

The Future of EB-5 in California

CALED 36TH ANNUAL CONFERENCE

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Panel Presenters

- Barry Sedlik, President, California Business Ventures (Moderator)
- Joseph McCarthy, Principal & Co-Founder, American Dream Fund
- Michele Franchett, Partner, Stone Grzegorek & Gonzalez LLP

Invest in the USA (IIUSA)

- Only national not-for-profit industry trade association for the EB-5 Regional Center Program
- Members represent about 95% of all EB-5 investment

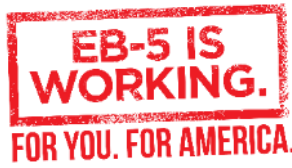
Primary Mission

- Educate industry and third party stakeholders about the Program.
- Maintain and expand economic benefits of the Program.
- Advance industry best practices and standards
- Lead the charge in advocacy for Program reform and reauthorization.

What we will cover

- What is EB-5?
- Why is it an important tool for California economic development?
- How does it work?
- What are anticipated changes in the program?
- How can California public sector/economic development organizations get involved?
- What can you do to help sustain the program?

What is EB-5?



- **The US's Immigrant Investor Program – Employment Based visa of the Fifth Preference**
- **If a foreign national invests \$1M or \$500,000 in a targeted employment area (TEA) and creates 10 jobs for US citizens, they then qualify for permanent residency.**
 - **Targeted Employment Area:** Within MSA with 150% of national unemployment or “rural” area (outside MSA w/ pop < 20,000)
- **About 10,000 EB-5 visas allocated per year**
 - Less than 1% of total visas issued annually by U.S.

California Big Picture

- **Companies need capital to expand & grow**
- **Access to capital is often limited resulting in gaps in capital needs**
- **States, counties, and cities use financial incentives to help companies close the gap and stay/expand/migrate to their jurisdictions**
- **Incentives often difficult to customize to company requirements**
- **California is perceived as a high-cost of business location offsetting key advantages of labor pool and access to markets**
- **Available California incentives modest relative to competitors**
- **California incentives helpful but limited in securing successful outcomes**

States continue to provide incentives to business for attraction, retention and expansion

- **\$7 billion aggregate state investments in 2016¹**
- **\$1.25 billion Tesla Gigafactory in Nevada²**
- **\$828 million California FY15-16 Tax Expenditures³**
- **\$653 million Texas Enterprise Fund appropriations to date⁴**

