

August 13, 2015
USCIS EB-5 Stakeholder Engagement Teleconference

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SUSAN CURDA

Good morning, everyone. I am Susan Curda. I am the District Director for U.S. Citizenship and Immigration Services here in Los Angeles. I'm very happy to welcome you all here to this national stakeholder event. In 2013, U.S. Citizenship and Immigration Services realigned the EB-5 program into the Immigrant Investor Program Office in Washington, D.C., with an SES-leader dedicated exclusively to EB-5 adjudication. This realignment is a direct reflection of the agency's continued focus on, and prioritization of, the program's integrity and potential to create jobs in the U.S. USCIS has invested in the expertise needed to adjudicate these complex cases by hiring staff with expertise in economics, law, business, finance, securities and banking to enhance consistency, timeliness and integrity within the program. A dedicated team of attorneys from the USCIS Office of Chief Counsel advise on an array of program-related legal matters as well as an embedded unit from the Fraud Detection and National Security and together they analyze fraud implications and potential schemes.

In FY 2014, USCIS received nearly 11,000 immigrant petitions by alien entrepreneurs, which represents \$5.5 billion in future potential investment, and approved more than 5,100 Form I-526s, which represent more than \$2.5 billion in investment.

Most recently, the program has selected a permanent Deputy Chief in charge of IPO operations and three Division Chiefs, who have oversight over adjudicative and economic actions taken on EB 5 petitions. IPO continues to increase operational efficiencies and host regular stakeholder engagements such as this one to help communicate the progress of the office, capture questions, issues of concerns and develop appropriate solutions. In FY 2014, the engagements averaged more than 650 attendees.

Today, I'm very happy to have with us Mr. Nicholas Colucci, who is the Chief of the Immigrant Investor Office, and Ms. Julia Harrison, Deputy Chief of the Immigrant Investor Office. I would also like to welcome Ms. Danielle Scott, Chief of the Intergovernmental Affairs Branch of the Public Engagement Division, who will now be orchestrating the remainder of this conference. Thanks.

DANIELLE SCOTT

Thanks so much, Susan, and thanks for those introductory remarks. Hello, everyone, and welcome to today's national EB-5 Stakeholder Engagement. I'd like to welcome all that are joining the teleconference and those also joining us in person as we're here in the Los Angeles

[office]. My name, as Susan mentioned, is Danielle Scott and I'm the Chief of the Intergovernmental Affairs Branch within the Public Engagement Division of USCIS. I'd like to first give a big shout-out and thanks to Susan and her team for facilitating today's engagement and allowing us to, to share this wonderful space, so thank you so much. Leading today's discussion for us, as Susan mentioned, is Mr. Nicholas Colucci, who is the Chief of the Immigrant Investor Program Office, and also Miss Julia Harrison, who is the Deputy Chief of the Immigrant Investor Program Office. Ah, I will be turning the call over to them very shortly to provide some updates and then also to share some information from some additional [unintelligible] that are experts in the Immigrant Investor Program Office.

Prior to opening an engagement, I would like to first issue some administrative reminders for the folks on the phone along with the folks joining us in person, so please note that information provided during today's teleconference and engagement is not intended for media attribution. Members of the media joining us today, we ask that if you have any question at the end of today's engagement or need additional information or an on-the-record comment, please call the USCIS press office at (202) 272-1200. For any Congressional staffers, please contact the U.S. Office of Legislative Affairs for any request or case-specific matters ...

So now I would like to go ahead and turn the floor over to Mr. Nicholas Colucci, who is the Chief of the Immigrant Investor Program Office.

NICHOLAS COLUCCI

Thank you, Danielle. Good morning to everybody here and on the West Coast and good afternoon to those of you, um, everywhere else. As Danielle mentioned, my name is Nick Colucci. I'm the Chief of USCIS's Immigrant Investor Program and we oversee the EB-5 program. It's really nice to be here in Los Angeles for this national engagement. In addition to holding this engagement today, we participated in a number of events and meetings here this week as part of a new series of engagements that we've titled EB-5 In Touch and it's where we travel to a part of the country that has benefitted from U.S. – I'm sorry – from EB-5 capital. Ah, we get to meet with local officials as well as see some of the EB-5-sponsored projects firsthand. I'll talk a little more later about the rest of the week, but, before I want to before I jump into my remarks, I want to thank Susan and the LA District Office for hosting here this week.

