

## I-526 Public Comments and USCIS Responses

Commenters	Document ID	Comment	USCIS Response
<b>Comment Submitted by Jean Public</b>	<b>USCIS-2007-0021-0048</b>	I am in favor of shutting down this collection of information. This buying your way ijnto the usa for \$500,000 and then they use it to bring over all kinds of fake relatives to work there causes no new jobs for american citizens. This is simply a giveaway program to foreigners. The usa is assaulted by the millions of foreigners coming here to take jobs from americans. They also get so much help that many americans never get. What the hell is going on when these alleged fake refugees come her and get thousands of dollars a month for doing nothing. The federal deficit is \$20 trillion dollars and this giveaway is outrageous to aemrcian taxpayers. Absolutely outrageous. Shut down this program of these fake entrepreneurs and the giveaways to foreigners. This govt is traitorous to americans. It needs to be held as traitors to americans. This commetn is for the pubic record please receipe. Our kids cant get jobs and they bring in foreignes to take the jobs because the lousy owners of businesses want to pay low wages. This program is a wage buster. This commetn is for the public rcord. Please receipt. Jean publiee <a href="mailto:jeanpublic1@yahoo.com">jeanpublic1@yahoo.com</a> we have corrpt people in congress and the fat cat bloated bureaucracy in washington dc. Hurting average americans every single day.	USCIS appreciates your comment, however, USCIS has assessed that the issues raised are not germane to the revisions being made to the Form I-526.
<b>Comment Submitted by Alexandre Deocleciano Banja Bezerra Jnior</b>	<b>USCIS-2007-0021-0047</b>	I think it is very important to encourage enterpreneurs to come to US to invest their money, time or know –how. It also helps America get better when we mix all kind of culture, that is what make America the greatest country on the world. As a entrepreneur we most thing outside of the box, when we open our frontier and minds. I am Brazilian and I came to US to open a business, so I did, but the Homeland Security did not renew my status as I asked for it. I love this county more than I love mine, and some times I just don’t understand a little bit.... By that time the Homeland security denied my stay here, I had \$1,500,000.00 contract on construction sites, because the immigration did not allowed me to stay legally, I lost it. Now I am just make enough money to pay bills. Right now I have a lot of contractors calling me to work for them, but I am scared. This job that I losted was a Federal Credit Union building, in the beginning they said only legal people is allowed to work inside the building, after 2 years, in the end of the job, they called me to finish it, as I did, because they know how good we are, and we just went to fix somebody else mess. It is fair?, we work hard, we do an excellent job, but not able to be what we want to be? I had 25 crews with me, most of them Americas, now all of them are	USCIS appreciates your comment, however, USCIS has assessed that the issues raised are not germane to the revisions being made to the Form I-526.

		<p>doing something that they don't want to do and make just enough money to pay bills as well, they keep call me all the time. If I was legal I could grow and hire more people and help them to have a better life. I have to respect all the rules, all the laws, the American culture, the American people, as I do, but how can I be able to grow and help anything or anybody without be legal? Most of the time it is impossible. I don't want to stay illegal in US, but I have a daughter to take care of it, and she is in Brazil and I missed her so much and I want my daughter to be just like a American girl when she grow up. America is the place that I want her to grow, the place to have a family. I think you guys should filter who is qualified or not to stay here, some of the immigrants don't deserve to stay here, I am sure that, some of them do. So, for those whom has business and doing not less than work hard, paying their taxes, been under the low, they should have the opportunity to apply for entrepreneur visa as well. Because the only difference between them is that they already life here, they already know how to do business here and also they want to stay beside those who wants to make money and live in US in couple years, it will be good to have entrepreneur from everywhere, they have their own skills, different from ours, helping us with new ideas, point of views, innovations, but I think you guys think about those who wants to stay, those whom already love this country, those really care about USA. I will leave my own informations, I really respect if you guys deport me, and I will understand, but like I said to My dad once, I would die for this country, and I will fight to bring my best to help US grow and get better, helping every single one that I can. I hope that all said about me can help you to understand a little bit about our situation in US. Thank you, Best regards, GOD BLESS AMERICA</p>	
<p><b>Comment Submitted by Jinhee Wilde</b></p>	<p><b>USCIS-2007-0021-0049</b></p>	<p>I-526 petition form should have a section where the investor/petitioner could list the members of his/her family who are derivatives. Because there is no family information that could be inputed on the petition form, NVC could only issue the Visa Fee bill for the investor alone having the petitioner to request that the fee bills be revised to add his/her family. This is an unnecessary additional step that could be avoided if the Form I-526 has a section on Family derivatives like in I-140 form.</p>	<p>USCIS agrees with this comment. On page 9 of the Form I-526 posted for public comment, USCIS included a section called "Part 7. Information on Petitioner's Spouse and Children", where petitioners can list their family members and indicate whether each individual will be applying for a visa abroad or adjustment of status as a dependent. The addition of this section will help alleviate the need for petitioner's to request fee bill revisions to add dependent family members.</p>
<p><b>Comment</b></p>	<p><b>USCIS-2007-</b></p>	<p>Part 2 - Item 6 (and generally), the question presumes that the</p>	<p>USCIS appreciates your comments. For</p>

