



Interim Report on EB-5 Program

History and Status of the Program in
Vermont



Mission Statement

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Dear Colleagues,

In the past five years, government parties brought criminal and civil cases against developers of eight projects in the Northeast Kingdom that were using the Federal government's employment-based fifth preference (EB-5) program. All but one of these projects pertained to construction and renovation at the Jay Peak and Burke Mountain Resorts. The civil fraud cases were settled after the former owner of these resorts and a former executive of Jay Peak paid fines and/or gave up ownership of properties worth millions of dollars. In the Federal criminal case, the former owner pled guilty to three felony charges and criminal charges are pending against three others. In addition, a group of investors has filed a lawsuit against the Agency of Commerce and Community Development (ACCD) and two former State employees.

Vermont's Attorney General requested that we audit the State's involvement with the Jay and Burke projects. We agreed to conduct this audit to provide Vermonters with an independent and clear account of the State's role. To conduct this audit, the Attorney General agreed to provide us with all State records of which his office was aware.

To date, we have reviewed hundreds of thousands of emails and other documents and plan to review several thousand more. However, on the advice and request of the Attorney General's office, we agreed to defer interviewing current or former State employees until certain legal proceedings were resolved since they may be called as witnesses. The decision to defer work in whole or in part when there is a matter under litigation is consistent with generally accepted government auditing standards.

Although our audit is not complete, we decided to issue this interim report to explain the context surrounding the implementation of the EB-5 program in Vermont. Therefore, this report explains the Federal EB-5 program and describes the history and role of the Vermont Regional Center (VRC), which the U.S. Citizenship and Immigration Services (USCIS) designated as an EB-5 regional center.

Our audit of the State's role in the Jay and Burke projects is ongoing. The remaining work primarily involves reviewing additional files that we have not yet received and conducting interviews of former and current State employees.

This report is available on the state auditor's website,
<http://auditor.vermont.gov/>.

Sincerely,



DOUGLAS R. HOFFER
State Auditor

ADDRESSEES

The Honorable Mitzi Johnson
Speaker of the House of Representatives

The Honorable Tim Ashe
President Pro Tempore of the Senate

The Honorable Phil Scott
Governor

Ms. Susanne Young
Secretary, Agency of Administration

Mr. Adam Greshin
Commissioner, Department of Finance and Management

Ms. Lindsay Kurrle
Secretary of the Agency of Commerce and Community
Development

Mr. Michael Pieciak
Commissioner, Department of Financial Regulation

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Highlights

Since April 2016, the public has been aware of allegations by the Federal government and the State of Vermont that a massive fraud had been perpetrated in the Northeast Kingdom. These allegations purported that the owner and others involved with various enterprises to expand existing or start new businesses (which we are calling the Jay and Burke projects) misappropriated or misused funds from foreign investors who were part of the Federal government's employment-based fifth preference (EB-5) program. Under this program, foreign nationals can obtain lawful, permanent residency in the United States by making investments meeting certain requirements that result in job creation or preservation.

To resolve securities and consumer fraud civil cases brought by the U.S. Securities and Exchange Commission (SEC) and the State of Vermont—Ariel Quiros (former owner of the Jay Peak and Burke Mountain Resorts) and William “Bill” Stenger (former Jay Peak executive)—paid fines and/or gave up ownership of properties worth millions of dollars.¹ Also, in May 2019, the U.S. Attorney for the District of Vermont announced indictments of Mr. Quiros, Mr. Stenger, and two others on criminal charges arising from the alleged fraud related to one of the businesses—AnC Bio Vermont. On August 14, 2020, Mr. Quiros pled guilty to three felony charges in this case. Criminal charges against the other defendants remain pending.

None of the civil and criminal cases brought by the U.S. government or the State of Vermont allege wrongdoing by State organizations or employees. Nevertheless, some investors have an ongoing lawsuit against the Agency of Commerce and Community Development (ACCD), and two former employees that alleges misconduct although they did not accuse State employees of diverting or stealing money from investors.

Vermont's Attorney General requested that the State Auditor's Office (SAO) audit the State's involvement with the Jay and Burke projects. We agreed to conduct this audit after reaching agreement with the Attorney General that his office would provide all State records of which they were aware. However, on the advice and request of the Attorney General's office, we agreed to defer interviewing current or former State employees or publish findings until certain legal proceedings were completed.² As a result, our audit is not yet complete. In the meantime, we decided to issue this interim report to: (1) explain the EB-5 program and (2) describe the history and role of the Vermont Regional Center (VRC).³

¹ Mr. Quiros and Mr. Stenger neither denied nor admitted the charges. In his settlement agreement with the State, Mr. Stenger admitted that he did not adequately or properly supervise the administration of investor funds.