As I typically do, I want to start by providing a few program-related statistics. On a positive note, our staffing today stands at 112 employees and we're working on bringing on board another four employees or four individuals who have accepted offers. We're also in the process of hiring additional adjudicators and economists to supplement that staffing. We do expect to be at our target staffing level of 121 by the end of the fiscal year, so for us that's September 30th, and we also hope to hire another 20 or so employees between then and the end of the calendar year. Another piece of good news is we've significantly picked up our rate of adjudication. More specifically, between March and June of 2015, we averaged more than 1,000 adjudications per month of the Form I-526, and that is the Immigration Petition by Alien Entrepreneur. This represents about an 80 percent increase from our monthly adjudication rate for this form type earlier in the fiscal year. In that time period – March through June of 2015 – we adjudicated more than 1,100 petitions than we received and, as you all know, this will help reduce the

number of pending petitions as well as ultimately help to bring down our processing times. And here's where I get into some statistics. The first three quarters of the fiscal year, which ended June the 30, on June 30, we received 7,723 Form I-526 petitions and, in terms of year over year for that same time period, it's a 5 percent increase from what we received last year. We approved 6,498 526 petitions and denied 663. Again, approved 6,498 and denied 663. For the Form I-829 – that's the petition by the entrepreneur to remove conditions – we received 2,268, and that is a 47 percent increase year over year. For the 829s, we approved 606 and denied 5. And then finally for the Form I-924 – that's the application for a regional center under the Immigrant Investor Pilot Program – we received 252 applications, and that is a 30 percent increase from the same time period last year. We approved 187 and denied 31. And just please note these are preliminary statistics. They still have to be vetted and then published officially. They'll be very close, though. One thing I do want to mention is we have a thing – or we are seeing right now a spike in both immigrant investor petitions and 924 amendments and we think it probably has something to do with the regional center program sunsetting on September 30, but for the 924s, I think we received 55 or so in the month of July, so, again, we're seeing quite a pickup there. Traditionally we usually get between like 25 and 35 of those.

So that was a lot of the good news. On a less positive note, our processing times are not where we or you would like them to be. The latest times as of May 31st are for the 526, it's 13.4 months. The 829 is 13.6 months, and the 924 is 11.5 months. And, again, we hope to bring those down as we continue to bring new staff on board.

Switching subjects: As you may have seen, you know, the State Department's announcement that the visa cutoff date for Chinese-born investors was May and I think they recently amended that to September of 2013 – I'm sorry, May of 2013 – and now it's September of 2013. Just on Monday, we published a Policy Memo, a Draft Policy Memo, for comment. We want to hear from all of you about how two of the program's eligibility requirements – job creation and investment sustainment – we be impacted. I just encourage everyone to please take time and, and really go through that in detail and provide with all of your comments and ideas. The comment period closes I believe on September 8th and we do hope to move pretty quickly, once we take all of your comments into consideration. Laurie Melton is going to have additional questions and answers on the policy memo in a few minutes.

We are also going to soon be positing something called the EB-5 Protocols and that, that's short for a long title, but it, it's Ethics and Integrity: Protocols for Processing Immigrant Investor Visa Petitions and EB-5 Regional Center Applications Including Stakeholder Communications. These Protocols were ordered by the Secretary and developed by DHS's Office of General Counsel in consultation with USCIS. The Protocols dictate how DHS employees and contractors should handle contacts with EB-5 petitioners, applicants and the other stakeholders, members of Congress and their staff, other elected officials and the White House. The Protocols also address when and how senior leaders with the department and agency may intervene in specific EB-5 cases. For all of you, perhaps the most significant point to note is that, under the EB-5 Protocols, all substantive inquiries – this is whether in writing, by phone or in person – are required to be memorialized and placed in the relevant USCIS file. The, ah – excuse me – the procedure questions, such as a general inquiry into the status of a petition or an application, will not generally be considered substantive or impacted by the Protocols, and for the purpose of the