<p><b>Submitted by</b> <b>Matthew Gordon</b></p>	<p><b>0021-0050</b></p>	<p>JCE and NCE are separate entities. For non-regional center investments the JCE and NCE are always one and the same. The wording on the form should be updated to clarify (e.g. "JCE, when separate from the NCE").</p> <p>Items 15-20 - The questions are over-broad. They ask for the investors total income and net worth, even though the EB-5 investment might represent only a small portion of their income and/or net worth. Some families have substantial business interests and assisting for essentially what is a full accounting of the investor's (or sources') balance sheet will have a chilling effect on investors. The logistics of documenting the source of funds for \$500,000 can cumbersome, often running hundreds of pages. For investors worth many millions (often tens and hundreds of millions), it would be extraordinarily burdensome. There is no basis in the enabling legislation for requesting this information.</p>	<p>Part 2- Item 6, the Form I-526 Instructions clarify that the question may pertain to an NCE or JCE. Further clarification regarding the NCE or JCE is provided throughout the Form I-526 instructions. (Note that the Table of Changes-Instructions Form I-526 were made available for public review contemporaneously with the Form I-526 at <a href="http://www.regulations.gov">www.regulations.gov</a>.)</p> <p>The commenter further stated that items 15-20 are over-broad, cumbersome, extraordinarily burdensome and that there is no basis in legislation for requesting this information. However, this information is necessary for USCIS to determine lawful source of funds and whether the petitioner qualifies as an "accredited investor" under SEC Regulation D.</p>
<p><b>Comments Submitted by</b> <b>Ashley Case (IIUSA)</b></p>	<p><b>USCIS-2007-0021-0051</b></p>	<ol style="list-style-type: none"> <li>1) While well-intended, this complex and multifaceted form at times borders upon overreaching by placing an obligation on the investor to provide sensitive information that was not relevant to the I-526 filing.</li> <li>2) The Form was too long and unnecessarily complicated.</li> </ol>	<p>USCIS appreciates the overall comments that the Form I-526 is too long, multifaceted, unnecessarily complicated, and overreaching by placing an obligation on the investors to provide sensitive information not relevant to the I-526. The adjudication of EB-5 visas is among the most complicated adjudications performed by USCIS, requiring review and analysis of multiple factors, including economic and business factors, tracing source of funds, and assessment of individual immigrant eligibility. Thus, the detailed level of information collected in the I-526 is</p>

			commensurate with the level of detail required in the adjudication process of EB-5 visas.
		The Form would require assistance from project’s counsel. There should be two separate documents, one for information on the New Commercial Enterprise (NCE) and/or Job Creating Enterprise (JCE) that would only need to be filled out once per project. This portion would then be affixed to with the investor-specific information of the form. This would ensure consistency in the business section(s) of the petition while allowing for adequate attention to be paid to the investor-specific information of the I-526. It also would cut back on adjudication time as adjudicators would not need to review the same information on the business side of the petition for each individual investor. Two Form G-28’s (indicating legal representation for both the project portion as well as the investor specific portion) should accompany Form I-526.	USCIS appreciates this comment. However, each Petitioner has the burden to establish eligibility for all requirements for an EB-5 visa, including NCE and JCE related requirements. The Form I-526 is designed to track the EB-5 visa eligibility requirements specified in 8 CFR 204.6. Petitioners, however, are not precluded from obtaining information from the NCE or JCE to submit with their application. Thus, USCIS deems it appropriate to collect this information on a single form.
		There should either be a separate section or an alternative form for direct entrepreneur and direct pooled filings.	The Form I-526 Instructions provide guidance for Petitioners who have made direct investments. Since the overall requirements for EB-5 eligibility remains the same for direct or indirect (through a Regional Center) investors, USCIS does not deem it necessary to create a separate section or form. (Note: for this response and for the following responses, the Table of Changes-Instructions Form I-526 were made available for public review contemporaneously with the Form I-526 on <a href="http://www.regulations.gov">www.regulations.gov</a> )
		Pages 2-3, Part 1: Physical Address and Employment History for the last five years: o This is burdensome and unnecessary because it is something that would come up at the Consular Processing/Adjustment stage, and would need to be filed in again at that point. Further,	USCIS seeks this information to assist in determining the lawful source of funds used for the EB-5 investment. Other employment-based visa types do not have a lawful source of funds

