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The Real Estate Roundtable

August 19, 2026

Submitted via www.regulations.gov

U.S. Citizenship and Immigration Services (USCIS)
Department of Homeland Security

Proposed Rulemaking, ***Ensuring the Integrity of the EB-5 Program***
Docket No. USCIS-2026-0100

The Real Estate Roundtable ("RER") appreciates this opportunity to provide comments regarding the above-referenced proposed rule (the "Proposal").[1] More information on RER is provided in the attached Addendum.

Summary of Comments

- ***USCIS should maintain the longstanding status quo regarding EB-5's treatment of bridge financing.*** Bridge financing is a critical component of financing a commercial real estate project. It addresses a timing mismatch between when a project requires immediate capital and when longer-term capital becomes available. A developer may need to acquire property, commence site preparation, purchase materials, enter into construction contracts, install infrastructure, and begin vertical construction before EB-5 subscriptions have been fully raised and deployed. The amount of re-paid bridge capital with EB-5 investments should not be capped in any given project, nor should bridge financing be eliminated or time-limited as a basis to demonstrate qualifying EB-5 job creation.

- ***Congress intended for "source of funds" rules to apply only to EB-5 capital – not all components of a project's financing.*** The text of the *EB-5 Reform and Integrity Act of 2022 ("RIA")* does not support USCIS's proposal to apply "source of funds" rules to all non-EB-5 financing in a project's capital stack. Practically speaking, it would be impossible for an EB-5 petitioner to ensure that the ultimate sources for a loan from a major multi-national bank that funds its balance sheet from enormous commingled deposits – or all individual retirement pensioners contributing to a pension fund – must satisfy EB-5's "source of funds" requirements. Congress delegated responsibilities to other agencies – not USCIS – to monitor avenues of illicit overseas finance regarding non-EB-5 capital.

[1] 91 Fed. Reg. 40676 (July 2, 2026).

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- ***<u>USCIS's proposed new $1.4 million investment tier for "high employment areas" would lead to illogical and punitive policy results.</u>*** For example, it would impede development of low-income and affordable housing in communities where it is lacking. The *RIA* struck a careful balance to extend EB-5 preferences to census tracts based on a system of varying investment levels, visa set asides, and expedited processing. Congress did not intend to punish economic development projects in the nation's urban and suburban business districts that serve as engines of job creation. Yet that is exactly the result that the anti-competitive $1.4 million investment level, as it is proposed, would achieve.

More detail is provided in our attached comments. Please contact Duane J. Desiderio, Senior Vice President and Counsel (ddesiderio@rer.org), for more information.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer

The Real Estate Roundtable

COMMENTS OF THE REAL ESTATE ROUNDTABLE (RER)
REGARDING THE USCIS PROPOSED RULEMAKING

Ensuring the Integrity of the EB-5 Program

Docket No. USCIS-2026-0100

- ***The longstanding status quo between bridge financing and EB-5 job creation should be maintained.***

USCIS proposes eliminating the use of repaid bridge financing as a basis to meet EB-5 job creation requirements. (Proposed 8 CFR 204.407(e)(1)). We urge against finalizing this aspect of the Proposal.

Bridge financing typically addresses a timing mismatch between when a project requires capital and when an anticipated source of longer-term capital becomes available. A developer may need to acquire property, commence site preparation, purchase materials, enter into construction contracts, install infrastructure, and begin vertical construction before EB-5 subscriptions have been fully raised and deployed. A bridge lender may provide the capital necessary to allow those activities to proceed, with the expectation that it will be repaid later with EB-5 or other funds. Without bridge financing, many economically viable projects could not begin or ultimately reach fruition.

Real estate projects are typically financed through a "capital stack" of initial construction loans, usually wrapped into "permanent" commercial mortgages in "first lien" position on an asset after construction is completed – plus subordinated mezzanine debt and equity investments that assume more risk and thus come with higher interest rates and expected returns.[2, 3]

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[2] The table on page 2 was prepared based on studies and analysis from leading commercial real estate analytics, investment, and advisory firm, CBRE. See Institutional Valuation and Advisory Services, *"Debt Valuation Methodology Overview Q2 2026"*); CBRE Research "*Commercial Real Estate Investment Volume Surges, Lending Conditions Improve*" (Q1 2026) (April 30, 2026); "*Eyeing Real Estate Returns Over a 10 Year Horizon*" (Feb. 19, 2026); CBRE Research, "*2026 North American Investor Intentions Survey*" (Jan. 29, 2026); CBRE Econometric Advisors, Debt Monitor (July 2025); CBRE Investment Mgmt., *U.S. Real Estate House View (H2 2025)*; CBRE Research, *Some Distress Will Emerge Amid Wall of Loan Maturities* (May 8, 2024); CBRE Research, "*Debt funding gap arises in multifamily sector*" (Oct. 25, 2023); CBRE Research, "*A financing gap is no longer the concern, but a cash trap might be*" (June 13, 2023).

