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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 5, 2016

**VIA ELECTRONIC TRANSMISSION**

The Honorable Jeh Johnson  
Secretary  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Johnson:

Over the past few months, my staff have conducted joint/bicameral interviews of U.S. Immigration and Customs Enforcement (ICE) personnel to discuss the EB-5 Immigrant Investor Program. During those interviews, I received a copy of an internal ICE communication that sets forth numerous form change recommendations to address vulnerabilities in the program. See attachment.

Currently, comments are being collected by the Department on proposed changes to the Form I-526 (Immigration Petition by Alien Entrepreneur).<sup>1</sup> The comment period recently closed on proposed changes to Forms I-924 (Application For Regional Center Under the Immigrant Investor Pilot Program) and I-924A (Supplement to Form I-924).<sup>2</sup> It is my understanding that changes are also being contemplated for the Form I-829.

As discussed in an ICE memorandum responding to questions from then DHS Secretary Napolitano about the EB-5 program, ICE made these form change recommendations in order to address serious program vulnerabilities:

In addition to the proposed legislative edits, HSI proposed making changes to the USCIS forms (I-526, I-829, I-924 and I-924A) that are used by RC's and alien investors. HSI felt that the forms did not collect enough information to determine the validity of either the RC's, the alien investors or the source of the investor's funds. HSI submitted to USCIS a series of recommended questions to be included on the aforementioned forms, as well as

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<sup>1</sup> Agency Information Collection Activities: Immigrant Petition by Alien Entrepreneur, Form I-526; Revision of a Currently Approved Collection, 81 Fed. Reg. 44,890 (July 11, 2016).

<sup>2</sup> Agency Information Collection Activities: Application for Regional Center Under the Immigrant Investor Pilot Program and Supplement, Form I-924 and I-924A; Extension, Without Change, of a Currently Approved Collection, 81 FR 10647 (Mar. 1, 2016).

additional recommended security checks, to help address the seven program vulnerabilities that were identified.<sup>3</sup>

I understand the attached recommendations were originally transmitted to USCIS in 2012. I would appreciate knowing, for each of the forms, which ICE recommendations USCIS will be adopting and an explanation for which ones it will not be adopting.

I ask that you respond to my concerns and the questions included in this letter by August 26, 2016. If you have any questions, please contact Kathy Nuebel Kovarik of the Senate Committee on the Judiciary at 202-224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley  
Chairman

Attachment

cc: Hon. Jason Chaffetz  
Chairman, House Committee on Oversight and Government Reform.

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<sup>3</sup> EB-5 Program Questions from DHS Secretary, U.S. Immigration & Customs Enforcement, Homeland Security Investigations, Investigative Programs, available at <http://www.grassley.senate.gov/sites/default/files/issues/upload/EB-5-12-12-13-ICE-memo-security-vulnerabilities.pdf> (attachment).

**From:** [REDACTED]  
**Sent:** 11 Jun 2012 17:21:44 +0000  
**To:** [REDACTED]  
**Subject:** EB-5 Form Change Recommendations  
**Attachments:** Form I-526 recommendations 2 .docx, Form I-829 recommendations 2.docx,  
Form I-924 recommendations 2.docx, Form I-924A recommendations 2.docx

[REDACTED]

Attached are the form change recommendations that [REDACTED] referenced in our meeting early. This tasking was prepared by [REDACTED] and [REDACTED].

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**List of program vulnerabilities and recommendations for changes to the forms and required security checks for the EB-5 Alien Investor Visa Program**

**Form I-526, Immigrant Petition by Alien Entrepreneur**

**1. Program Vulnerability: Export of Sensitive Technology / Economic Espionage**

How is this issue addressed on form I-526: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-526 (form) (and/or require submission of a G-325A Biographic Information Form)

**2. Program Vulnerability: Use by Foreign Government Agents / Espionage**

How is this issue addressed on form I-526: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-526 (form) (and/or require submission of a G-325A Biographic Information Form)
- List foreign travel history for the past five years.
- List any foreign military or government employment experience

**3. Program Vulnerability: Use by Terrorists**

How is this issue addressed on form I-526: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-526 (form)
- List nations of residence history for parents of applicants.

**4. Program Vulnerability: Investment Fraud by Regional Center**

How is this issue addressed on form I-526:

- General questions about the investment and how many jobs were created

*Recommendations for change / security enhancements:*

- Require question regarding participation and application under other RC's
- Has the applicant had previous experience managing business enterprises, if so how?