		the other employment-based immigrant petition (I-140) does not ask for this information from the beneficiary.	requirement.
		Page 4, Part 1, Q.26-28: Your Entry into the United States o Is this implying that the petitioner is already in the U.S.? Or is it assuming that a petitioner will know years in advance of entering the U.S. the means by which they will do so? These questions need more clarity.	The Form I-526 Instructions, at Part 1, Q.26-28 clarifies that these questions refer to the “date you arrived”.
		Page 4, Part 2, Q.4: Information About Your Investment o Is this the receipt number for the original I-924 approval, exemplar, or amended I-924? What if there is a pending approval? o A suggestion would be to give check box options for what type of receipt the receipt number the petition relates to.	The Form I-526 Instructions clarify at Part 2, Q.2-5 that this question asks for the receipt number for the approved regional center application upon which the petition is based.
		Page 4, Part 2 Q. 5: Information About Your Investment o Is this asking for the employer identification number (EIN)? If yes, then it is suggested to call it that instead.	The Form I-526 Instructions clarify at Part 2, Q.2-5 that this question specifically asks for the NCE identification number (NCEID) assigned to an NCE when USCIS approves a Form I-924 application with an exemplar Form I-526 petition or when USCIS approves the first Form I-526 petition for an NCE. Petitioners can obtain the NCEID from the regional center.
		Page 5, Part 2, Q.6: Petition Type and Required Capital Investment o If the JCE and NCE are the same entity, then the petitioner should only need to answer it once. If they are separate entities, then it doesn’t matter where the NCE is located because its location does not affect TEA designation.	The Form I-526 Instructions, at Part 2, Q.6 provide instructions on how to answer this question when the JCE and NCE are the same entity.
		Page 5, Part 2, Q.7: Upward Adjustment Area o This policy implementation has not been discussed for EB-5 therefore how can it be included in this form?	The question about Upward Adjustment Area refers to upward adjustment to a “High Unemployment Area” as defined at 8 CFR 204.6(e).
		Page 5, Part 2, Q. 9-12: Composition of Your Investment and Your Income o Please clarify exactly what information is being sought in this	The Form I-526 Instructions, at Part 2, Q. 9-12 provide detailed instructions as to the specific information being sought.

		<p>section. Part 2 questions on income and net worth at different stages of investment seem redundant and may be burdensome for ordinary investors.</p>	<p>This information is necessary to determine whether the Petitioner has met the capital at risk and lawful source of funds eligibility requirements.</p>
		<p>Page 5, Part 2, Q. 15-18: Composition of Your Investment and Your Income</p> <ul style="list-style-type: none"> <li>o Part 2. Questions 15-20 - asks for gross income, net income and net worth both at time of application and at time of investment. This seems to be to verify accredited investor status for offerings conducted under Reg. D. USCIS may then begin asking for proof to verify these figures. Further, they may begin to ask for investors to show the source of funds for ALL of their assets, which is not required under any law.</li> <li>o These questions seem to delve into the realm of securities. It is unclear if this is the intention of these questions, but raises the question as to what agency is adjudicating the petition.</li> <li>o Problematic because there are conflating securities laws, that USCIS does not have expertise in, and immigration law. For example, an investor does not need to be accredited for Reg. S offerings so these figures should not be required if the investor is making an investment under Reg. S.</li> </ul>	<p>This information is necessary to determine whether the Petitioner has met the capital at risk and lawful source of funds eligibility requirements. USCIS regularly works with the U.S. Securities Exchange and Commission (SEC) to ensure compliance with SEC regulations.</p>
		<p>Part 3, 15c asks question about the investor's status (I-526 pending or I-526 approval). However, an entity may hold a percentage ownership of the NCE. It means, when answering the status question, the entity should check N/A box. However, there is no N/A checkbox for this question.</p>	<p>The Form I-526 Instructions at Part 3, 15a-17c explain that this question pertains only to when the investor is a person.</p>
		<p>Page 7 , "Multiple investors"</p> <ul style="list-style-type: none"> <li>o This would be problematic, as most investors ask for anonymity. Further each filing attorney will have to be sure they receive the investor's information from other attorneys.</li> </ul>	<p>This information is important for USCIS to be able to track the number of investors in order to ensure that each investor has created the requisite number of jobs. This information would be available from the Regional Center or NCE and the names of other investors would be registered with the relevant</p>

			state authority regulating the formation of the entity (such as the secretary of state where the corporation or limited partnership is registered).
		Page 8, Part 5, Q. 3-7: Employment Creation Information o These questions seem to be specific to the Direct EB-5 Program. There needs to be questions that address JCE job creation that would occur in the Regional Center EB-5 Program.	The Form I-526 Instructions, at Part 5, Q.3-7 provide instructions on how to answer this question when the JCE and NCE are the same entity.
		Page 8, Part 5, Q. 4: What are the costs for benefits you receive in your current position in the NCE o What does this question mean? The information is repeated in an earlier question.	The Form I-526 Instructions, at Part 5, Q.4 clarify that this question refers to the "...value of benefits you received in your current position in the NCE".
		Page 8, Part 5, Q. 5: Number of full-time direct and qualifying employees in the NCE at the time of your initial investment o This number will be difficult to keep updating for projects that have investors submitting their I-526s over a period of time and not all at once.  o Please define what a "qualifying employee" means  Page 8, Part 5, Q. 6: Current number of full-time direct and qualifying employees in the NCE o It is unclear why this information matters for this petition.  o Also, this would theoretically change over time and is not a constant number.	The Form I-526 Instructions, at Part 5, Q.5 provide a definition for "qualifying employee". Collection of this information is important because USCIS must keep track of job creation for each individual Petitioner to ensure that the requisite number of jobs are created for each Petitioner as required under 8 CFR 204.6.
		Page 8, Part 5, Q. 11: Total amount of capital derived from investors who have not sought and are not seeking classification as alien entrepreneurs o This question is unclear. Is it asking for the entire capital stack or just investors in the NCE?	The Form I-526 Instructions, at Part 5, Q. 11 clarify that the Petitioner should indicate the total amount of capital invested into the JCE from investors who have not and will not be filing a Form I-526.
		Page 9, Part 7: Information on Petitioner's Spouse and Children o The questions about "Applying for Adjustment of Status" and "Applying for Visa Abroad" may change over time due to the	This information is necessary to ensure that dependent beneficiaries are included in the EB-5 immigrant visa process. The collection of this information at the I-526