[3] Data in the table on page 2 is further supported by the following: First National Realty Partners, *Measuring Private Equity Real Estate Returns*; IRC Partners, *Commercial Real Estate Financing Rates: What $10M+ Sponsors Need to Know Before Approaching Institutional Lenders* (May 1, 2026); Janover, *Commercial Real Estate Loan Rates* (July 2026); Janover, *Mezzanine Loans for Apartment and Multifamily Properties*; Mortgage Bankers Ass'n, Commercial/Multifamily Real Estate Finance Database; Met Life Investment Mgm't, *Real Estate Debt: Navigating the New Frontier* (July 10, 2024); Select Commercial Funding LLC, *Commercial Mortgage Rates – Current Rates as of July 12, 2026*; Valiance Capital, *Understanding the Differences Between: Core, Core Plus, Value-Add, and Opportunistic Investments.*

Capital Source	Position/ Risk	Maturity	Comments
Construction Loan	Senior during development, lease-up	2-3 year initial term; extensions commonly provide up to 4-5 year total term	Commonly floating rate and interest only. Wrapped into permanent loan when construction ends.
Permanent Senior Mortgage	1st lien after property's stabilization	5-10 years	Non-subsidized
Mezzanine Debt	Behind senior debt	3 – 10 years (matures at or before the senior loan)	Generally tied to same "exit event" (sale or refinance) as senior financing.
Private Equity	Last in line	5 – 10 year "hold period"	Rates ranging from "core" to higher-risk "opportunistic" investment

Each layer of the capital stack fills a distinct financing need with different levels of risk, and return allocated as necessary to fully capitalize the project. Although distinct in function these layers are interdependent; the availability and terms of one capital source depends on the availability and terms of the others. There is no set, uniform maturity date in the marketplace governing these various loan and investment vehicles across the Federal Reserve system.[4]

Respectfully, the Proposal's requests for comments on limiting "the amount that should be permitted for bridge financing," or "requiring that any bridge financing have a limited maturity date,"[5] do not reflect how economic development projects are financed in the marketplace. ***All*** capital sources of a project should remain "bridgeable" to meet the EB-5 program's overriding objective for U.S. job creation – which is attributable to the ***entire project as a whole***. The appropriate inquiry should remain whether EB-5 capital – highly regulated as it is with all of the requirements created by the *EB-5 Reform and Integrity Act of 2022 (RIA)* – is a component of financing for a qualifying ***project*** that creates the requisite number of jobs. A construction worker, a long-term office maintenance worker, and a restaurant worker employed after the project's completion – all hired as part of a single project – are not understood as a "senior-loan job," an "equity tranche job," or a "bridge loan job."

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[4] Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey on Bank Lending Practices* (SLOOS) (released quarterly); Federal Reserve Bank of New York, Staff Report, *Extend-and-Pretend in the U.S. CRE Market* (rev. June 2026); Federal Reserve Bank of St. Louis, *Commercial Real Estate in Focus* (May 30, 2024); Federal Reserve Bank of St. Louis, "Flow of Funds" data; Federal Reserve Bank of Richmond, Economic Brief, *Understanding the Surge in Commercial Real Estate Lending* (Aug. 2017); See also Office of the Comptroller of the Currency (OCC), *Commercial Real Estate Lending* (Comptroller's Handbook) (March 2022); Mortgage Bankers Association, *Annual Commercial/Multifamily Loan Maturity Volumes*; Crestmont Capital, *How to Predict Future Loan Payments if Rates Rise: The Complete Guide for Business Owners* (Nov. 18, 2025); First National Realty Partners, *"Why Commercial Real Estate Investments Require a 5-10 Year Holding Period;"*; Moody's, The State of CRE Lending; Private Equity Realty Investments (PERI) Capital Group, *CRE 101 – Investment Lifecycle of CRE Investments.*

[5] 91 Fed. Reg at 40709, col. 1 (July 2, 2026).

Yet, if temporary bridge financing initially funds construction expenditures before EB-5 capital becomes available, USCIS proposes in some fashion to treat the resulting jobs as "bridge loan jobs" rather than "project jobs." Congress required ***the enterprise*** to benefit the U.S. economy "by creating" employment.[6] It did not require particular EB-5 dollars, bridge funds, or any other capital to be the immediate source of particular job creation.