**5. Program Vulnerability: Investment Fraud by RC and Investors**

How is this issue addressed on form I-526:

- General questions about the investment and how many jobs were created

*Recommendations for change / security enhancements:*

- Ask on form I-526 if the investor knew any of the RC principals and / or agents prior to making the investment (form)
- Ask about any previous visa applications or USCIS applications filed on form I-526 (form)
- Ask about any previous arrests and convictions on form I-526 (form)

**6. Program Vulnerability: Investment Fraud by Investors**

How is this issue addressed on form I-526:

- General questions about the investment and how many jobs were created

*Recommendations for change / security enhancements:*

- Ask on form I-526 if the investor knew any of the RC principals and / or agents prior to making the investment (form)
- Ask about any previous visa applications or USCIS applications filed on form I-526 (form)
- Ask about any previous arrests and convictions on form I-526 (form)

**7. Program Vulnerability: Illicit Finance / Money Laundering**

How is this issue addressed on form I-526: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-526 (form)
- List all personal bank accounts and investments on form I-526 (form)
- If source of income is cited from investments, require specific and verifiable information regarding original investment entity
- If source of income is derived from gifts/inheritance, require data regarding the gift giver's source of income

***List of program vulnerabilities and recommendations for changes to the forms and required security checks for the EB-5 Alien Investor Visa Program***

**Form I-829, Petition by Entrepreneur to Remove Conditions**

**1. Program Vulnerability: Export of Sensitive Technology / Economic Espionage**

How is this issue addressed on form I-829: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-829 (form) (and/or require submission of a G-325A Biographic Information Form)

**2. Program Vulnerability: Use by Foreign Government Agents / Espionage**

How is this issue addressed on form I-829: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-829 (form)

**3. Program Vulnerability: Use by Terrorists**

How is this issue addressed on form I-829: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-829 (form)

**4. Program Vulnerability: Investment Fraud by Regional Center**

How is this issue addressed on form I-829:

- Part 5, Information About Your Commercial Enterprise

*Recommendations for change / security enhancements:*

- Perform recurring Google searches on RC's (security check)

- Perform D&B search of RC's (security check)
- Site visits to RC's (security check)

#### **5. Program Vulnerability: Investment Fraud by RC and Investors**

How is this issue addressed on form I-829:

- Part 5, Information About Your Commercial Enterprise

*Recommendations for change / security enhancements:*

- Ask on form I-829 if the investor knew any of the RC principals and / or agents prior to making the investment (form)
- Ask about any previous visa applications or USCIS applications filed on form I-829 (form)
- Perform recurring Google searches on RC's (security check)
- Perform D&B search of RC's (security check)
- Site visits to RC's (security check)

#### **6. Program Vulnerability: Investment Fraud by Investors**

How is this issue addressed on form I-829:

- Part 5, Information About Your Commercial Enterprise

*Recommendations for change / security enhancements:*

- Ask on form I-829 if the investor knew any of the RC principals and / or agents prior to making the investment (form)
- Ask about any previous visa applications or USCIS applications filed on form I-829 (form)

#### **7. Program Vulnerability: Illicit Finance / Money Laundering**

How is this issue addressed on form I-829: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, sources of income and employment history on form I-829 (form)
- List all personal bank accounts and investments on form I-829 (form)

***List of program vulnerabilities and recommendations for changes to the forms and required security checks for the EB-5 Alien Investor Visa Program***

**Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program**

**1. Program Vulnerability: Export of Sensitive Technology / Economic Espionage**

How is this issue addressed on form I-924:

- Item 7, page 4, "Identify each industry that has or will be the focus of EB-5 capital investments sponsored through the regional center."

*Recommendations for change / security enhancements:*

- List country of citizenship, other names used, residence history, source of income, employment history of RC Principal and agents on form I-924 (form) ) (and/or require submission of Form G-325A, Biographic Information) List any other names used by principal.
- Questions regarding corporate investments in, and business relationships with, foreign nations, listing specific countries.

**2. Program Vulnerability: Use by Foreign Government Agents / Espionage**

How is this issue addressed on form I-924: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, source of income, employment history of RC Principal and agents on form I-924 (form) (and/or require submission of Form G-325A, Biographic Information)
- Screen RC principals and agents for known or suspected government agents (security check)

**3. Program Vulnerability: Use by Terrorists**

How is this issue addressed on form I-924: N/A

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, source of income, employment history of RC Principal and agents on form I-924 (form) List any other names used by principal.
- Require listing of nations travelled to in the past five years by RC principals.



#### **4. Program Vulnerability: Investment Fraud by Regional Center**

How is this issue addressed on form I-924:

- Item 2, page 3: "Has this Regional Center's designation ever been formally terminated by USCIS, or has the Regional Center ever filed a form I-924 or Regional Center proposal or amendment that was denied?"
- Item 8d, page 5: "Has or will the Regional Center or any of its principals or agents have an equity stake in the commercial enterprise?"
- Item 8e, page 5: "Has or will the Regional Center or any of its principals or agents receive fees, profits, surcharges, or other like remittances through EB-5 capital investment activities from this commercial enterprise, beyond the minimum capital investment threshold required of the EB-5 alien entrepreneurs?"