Protocols, the term substantive refers to communications which have the likelihood of impacting, or were considered in the adjudication of, an EB-5 application or petition and could include instances in which there is a discussion of specific facts related to an EB-5 case. One of the things that we need to do in the next couple of weeks is train all of the impacted and contractors at USCIS and DHS. One of the things we're also going to do is post those Protocols online for all to see the Protocol Memo as well as the training that we plan to provide to our employees and contractors.

Next I want to talk a little bit about a new team that we're putting together within IPO and it's going to be dedicated to promoting compliance within the regional center industry. The team will primarily focus on reviewing I-924As for timeliness, accuracy and completeness, and preparing Notices of Intent to Terminate for regional centers that no longer meet program requirements. In the past, our economists did this work and what we found is it's quite a bit of work and these things take quite a bit of time and it did compromise some of our processing times and so now we're created a stand-alone team to do that. So in addition to reviewing 924As and issuing Notice of Intent to Terminate, the team's going to look at other compliance-related issues and that includes pursuing appropriate action against regional centers for inappropriate use of the DHS seal – we have a forthcoming stakeholder alert on this issue – and against regional centers and/or their marketers for making false claims about guaranteed returns, guaranteed approvals and guaranteed expedited treatment of petitions, all of which are contrary to program policy and guidance. The team's work will also include a review of regional center and related entity naming conventions, which may falsely imply a special relationship between the entity using the name and USCIS, DSH or the United States government, as discussed in the recent stakeholder memo that we published.

The mission of the new office is to increase compliance and we hope to accomplish in a number of ways, including exercising authority to interview regional center applicants and I-829 petitioners; holding additional engagements focused on regional centers to help further explain and clarify relevant laws; regulations and other program requirements; conducting additional site visits, both domestically and overseas to ensure documents are authentic and projects are proceeding as planned; auditing financial records to ensure funds are spent in accordance with the offering documents, economic analysis and business plan, and holding accountable those regional centers that violate the law, policy or regulations.

Ensuring the integrity of the program and always is going to be a critical priority for us and for all of you and, as I've mentioned at every, single engagement we've held so far, you know, please continue to make us aware of any concerns or suspicions of illegal activity that you may have.

Next, as you may have seen, the Government Accountability Office, and that is GAO, release its review of the EB-5 Program yesterday. The report assessed USCIS efforts under the program to: 1) work with interagency partners to assess fraud and other related risks, 2) address any identified fraud risks, and 3) increase its capacity to verify job creation and use a valid and reliable methodology to report program outcomes and overall economic benefits. Overall, the report mentioned a number of strides we've made with respect to fraud detection and in the administration of the program. Specifically, it stated USCIS has taken some steps to enhance its

fraud risk management efforts, including creating an organizational structure conducive to fraud risk management, establishing a dedicated entity to [unintelligible] and oversee its fraud risk management activities, conducting fraud-related awareness training, and establishing collaborative relationships with external stakeholders, including law enforcement agencies. It went on to remark that USCIS took action over time to increase the size and expertise of its workforce, provide clarifying guidance and training, and revise its process for assigning petitions and applications for adjudication.

GAO did have four recommendations with which we concurred. The first recommendation was to plan and conduct regular future fraud risk assessments of the EB-5 Program. In response to GAO's recommendation, we've agreed to do this and continue to do annual assessment, which we've done each year since 2012.

The second recommendation was to develop a strategy to expand information collection, including identifying and collecting additional information on EB-5 forms and conducting interviews at the 829 stages. As you know, we recently published a revised 829 and all of the other forms that we have right now are being worked on and will soon be published in the Federal Register for comment. One of the other things we're seeking to do is upgrade our system so that we can accommodate that expanded information that [we're going to be] gathering. And then, finally, we've started to develop a strategy for these 829 interviews of the petitioners.