		gap between submitting an I-526 and Consular processing. A family member could change his/her mind or the situation may change during that time period.	stage of the visa process does not preclude a change from Consular processing to adjustment of status (or vice versa) at a later date.
		Page 12, Part 10, Q. 8: Preparer’s Certification o This is read to say that the petitioner has told the preparer the information and documents are correct and true.	The Form I-526 Instructions, at Part 10, Q. 1-8 provide additional guidance concerning the Preparer’s Certification.
<b>Comment submitted by Kelsey Harris-Letter from the American Immigration Lawyers Association (AILA)</b>	<b>USCIS-2007-0021-0051</b>	<b>Font Size should be Adjustable.</b> From previous experience, all required information cannot fit in the designated boxes on the current Form I-526. In order to be able to fill in essential information, the fillable form should allow the font size to be adjustable.	USCIS appreciates this comment. USCIS uses Optical Character Recognition technology (scanners) to capture data entered into the I-526. The font used to complete the forms must be large enough for the scanners to capture the information.
		<b>Provide Physical Address Information for the Last Two Years Instead of the Last Five Years.</b> The draft Form I-526 requires the investor’s physical address for the past five years (Part I: Information about You, Page 2). However, as a result of their business activities, many investors live in multiple cities simultaneously and have multiple addresses. To avoid confusion, we suggest requesting the investor’s current registered household address instead of all addresses from the last five years.	USCIS appreciates this comment. However, USCIS will utilize this information to verify various elements of visa eligibility, from lawful source of funds to national security concerns.
		<b>Date Requirements.</b> Many individuals are unable to recall specific dates accurate to the day (“dd”) regarding residence, employment, and education history. Permitting the investor to provide only the month and year would be sufficient and would avoid the need to repeatedly explain that the date is an estimate or approximation. We suggest “mm/yyyy” instead of “mm/dd/yyyy.”	USCIS appreciates this comment. However, USCIS deems it appropriate to utilize the “mm/dd/yyyy” format given that this information will be used to verify various elements of visa eligibility.
		<b>Part 1, Q.20: Replace “Sex” under Part I by “Gender.”</b> Kindly consider this modification to be inclusive of all genders.	USCIS appreciates this comment. However, USCIS deems it necessary to utilize “male” and “female” in order to

			be able to verify a petitioner's identity and maintain consistency with the various international travel and identity documents received by USCIS.
		<b>Part 1, Q.25: Country of Last Foreign Residence.</b> "Foreign" may be ambiguous to foreign national petitioners. We suggest rephrasing this to read: "Country of Last Residence outside the United States."	USCIS appreciates this comment. However, USCIS deems it appropriate to phrase this question as: "County of Last Foreign Residence". This is consistent with other USCIS forms, such as the Form I-612, which uses this terminology.
		<b>Part 1, Q.26: Date of Arrival.</b> Considering that many petitioners have visited the United States multiple times, we suggest that "date of arrival" be replaced with "date of last arrival" so the instruction is clear.	USCIS appreciates this comment. The Form I-526 Instructions, at Part 1, Q.26-28 clarify that this question refers to the "date you arrived". (For this response and following responses, the Table of Changes-Instructions Form I-526 were made available for public review contemporaneously with the Form I-526 at <a href="http://www.regulations.gov">www.regulations.gov</a> )
		<b>Part 1, Q.27a, 27b: Place of Arrival or Port-of-Entry – City or Town and State.</b> Please add an option for people whose are admitted at a CBP Preclearance Office outside the United States.	USCIS appreciates this comment. The Form I-526 Instructions, at Part 1, Q.27 clarify that the petitioner should: "Provide the city/town and state where you arrived in the United States." This would allow a petitioner to provide information about admission at a CBP Preclearance Office.
		<b>Part 1, Q.28g, 28h: Current Nonimmigrant Status (if applicable).</b> The term "nonimmigrant status" does not encompass those who are lawfully present in the United States in other classes (e.g., TPS, parole, etc.).	USCIS appreciates this comment. This question is designed to collect information about the current status of petitioners who are currently in the United States. It does not preclude the petitioner from responding with an answer such as TPS or parole.
		<b>Part 2, Q.4: "What is the receipt Number for the approved Regional Center application upon which your petition is</b>	USCIS appreciates this comment. This question is designed to collect