*Recommendations for change / security enhancements:*

- Require 924 to list past bankruptcy claims of principals and managers.
- Require 924 to list any open civil cases pending against the principals or RC related entities.
- Perform FINCEN checks on RC principals, agents (security check)
- Ask about any previous arrests and convictions of RC principals and agents on form I-924 (form)
- Ask about RC principals' and agents' involvement in any other RC, past or present, on form I-924 (form).
- Ask if RC principals have ownership stake in any New Commercial Enterprise that makes loans to Job Creating Enterprise (form)
- Perform recurring Google searches on RC's (security check)
- List all recruiters and recruiting agencies used to recruit investors on form I-924 (form)

#### **5. Program Vulnerability: Investment Fraud by RC and Investors**

How is this issue addressed on form I-924:

- Item 2, page 3: "Has this Regional Center's designation ever been formally terminated by USCIS, or has the Regional Center ever filed a form I-924 or Regional Center proposal or amendment that was denied?"
- Item 4, page 3: "Describe the Regional Center's administration, oversight, and management functions that are or will be in place to monitor all EB-5 capital investment activities and the allocation of the resulting jobs created or maintained under the sponsorship of the Regional Center."
- Item 5, page 4: "Describe the past, current and future promotional activities for the Regional Center. Include a description of the budget for this activity, along with evidence of the funds committed to the Regional Center for promotional activities. Submit a plan of operation for the Regional Center that addresses how EB-5 investors will be recruited, the method(s) by which the

capital investment opportunities will be offered to the investors, and how they will subscribe or commit to the investment interest."

- Item 6, page 4: "Describe whether and how the Regional Center is engaged in supporting a due diligence screening of its alien investor's lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital. Also, describe the Regional Center's prospective plans in this regard if they differ from past practice."
- Item 8d, page 5: "Has or will the Regional Center or any of its principals or agents have an equity stake in the commercial enterprise?"
- Item 8e, page 5: "Has or will the Regional Center or any of its principals or agents receive fees, profits, surcharges, or other like remittances through EB-5 capital investment activities from this commercial enterprise, beyond the minimum capital investment threshold required of the EB-5 alien entrepreneurs?"

*Recommendations for change / security enhancements:*

- Ask on form I-924 if the RC principals and/or agents know any of the potential investors personally (form)
- Perform FINCEN checks on RC principals, agents (security check)
- Ask about any previous arrests and convictions of RC principals and agents on form I-924 (form)
- Ask about RC principals' and agents' involvement in any other RC, past or present, on form I-924 (form)
- Ask if RC principals have ownership stake in any New Commercial Enterprise that makes loans to Job Creating Enterprise (form)
- Perform recurring Google searches on RC's (security check)
- List all recruiters and recruiting agencies used to recruit investors on form I-924 (form)

**6. Program Vulnerability: Investment Fraud by Investors**

How is this issue addressed on form I-924:

- Item 4, page 3: "Describe the Regional Center's administration, oversight, and management functions that are or will be in place to monitor all EB-5 capital investment activities and the allocation of the resulting jobs created or maintained under the sponsorship of the Regional Center."
- Item 5, page 4: "Describe the past, current and future promotional activities for the Regional Center. Include a description of the budget for this activity, along with evidence of the funds committed to the Regional Center for promotional activities. Submit a plan of operation for the Regional Center that addresses how EB-5 investors will be recruited, the method(s) by which the capital investment opportunities will be offered to the investors, and how they will subscribe or commit to the investment interest."
- Item 6, page 4: "Describe whether and how the Regional Center is engaged in supporting a due diligence screening of its alien investor's lawful source of capital and the alien investor's ability

to fully invest the requisite amount of capital. Also, describe the Regional Center's prospective plans in this regard if they differ from past practice."

*Recommendations for change / security enhancements:*

- Ask on form I-924 if the RC principals and/or agents know any of the potential investors personally (form)

**7. Program Vulnerability: Illicit Finance / Money Laundering**

How is this issue addressed on form I-924:

- Item 7, page 4, "Identify each industry that has or will be the focus of EB-5 capital investments sponsored through the regional center. Is the form I-924 application supported by an economic analysis and underlying business plan for the determination of prospective EB-5 job creation through EB-5 investments in this industry category?"