¹Center for Regional Economic Competitiveness, December 2015

²Bloomberg, September 12, 2014

³California Department of Finance Tax Expenditure Report 2015-16

⁴Texas Public Policy Foundation, December 2015

Note: Numbers not necessarily comparable

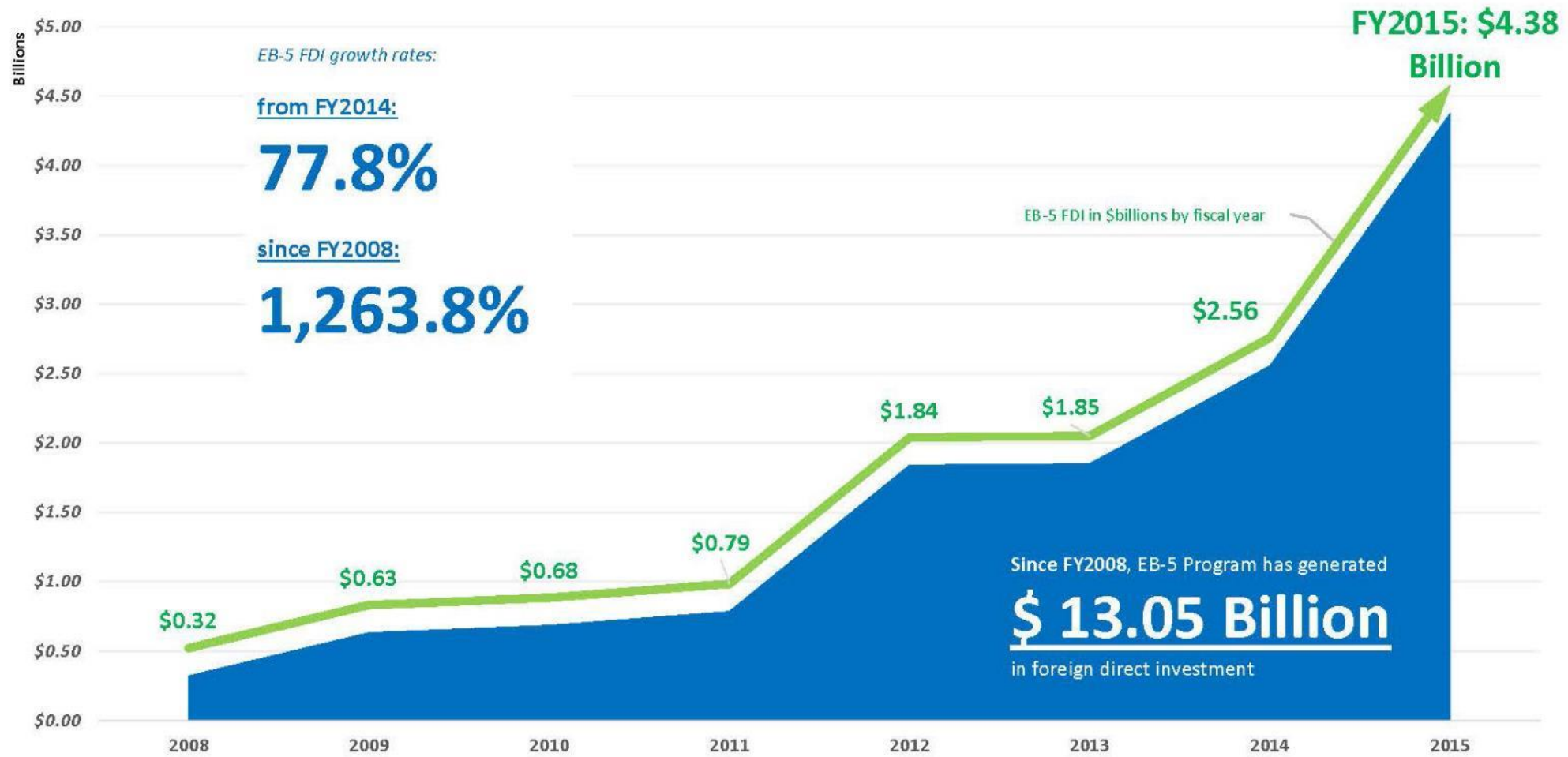
California tools to help grow & expand businesses are limited or uncertain

- Redevelopment & enterprise zones abolished
- Tax credits/exemptions helpful but of limited value to many businesses
 - CA Competes Tax Credit
 - Sales & Use Tax Exemption/Exclusions
 - R&D Tax Credits
 - New Employment Hiring Tax Credit
- Redevelopment replacements new & untested
 - AB2 (Community Revitalization & Investment Authorities)
 - AB314 (Enhanced Infrastructure Financing Districts)
- Loan & credit enhancement/collateral support value diminished in low interest rate environment
 - Small Business Loan Guarantees
 - CA Capital Access with Collateral Support
 - Industrial Development Bonds
 - Pollution Control Tax-Exempt Bond Financing

EB-5 is an important tool in California's economic development toolbox

- **Helps companies close the capital gap for expansion, retention, and growth in California**
- **Does not use federal or state funds**
- **Does not place California taxpayers at risk**
- **Provides wide versatility for many types of commercial and industrial businesses without restrictions of many incentive programs**
- **Advantages California's economic development community through deep sophistication of local EB-5 practitioners**

