



GAO Report: “Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits”

Senators Charles Grassley, Patrick Leahy, Bob Corker, Ron Johnson, Thomas Carper, Rob Portman, and Charles Schumer requested that the Government Accountability Office (GAO) review the risks and economic benefits of the EB-5 program. The [report](#) addresses several challenges related to the EB-5 program that have been highlighted in recent years, and which are addressed in legislation currently pending in Congress.

The congressional requesters asked the GAO to examine the following:

- The extent to which U.S. Citizenship and Immigration Services (USCIS) and its sister agencies have assessed risks of in the program, and what risks have been found;
- The extent to which USCIS has put into place procedures to address and identify risks within the program;
- The extent to which USCIS has expanded its capacity to verify job creation, including the use of reliable methodologies to report economic benefits of the programs.

The report’s top line findings were as follows: while USCIS had worked with its partner agencies to identify risks, such assessments are not ongoing. The GAO reported that USCIS acknowledged that it did not have current plans to systematize such assessments. The GAO noted that USCIS stated that fraud-related risks were evolving. Specifically, the GAO received information from agency officials relative to areas of concern that included determining an investor’s source of funds and the legitimacy of an investment entity. The GAO made clear that USCIS had taken steps to enhance its oversight and focus resources effectively, but also noted that weaknesses in its information systems present challenges to most effectively using data collected to identify such risks.

The report also focused on USCIS’ ability to report the program’s economic benefits, noting that USCIS’ increase of its EB-5 workforce, and its enhanced technical sophistication, has increased its capacity to verify job creation through the program. The GAO reported that USCIS’ reporting methodology can both overstate *and* understate economic benefits resulting from the program. The GAO recommended that USCIS implement better information collection procedures; though it also acknowledged that USCIS does not believe it has the statutory authority or mandate to develop a more elaborate mechanism to collect such information.

As part of its study, the GAO interviewed numerous parties associated with the EB-5 program, from USCIS adjudicators and economists, to regional center principals and FDNS and IPO supervisory officials to gain insight to its queries. The GAO also

reviewed the economic models to estimate job creation and interviewed the appropriate subject-matter experts. The GAO also reviewed two reports issued by the DHS Office of Inspector General (OIG) on the EB-5 program: a report published in December 2013 focused on USCIS' ability to terminate a regional center based upon national security concerns and determining whether the program was benefitting the U.S. economy and fulfilling job creation requirements. The second report, from March 2015, found that a former director created the perception of favorable action towards some program stakeholders.

The GAO's Findings

As a result of its inquiry into the risks and economic benefits of the EB-5 program, the GAO found the following, summarized below:

Source of Immigrant Investor Funds

The GAO reports that it can be difficult for USCIS adjudicators to verify the lawful source of investor funds, which is then identified as a potential fraud risk. The GAO assessed 150 petitions designated as "high risk," and the Fraud Detection and National Security Unit (FDNS) determined that the source of funds contained risks, including counterfeit documents and the inability to verify information from foreign banks. The U.S. currently has some limits in verifying foreign banking information, though it does have agreements with certain countries to exchange financial information.

Legitimacy of Investment Entity

Regional centers and their operators have been under recent scrutiny by USCIS for potentially unlawful investment schemes. The GAO report cites two instances where the regional center was found to have defrauded investors. According to the report, there are concerns relating to the inability of the U.S. government to fully investigate foreign-based sales and marketing practices abroad.

Appearance of Favoritism in Program Administration

The GAO referenced a report issued by the DHS Office of Inspector General that examined actions by a former USCIS director, which concluded that the former director created an appearance of favoritism. The GAO noted that following the issuance of that report, the Secretary of Homeland Security instituted protocols to prevent agency actions that could give rise to such an appearance of favoritism.

Steps Taken by USCIS

In response to the risks identified above, the GAO recognized that the USCIS has taken some steps to mitigate risk, including:

- Changing its organizational structure: USCIS restructured its EB-5 program operations and moved all activities from California to Washington, D.C. USCIS also established a fraud specialist unit within FDNS, in addition to increasing its staff to be well equipped to ensure program integrity.

- Establishing fraud awareness training: USCIS is committed to deterring fraud, and has invested in training programs. Examples include programs focused on detecting evidence that may indicate money laundering, and developing an “EB-5 University” to address evolving issues.
- Law enforcement collaboration: USCIS has increased its coordination with law enforcement agencies, and as such, has expanded the scope of background checks.