		<p><b>based?”</b> Not every petition will be based on an I-924 application with an actual or exemplar project approval. Moreover, the meaning of the question as worded is unclear. Is an I-526 petition “based on” an approved Regional Center application when the only approved Regional Center application is the original designation based on an unrelated, hypothetical project? Or is it only important to have the receipt number of an I-924 application in which USCIS reviewed documents associated with the same investment project? This question should be rephrased to read: “If your petition is associated with an approved or pending Regional Center application, provide the receipt number of that application.”</p>	<p>information on whether the investment is a stand-alone or regional center investment. The Form I-526 Instructions at Part 2, Q.2-5 specify that for investments made through a regional center, the petitioner should: “Provide the name of the regional center with which your investment is associated and the regional center’s identification number. Also provide the receipt number for the approved regional center application upon which your petition is based. Finally, provide the NCE.”</p>
		<p><b>Part 2, Q.5: “If applicable, provide the New Commercial Enterprise (NCE) Identification Number.”</b> It is unclear what the NCE Identification Number is. Will only NCEs associated with Regional Centers be assigned such numbers, excluding (for example) pooled investments not associated with Regional Centers? If all pooled NCEs will be assigned NCE numbers, this question would be better placed in Part 3 (“Information About the NCE”).</p>	<p>USCIS appreciates this comment. The Form I-526 Instructions at Part 2, Q.2-5 clarify that this question asks for the NCE identification number (NCEID) assigned to an NCE when USCIS approves a Form I-924 application with an exemplar Form I-526 petition or when USCIS approves the first Form I-526 petition for an NCE. Petitioners can obtain the NCEID from the regional center.</p>
		<p><b>Part 2, Q.6: Targeted Employment Area (TEA).</b> This portion of the draft form uses the phrase “principally doing business.” This phrase is vague and prone to confusion, especially for job creating entities (JCE) that operate in various locations. We note that the instructions to Form I-526 provide some guidance (“is principally doing business in the location where it regularly, systematically, and continuously provides goods or services that support job creation. Provide the address where the NCE or JCE (as applicable) is principally doing business and creating jobs”). However, to make it clear, we suggest changing this language to focus on “principal place of business.” <b>Q.6.b,c,f,g: “Is the area a rural area” and “Is the area a high</b></p>	<p>USCIS appreciates this comment. These questions are designed to track the EB-5 eligibility requirements laid out in 8 CFR 204.6 regarding TEAs and the minimum required capital investment. The minimum required amount of capital investment is determined by the location where the NCE is “principally doing business”. The question about “rural area” and “high unemployment area” speak to requirements under 8 CFR 204.6(J)(6) regarding targeted</p>

	<p><b>unemployment area.”</b> It seems unnecessary to require a clear Yes/No determination for both options – one should be permitted to petition by selecting a basis and not by asserting or eliminating all possible bases. Thus, we suggest removing this question.</p> <p><b>Q.6d,h: “Address where the NCE (or JCE) is principally doing business.”</b> The form should be amended to accommodate multiple addresses.</p>	<p>employment areas.</p>
	<p><b>Part 2, Q.6e: “Is the job-creating entity (JCE) principally doing business in a targeted employment area.”</b> The form does not ask whether there is a JCE distinct from the NCE, so it is unclear how one would answer this question if there is no separate JCE. Thus, this question should be rephrased to read: “If the JCE and NCE are different entities, is the principal place of business of the job-creating entity (JCE) principally doing business in a targeted employment area?”</p>	<p>USCIS appreciates this comment. The Form I-526 Instructions, at Part 2, Q.6 provide instructions on how to answer this question when the JCE and NCE are the same entity.</p>
	<p><b>Part 2, Q.7: Upward Adjustment Area.</b> “Upward Adjustment Area” introduces a new concept to EB-5 that is undefined. An explanation of the capital investment amount and the definition of what constitutes an “Upward Adjustment Area” must be provided and should be disclosed to the public for comment before implementation through rules, forms, or otherwise. Until then, this question should be removed or replaced with “Other.”</p>	<p>USCIS appreciates this comment. The question about Upward Adjustment Area refers to upward adjustment to a “High Unemployment Area” as defined at 8 CFR 204.6(e).</p>
	<p><b>Part 2, Q.9-20: “Composition of Your Investment and Your Income.”</b> The questions about composition of investment, income, and net worth appear in the current version of Form I-526 under the heading “Additional Information about the Enterprise.” In the context of “information about the enterprise,” questions about income and net worth appear to relate to establishing eligibility as a “troubled business” under 8 CFR §204.6(e). The questions now relate to the income and net worth of the <i>investor</i>, without any discernable connection to the eligibility criteria under the EB-5 regulations. Thus the heading for Q.9-14 should be revised to read “<b>Composition of Your Investment in the New Commercial Enterprise,</b>” and a Page 4 of 8 new heading should precede Q.15-20 that reads “<b>Income</b></p>	<p>USCIS appreciates this comment. This information collection refers to EB-5 eligibility requirements regarding whether the petitioner has met the capital at risk and lawful source of funds requirements.</p>