USCIS interprets the *RIA* as creating a new, "closer nexus" specifically between the EB-5 investment and qualifying job creation because Congress used a preposition ("by") instead of a conjunction ("and").[7] "The key to the better interpretation lies in some statutory history." *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). But in this case, there is none to support the agency's inference. As the Proposal acknowledges, the *RIA* "did not explicitly address the use of bridge financing in the EB-5 program" and the new phrasing "is not directly addressed in any related legislative history."[8] In short: there is no statutory history to support the reading of "by creating employment" to impose a "closer nexus" between EB-5 capital and job creation.[9] Moreover, under *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024), statutory ambiguity does not itself constitute an implicit delegation of interpretive authority to an agency, nor is the agency's interpretation presumed to be the "best reading" of the statute. We urge USCIS to not infer that the single word "by" imposes a tight capital-source attribution requirement to U.S. job creation that Congress neither expressed nor otherwise indicated it intended. In this regard, we respectfully submit the Proposal does not offer the "better interpretation" or the "best reading" of the *RIA*.

In essence, the Proposal appears to be an attempt to regulate the timing and sequencing of project financing. Any concerns Congress had with regard to the temporal dimension of an EB-5 investment were addressed through the *RIA*'s provisions regarding the "sustainment" period for EB-5 deployment.[10]

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[6] 8 U.S.C. § 1153(b)(5)(A)(ii).

[7] Id. at 40707, col. 3 ("the RIA amended the INA's job-creation requirement to now provide that an investor must demonstrate the new commercial enterprise into which they invested not just benefit the United States economy ''and'' create qualifying employment but that it must benefit the United States economy ''by'' creating such employment. *See* INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(b)(5)(A)(ii)".)

[8] Id. at 40707, col. 3.

[9] Compare that to *Holmes,* 503 U.S. 258, 267–68 (1992) (the "key to the better interpretation" of RICO's *"by reason of"* language lay in statutory history showing that Congress borrowed language specifically from § 4 of the Clayton Act and § 7 of the Sherman Act, bringing a well-established "judicial gloss" requiring proximate causation between the statutory violation and the litigant's alleged injury).

[10] The *RIA* provides that EB-5 capital must be "expected to remain invested for not less than 2 years," 8 U.S.C. § 1153(b)(5)(A)(i). The statute does not specify the triggering event from which those two years start to run. We believe USCIS's current interpretation of the "sustainment" provision transforms EB-5 into an unusually short-term investment program that assists only smaller projects, with lower job creation benefits. We hope Congress will provide greater clarity regarding the "sustainment" period in future legislative reauthorization discussions. In any event, we note that the Proposal's intentions that "redeployment" must be completed generally within three (3) months is particularly unrealistic in light of the Service's interpretation of 2-year "sustainment." USCIS should keep the existing framework allowing "redeployment" within a "commercially reasonable period of time."

Congress expressly addressed how long EB-5 capital must remain invested**,** but did not prescrib**e** when that capital must enter the project's capital stack relative to construction loans, bridge loans, sponsor equity, or other sources of financing**.** That distinction should be respected. We hope USCIS will not impose an additional capital "sequencing requirement" that Congress chose not to add.

The EB-5 statute is fundamentally concerned with whether the qualifying investment supports an enterprise that creates U.S. jobs. Denying job-creation credit solely because temporary bridge financing preceded the EB-5 investment would elevate form over substance. Where EB-5 capital becomes a bona fide component of the financing for the job creating project, the statutory objective is satisfied regardless of the sequence in which the interdependent financing sources were deployed.

Accordingly, we respectfully request that USCIS not finalize proposed 8 C.F.R. § 204.407(e)(1). If USCIS enacts new rules to change its longstanding policies regarding bridge financing, the agency should assure prospective application only.

- ***Congress intended for "source of funds" to apply <u>only</u> to EB-5 capital – not all layers of a project's financing.***

USCIS should withdraw proposed 8 C.F.R. § 204.407(c)(4) to the extent it would require an immigrant investor, regional center, NCE, or JCE to demonstrate the lawful source of non-EB-5 capital.