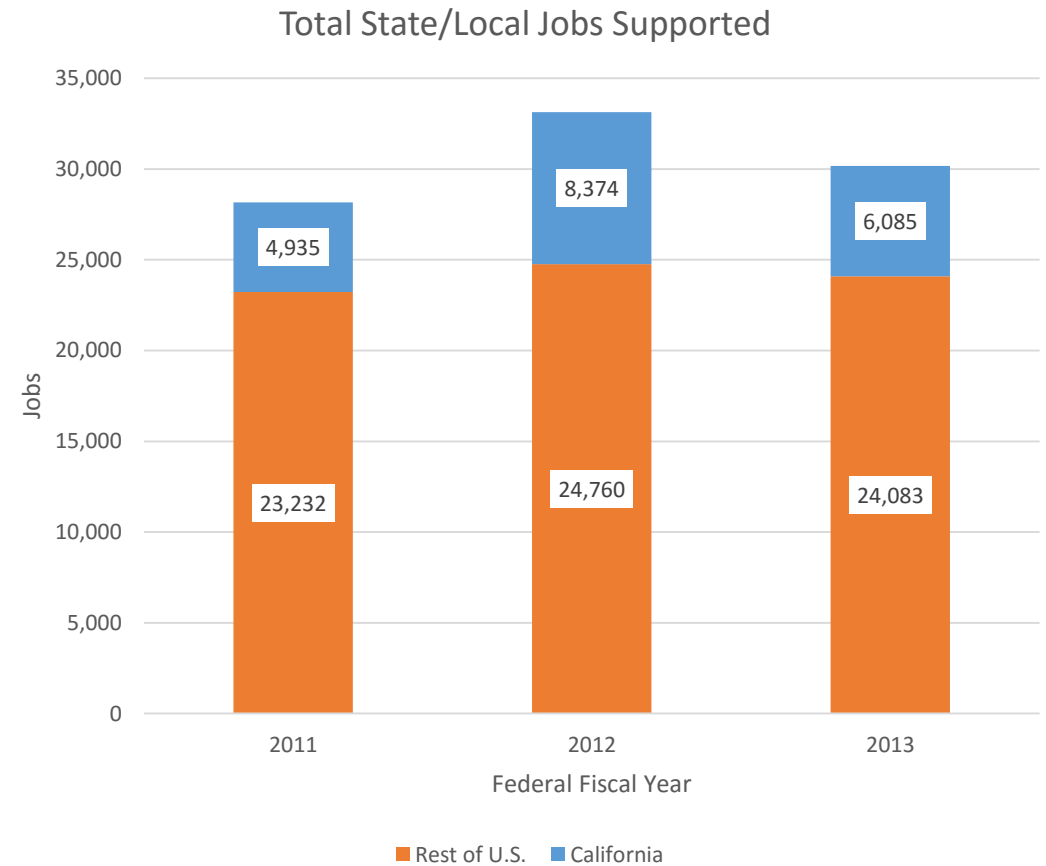
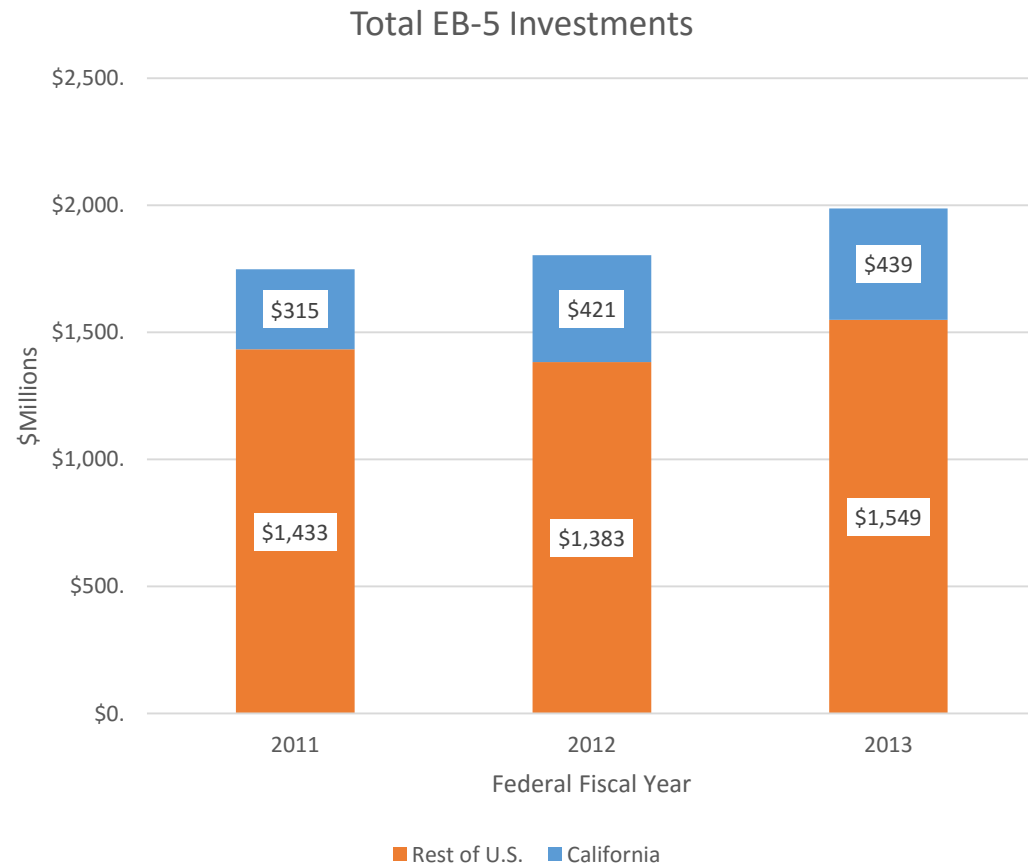
EB-5 Foreign Direct Investment (FDI) in \$Billions by Fiscal Year since FY2008



