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August 28, 2025

Mr. Samuel Silverman
EB5AN, LLC

Re: EB-5 Funds Deployment Timeline for I-526E Petitions

Mr. Silverman:

You have asked us to review the USCIS guidance on the timing of fund disbursement to the Job Creating Entity (“JCE”) from the New Commercial Enterprise (“NCE”) for I-526E Petitions filed on or after March 15, 2022, as well as the required length of time that EB-5 funds must remain invested overall. When Congress passed the EB-5 Reform and Integrity Act of 2022 (the “RIA”), the RIA contained the following language about the length of the investment timeframe: “Visas shall be made available...to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise...in which such alien has invested (after November 29, 1990) or, is actively in the process of investing, capital...and which is expected to remain invested for not less than 2 years.” [Emphasis added]. Following the passage of the RIA, USCIS has interpreted this provision to mean that EB-5 investors who make an investment and file Form I-526E after March 15, 2022 must keep their investment in an EB-5 project for at least two (2) years.

U.S. Citizenship & Immigration Services (“USCIS”) has written a policy manual (the “Policy Manual”) which outlines certain adjudication requirements of the EB-5 Program and provides internal policy guidance for adjudicating EB-5 applications such as a Form I-526E, Immigrant Petition by Regional Center Investor (“I-526E Petition”). The Policy Manual is applicable to, and binding on, all USCIS employees. USCIS also has published guidance for I-526E Petitions on its website, including its “EB-5 Questions and Answers,” which were last updated by USCIS on May 15, 2025.

USCIS has updated its Policy Manual, Volume 6, Part G, Chapter 2, Section A.2 to state the following:

“The petitioner must document the path of the funds to establish that the investment was made, or is actively in the process of being made, with the immigrant investor’s own funds. For petitions filed on or after March 15, 2022, the capital must be expected to remain invested for not less than 2 years.”¹ [Emphasis added].

USCIS further clarified this guidance on its website entitled “EB-5 Questions and Answers,” which were last updated by USCIS on May 15, 2025. Specifically, USCIS explained that the 2- year period for the investment begins when the new commercial enterprise advances the funds to the EB-5 project/job creating entity:

¹ See: <https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2>.

“An investor filing an EB-5 immigrant visa petition must have invested, or be in the process of investing, the required amount of capital in a new commercial enterprise in the United States and expect to maintain that investment for not less than 2 years, provided they have met job creation requirements. Although the statute does not explicitly specify when the 2-year period begins, we interpret the start date to be the date that the full amount of qualifying investment is made to the new commercial enterprise and placed at risk under applicable requirements, including being made available to the job creating entity, as appropriate.”²

In the “EB-5 Questions and Answers,” USCIS specifically confirmed that investors who file an I-526E Petition under the RIA after March 15, 2022 no longer need to sustain their investment throughout the 2-year period of their conditional residence to be eligible for removal of conditions on their permanent resident status. In publishing this guidance, USCIS clarified that the required 2-year period of investment no longer needs to match the 2-year period of the investor’s conditional permanent residence.

Finally, USCIS also clarified in the “EB-5 Questions and Answers,” how it will adjudicate I-829 Petitions under the new investment timeline guidance:

“We will use the new INA section 203(b)(5) and section 216A requirements, as amended by the RIA, in considering Form I-829 petitions based on Form I-526 and Form I-526E petitions filed on or after March 15, 2022... To determine the date when the 2-year period required by INA 203(b)(5)(A)(i) begins, we will generally use the date that the requisite amount of qualifying investment is made to the new commercial enterprise and placed at risk under applicable requirements, including being made available to the job creating entity, as appropriate. If the investor invested more than 2 years before filing the Form I-526 or Form I-526E petition, the investment should generally still be maintained at the time the Form I-526 or Form I-526E is properly filed so we can appropriately evaluate eligibility.” [Emphasis added].

In its example listed above, USCIS confirms that the 2-year period of investment does not need to match the 2-year period of conditional permanent residence for the investor.

Based on the above guidance, USCIS has stated the following investment timeframe applies to EB-5 investors who file an I-526E Petition under the RIA after March 15, 2022:

1. The 2-year period of investment begins on the date that the full amount of the EB-5 investment (i.e. either \$800,000 or \$1,050,000) is made available to the job creating entity;
2. If an investor makes a partial investment, and then later invests the remaining amount of capital, the 2-year period will not commence until the final installment is made available to the job creating entity from the investor; and
3. When filing the I-829 Petition to remove the conditions on permanent residence, USCIS will evaluate when the full amount of capital was made available to the job creating entity for purposes of determining when the 2-year investment period began. Because USCIS no longer requires the 2-year investment period to coincide with the 2-year period of conditional residence, it is possible for the EB-5 investment to be advanced to the job creating entity at any time before or during the

² See “Required Investment Timeframe”: <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers>.

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2-year period of conditional residence, even just before the I-829 Petition is filed, so long as the EB-5 loan agreement or investment documents bind the job creating entity to at least a 2-year period of investment following receipt of the funds.

Any conclusions set forth in this letter are given solely for the benefit of EB5AN and may not be relied upon, in whole or in part, by any other person, firm or corporation for any purpose, without Greenberg Traurig's prior written consent. Any conclusions set forth in this letter are current as of the date hereof and we express no finding, conclusion or opinion as to circumstances or events that may occur subsequent to such date.³ We trust that this letter is responsive to your request. Please contact me if you have any additional questions in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kate Kalmykov', with a stylized, wavy line extending to the right.

Kate Kalmykov
Shareholder

³ USCIS has confirmed that it is working towards publishing a comprehensive EB-5 Notice of Proposed Rulemaking ("NPRM") and the estimate for publication remains November 2025. The NPRM likely will provide additional guidance from USCIS on the required investment period. See: <https://iiusa.org/wp-content/uploads/2025/07/IIUSA-v.-EB5-7-18-status-report.pdf>.