² Generally accepted government auditing standards requires that auditors evaluate the effect of investigations or legal proceedings on audits and states that it may be appropriate to defer work in total or in part to avoid interfering with an ongoing investigation or legal proceeding.

³ Appendix I contains detail on our scope and methodology. Appendix II contains a list of abbreviations used in this report.

Objective 1 Finding

The U.S. Congress established the EB-5 program in 1990 to promote job creation. It is administered by the U.S. Citizenship and Immigration Services (USCIS), which is an agency of the Department of Homeland Security. Under the regional center part of the EB-5 program at the time when the Jay and Burke projects were soliciting investors, immigrant investors could invest \$500,000 in EB-5 projects located in high unemployment or rural areas.⁴ The communities where the Jay and Burke projects are located met this criteria. In return, prospective immigrants had the possibility of a return on their investments and could receive permanent resident status (also known as green cards) after going through a multi-year process to prove that they met the requirements of the program. One key requirement is that the investment must create no fewer than 10 full-time jobs. For the funds invested in a project affiliated with a regional center, these can be direct or indirect jobs. Direct jobs are those that establish an employer-employee relationship between the new commercial enterprise and the persons it employs. Indirect jobs are those held outside the new commercial enterprise but were created as a result of the enterprise (e.g., construction). USCIS has acknowledged that it is often impossible for it to conclusively verify job creation, particularly for indirect jobs because the calculation of this type of job relies on economic model estimates.

There are risks associated with the EB-5 program that make it vulnerable to fraud and/or difficult to identify fraud. One area of fraud risk that is particularly relevant to the Jay and Burke projects is associated with securities. The investments immigrants made in the Jay and Burke projects are considered securities. As such, they are subject to securities statutes and rules governing their offering and sale. However, these securities are sold to non-citizens, and there is limited regulatory transparency in offshore offers and sales. In addition, immigrant investors may be primarily focused on obtaining their visas so may not exercise due diligence about their investment decisions. In early 2013, the SEC filed its first case alleging securities fraud related to an EB-5 investment.

Objective 2 Finding

ACCD's VRC was first designated as a regional center (an economic unit in the United States involved with promoting economic growth) by USCIS in 1997. For many years, the VRC was not successful in soliciting EB-5 immigrant investor capital. In 2006, the State, intending to resurrect and restart the VRC, requested that USCIS reaffirm its regional center status, which it did in 2007. USCIS charged the VRC with monitoring investment activities under its sponsorship and with maintaining records, data and information in order to report to USCIS annually. The VRC is an "umbrella" regional center in that it does not undertake development of projects directly. Instead, private developers independently obtained EB-5 investments for specific projects approved by the VRC. In total, the VRC approved 17

⁴ A new EB-5 rule, which became effective in November 2019, increased the minimum investment amount and made other changes to the EB-5 program. Since this is subsequent to the establishment of the Jay and Burke projects, this report generally explains how the program worked prior to this rule.

EB-5 projects although some were later halted. Eight of these (47 percent) were Jay and Burke projects.

In late 2014, the State changed the makeup of the VRC, splitting its duties between ACCD and the Department of Financial Regulation (DFR) to increase financial oversight. ACCD retained responsibility for: (1) reporting to USCIS, (2) marketing and promoting the VRC, and (3) fielding and responding to inquiries from investors and prospective investors or their respective attorneys. DFR became responsible for: (1) determining whether to approve or deny a project's application, (2) conducting on-going compliance of approved projects, (3) revoking a project's approval due to noncompliance, and (4) investigating investor complaints. DFR reported that it began to investigate the financial aspects of the Jay and Burke projects soon after taking on these VRC responsibilities. DFR's investigation, working with the Vermont Attorney General's Office and an outside forensic auditor, culminated in the State filing a fraud complaint against Mr. Quiros and Mr. Stenger in April 2016.

In August 2017, USCIS began the process of terminating the VRC's regional center designation largely because of the scandal associated with the Jay and Burke project fraud. USCIS's statutory authority to terminate a regional center's designation is limited to determining that the center either failed to file required reports or failed to promote economic growth (i.e., USCIS reported that it does not have the statutory authority to terminate regional centers due solely to criminal concerns). Instead of termination, the State proposed that it "wind down" its VRC operations. Under this proposal, the VRC would continue to sponsor and oversee existing projects but not approve new ones. On July 3, 2018, USCIS rejected the State's wind-down proposal and terminated VRC's regional center designation, concluding that the VRC was unable to promote economic growth. USCIS denied the State's subsequent appeal of this termination. Currently, the State has an outstanding request for USCIS to reconsider this decision. The State is particularly concerned that the termination of the VRC could adversely affect the immigration goals of investors who have not yet achieved permanent residency status. Such adverse effects could be borne by any such investor in a VRC-sponsored project, even those not associated with the Jay and Burke projects. The State still operates the VRC for existing projects as the termination process continues.