		<p><b>and Net Worth of the New Commercial Enterprise.”</b></p> <p><b>Part 2, Q.9 “Total Amount Deposited or Committed To Deposit into U.S. Business Accounts for NCE.”</b> Does “committed to deposit” include promissory notes, or does it only include escrow funds? Unless clarified, there will be considerable variety in how this question is answered. It is also unclear whether this figure includes “administrative fees.” If the intent is to include only the amount that would be “for” the NCE as a capital contribution, that needs to be clarified. If it includes administrative fees, it is not clear they are “for the NCE.” If it does not include administrative fees, this would be inconsistent with USCIS policy which deems administrative fees part of the “investment” for purposes of documenting the lawful source. It is also unclear whether a contribution of cash in return for stock or an ownership interest in the company should be entered twice (under “Cash” or “Total Amount Deposited,” and also “Total Stock or Other Equity Purchases”). Some interpret “total stock or equity purchases” as referring to contributions of stock or equity holdings as capital. Others would complete this box to indicate a cash-for-equity investment.</p> <p>Thus this question should be rephrased to read: “Total Capital (Excluding Administrative Fee) Invested in NCE (Deposited or in Escrow).”</p> <p><b>Part 2, Q10: “Total Value of Assets You Purchased for Use in NCE.”</b> Because this question can be read to relate to full capitalization of the NCE, we suggest adding “you” to the question.</p> <p><b>Part 2, Q.11: “Total Value of All Property Transferred from Abroad.”</b> It is unclear why property would have to be transferred “from abroad” to be included in the investment. It would appear that property that is not newly purchased but is transferred to the NCE as a capital contribution would be included here. If property from abroad needs to be a separate line item, it should be clear where one would be expected to enter the value of other “transferred property.” In sum, given</p>	<p>USCIS appreciates this comment. The Form I-526 Instructions, at Part 2, Q.9-13 clarify that a petitioner should: “Indicate the total amount of money you have deposited or committed to deposit in U.S. business account(s) for the NCE, including money placed into escrow with a U.S. or foreign bank. If you have not transferred any funds to a U.S. business account for an NCE.” These questions are designed to track EB-5 visa eligibility requirements under 8 CFR 204.6(J)(2) regarding investment of the required amount of capital.</p>
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	<p>that there is no legal distinction between property to be transferred from abroad or in the U.S., we suggest deleting “from abroad.”</p> <p><b>Part 2, Q.12: “Total of All Debt Financing.”</b> Debt financing should not be included as a component of “Your Investment,” as this is inconsistent with the definition of “investment” under the EB-5 regulations. Please delete Q.12.</p>	
	<p><b>Part 2, Q.15,16: “Your Gross (or Net) Income at Time of Investment.”</b> Given that there are no income requirements for EB-5 investors, these questions are inappropriate. In addition, it is unclear whether the “Gross (or Net) Income” refers to annual income or some other period of time. “At time of investment” is also unclear as many investments are made Page 5 of 8 through multiple transactions, sometimes over a period of years. If USCIS seeks the investor’s gross and net annual income for each year since the initial investment, it should clearly state so, as it does in Form I-829. Thus, these two questions should be removed. Alternatively, if these questions relate to the gross and net income <i>of the NCE</i> (as in the current Form I-526), the word “Your” should be deleted from heading of “Your Income,” as well as in questions 15 and 16.</p> <p><b>Part 2, Q.17,18: “Your Current Gross (or Net) Income.”</b> Given that there are no income requirements for EB-5 investors, these questions are inappropriate. In addition, it is unclear whether this refers to estimated annual, year-to-date, or most recent tax year. Thus, we suggest removing these two questions.</p> <p><b>Part 2, Q.19: “Your Net Worth at Time of Investment.”</b> Given that there are no net worth requirements for EB-5 investors, these questions are inappropriate. This question seems to make more sense in connection with the net worth of the NCE for a “troubled business.” “At time of investment” is also unclear, as many investments are made through multiple transactions, sometimes over a period of years. In addition, preparing a current net worth statement is unnecessarily burdensome on investors, especially when they are already required under the regulations to provide extensive</p>	<p>USCIS appreciates this comment. This information is necessary to determine whether the Petitioner has met the lawful source of funds eligibility requirements. The Form I-526 Instructions at Part 2, Q15-21 provide additional clarification for these questions and indicate that they relate to the petitioner (as opposed to the NCE). These questions track EB-5 visa eligibility requirements as described in 8 CFR 204.6(2) and 8 CFR 206.4(3).</p>