*Recommendations for change / security enhancements:*

- List country of citizenship, residence history, source of income, employment history of RC Principal and agents on form I-924 (form)
- List all corporate bank accounts, escrow agents and accounts, and personal bank accounts of RC principals and agents on form I-924 (form)

***List of program vulnerabilities and recommendations for changes to the forms and required security checks for the EB-5 Alien Investor Visa Program***

**Form I-924A, Supplement to Form I-924**

**1. Program Vulnerability: Export of Sensitive Technology / Economic Espionage**

How is this issue addressed on form I-924A: N/A

Recommendations for change / security enhancements:

- List country of citizenship, AKAs, country of birth, residence history, source of income, employment history of RC Principal and agents on form I-924A (form) (and/or require submission of Form G-325A, Biographic Information)
- Ask if the RC or company receiving EB-5 funds is involved in the import / export business or in the manufacture of sensitive technology on form I-924A (form)

**2. Program Vulnerability: Use by Foreign Government Agents / Espionage**

How is this issue addressed on form I-924A: N/A

Recommendations for change / security enhancements:

- List country of citizenship, residence history, source of income, employment history of RC Principal and agents on form I-924A (form) (and/or require submission of Form G-325A, Biographic Information)
- Ask if the RC or company receiving EB-5 funds is involved in the import / export business or in the manufacture of sensitive technology on form I-924A (form)

**3. Program Vulnerability: Use by Terrorists**

How is this issue addressed on form I-924A: N/A

Recommendations for change / security enhancements:

- List country of citizenship, residence history, source of income, employment history of RC Principal and agents on form I-924A (form) (and/or require submission of Form G-325A, Biographic Information)

**4. Program Vulnerability: Investment Fraud by Regional Center**

How is this issue addressed on form I-924A:

- Item 4, page 6: "Provide the total number of approved, denied and revoked form I-526 petitions filed by EB-5 investors making capital investments sponsored by the Regional Center."
- Item 5, page 6: "Provide the total number of approved, denied and revoked form I-829 petitions filed by EB-5 investors making capital investments sponsored by the Regional Center."

Recommendations for change / security enhancements:

- Perform FINCEN checks on RC principals, agents (security check)
- Ask about any previous arrests and convictions of RC principals and agents on form I-924A (form)
- Ask about RC principals' and agents' involvement in any other RC, past or present, on form I-924A (form)
- Ask if RC principals have ownership stake in any New Commercial Enterprise that makes loans to Job Creating Enterprise (form)
- List all recruiters and recruiting agencies used to recruit investors on form I-924A (form)
- Perform recurring Google searches on RC's (security check)

#### **5. Program Vulnerability: Investment Fraud by RC and Investors**

How is this issue addressed on form I-924A:

- Item 4, page 6: "Provide the total number of approved, denied and revoked form I-526 petitions filed by EB-5 investors making capital investments sponsored by the Regional Center."
- Item 5, page 6: "Provide the total number of approved, denied and revoked form I-829 petitions filed by EB-5 investors making capital investments sponsored by the Regional Center."

Recommendations for change / security enhancements:

- Ask on form I-924A if the RC Principals and/or agents knew any of the RC investors personally prior to the investment or if the principals and/or agents have any relationship with any investors outside of the business enterprise (form)
- Perform FINCEN checks on RC principals, agents (security check)
- Ask about any previous arrests and convictions of RC principals and agents on form I-924A (form)
- Ask about RC principals' and agents' involvement in any other RC, past or present, on form I-924A (form)
- Ask if RC principals have ownership stake in any New Commercial Enterprise that makes loans to Job Creating Enterprise (form)
- List all recruiters and recruiting agencies used to recruit investors on form I-924A (form)
- Perform recurring Google searches on RC's (security check)

#### **6. Program Vulnerability: Investment Fraud by Investors**

How is this issue addressed on form I-924A:

- Item 4, page 6: "Provide the total number of approved, denied and revoked form I-526 petitions filed by EB-5 investors making capital investments sponsored by the Regional Center."
- Item 5, page 6: "Provide the total number of approved, denied and revoked form I-829 petitions filed by EB-5 investors making capital investments sponsored by the Regional Center."

Recommendations for change / security enhancements:

- Ask on form I-924A if the RC Principals and/or agents knew any of the RC investors personally prior to the investment or if the principals and/or agents have any relationship with any investors outside of the business enterprise (form)

#### **7. Program Vulnerability: Illicit Finance / Money Laundering**

How is this issue addressed on form I-924A: N/A

Recommendations for change / security enhancements:

- List country of citizenship, residence history, source of income, employment history of RC Principal and agents on form I-924A (form)
- List all corporate bank accounts, escrow agents and accounts, and personal bank accounts of RC principals and agents on form I-924A (form)
- Perform FINCEN checks on RC principals, agents (security check)