IIUSA Data Report

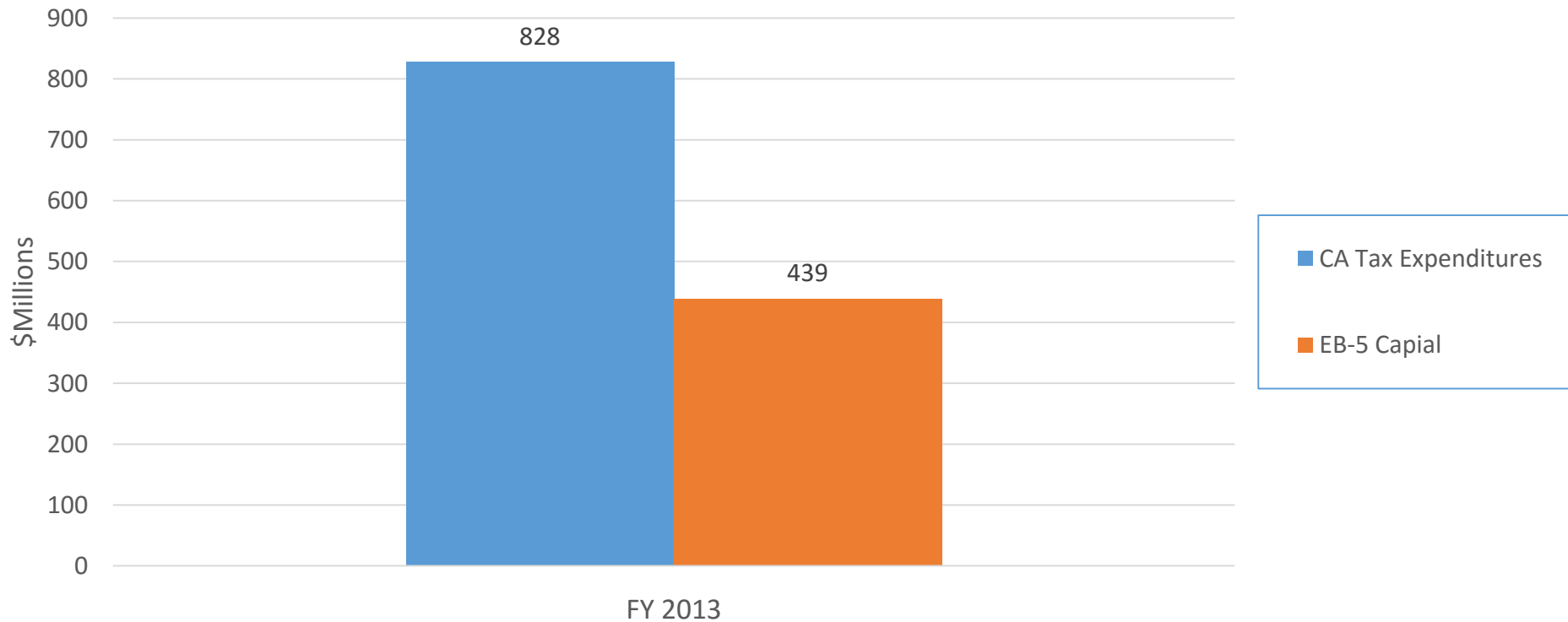
Source: U.S. Citizenship and Immigration Services (USCIS)

California is the biggest player in EB-5



EB-5 provides California companies with an equivalent of more than 50% of all California incentives combined with no taxpayer funds!

Comparison of California Incentives to EB-5 Capital Provided to California Businesses