The third recommendation was to track and report data received by immigrant investors and verified by the agency with respect to job creation and investment through the EB-5 Program. This is something we've done in the past, but only as an estimate. In the past – we get asked that question a lot when go up on Capitol Hill and elsewhere and we brief the program and they ask us, you know, how many jobs it created and what, what's the investment level, and what we've done is we've provided pretty conservative investments by multiplying \$500,000 by the number of the 526 applicants and then also multiplying 10 by the number of 829s we've approved, and the GAO would like us to be a little bit more precise with those estimates and that's something we plan to do again in the future.

And, finally, they recommended that Commerce's valuation of the economic impact of the EB-5 Program include a discussion of program costs, even if they could not be qualified for the study, and I think, as you all recall, we agreed, or we entered into an agreement, I should say, with Commerce as a result of the IG study of the program in December of 2013, and Commerce continues to work on the report and they have agreed to include a discussion of program costs.

You know, in closing, we're really grateful for the work the GAO did. We always look for opportunities to improve and we look forward to implementing those recommendations that they had.

And then, finally, just to share a little bit about our week in LA leading up to this engagement, as well as a little bit about a trip that I took with Kurt Vika, our, head of our FDNS EB-5 fraud unit to Guangzhou and Beijing, China. While we were in LA, it's been a really busy and really good week. On Monday, we met with Susan and her staff, the local leadership here, and then that afternoon we met with all of our federal law enforcement partners and specifically the SEC, the

FBI and ICE counterparts. On Tuesday, we went out with some of our local Fraud Detection and National Security Officers and, and conducted several site visits of various projects in the area. We did this in preparation for our random site visit program that our FDNS colleagues expect to implement in Fiscal Year 2016. And then just yesterday we, as we do each time we have a national engagement, the day before we'll provide a briefing to congressional staff of what we plan to say at our engagement, and we did that yesterday.

In terms of the trip to China, it was really eye-opening. It was my first time there. While we were in Beijing, we got to meet with officials from China's Ministry of Public Safety and Security, as well as officials at the national, provincial and local levels. They were all very interested in how the program worked, and we explained that and we learned from them various mechanisms that we could use to augment our procedures for verifying questionable Chinese tax, income, identification and other documents submitted to us. In Guangzhou, we spent a lot of time with our ICE colleagues there as well as State Department officials. We actually got to witness some interviews that State Department does at the windows with some of the EB-5 petitioners and, and, you know, that was really interesting. We spoke with some of the USCIS staff who conduct site visits at our request when we have questions about the legitimacy and documents of the projects, and they walked us through a few of the site visits, and they take a lot of time and, and they can be pretty costly, but very worthwhile in terms of just enhancing that on-the-ground due diligence. One of the things we, we seek to do is expand our footprint there so we can do even more of that. And then, finally, we received a presentation from the Department of State staff who had attended some of the trade shows in China related to EB-5 and that was very interesting and eye-opening as well. Again, a really worthwhile visit for us and for me personally, and we look forward to continuing those relationships that we built by tending those, you know, while we were over in China.

Now I'm going to turn it over Julia Harrison. She's going to talk about some operational considerations, but thank you for your time.

JULIA HARRISON

Hello, everyone. I'm going to talk a little bit about with you, a little bit with you about the effort we've made over the last several months to ensure that we have our workflow running smoothly and that cases are being adjudicated in an equitable sequence – generally, first in, first out, which we're all familiar with that. Of course, at IPO we do some grouping of petitions that relate to the same new commercial enterprise because we gain some efficiencies there, and at the same time we have been focusing back and capturing cases that were filed in 2012 and 2013 that had gotten out of order for various reasons, and we're really making those a priority, and while I'm sorry to say we're not 100 percent finished with that effort, we are almost there. The staff is working very hard on those older cases, and I do expect that we will be completely finished with this effort by the end of this calendar year, if not before. And we also heard from you recently that some of the, from some of the regional centers, that you're reporting that your I-526 cases are being adjudicated, some of them, in a matter of weeks where others are taking several months and that was causing some confusion, so I want to talk about that a little bit. There are a few reasons that this may happen. For instance, in some, some cases, the regional center or the individual petitioner will submit a request for their petition to be expedited. That's a process that you're all