Background

The Jay and Burke EB-5 projects were extensive—attracting hundreds of foreign investors who collectively paid hundreds of millions of dollars to developers to construct various projects in the Northeast Kingdom.

According to lawsuits filed by both the Federal and State governments, these projects were alleged to be part of a widespread fraudulent scheme. As a result, each of these projects and the Jay Peak and Burke Mountain Resorts were placed under the control of a receiver appointed by a Federal court.

Jay and Burke EB-5 Projects

William “Bill” Stenger was hired at Jay Peak Resorts in 1984 and later became its president and chief executive officer. Ariel Quiros purchased the Jay Peak Resort from Mont St. Sauveur International, Inc. in June 2008. He later purchased the Burke Mountain Resort.

In all, there were eight EB-5 Jay and Burke projects. All but one pertained to construction and renovation at the Jay Peak and Burke Mountain Resorts that added guest accommodations and facilities, such as a water park. The first two projects—Jay Peak Hotel Suites (also known as Phase I or Tram Haus Lodge) and Jay Peak Hotel Suites Phase II (also known as Hotel Jay)—were initiated while Jay Peak Resorts was owned by Mont St. Sauveur International, Inc. before the sale of the resort to Mr. Quiros.⁵ Construction was completed on these two projects after the sale.

Mr. Quiros and Mr. Stenger solicited foreign nationals seeking U.S. residency to invest \$500,000 in the EB-5 projects along with up to \$50,000 in a non-refundable administrative fee. In total, 854 foreign nationals invested \$427 million in the Jay and Burke projects.⁶ In return, investors received a limited partnership interest in a specific project that would offer the possibility of a return on their investments and the chance to earn permanent residency in the United States if these projects generated a required number of jobs.

According to DFR, three of the eight projects were completed and four were partially completed or were completed in a manner inconsistent with the description provided to the investors.⁷ Construction for the lone non-ski related project, the Jay Peak Biomedical Research Park, also known as AnC Bio Vermont or Phase VII, (a proposed biomedical facility in Newport) never

⁵ Although the sale of Jay Peak Resort was completed in June 2008, Mont St. Sauveur International, Inc. gave functional control of the Jay Peak Resort to Mr. Quiros in January 2008 with the understanding that legal control was to pass to him later.

⁶ This does not include the non-refundable administrative fees.

⁷ [Review of the EB-5 Program in Vermont and the Vermont Regional Center](#) (DFR, in consultation with ACCD, August 18, 2017).

commenced.⁸ Appendix III provides a brief description of each of the Jay and Burke projects, the number of investors and how much they invested, and the status of construction.

Lawsuits

In April 2016, the [SEC](#) and the [State of Vermont](#) (the Office of the Attorney General and DFR) separately filed similar civil lawsuits against Ariel Quiros and Bill Stenger alleging fraud related to the Jay and Burke projects. For example, both lawsuits alleged that Mr. Quiros misused investor funds to purchase the Jay Peak and Burke Mountain resorts, and that he misappropriated funds for his personal use. These lawsuits were settled and resulted in millions of dollars in properties and cash provided to the receiver to be used on behalf of the investors or earmarked for economic development in the Northeast Kingdom.⁹

In May 2019 the U.S. Attorney for the District of Vermont announced [indictments](#) of Mr. Quiros, Mr. Stenger, and two others¹⁰ on criminal charges pertaining to one of the EB-5 projects, AnC Bio Vermont. The indictment accuses the defendants of, among other things, (1) fraud, (2) lying to investors, the VRC, USCIS, and the SEC and (3) embezzlement. In return for capping his potential jail sentence at no more than 97 months, on August 14, 2020, Mr. Quiros pled guilty to three felony charges in this case. In his plea agreement, Mr. Quiros also agreed to cooperate with the U.S. Attorney's office on ongoing matters and sentencing has been delayed pending his cooperation. Charges are still pending against the other three defendants. See Appendix IV for a summary and status of these Federal and State lawsuits.

The State has also been sued because of its operation of the VRC. In May 2017, a set of investors filed a putative class action lawsuit against the State alleging malfeasance. Part of this lawsuit was dismissed but the [Vermont Supreme Court](#) has let the following claims for alleged wrongdoings go forward: (1) negligence by ACCD, (2) breach of contract and the implied covenant of good faith and fair dealing by ACCD, and (3) gross negligence against two former State employees.

⁸ Site preparation and groundbreaking for the proposed AnC Bio Vermont facility did occur.