Joseph McCarthy

Principal & Co-Founder
American Dream Fund

Basic EB-5 Models

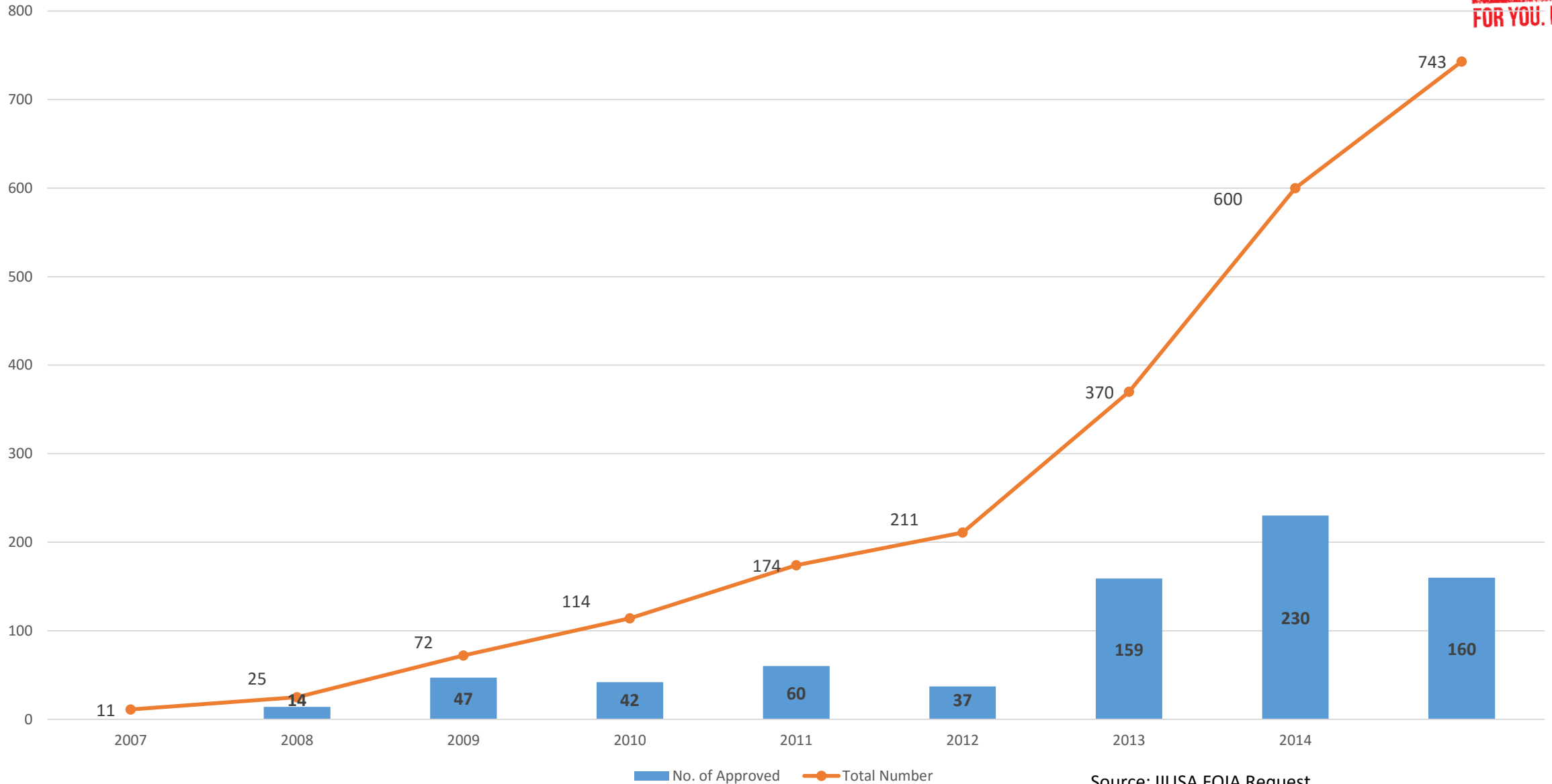
- **Direct EB-5 (e.g. formation of a business)**
- **Regional Center EB-5 (investment through a USCIS approved regional center that garners the benefit of indirect job-creation)**
- **Loan/Equity/Bond models**
- **Various positions in the capital stack**
- **Replacement of Bridge or Interim Capital Financing**
- **Cost of capital varies from project to project**

Regional Centers

- These are USCIS approved entities that can sponsor investment opportunities within specific & non-exclusive geographic territories.
- They can sponsor multiple projects, and can aggregate tens of millions, or hundreds of millions of dollars of foreign investor capital for use in job-creating projects.
- You can form a new regional center or license (“rent”) an existing one.
- There are currently greater than 850 regional centers nationwide and 201 in California.
- Greater than 98% of EB-5 investment is done through regional centers.

EB-5 IS WORKING.
FOR YOU. FOR AMERICA.