	<p>financial documentation. Requiring investors to go back in time to determine historical valuations and develop one or more snapshots of past net worth is not only burdensome, it serves no legal purpose. This question should be removed.</p> <p><b>Part 2, Q.20: “Your Current Net Worth.”</b> Given that there are no net worth requirements for EB-5 investors, this question is inappropriate. In addition, given market variations, a petitioner’s net worth is subject to great fluctuation. This question should be removed.</p>	
	<p><b>Part 2, Q.21: “Your Sources of Investment Capital.”</b> It is unclear whether this question seeks information about all historical sources of investment capital, or just the primary/immediate sources. For example, if a petitioner obtains gifted funds, the donor used loan proceeds to make the gift, and the loan proceeds derived from a mortgage on real property that was purchased with employment income, would the petitioner check all three boxes (income, indebtedness, gift)? We suggest rephrasing the question to read: “Please identify the primary/immediate sources (i.e. gift, savings, inheritance, investment proceeds, sale proceeds) of the capital you have invested or are actively in the process of investing into the NCE (Select all that apply).”</p> <p><b>21.b: Indebtedness.</b> It is inaccurate to characterize “loan proceeds” that are the “source” of the petitioner’s capital as “indebtedness.” This language suggests that the requirements for loan proceeds under the April 2015 indebtedness policy are extended to loans that are one step removed from the petitioner. In addition, a promissory note is not a “source of capital.” If there is capital committed to the NCE via a promissory note, that capital will have a source Page 6 of 8 independent of the note. Thus we suggest replacing everything listed in item 21.b. with NCE as borrower without using assets of NCE as collateral.</p> <p><b>21.f: “Describe documentation ...”:</b> The request here is vague, and the 1-inch space provided is insufficient, given the complex task of documenting lawful source of funds. Petitioners will</p>	<p>USCIS appreciates this comment. This information is necessary to determine whether the petitioner has met the capital at risk and lawful source of funds eligibility requirements. as described in 8 CFR 204.6(J)(2) and 8 CFR 206.4(J)(3). These regulations specify the types of evidence that the petitioner must submit to establish lawful source of funds and capital at risk. For example, 8 CFR 204.6(J)(2)(v) provides that when a petitioner has obtained investment funds through a loan (indebtedness), the petitioner must submit evidence of, “...any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.”</p>

		<p>most likely respond with “see enclosed memorandum,” or a general statement such as “bank documents, company financial documents, loan documents, tax returns, personal declaration.” We suggest removing this question, as it is duplicative of the source of funds analysis included in I-526 petition filings and will not yield relevant information.</p>	
		<p><b>Part 3, Q.6,7: “Nature of Activity” and “Included Industries (NAICS).”</b> These questions are confusing for an NCE that is not the same as the JCE. It is unclear whether USCIS wants information about the job-creating activity supported by the NCE or the actual business of the NCE (which might be “private lending” or “investment”). Thus the headings should be amended to read: “Nature of Job-Creating Activity Supported by NCE” and “Intended Industries (NAICS) of Job-Creating Activity Supported by NCE.”</p>	<p>USCIS appreciates this comment. This question tracks 8 CFR 204.6(j)(4), which specifically requires the petitioner to show how the NCE will create the requisite number of jobs. The Form I-526 Instructions, at Part 4, Q.6-7 clarify that a petitioner may also provide information about the “Nature of Activity and Included Industries” as it relates to the JCE if it is different from the NCE,</p>
		<p><b>Part 3, Q.8: “Have you invested or are you actively in the process of investing in a troubled business.”</b> This is phrased as a question about “You” or “Your Investment” as opposed to “The NCE.” This question could be rephrased to read: “Is this petition based on the NCE’s qualification as a troubled business.”</p>	<p>USCIS appreciates this comment. The Form I-526 Instructions, at Part 3, Q.8 clarify that a petitioner should indicate whether he or she has invested or is actively in the process of investing in a troubled business and, if yes, provide an explanation of how the NCE qualifies as a troubled business.</p>
		<p><b>Part 3, Q.9, 10: Dates of Formation and FEIN.</b> These questions seem out of place and might make more sense immediately following Q.5.</p> <p><b>Part 3, Q.11-14: Dates and Amounts of Your Investment and Percentage of Your Ownership of NCE.</b> These are questions about “You” and “Your Investment,” and should be moved to the end of Part 2.</p>	<p>USCIS appreciates this comment. The order of questions on the Form I-526 is designed to track the order of eligibility requirements as laid out in 8 CFR 204.6. For instance, the requirements for investment into a “troubled business” at 8 CFR 204.6(h)(3) comes before the section on the required capital investment into an NCE at 8 CFR 204.6(j).</p>

		<p><b>Part 3, Q.15-17: Multiple Investors: Name, percentage ownership and immigration plans of other investors.</b> Except perhaps in the case of small pooled investments and investor-operated NCEs, it would be unusual at the time of I-526 filing for investors to have detailed information about the identity and status of other investors beyond those non-EB-5 owners disclosed in offering documents. Certainly, the investors would not have personal knowledge of any of the underlying facts, and it is inappropriate to require investors to attest to these facts under penalty of perjury. It would be preferred to ask investors to attach a statement signed by a duly authorized representative of the NCE providing the requested information.</p>	<p>USCIS appreciates this comment. This information is important for USCIS to be able to track the number of investors to ensure that each investor has created the requisite number of jobs. This information would be available from the Regional Center or NCE and the names of other investors would be registered with the relevant state authority regulating the formation of the entity (such as the secretary of state where the corporation or limited partnership is registered). Additionally, The I-526 Form Instructions state: “If you need extra space to complete any item within this petition, use the space provided in Part 11. Additional Information or attach a separate sheet of paper...”.</p>
		<p><b>Part 5, Q.2: “What are your duties, activities and responsibilities in the NCE?”</b> There is insufficient space for the response to this question.</p>	<p>USCIS appreciates this comment. The I-526 Form Instructions state: “If you need extra space to complete any item within this petition, use the space provided in Part 11. Additional Information or attach a separate sheet of paper...”.</p>
		<p><b>Part 5, Q.5,6: Number of...Employees in the NCE (at time of initial investment and current).</b> These should read “employees of the NCE,” not “in” the NCE.</p>	<p>USCIS appreciates this comment. The I-526 Instructions provide further clarification that: A direct and qualifying employee is an individual who provides services or labor for the NCE, who receives wages or other remuneration directly from the NCE, and who is a United States citizen, a lawful permanent resident, or other immigrant lawfully</p>