⁹ In their settlement agreements with the SEC, [Mr. Quiros](#) and [Mr. Stenger](#) neither denied nor admitted to the allegations made in the complaints. Mr. Quiros also neither denied nor admitted the allegations in the State complaint. Regarding the State complaint, Mr. Stenger acknowledged and agreed that he did not properly supervise the administration of EB-5 investor funds and, as a result, they became subject to misuse, misappropriation, and commingling. As part of his plea agreement in the Federal criminal case, Mr. Quiros admitted using investors' EB-5 funds for personal expenses and as part of the scheme to purchase the Jay Peak Resort in 2008.

¹⁰ The two others were William "Bill" Kelly, a long-time advisor to Mr. Quiros and Jong Weon "Alex" Choi, a South Korean citizen.

Since the criminal case and investors lawsuit are still pending, as allowed by generally accepted government auditing standards,¹¹ the SAO has agreed to limit the work performed on the audit on the State's role in the EB-5 program until these legal proceedings have reached a conclusion. To date, the SAO has reviewed hundreds of thousands of emails and other documents provided by the Office of the Attorney General and expects to review several thousand more before the end of the overall audit. However, the SAO has agreed to postpone conducting interviews of individuals who may be called as witnesses to these trials and issuing a public audit report of findings until the legal proceedings are finished.

Receivership

At the request of the SEC, in April 2016, a Federal judge appointed a receiver for the Jay and Burke projects and associated companies.¹² A receiver is a neutral third-party custodian for property and assets, who is granted powers by the court¹³ and answers to the judge. The SEC typically recommends the appointment of a receiver when it fears a company or individual may dissipate or waste corporate property and assets.

In this role, the receiver for the Jay and Burke projects:

- **Seized assets.** Took possession of the assets of the receivership companies, including assuming control for all financial accounts.
- **Operated the resorts.** Employed a management company to maintain and operate the Jay Peak and Burke Mountain resorts.
- **Assisted investors with their immigration goals.** This included reaching agreement with USCIS so that they would start ruling on immigrant petitions from Jay and Burke project investors and providing information to these investors to support their petitions.
- **Completed construction projects.** Certain construction projects were completed to satisfy EB-5 job creation requirements. For example, for the Jay Peak Hotel Suites Stateside project (also known as Phase VI), the receiver completed the construction of 60 cottages and a recreational

¹¹ These standards require auditors to evaluate the effect of initiated or in-process investigations or legal proceedings on audits. The standards state that it may be appropriate for auditors to withdraw from or defer further work on the audit or a portion of an audit to avoid interfering with an ongoing investigation or legal proceeding.

¹² The [first order](#) was issued on April 13, 2016 and covered the first seven Jay projects. A [second order](#) expanding the receivership to include the Burke Mountain project was signed on April 22, 2016.

¹³ The court's order governs the authority of the receiver. Generally, the court pays a receiver from assets of the receivership estate. The receiver submits a bill to the court for fees and services who decides on the amount the receiver is entitled to be paid.

center and built athletic fields. According to the receiver, this has created enough jobs for all investors in this project to meet job creation requirements.¹⁴

- ***Sued various parties.*** Pursued lawsuits against various parties to recover monies for the receivership estate. For example, on June 30, 2017, the Court approved a settlement between the receiver and other parties with Raymond James & Associates, Inc.¹⁵ in which Raymond James agreed to pay the receivership estate \$150 million.^{16, 17} As of February 29, 2020, other lawsuits were still pending. A judge has stayed two of these cases until completion of the criminal proceedings.
- ***Sold properties.*** Some properties were sold and the proceeds put in trust for the receivership estate. For example, the receiver sold a New York condominium and storage unit previously owned by Mr. Quiros for \$2,220,000. Other properties, such as the Jay Peak Resort are up for sale. The Burke Mountain Hotel is not for sale because, according to the receiver, it has not yet generated sufficient jobs for all investors in the project and the sales price based on current financial performance would be “extremely low.”¹⁸

To date, the efforts of the receiver have resulted in 204 Phase I (Jay Peak Hotel Suites) and Phase VII (AnC Bio Vermont) investors having their investments returned.¹⁹

Objective 1: Immigrant Investors Use the EB-5 Program to Achieve U.S. Residency Status

The EB-5 program was designed to provide a path to U.S. residency for immigrants who invest in businesses that create jobs in the United States. To

¹⁴ Receiver’s [Sixth Interim Report](#) covering the period from July 1, 2018 to April 30, 2019.

¹⁵ The SEC alleged that most of the investor money Mr. Quiros misappropriated or misused flowed through Jay Peak-related brokerage accounts (managed by his former son-in-law) at Raymond James & Associates. The receiver sued Raymond James & Associates contending that it was liable for its role in the fraud. Raymond James denied any participation in the fraud.

¹⁶ This amount included \$4.5 million Raymond James & Associates paid to the receiver as part of a settlement that DFR reached with Raymond James on June 29, 2016. Under the DFR settlement, Raymond James & Associates also agreed to pay the State a \$1.25 million administrative penalty and \$200,000 to reimburse DFR for its costs.