As explained above, many real estate and infrastructure projects routinely combine multiple independent sources of financing. Nothing in the *RIA* suggests that Congress intended an EB-5 investor to subject every other tranche of financing to the specific "source of funds" inquiry applicable only to EB-5 funds. The *RIA*'s "source of funds" provision states:

> An alien investor shall demonstrate that the capital required under subparagraph (A) and any funds used to pay administrative costs and fees associated with the alien's investment were obtained from a lawful source and through lawful means.[11]

If Congress intended that all funds in every layer of the project's capital stack should be subject to this section, then it would have broadly drafted the language accordingly. Rather, the statute requires EB-5 investors to demonstrate lawful provenance for **"the" … "capital" … "required under subparagraph (A),"** as well as any funds to pay administrative costs and fees **"associated with the alien's investment."** Parsing this statutory text:

- "***<u>The</u>*** *capital*: Congress did not say "***all*** capital." "The" capital means the capital invested by the EB-5 petitioner.

[11] 8 U.S.C. § 1153(b)(5)(L).

- "*The **capital***": Congress separately defined "capital" to mean "all real, personal, or mixed tangible assets ***owned and controlled by the alien investor*.**"[12] EB-5 investors only control ***their*** capital contribution. They do not control separate bridge loans, construction loans, permanent loans, mezzanine loans, subsidized loans, or equity contributions provided by large institutional or community banks, sovereign wealth funds, life insurance companies, pension funds, government agencies and sponsored enterprises, or unrelated equity investors that may all contribute to a project's financing.

- "*The capital **required under subparagraph (A)"***: Subparagraph (A) does not pertain to project capital generally or abstractly. It pertains to capital in which "such alien has invested" in a "new commercial enterprise" as necessary for EB-5 visa eligibility.[13] Plainly, capital "required under subparagraph (A)" pertains only to EB-5 capital.

- *"Funds used to pay administrative costs and fees **associated with the alien's investment"***: The textual nexus is "to the alien's investment," not to an independent bank loan, government loan, or equity slug. Congress expressly identified both the person bearing the obligation to show legal sourcing (the "alien investor") and the funds subject to the sourcing obligation (the alien investor's capital contribution and "associated fees"). Congress did not require an alien investor to demonstrate that ***un***-associated capital is lawfully derived.

Broad financial review of international project financing apart from EB-5 capital is not within USCIS's purview. Those functions instead fall within the specialized mandates of the Treasury Department's Committee on Foreign Investment in the United States (CFIUS), Office of Foreign Asset Control (OFAC), and Financial Crimes Enforcement Network (FinCEN). These entities are specially charged with regulating the legitimacy of foreign capital and international monitoring for money laundering, freezing assets of known terrorist organizations, reviewing foreign investments for security risks to the U.S., and checking against other avenues of illicit overseas finance. It would be anomalous for USCIS to impose sweeping third-party capital tracing requirements that intrude into the responsibilities of other regulatory bodies – especially in the absence of any clear delegation of authority from Congress on a "major question" concerning the ability of U.S. companies to transact in global capital markets. See *West Virginia v. EPA*, 597 U.S. 697.

Congress unquestionably – and appropriately – strengthened "source of funds" and integrity requirements when it overhauled the regional center program in 2022. But it did so through detailed statutory provisions. Nothing in the *RIA*'s reforms clearly indicates that Congress intended EB-5 visa eligibility to depend on an evidentiary showing regarding the "source of funds" that the investor neither owns nor controls; or producing information that EB-5 investors have no legal or practical means of obtaining. For example, how could a single EB-5 investor meet "source of funds" requirements regarding a loan from one of the largest commercial banks in America that may provide a portion of a project's

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[12] Id. § 1153(b)(5)(D)(ii).

[13] Id. § 1153(b)(5)(A).

financing, where innumerable deposits are commingled on the bank's balance sheet? Or regarding every individual retiree-pensioner contributing to a pension fund?

We urge USCIS to remove from proposed § 204.407(c)(4) any requirement that an immigrant investor, regional center, NCE, or JCE identify or establish the lawful source of non-EB-5 capital. Nonetheless, if USCIS moves to finalize some requirement to trace sources of non-EB-5 capital, at minimum any such requirements should include exemptions for financing from regulated banks in the Federal Reserve System, government financing, tax credit funds, sovereign wealth funds registered with the International Forum of Sovereign Wealth Funds (SWFI), pension funds listed with the Pension Benefit Guaranty Corporation, licensed insurance companies listed with the National Association of Insurance Commissioners (NAIC), and other audited institutional investors.

- ***The proposed $1.4 million investment category for "high employment" areas would be punitive to investments in urban and suburban communities and result in unreasonable policy outcomes.***

USCIS proposes a new definition for "high employment areas" at a third, upper tier investment level of $1.4 million. (Proposed 8 CFR § 204.401, 204.407(b)(3)). We urge USCIS to refrain from creating this third new category.