familiar with, I think. If this request is granted, then the petition or the petitions, depending on the request, they get moved to the front of the line and they get assigned to the next available officer, so that would be a reason why you're seeing cases that we're filed more recently getting adjudicated well ahead of other cases. Another reason that this has happened is that on June 15th of this year we stopped accepting electronically filed Form I-526, the Petition for the Alien Entrepreneur, and also discontinued the Regional Center Document Library. As, as part of this effort, we needed to complete the adjudication of the previously electronically filed petitions immediately, so in that instance those cases did get moved ahead of some other, other cases that had been filed, but, as always, if you're concerned about the process of your case, please feel free to contact our customer service team.

Next I want to talk with you a little bit about our upcoming EB-5 Interactive. The EB-5 Interactives are engagements that we're using to take a deeper dive on a specific EB-5-related topic. To date, we've held two of these interactives and our next interactive is scheduled for September 17th of this year. In keeping with our commitment to provide greater customer service and transparency, we decided to ask you, the stakeholders, to provide ideas on suggested topics through the USCIS Idea Community. The USCIS Idea Community, for those of you who are not familiar, is an online portal that provides a forum to discuss topics raised by the agency, vote on those topics and/or provide feedback that most concern stakeholders or customers. IPO solicited topic ideas from our stakeholders throughout July and, although we are appreciative of those who did submit ideas and comments, we didn't feel that we received enough suggestions to pick a topic based on consensus from the Idea Community, so what we decided to do is focus our next interactive on the I-924A process, because the filing time for that is, is coming up here, and then we're planning to give you another opportunity to use the Idea Community, social media – starting our own Facebook and Twitter stuff – and through engagements such as this one to help us select the topic for the one after that. So the next interactive is September 17th. We'll be covering the I-924A process. So I really do encourage you, if you have not already done so, visit our website – uscis.gov – and sign up to receive the announcements and messages about future opportunities to engage with us. We want to make sure that you're getting notice that the Idea Community is out there so that your burning topic that you want us to talk about gets brought to our attention. So just to kind of give a little more information: Our plan for the September interactive will be to share some filing tips and expectations regarding the regional center annual reporting requirements. We want to make that process a little, a little more transparent and a little easier for you all.

So next I'm going to go on to talk a little bit about some of the questions that we received in advance. I'm going to cover a couple and then I'm going to turn it over to Laurie Melton, who is one of our Division Chiefs in our adjudications. She'll cover a couple and she'll also talk a little bit about the Policy Memo and then she'll turn it over to John Lyons, who is the chief of our Economics Division, and he'll talk with you about some of the questions that we received in advance.

So one of the questions that we received from, from you all is: What can be done by the regional centers to avoid having serial NCE (New Commercial Enterprise/Job Creating Enterprise) related RFEs sent to all petitioners. And so I understand that that is really frustrating. You're submitting several petitioners and if we find an issue related to the NCE or the JCE, we send

every single one of your petitioners an RFE. So I would say to you that the number one thing that you could do is to file the I-924 with a Form I-526 exemplar, and so when the exemplar is approved, then we'll grant deference to the business plan, the economic analysis and the organizational documents associated with that NCE and then your petitioners won't need to do that. But, absent that, it is incumbent on the petitioner to demonstrate that they're eligible for the benefit, so if these docs are not approved in advance, then we do need to address them with every petitioner. In the event that, you know, the time for that maybe has passed, if you're already received an RFE for a petitioner and you know you have other petitions pending in our office or you've got some sitting on your desk that you're getting ready to send into us, go ahead and include those documents that you were put on notice that we needed in your first RFE with your submissions and then you'll avoid getting the RFE for those.

