive process in the local market.

Upon further review, it appears that [REDACTED] is using EB-5 capital to construct a building. The job creation estimates employed in this application are based, at least in part, on the assumption that direct employees of the future tenants of the building can be utilized as inputs into the applicable input-output model. However, USCIS has concerns that the attribution of these direct jobs to the EB-5 investment may not be based on reasonable economic methodologies, and therefore do not demonstrate in "verifiable detail" that the requisite jobs will be created. Rather, contemporary economic methodologies appear to indicate that such jobs would more appropriately be attributed to the tenants themselves and not to [REDACTED] because the demand for labor precedes the decision about where to house that labor as a general economic principle. For example, if a federal agency determined that additional federal employees needed to be hired to fulfill the agency's mission at a particular location, the federal agency would seek to hire the requisite number of employees and as part of that process, would also take steps to lease the appropriate physical premises to provide sufficient workspace for the new hires. In this instance, it is the federal agency that is creating the jobs through its decision to hire more employees, not the landlord who will ultimately lease the workspace to the federal agency.

USCIS observes that the tenant-occupancy methodology (that the direct jobs created by future tenants are intended to be attributable to the EB-5 investments) is not economically reasonable on the facts as presented. To allow for the existing methodology would require USCIS to credit the prospective EB-5 investors in the new commercial enterprise with the employment impacts created by the unrelated business ventures of future tenants (even though such tenants might engage in business activities within the requested industry categories and NAICS codes). After reviewing the tenant-occupancy methodology presented thus far, USCIS observes that the nexus between the investment and the job creation is either too attenuated or too incomplete to constitute a reasonable economic methodology. Consequently, the existing record presents USCIS with a justification to recognize only those employment impacts that could be attributed to [REDACTED] such as those resulting indirectly from the construction activity and, if applicable, the ongoing building management activities that will be required to maintain the building.

However, USCIS does not foreclose the possibility that [REDACTED] might present additional evidence to demonstrate an economically acceptable nexus between the EB-5 investment and responsibility for the job

creation asserted in the application. Accordingly, [REDACTED] may present additional evidence to demonstrate that the proposed methodology is economically reasonable.

To help illustrate the factors that USCIS finds central to adjudicating the fundamental reasonableness of this particular economic methodology, USCIS requests that any response address the following points:

1. Evidence that there is excess demand for the specific types of tenants ([REDACTED]) to your construction project and business plan. Please provide a data-based assessment, and the source of the data utilized by the assessment.

To show such excess demand, the assessment should:

- a. Analyze whether prospective tenants which would locate in the commercial or industrial space that will be constructed and/or renovated under the proposed project are currently suffering from a lack of a unique or specialized business space, that, in economic terms, such prospective tenants are "constrained" from commencing or expanding their businesses by a lack of unique or specialized business space.
  - b. Provide a data-based analysis, including the source of the data, which establishes whether there is "pent up" demand for the specific professional and business services relevant to your project. Such data-based analysis should include:
    - i. Evidence of congestion externalities as demonstrated by a low vacancy-unemployment ratio pursuant to specific space and businesses seeking to expand, respectively; and
    - ii. Evidence of upward wage and rental pressures in specific regional sectors that are likely to be attracted to the proposed project space.
2. The jobs that become located within the tenant space of the project should be shown to be a result of an expansion in specific services driven by your project as opposed to tenant shifting and/or relocation of already existing jobs. Please explain how it will be verified that the jobs that will become located within the tenant space of the project can be considered "new" jobs.

Alternatively, [REDACTED] is afforded an opportunity to provide business plans and an economic impact analysis for any industry categories and NAICS codes to demonstrate employment creation which is not based on tenant occupancy. The business plan(s) and economic analysis must show:

- The feasibility of the project under current market conditions within the Regional Center;
- Employment creation projections are not based on tenant occupancy as described above;
- The transparent basis for the data that will be used as the inputs to the model (to included how the estimation of the creation of the direct jobs were derived); and
- The RYDYN calculations used to determine the jobs that will be created, supported by the relevant RYDYN data.

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In addition, the submission must clearly identify the timeframe for the commencement, implementation, and realization of each project, how the investors' funds will flow to the job creating entity, and as a result, how the jobs will be created.

Please note that if the regional center submits a new Economic Impact Analysis and Business Plan(s) for project(s) based on industry categories and NAICS codes which do not relate to job creation based on tenant occupancy, the regional center will need to meet the other requirements for regional centers. Other requirements include:

- Describing how the regional center focuses on a geographical region of the United States;
- Describing how the regional center will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment; and
- Demonstrating the regional or national impact of the Regional Center by submitting a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and outside of the regional center jurisdiction.

Additionally, please note that when relying on economic input-output models for estimating job creation<sup>1</sup>, any jobs directly created within the new commercial enterprise in which the immigrant investor has invested, will be for qualifying employees as defined in 8 C.F.R. § 204.6(e), and must be documented by the supporting evidence required in 8 C.F.R. § 204.6(j)(4)(i) and 8 C.F.R. § 216.6(a)(4)(iv).

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<sup>1</sup> Note: USCIS does not accept or credit creation of temporary "construction jobs" within a business plan or economic job creation forecasts activities which involve a limited duration construction phase of less than 2 years. See [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/eb5\\_17jun09.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/eb5_17jun09.pdf), pages 2 and 5.