The GAO identified some shortcomings regarding the USCIS’s ability to collect information to detect and mitigate risks. Specifically, the GAO identified certain programs and processes that it believed merited improvement, summarized below, and noted that USCIS is taking steps to address the concerns:

- Electronic Database
The report found that USCIS does not have the appropriate electronic databases to conduct fraud-mitigating activities. For example, the information on Form I-924 concerning regional center principals is not required to be entered into the database, and as such, this information is never run through a database or background checks. To remedy this, USCIS will begin utilizing its Electronic Immigration System to capture all data, though the system has been delayed for nearly 4 years and costing over \$1 billion.
- FDNS Site Visits Are Limited
FDNS currently conducts site visits if the Immigrant Investor Program Office (IPO) staff uncovers a material concern regarding the project and the information cannot be verified. In response, USCIS plans to implement additional random site visits in 2015, and to hire eight additional EB-5 program staff for this purpose.
- Interview of Investors Applying to Remove Conditional Permanent Resident Status
The GAO found that USCIS has not interviewed any immigrant investors applying to remove the conditions on his or her permanent resident status. The GAO recommends that interviews could lead to more information gathering and could lead to corroboration with the information given at the I-526 stage of the petition process. USCIS agreed with the GAO’s recommendation, and will develop a plan to implement enhancements to data collection procedures, including the possible use of interviews, to be completed by September 30, 2016.
- USCIS Does Not Collect Certain Applicant Information
The GAO reported that USCIS is not capturing certain information that may help mitigate fraud. Specifically, USCIS does not collect information from third parties associated with the regional center or the project, including the businesses supported by the regional center, advisors, foreign brokers, marketers, attorneys, and advisors. USCIS has stated that it is currently drafting a revised Form I-924 to capture this information.

National Security

A portion of the GAO report is dedicated to national security issues and USCIS's ability to terminate or deny an application based solely on credible concerns. USCIS recognizes that national security concerns are grounds for denial at the adjustment of status stage, but it does not believe it has the authority to terminate a regional center on national security grounds unless there is an eligibility ground (relating to EB-5 eligibility) that has not been met. The GAO reported that there are some regional centers that are allowed to operate by USCIS despite national security concerns, and recognizes that currently pending legislation in Congress will address these issues. USCIS currently conducts a minimum of one fraud, national security, or intelligence assessment on the program on an annual basis, and will continue to do so.

Methodology for Calculating Jobs

The December 2013 OIG report claimed that USCIS lacked the necessary means to evaluate job creation. In response, USCIS hired 22 economists who have all undergone training. In addition, USCIS has provided its economists with access to data from the RIMS II economic model, noting that it is the model most often utilized and measures indirect and direct jobs. The GAO reported that the RIMS II data does not provide USCIS the ability to determine the exact location of the indirect jobs created through the program.

Reporting EB-5 Outcomes

The GAO reported that USCIS does not have the proper tools to track the outcomes of investment and job creation, and that as a result it may overstate or understate the economic benefits of the EB-5 program. The GAO found that 26 percent of investors have not finished the program, and as such, recommends that USCIS track all data entered on Form I-526 and I-829. USCIS concurred in the recommendation and will develop a plan to collect data on investment amounts and job creation, to be done by September 30, 2016.

A concern reflected in the GAO's report is whether immigrant investors should be able to claim jobs created by other investors in the project who are not seeking a green card, as permitted by controlling regulations. The GAO reported the views of the IPO, which recognizes that EB-5 capital is critical to the viability of many projects. There GAO recognized that there are numerous industries, including manufacturing, that would not be able to generate the required number of jobs if it relied solely on jobs created by the EB-5 investment at current investment levels.

Study to Address Overall Program Benefits and Cost of the EB-5 Program

The GAO report recommends that the Department of Commerce's Economics and Statistics Administration (ESA) should complete its study on the EB-5 program and its associated costs, specifically weighing the cost of running the program against the benefits that immigrant investors bring to the United States, such as tax payments, consumer spending, and job creation. The GAO believes it is important to measure a program's net economic impact, and the GAO recommends that this study strive to do so.

The USCIS IPO concurs and will include relevant program costs in the study, to be published November 30, 2015.

Conclusion

The GAO's report highlights a number of areas for improvement within USCIS. These recommendations are largely directed toward ensuring program integrity and better collection and use of data received from regional centers and immigrant investors to measure program performance. It is noteworthy that USCIS, in its letter response to the GAO, concurred in all four of the GAO's recommendations.