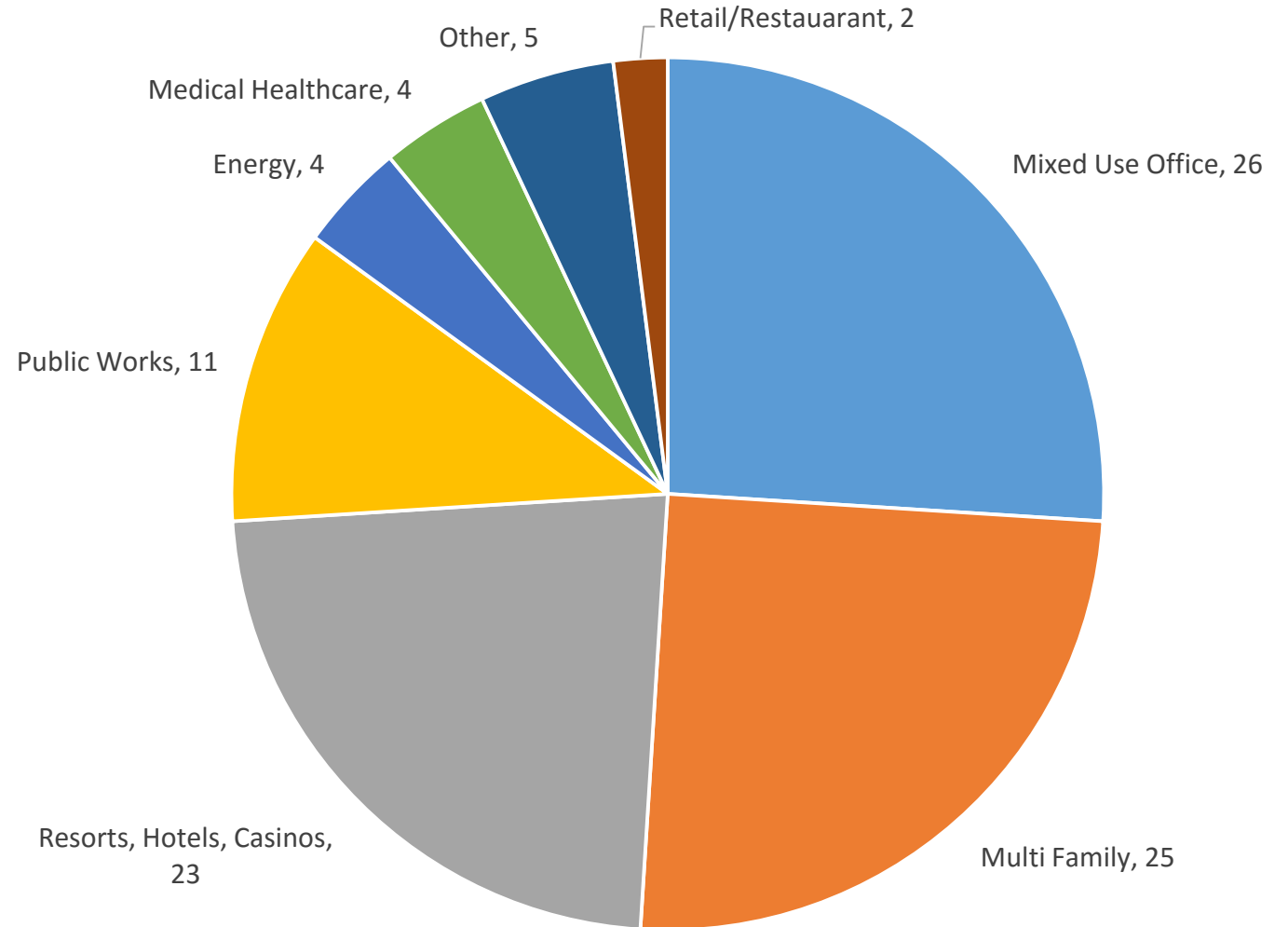
Number of Regional Centers (FY2007-2015)



Source: IIUSA FOIA Request

EB-5 Projects (2015)

- **Mixed Use / Office (26%)**
- **Multi Family (25%)**
- **Resorts, Hotels, Casino (25%)**
- **Public Works (11%)**
- **Energy (7%)**
- **Medical Healthcare (4%)**
- **Other (5%)**
- **Retail/Restaurant (2%)**



Source: NES Financial Escrow Statistics www.nesfinancial.com

Cost & Use of Capital

- **Main Factors in Cost of Capital**
 - **Investor Return**
 - **Regional Center Costs**
 - **Investor Recruitment Fees (bulk of costs)**

- **Uses of Capital**
 - **First or Second Position Loan**
 - **Mezzanine Debt**
 - **Preferred Equity**
 - **Replacement of Interim Capital**

Timing Issues

- **Timing of EB-5 Capital = Biggest Challenge**
- **Formation of Regional Center (10-12 months)**
- **Preparation of Offering (approximately 3 months)**
- **Processing of EB-5 Investor Petitions (13-16 months)**
- **Overseas Capital Syndication / Marketing (7-12 months)**