Another question that we got is: Do petitioners need to send copies of the hypothetical sample project documents if the original regional center designation was done with these documents? So those of you who are submitting your Form I-924 with just a hypothetical project, you're asking do our petitioners then need to send those, all those hypothetical documents in addition to the updated documents with the actual project. And the answer is no. We're, we don't need those because we're not granting deference to those, so – but what we will need the petitioners to present [is a] *Matter of Ho*-compliant business with a conforming economic impact analysis and copies of the organizational and transactional documents for the actual project in which they are investing.

And we got a question about a better way to submit your evidence when we, when you receive a Request for Evidence. Given the decommissioning of the LSL, electronically filed 526s and the document library, the question we got is is there a better way – can we send you digital records on a CD? And, unfortunately, the answer to that is no. The security that we have in our systems does not allow us to play a CD or a DVD in our system. We couldn't even pop in a training video for our officers if we wanted to. They're really strict. So, sorry, but we are still looking at different mechanisms and hopefully we'll have something that's a little more efficient for you all soon.

Another question we got was on expedited processing requests and can we provide additional guidance. The answer to that is kind of also no. I mean, we do have the Policy Memo that posted on our website. If you need help finding that, please feel free to send an inquiry to our customer service box. But, generally, the, the information is broad and we want you to submit the information that you think is important for us to know in adjudicating that expedite request.

And then the last thing I want to talk with you about before I turn it over to Laurie is we did, of course, understandably get some questions from you all about what is our plan should, should there be a lapse in the program if it not reauthorized ahead of the September 30 sunset date – will USCIS publish guidance if such an event were to occur and when can they expect to see such a document. And so I just want to let you know that, obviously, the program will sunset on midnight September 30 if there's no new legislation passed and we will continue to receive, process and adjudicate the regional center-affiliated forms as usual until the close of business on Wednesday, September 30, 2015. As I'm sure most of you know, legislation is currently pending in Congress to extend the program and USCIS will publish a document providing guidance on

how the agency will handle impacted cases should the program sunset and we anticipate issuing this guidance in the, in the coming weeks. And just to reiterate, this does not impact the non-regional center-related cases.

So now I'm going to turn it over to Laurie. She's got a few things about the memo and then some other of your questions that you submitted in advance to talk about.

LAURIE MELTON

Thank you. I have the unenviable task of talking about the Policy Memo. If you recall, a few engagements ago, I spoke to you and said we're working on Policy Memo and, in fact, the first question that I want to address today is: At the April 22nd engagement, USCIS mentioned a memo would be issued in the near future. When will it be issued? Well, your answer is Monday. I hope you've all had a chance to, to read it. I want to talk just a little bit about it and give you a brief overview and then we'll go into some of the questions that we received in advance that specifically to the memo.

As, as you know, we are limited in making policy decisions first of all by statutory authority and then by current existing regulatory authority, so we worked very diligently to come up with a policy to provide as much flexibility as we could for stakeholders under those parameters and also given the constraint of the visa cutoff date.

The first topic that is most impacted by those visa cutoffs relates to job creation and those of you who have been around the EB-5 Program for a while will probably recall a Policy Memo from 2009 where we talked about adjudicating job creation and that we would look at the 526 petition to determine whether or not the job creation would occur within two years of adjudication, understanding that adjustment of status and/or consular processing would take approximately six months. A lot of you may refer to that as the Two-And-A-Half-Year Rule. It's not a rule, as my counsel in the front row will remind me, but that is, that is in the Policy Memo, so that's the, the frequent guidance that you, you hear, is the Two-And-A-Half-Year Rule. Our current Policy Memo that is in draft format for your comment does not change that process. We're going to – our plan is to continue to adjudicate anticipating that six-month window simply because these cutoff dates are new and we can't predict for that consular processing in the future, so we're going to monitor that with the hopes of providing additional guidance at a later date once we've had the ability to monitor that for a while. The other important component of the job creation relates to the I-829. Obviously with the unpredictability of how long it may take someone to actually enter the U.S. and start they're conditional permanent residence period, there were questions about how long the jobs would have to remain in existence, and we wanted to reiterate our policy that's in the 2009 memo and I think reflected again in our draft Policy Memo that so long as the jobs that were created were permanent, considered permanent in nature, not temporary or seasonal, that we will consider that in the analysis at the 829 adjudication even if those jobs don't happen to be in existence at the time the 829 petition is adjudicated.