			authorized to be employed in the United States, excluding you, your spouse, and your sons and daughters. This definition does not include independent contractors.”
		<b>Part 5, Q.7: Difference in Number of Full-Time Direct and Qualifying Employees.</b> This question is incomplete and should be rephrased to read: “Difference in Projected Number of Full-Time Direct and Qualifying Employees between the Time of Your Initial Investment and the End of Your 2-Year Period of Conditional Residence.	USCIS appreciates this comment. This question goes to the number of created jobs that can be claimed by the petitioner, referring to the expected number of jobs the petitioner will create within a “reasonable time period”, as specified in 8 CFR 216.6(a)(4)(iv). The I-526 Instructions at Par5 5, Q7 provide detailed instructions on how to calculate the response to this question.
		<b>Part 5, Q.8: “Number of Full-Time Direct and Indirect Positions That Will Be Created During the Relevant Time Period.”</b> It is inaccurate and misleading to refer to indirect jobs as “positions.” “During the Relevant Time Period” lacks meaning and should be omitted or rewritten to specify the period prior to the end of conditional residency. We suggest that this be rephrased to read: “Projected Number of Direct and Indirect Jobs That Will Be Created by the NCE and/or JCE Prior to the End of Your 2-Year Period of Conditional Residence.”	USCIS appreciates this comment. This question refers to the expected number of jobs the petitioner will create within a “reasonable time period”, as specified in 8 CFR 216.6(a)(4)(iv).
		<b>Part 5, Q.9: “If the new commercial enterprise is associated with a Regional Center, does this petition rely on indirect job creation? If you answered “yes” to Item Number 9, indicate the economic model used to estimate indirect job creation in Part 11, Additional Information.”</b> “Does this petition rely on” indirect job creation does not seem to account for the possibility that a petition that includes projections of both direct and indirect job creation may not necessarily “rely” on indirect job creation but would potentially benefit from its inclusion. This could be rephrased to ask whether the petition “includes projections of indirect job creation.” “Indicate the model” is also very vague. It would be better to	USCIS appreciates this comment. The I-526 Form Instructions clarify that the purpose of this question is to collect information on whether the petitioner will use indirect jobs to meet the job creation requirements. The question is also meant to collect information on the methodology used to calculate the indirect job projections.

		provide the options of “RIMS II,” “IMPLAN” and “Other (describe)” for the petitioner to choose.	
		<b>Part 5, Q.11: “Total Amount of Capital Derived From Investors Who Have Not Sought and Are Not Seeking Classification as Alien Entrepreneurs.”</b> There are many circumstances where it would be unclear how to answer this question. Does this question contemplate only capital that is already contributed to the JCE or does it include all anticipated/projected capital? Does it include only equity contributions or is it intended to include debt financing? Is it asking only about funding provided by the NCE? We suggest the question be amended to read: “Total Amount of Funding to Be Provided to Job Creating Entity Other Than EB-5 Funds.”	USCIS appreciates this comment. The Form I-526 Instructions, at Part 5, Q. 11 clarify that the petitioner should indicate the total amount of capital invested into the JCE from investors who have not and will not be filing a Form I-526.
		<b>Part 7, Information on Petitioner’s Spouse and Children.</b> As clear as this instruction may seem, it is not clear, especially when read in conjunction with the sentence which relates to the choice of visa processing or adjustment of status for each dependent. For clarification and to prevent omissions due to misunderstanding, the instruction should state “List your spouse and all of your children, whether or not they will apply for immigration benefits.” We appreciate the adoption of a similar section in Form I-526 which permits USCIS to include dependent information in its transmittals to the National Visa Center (NVC) to facilitate dependent visa processing. It is suggested that the option of “follow to join” be added to Part 7, Information on Petitioner’s Spouse and Children, with answer choices, “Yes,” “No,” and “Not Yet Known.”	USCIS appreciates this comment. This information is necessary to ensure that dependent beneficiaries are included in the EB-5 immigrant visa process. The collection of this information at the I-526 stage of the visa process does not preclude a change from Consular processing to adjustment of status (or vice versa) or following to join at a later date.
		<b>Part 8, Insert “G-1145 Related Party Information.”</b> We suggest adding “G-1145 Related Party Information” under Part 8, to allow the Regional Center to be informed of each investor’s case status.	USCIS appreciates this suggestion. However, the G-1145 is designed to notify the petitioner of acceptance of his or her petition. The e-Notification of Application/Petition Acceptance is available for any applications filed at a USCIS Lockbox.