¹⁷ This money was used to (1) repay all investors in the Jay Peak Hotel Suites project (\$15.3 million), (2) provide refunds to 134 AnC Bio Vermont project investors (\$67 million), (3) set aside for future repayments to investors in the Burke Mountain Resort, Hotel and Conference Center project (\$10 million), (4) complete Jay Peak Hotel Suites Stateside project construction (\$17.5 million), (5) satisfy various types of creditor claims (\$13.9 million), and (6) create a fund for attorneys fees and costs (\$25 million). The remaining \$1.3 million is to be used for the general benefit of the receivership estate.

¹⁸ Receiver’s [Eighth Interim Report](#) covering the period from October 1, 2019 to February 29, 2020.

¹⁹ The receiver also returned funds to one individual who did not complete his investment.

successfully achieve permanent residency status, these investments must result in at least 10 full-time jobs and meet other requirements and the immigrant investor must go through a Federal multi-year approval process. Vulnerabilities in the EB-5 program have caused it to become a target of fraudulent actors.

The Department of Homeland Security published a [new rule](#) to modernize the EB-5 program. The rule went into effect on November 21, 2019.²⁰ Since this rule took effect after the establishment of the Jay and Burke projects, this report generally explains how the program worked prior to this date.

Overview of the EB-5 Regional Center Program

The Federal government's Immigration Act of 1990 created an employment-based immigrant visa category to promote job creation and encourage capital investment in the United States by foreign investors in exchange for lawful permanent residency (green card) and a path to citizenship. This program is administered by the Department of Homeland Security's USCIS and is commonly referred to as the EB-5 program.

Under the EB-5 regional center program, first enacted as a pilot in 1992 and reauthorized several times since,²¹ a certain number of EB-5 visas are set aside annually for immigrant investors in economic units called regional centers.²² An EB-5 regional center is an economic unit, public or private, in the United States that is involved with promoting economic growth.

To become a regional center, an entity must be approved by USCIS after submitting an application that includes a proposal that demonstrates it would promote economic growth. In addition, the regional center is supposed to oversee and monitor the project(s) that it sponsors.

As of June 4, 2020, there were 721 approved regional centers. The vast majority of regional centers have been privately owned. Vermont was one of

²⁰ 84 FR 35750. The new rule (1) provides priority date retention in the visa queue of an approved immigrant I-526 petition to certain EB-5 investors, (2) increases the required minimum investment amounts, (3) reforms targeted employment area designations, and (4) clarifies USCIS procedures for the removal of conditions on permanent residents. Several commentators on a draft of this rule suggested additional measures USCIS could implement to address fraud in the EB-5 program but they were not included in the rule because the Department of Homeland Security determined that they were outside of the scope of the rulemaking.

²¹ The regional center pilot program was established by P.L. 102-395. Most recently, P.L. 116-94 reauthorized the program until September 30, 2020.

²² Immigrant investors can also invest in new commercial enterprises that are not affiliated with a regional center. In such cases, the investor must demonstrate that his or her investment created no fewer than 10 direct full-time jobs. The 2019 EB-5 rule states that 92 percent of immigrant investors invest in projects associated with regional centers.

very few states that had an approved regional center that was part of State government.

USCIS can terminate a regional center only if the center (1) fails to submit required information to USCIS or (2) no longer serves the purpose of promoting economic growth. According to the chief of USCIS's Immigrant Investor Program Office (IPO), if a regional center fails to engage in proper monitoring and oversight of capital investment activities and jobs created under its sponsorship, that regional center may no longer meet the criteria of promoting economic growth.

In testimony before the U.S. Senate in June 2018, the USCIS director at that time stated that the agency lacked explicit statutory authority to terminate a regional center's designation for criminal or security concerns, stating "in instances where USCIS has criminal or security concerns about a regional center, USCIS has to either demonstrate these concerns are related to the regional center's failure to promote economic growth, or demonstrate the regional center's failure to promote economic growth separately from any criminal or security concerns."²³ Moreover, if USCIS finds a problem with a regional center that may not warrant termination, it does not have authority to act proportionally by sanctioning regional centers with fines or temporary suspensions.

According to the former director's testimony, USCIS faces other challenges in ensuring the integrity of the EB-5 regional center. For example, **USCIS is not authorized to require regional centers to report a certification of continued compliance with securities laws, disclosure of pending litigation, details of how investor funds were used, an accounting of jobs created, or progress towards completion of the investment project.**

How Investor Immigrants Obtain Permanent Green Cards

Federal law allows for up to 7.1 percent of employment-based visas be made available to immigrants that meet the requirements of the EB-5 program²⁴ (i.e., 9,940 visas). Of this amount, at least 3,000 visas in each fiscal year are reserved for qualified immigrants who invest in a targeted employment area.²⁵

²³ [Citizenship for Sale: Oversight of the EB-5 Investor Visa Program](#) (L. Francis Cissna, USCIS Director before the U.S. Senate Committee on the Judiciary, June 19, 2018).