Capital Raise

-
- **Consular Interview (6 month – 2 years)**
 - **I-829 processing (12 months)**
 - **Total Investor Timeline (5-7years)**

Remaining
Investor Process

Investor Priorities

- **Fundamental Priorities**
- **Green Card**
- **Return of Investment Capital in 5 to 7 Years**
- **Investor Preferences**
- **Product and Brand Familiarity**
- **Other Capital Stack Sources**
- **EB-5 Investment Collateral**
- **Region Familiarity**
- **Developer/Operator Experience**
- **Investment Amount: \$500k vs. \$1M**

Anticipated Changes to the EB-5 Program

- **EB-5 Regional Center Program Scheduled for Reauthorization/Reform in September 2016**
- **Anticipated Changes to:**
 - **Investment Amount**
 - **Targeted Employment Area Classification**
 - **Visa Allocation**
 - **Integrity Measures**
 - **Source of Funds (for individual investors)**
 - **Available Number of Visas (considerable program backlog)**

Michele Franchett

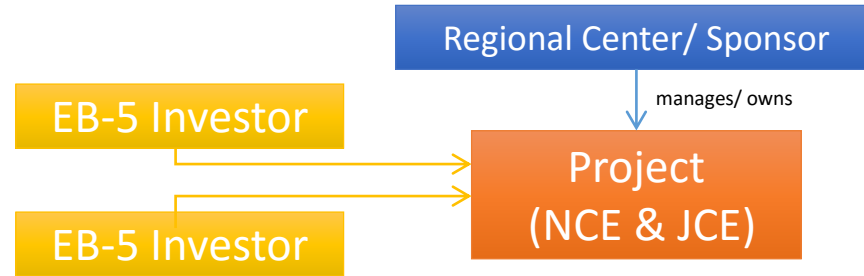
Partner

Stone Grzegorek & Gonzalez LLP

Common EB-5 structures

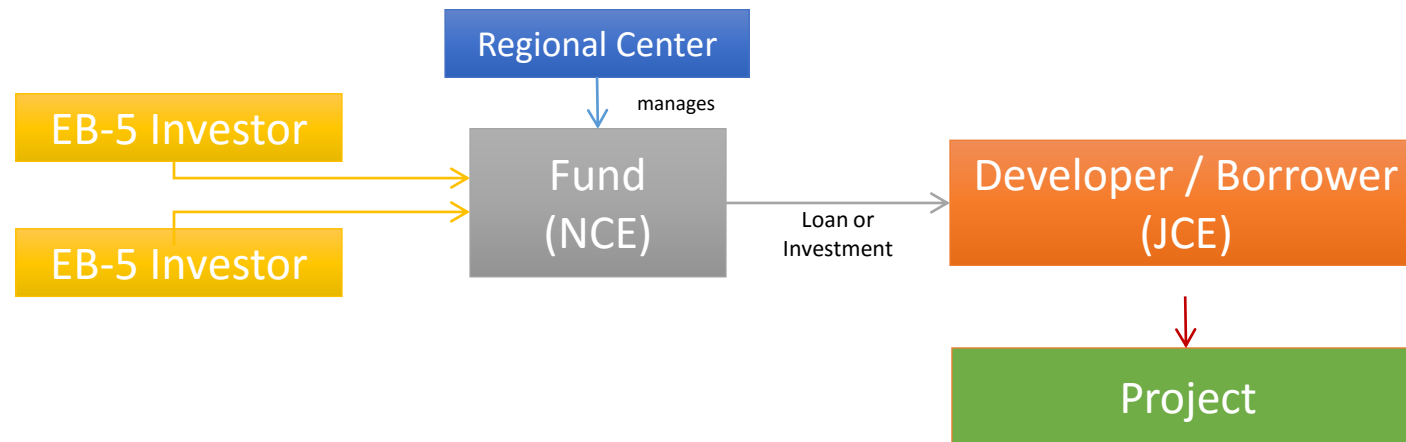
- **SINGLE GROUP MODEL:**

- The Regional Center/Job Creating Project involve just one group



- **FUND MODEL:**

- The Regional Center raises capital for a Job Creating Project controlled by a separate group



Examples of EB-5 in Public Sector

- Public entity as a regional center
- EB-5 capital paired with other forms of incentive financing
- Public entity as recipient of EB-5 capital

Public Entity as a Regional Center

- Importance of devoting sufficient resources for oversight, management, and control
- City of Dallas Regional Center – example of successful public entity regional center
 - Management & oversight contracted out to Civitas
 - Could another entity replicate?
- MMAC – example of successful quasi-governmental entity regional center
- Vermont Regional Center – example of insufficient oversight?