That was job creation. And I'm going to give you guys to ask some clarifying questions in just a second. The other component of the Policy Memo related to sustainment of the investment, and this is where it certainly gets a lot trickier, because our statutory and regulatory authority requires

that the investors sustain their investment throughout the conditional permanent residence period, unlike the marriage-based immigration – where if you are married for two years, by the time you adjust, congratulations, you get a full green card – there’s no such statutory authority in the EB-5 Program, and so we are required to look at that investment as being sustained throughout the entire conditional permanent residence period. In looking at whether or not that investment has been sustained at the 829, we are going to look at whether or not that investment has been maintained in a single new commercial enterprise, and we also are going to ensure that that investment has remained at risk throughout the conditional residence period. I’m going to go into that a little more with a couple of the questions that were submitted that I think will provide a little bit of clarification there.

And, finally, our draft memo talks about material change, which I know all of you love. We don’t, but you do – no, just kidding. So we do go on to reiterate, as we mentioned in our May 2013 memo, we talk about material change and how if the material change occurs prior to the individual obtaining conditional permanent residence, there may be some concerns. We may have to deny that pending 526 petition; we may have to revoke it. That policy remains the same. What the Policy Memo does, however, is provide a few examples of what we believe would not necessarily be considered a material change, and I think that that’s really important. We only gave a couple of examples because this is a Policy Memo, not a checklist for adjudicators to follow, if you will. We understand there are going to be a variety of scenarios and we’re going to have to analyze those as they, as they come in.

I want to touch on a couple of questions that we received in advance that I think will answer some of the questions that you guys may have to clarify, particularly the sustainment of the investment. At one of our last engagements, we got a lot of questions about sustaining an investment and particularly a job-creating entity completes a project, creates the requisite number of jobs, and repays the loan before all of the investors’ 829s are approved. So you have a very successful – congratulations, right? So the question is: Are the funds considered sufficiently at risk throughout the conditional residence period or must the new commercial enterprise redeploy the funds? And I know we’ve gotten a lot of questions – can the NCE just put the money in escrow if the loan gets paid back sooner? The answer to that is our draft Policy Memo. In our draft Policy Memo, what we are proposing is that sustainment does require that the investment remain at risk. So if the loan is repaid in advance of an investor completing their two-year conditional residence period, the investment must be redeployed into another at-risk activity to remain at risk. And here’s another example: If a JCE which develops and owns a hotel is sold to a new owner who assumes the existing EB-5 loan and all obligations, does it remain in compliance for a conditional permanent resident petitioner trying to sustain the investment until the 829 adjudication? And counsel has advised me that I tell you the following: With each case, we have to adjudicate on its own specific facts. In general, however, as long as the requirements that the petitioner sustained their capital investment over the two years of conditional residence and created the requisite number of jobs are maintained [sic], the change of ownership of a JCE and the absorption of an EB-5 loan associated with that JCE would not, in and of itself, negate compliance with the individual investor’s sustainment. As noted previously, if the loan is repaid in advance, remember, the investment must be redeployed into another at-risk activity to remain at risk, OK?

We also received the question regarding job creation and how we thought that retrogression or visa cutoff dates might impact the Two-And-A-Half-Year Rule and, again, I think I covered that in my opening remarks. We are going to monitor that timeline for how long it's taking the consular process. Once we have a better viewpoint on that, [we'll] look at providing some additional guidance, but for now our draft Policy Memo is recommending that we keep the status quo for now.

And, with that, I'm going to open up to questions in the room ...

[LIVE QUESTIONS AND ANSWERS]

Thank you guys for your time on the memo and I'm going to turn it over to John Lyons, who's going to talk about sinking funds and other fun topics.