²⁴ 8 U.S.C. §1153(b)(5)(A).

²⁵ 8 U.S.C. §1153(b)(5)(B). A targeted employment area is a rural area or area that has experienced high unemployment (at least 150 percent of the national average rate). Rural area is defined as any area other than a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more.

Investor Requirements

To be eligible for a visa under the EB-5 program, an immigrant investor must make a capital investment in a new commercial enterprise that creates jobs.

- **Capital Investment.** The immigrant investor is required to invest his or her own capital and demonstrate that the funds were lawfully obtained. Before November 21, 2019, an immigrant investor was required to invest \$500,000 or \$1 million. The lesser amount was allowed if the project was in a targeted employment area (which would include the Northeast Kingdom where the Jay and Burke projects were located). The investment must be at risk. In other words, there can be no guarantee that the immigrant investor will receive a return or rate of return on his or her investment.
- **New commercial enterprise.** A new commercial enterprise is formed for any for-profit activity for the ongoing conduct of lawful business that was established after November 29, 1990.
- **Creates jobs.** To be eligible for permanent U.S. residency, the immigrant's capital investment must create at least 10 full-time jobs for U.S. workers.²⁶ For the funds invested in a project affiliated with a regional center designated by USCIS, these can be direct or indirect jobs. Direct jobs are those that establish an employer-employee relationship between the new commercial enterprise and the persons it employs. Indirect jobs are those held outside the new commercial enterprise but were created as a result of the enterprise (e.g., construction, real estate, recreation).²⁷ USCIS relies on reasonable²⁸ economic models to determine that it is more likely than not that the indirect jobs were created and may request additional evidence to support that the direct and indirect jobs were created.²⁹ Indirect jobs may include induced jobs, which are created

²⁶ To qualify, the worker must be a U.S. citizen, a lawfully admitted permanent resident or other immigrant authorized for employment in the United States. Full-time employment is defined as at least 35 hours per week.

²⁷ Indirect jobs can include, but are not limited to, those held by employees of the producers of materials, equipment, or services used by the new commercial enterprise. Indirect jobs can qualify even if they are outside of the geographical boundaries of a regional center (such as Vermont in the case of the Jay and Burke projects).

²⁸ The term "reasonable" is based on the legislation that created the regional center program (P.L. 102-395).

²⁹ To show that a new commercial enterprise would create no fewer than 10 full-time positions for qualifying employees, an immigrant investor must submit (1) documentation, such as tax records, for 10 qualifying employees, if such employees has already been hired or (2) a copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 qualifying employees will result within the next 2 years and the approximate dates employees will be hired. The two-year period is deemed to begin 6 months after the adjudication of the Form I-526 (Immigrant Petition by Alien Investor). When the immigrant investor requests removal of conditions on permanent resident status (Form I-829), he or she is required to provide evidence of job creation. For indirect job creation based on reasonable methodologies, evidence can include, but is not limited to, payroll records, tax documents, invoices and receipts, purchase agreements, and bank statements. USCIS does not require that the jobs still be in existence at the time the immigrant investor files a petition to remove conditions on permanent resident status but instead that at least 10 full-time jobs for qualifying employees were created by the new commercial enterprise as a result of his or her investment and that such jobs were considered

when new direct and indirect employees spend their earnings on consumer goods and services. In a response to a Federal audit report, USCIS acknowledged that it is often impossible for it to conclusively verify job creation.³⁰ In particular, indirect job creation numbers rely on economic model estimates that accrue to numerous downstream industries and it is not possible to verify exactly how many new jobs could be attributable to a specific EB-5 investment. It is possible that such forecasts may overstate actual job creation.³¹

Federal Processing of Immigrant Investor Petitions

To achieve their immigration goals, EB-5 investors must successfully complete a multi-year process. Not only does the immigrant investor have to undergo the same background and national security screenings as applicants in other visa categories but the investor must also meet the unique requirements of the EB-5 program.

Prospective immigrant investors must successfully navigate several processes and provide supporting documentation to USCIS's IPO or U.S. Department of State, as appropriate, for their approval. First, using Form I-526, *Immigrant Petition by Alien Investor*, the immigrant investor applies to be a conditional permanent resident. If USCIS approves the petition, the investor immigrant files either a DS-260, *Application for Immigrant Visa and Alien Registration* (to obtain a visa abroad to seek admission to the United States) or an I-485 *Application to Register Permanent Residence or Adjust Status* (if the individual is already located in the United States). Lastly, to seek removal of the conditions on his or her residence in the United States, the immigrant investor files a Form I-829, *Petition by Investor to Remove Conditions on Permanent Resident Status*, within 90 days prior to the two-year anniversary of the date the conditional permanent resident status was granted.