EB-5 Capital Paired With Other Forms of Incentive Financing

- **Historic Tax Credits**
- **New Market Tax Credits**
- **Enterprise Zones**

Public Entity as Recipient of EB-5 Capital

- **Early CMB projects**
 - **Former Norton Airforce Base (now S.B. International Airport)**
 - **Former McClellan Airforce Base (now McClellan Business Park)**
- **Seattle 520 Bridge Replacement (revenue bonds vs. general obligation bonds, “at risk” issue)**
- **Controversy - legislative proposal to eliminate use of EB-5 capital for public bonds**

Risk factors

- **Failure of EB-5 Petition or Visa Process**
- **Failure of Approval of Project**
- **Change in Circumstances**
- **Change in Requirements**
- **Timing Issues**

Q&A

For questions in engaging EB-5:

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Joe McCarthy: jmccarthy@adreamfund.com

Michele Franchett: michele@sggimmigration.com

Keep up to date on EB-5 with IIUSA: www.iiusa.org

Thank you, CALED!!

Backup Slides

EB-5 ELIGIBILITY REQUIREMENTS

The general EB-5 eligibility requirements are –

- Investment of capital (\$1 million, or \$500,000 if in a “TEA”)
- New commercial enterprise
- Investor capital is from a lawful source
- Commercial enterprise will create jobs (10 per EB-5 investor)
- Investor will participate in management (day-to-day, or policy formulation)

Controversy - Targeted Employment Area (“TEA”)

- The lower minimum capital threshold of \$500,000 (instead of \$1 million) applies if the investment is made in a business with a “TEA” – a rural area, or a high unemployment area (95% of all EB-5 petitions)
- A “rural area” is an area not within either a metropolitan statistical area or the outer boundary of any city or town with population exceeding 20,000
- “High unemployment” is at least 150 percent of the national average:
 - The MSA or the county in which the new commercial enterprise is conducting business has an average unemployment rate exceeding 150% of the national average rate, OR
 - State letter certifies that geographic or political subdivision has been designated a high unemployment area
- Whether the investment is made in a TEA is based on statistical information relating to the time of investment (or at the time the petition is filed), and is based on the location where the commercial enterprise is principally doing business.

Job Creation Requirement

- Must create 10 full-time positions per EB-5 investor
- In “stand alone” commercial enterprise (i.e., not regional center affiliated), these must be W-2 employees and typically no construction phase jobs could be claimed
- “Troubled business” investment allows for “saving” jobs
- A regional center-affiliated commercial enterprise allows for “reasonable methodologies” to estimate job creation, including construction phase and operations phase jobs, as well as indirect and induced jobs

Regional Center Job Creation

- Regional centers are designated by USCIS, and are listed at www.uscis.gov
- “Reasonable methodology” typically consists of:
 - (i) “Initial change” data, and
 - (ii) a widely used Input-Output model (such as RIMS II or IMPLAN)
- “Initial change” data (output, earnings, employment)
 - increase in revenues
 - Increase in “direct” jobs
 - Construction expenditures (for construction phase jobs)
- Estimating for phases
 - operations related jobs
 - construction related jobs

Illustration of use of input-output model

- Select region
 - Los Angeles
- Define initial change in economy
 - Electric auto manufacturing plant, 115 workers
- Identify industry
 - Automobile manufacturing NAICS 336111; IMPLAN 276
- Input data, view results:
 - Direct: 115.0
 - Indirect: 187.7
 - Induced: 143.3
 - Total operations phase jobs: 446.0
- Construction phase job creation involves the same process, and typically is a multiple of the expenditures on hard construction costs

Procedure for initial permanent residence

- Procedure for initial permanent residence:
 - (1) Investor files a Form I-526 with USCIS with info on source of funds & project (16 months)
 - (2) Investors from China wait for visa backlog (est. 6 years)
 - (3) Immigrant visa interview at the U.S. Consulate (5 – 6 months)
- Admission to the United States commence a two-year period of conditional permanent residence.

Procedure for removal of conditions

- Within the 90 days immediately preceding the 2nd anniversary of obtaining residence status, investor files petition to remove the conditions (I-829)
- The petition adjudication conditions set the requirements for the USCIS decision on the I-829 petition. They are:
 - The required capital was invested
 - The investment was sustained
 - The 10 jobs were created, or are expected to be created within a reasonable period of time