JOHN LYONS

Thank you. I'm John Lyons. I'm the Chief of the Economic Division at IPO. As with the very intelligent questions we've received this morning, we've also [UNKNOWN: Could you move it closer to your mouth? We can't hear you.] We want them – is this better? [UNKNOWN: Yeah. Older people can't hear you.] My name's not important, but I did wish to thank you for the intelligent questions we received this morning. We also received several questions in advance that were equally prescient in their applicability to the program and to all of the participants in the program, and I'd like to try to answer those as succinctly as possible. Because the questions are rather detailed, please forgive me if I appear to be reading rather than answering extemporaneously, but the questions do require some explanation and I want to make I get it right.

The first of those questions is: In a non-regional center context, corporate counsels often recommend to their clients to establish one company that owns the real property and another company to operate the business. This provides asset protection to an investor in the event that his or her business is sued, the following related to hypothetical scenarios and questions. Please keep in mind with this particular scenario that every case is unique and every case is fact specific, so these answers are, are very generalized, but applicable.

Scenario 1: We have Company A, which is established as a holding company and EB-5 investor capital fully capitalizes Company A. Company B, wholly owned by the EB-5 investor, uses funds provided by Company A to purchase land and a title to a parcel of land. Company C leases from Company B the land to operate a business and Company C uses funds obtained from Company A to operate the business. Now, as you know, an EB-5 investor has to invest the required amount of capital into a single commercial enterprise and, as a result of the investment, it has to create 10 jobs for each individual investor. The Policy Memo [will] explain that this definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries. But from the facts that were presented in the scenario that I just gave, it appears that Company B and Company C do not appear to be wholly owned subsidiaries of Company A, and so even if two completely separate companies have the same owner – the EB-5 investor – that fact alone does make them wholly owned subsidiaries of the investor or of the

company. For EB-5 eligibility purposes, only one company can be an NCE. But if both Company B and Company C are wholly owned subsidiaries of Company A, then Companies A, B and C might be considered a single commercial enterprise. Any jobs created by Company A, B or C in that scenario would then be credited to the EB-5 investment.

Scenario 2 also has similar facts, but we do away with the holding company. Here, the EB-5 investor wholly owns two separate companies – one for the land and one for the business. Can the EB-5 investor take credit for the jobs credited by Company C if Company A doesn't exist? Are you following all this? Only Company A or Company C can be a new commercial enterprise, but not both. Therefore, the minimum amount of capital must be invested in the same company that also creates the requisite number of jobs, whether that is Company B or Company C, but not both.

Now one of my favorite topics, and this was a really great question, a question on sinking funds. Those of you in finance know that a sinking fund is generally part of a bond covenant whereby the issuer of the bond says that he is going to put aside a certain amount of money every year to retire the debt of the bond and someone the question, saying some of our clients wish to account, establish accounts to enable a JCE to repay an NCE using profits from the JCE's business operation using an account similar in operation to a sinking fund that is used to repay bondholders. These arrangements wouldn't conflict with the requirement that all EB-5 money is invested and spent on the JCE's project as the repayment would only come from profit. Could USCIS confirm that this type of account does not conflict with the at-risk requirement for EB-5 investment? Again, general disclaimer, every case has to be analyzed on a case-by-case basis, but the general rule from the May 2013 Policy Memo [unintelligible] is that nothing precludes an investor from receiving a return that is a distribution of profit during or after the period of conditional residency so long as prior or during the two-year conditional residency period and before the requisite jobs are created, the return is not a portion of the investor's principal and was not guaranteed to the investor. A sinking fund type of account, using profits of the business to establish a repayment account for the NCE – again for the investors directly, but for the NCE – is not an implicit guarantee and would not violate the [unintelligible] provisions for the EB-5 capital investment. And as long as no portion of the EB-5 investor capital is returned to the investor, subject to the requirements of the regulation, an account established to repay these funds borrowed from the NCE would [unintelligible].

[LIVE QUESTIONS AND ANSWERS]