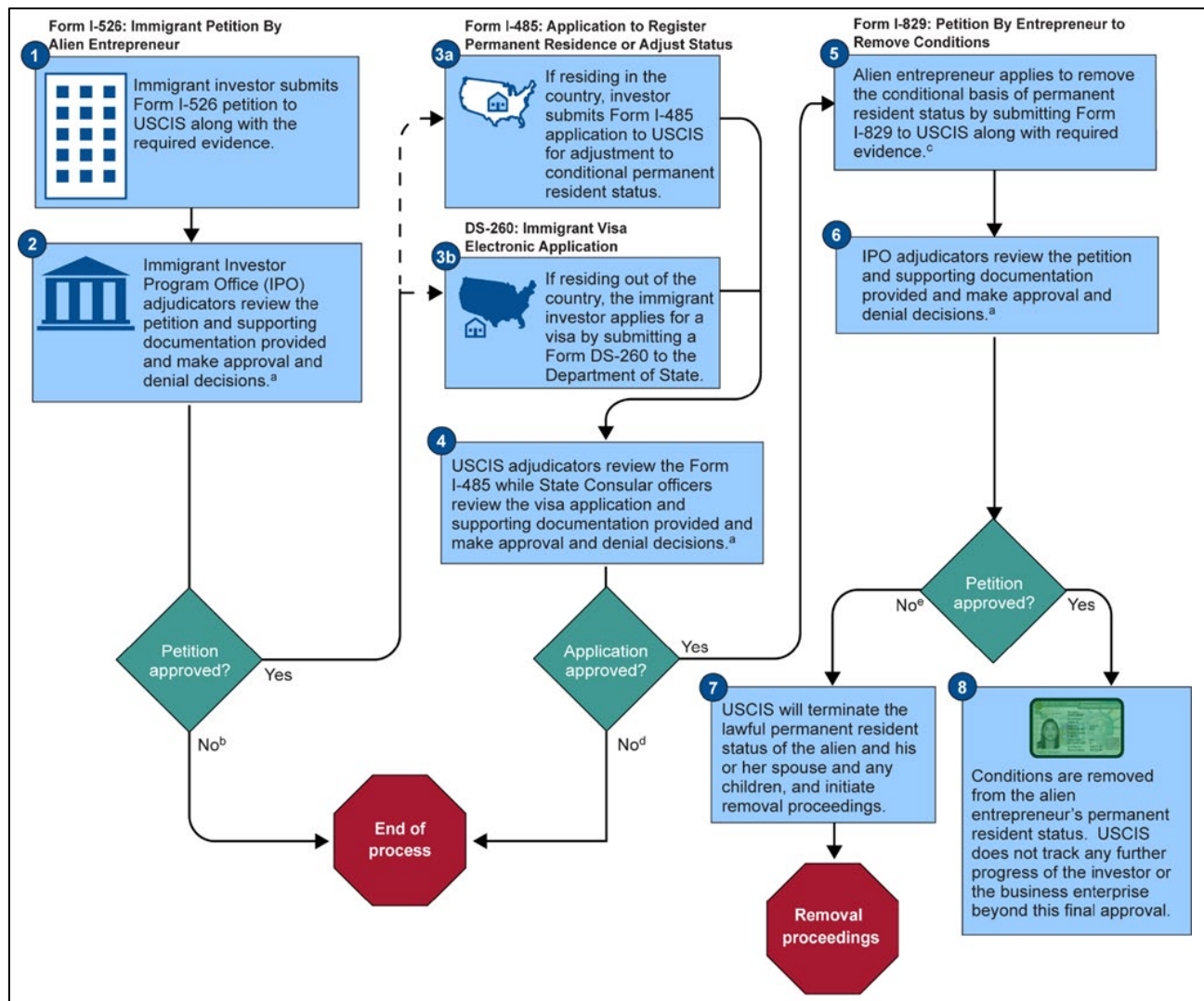
Figure 1 is a high-level illustration of the processing of these forms that was published by the U.S. Government Accountability Office (GAO) in 2016. The immigrant investor will be issued a U.S. green card (permanent resident status) if he or she successfully completes this process. This entire process takes years to complete.³²

permanent when created. Although the immigrant investor is required to submit evidence submitted to USCIS, he or she typically obtains it from the regional center or new commercial enterprise.

³⁰ [United States Citizenship and Immigration Services' Employment-Based Fifth Preference \(EB-5\) Regional Center Program](#) (Department of Homeland Security Office of the Inspector General, OIG-14-19, December 12, 2013).