A new $1.4 million investment tier would be especially punitive to urban and inner-ring suburban business districts that are centers of job creation and economic growth. We presume that USCIS's reasoning is that census tracts of high employment denote a community's affluence and thus do not warrant EB-5 investment support. Nonetheless, if the Proposal is adopted, Rural Areas of high employment would qualify for $800,000 investments (as adjusted for inflation). Likewise, infrastructure projects in high employment areas would attract EB-5 capital at $800,000 (again, adjusted for inflation).

Given that "Rural" and "Infrastructure" projects in high employment tracts would qualify at a significant competitive advantage at the $800K level, we can only surmise that the proposed $1.4 million investment tier would punish American workers and projects in America's cities and suburbs. Congress aimed to reward investments in preferred communities through the *RIA*'s intensely negotiated system of reduced investment thresholds, reserved visas, and expedited visa processing. It did not intend to penalize investment elsewhere with a third EB-5 investment category.

The illogical outcome is that only high employment census tracts in urban and suburban communities would be subject to an anti-competitive $1.4 million investment level for non-infrastructure projects. The proposal thus devalues ***affordable and low-income housing*** in cities and suburbs. It is hard to justify this result against the backdrop of the comprehensive, landmark housing law Congress just passed in July. As Banking Committee Chairman and lead Senate sponsor Tim Scott (R-SC) said upon enactment of the *21st Century Road to Housing Act*, the legislation is intended to "remove barriers," "help[ ] more families put down roots," and "mak[e] life more affordable" for the American people.[14] New residential units are needed in ***all*** communities across the U.S. Housing supplies are short everywhere – especially

[14] Senator Tim Scott (R-SC) press release (July 11, 2026).

affordable units in city and suburban neighborhoods where Americans want to improve their quality of life and cut down on commuting times, but they are "priced-out" of living closer to where they work.

EB-5 policy makers should gear the foreign investment program to help build and finance more affordable housing – especially in communities with better schools, jobs, and other amenities that are beyond reach for lower- and middle-income households. Yet, regulatory creation of the new $1.4 million EB-5 investment level would place EB-5 on a path that counters these national housing policy goals for the greater good.

The result is particularly illogical given the make-up and construct of census tracts. They are designated by population density – not size of geographic area.[15] Thus, census tracts in dense urban areas are small, with commuters from lower income neighborhoods living in different tracts only a few miles away and relying on mass transit to get to the "high employment" locations where they work for a living. In contrast, rural census tracts sprawl. Affluent rural census tracts provide the sites for high-end resort projects and highly profitable energy projects – and rural workers are also more likely to live in the same census tracts where they work.

Our analysis is not intended to denigrate economic development in our nation's rural communities, or the critical job-creating infrastructure projects our nation needs to be globally competitive. We do hope our analysis indicates how the $1.4 million investment category for High Employment Areas, as proposed, would create irrational outcomes. However one might interpret the 2022 *RIA* law, we think the Proposal's $1.4 million category disregards the aims of Congress when it struck a careful balance regarding rural, urban, suburban, and infrastructure investments.

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For more information regarding these comments, please contact Duane J. Desiderio, Senior Vice President and Counsel with The Real Estate Roundtable (ddesiderio@rer.org).

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[15] U.S. Census Bureau, *Geography Program Glossary* ("Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. A census tract usually covers a contiguous area; however, the spatial size of census tracts varies widely depending on the density of settlement.")

ADDENDUM

About The Real Estate Roundtable

www.rer.org

The Real Estate Roundtable is an invitation-only organization whose members are the Chairs, Presidents, and CEOs of top public and privately-owned real estate entities and trade associations, across every segment of the commercial real estate industry – as well as the Managing Directors of major national and international financial, pension, and lending entities. Roundtable members also include significant local and regional real estate leaders and advisors, along with the elected leaders of 18 national real estate trade associations.

Members of The Real Estate Roundtable work closely with Washington lawmakers and regulators to produce meaningful results on key national issues that affect the industry. The organization is committed to fact-based analysis of issues and sound, asset-related policies that have a positive impact on economic growth, job-creation, and local communities.

Real Estate's Impact on the U.S. economy:
(*See* Commercial Real Estate by the Numbers: 2026)

- **$26.8 trillion:** Total value of investable commercial real estate in the U.S.
- **$2.5 trillion:** Real estate's contribution to U.S. GDP
- **14.2 million:** U.S. jobs directly supported by real estate
- **$630 billion:** Yearly property taxes paid by CRE owners to local governments
- **$900 billion:** Amount invested in U.S. real estate by pension funds, educational endowments, and charitable foundations