³¹ [84 FR 35750](#), EB-5 Immigrant Investor Program Modernization.

³² As of July 2, 2020, USCIS reported that the estimated processing time for the I-526 form was 29.5 to 61 months. Estimated processing times for the I-829 form was 24.5 to 47.5 months.

Figure 1: USCIS Immigrant Investor Program Investor Petition and Application Process

- ^a USCIS adjudicators may request additional supporting documents, if needed. See 8 C.F.R. § 103.2(b)(8).
- ^b If the immigrant investor's Form I-526 petition is denied, the investor may appeal, or file a motion to reopen or reconsider the unfavorable decision by filing Form I-290B, Notice of Appeal or Motion, in accordance with Form I-290B filing instructions. See 8 C.F.R. §§ 103.3, 103.5.
- ^c If an alien entrepreneur does not timely file a petition to remove the conditional basis of permanent residence, his or her conditional permanent resident status automatically terminates, and removal proceedings are to be initiated. See 8 C.F.R. § 216.6(a)(5).
- ^d Consular officers may return the Form I-526 petition to USCIS, in which case USCIS may commence revocation proceedings pursuant to 8 U.S.C. § 1155; 8 C.F.R. § 205.2. Where approval of the petition is revoked, the immigrant investor may appeal to the Administrative Appeals Office. With respect to USCIS's denial of a Form I-485 application, the immigrant investor may file a motion to reopen or reconsider the decision. See 8 C.F.R. § 103.5.
- ^e According to 8 C.F.R. § 216.6(d)(2), denial of a Form I-829 petition may not be appealed; however, the alien may file a motion to reopen or reconsider the decision by filing a Form I-290B, Notice of Appeal or Motion, or seek review of the decision in removal proceedings. See 8 C.F.R. §§ 103.5, 216.6(d)(2).

Source: *Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts* (U.S. Government Accountability Office, GAO-16-828, September 13, 2016).

Fraud and the EB-5 Program

In August 2015, GAO reported on fraud risks unique to the EB-5 program, including: (1) fraudulent investment schemes, such as violations of securities law; (2) uncertain source of immigrant investor funds; and (3) the appearance of favoritism and special access in USCIS.³³ The SEC and the State of Vermont allege that Mr. Quiros and Mr. Stenger conducted fraudulent investment schemes involving the violation of securities law so this report focuses on this type of fraud in the EB-5 program.³⁴

Since regional centers pool multiple investors' funds into commercial enterprises these centers and their related entities could offer EB-5 investments that qualify as securities.³⁵ This makes them subject to Federal securities statutes and rules governing their offer and sale, including antifraud provisions.³⁶ For example, making false or misleading statements in the offer or sale of securities or failing to disclose material things to investors is a violation of federal securities laws.

According to a senior official from the USCIS that works on fraud issues, the most frequent incidents of fraud in the EB-5 program were those associated with securities. In October 2013, the SEC and USCIS jointly issued an investment alert to warn individuals about fraudulent investment scams that exploit the EB-5 program.³⁷

There are complications with the securities used in the EB-5 program that make the program more vulnerable to fraud and/or more difficult to identify fraud. For example,

- EB-5 investments are often limited partnerships interests or limited liability company units and are typically exempt from registration requirements in federal securities law. SEC has limited visibility into unregistered securities.

³³ [Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits](#) (U.S. Government Accountability Office, GAO-15-696, August 12, 2015).

³⁴ In their settlements with the SEC and the State of Vermont Mr. Quiros and Mr. Stenger did not admit to the allegations of securities fraud. In August 2020, Mr. Quiros admitted his guilt in a Federal criminal case related to one of the EB-5 projects. The criminal case against Mr. Stenger and two others has not yet been adjudicated.

³⁵ [Testimony on the EB-5 Immigrant Investor Program](#) (Stephen L. Cohen, SEC Associate Director, Division of Enforcement before the U.S. Senate Committee on the Judiciary, February 2, 2016).

³⁶ Limited partnerships are also defined as securities under the Vermont Uniform Securities Act (9 V.S.A. §5102(28)(E)). 9 V.S.A. §5501 prohibits fraudulent schemes, acts, statements, and omissions in connection with the offer to sell or the sale of a security.

³⁷ [Investor Alert: Investment Scams Exploit Immigrant Investor Program](#) (U.S. Securities and Exchange Commission and U.S. Citizenship and Immigration Services, October 9, 2013).

- EB-5 investments are sold to non-citizens and there is limited regulatory transparency with offshore offers and sales of securities.
- Immigrant investors may be primarily focused on obtaining their visas. As a result, these investors may not exercise due diligence about their investment decisions or may accept lower rates of return.
- It can be difficult to verify whether funds are being invested in projects and commercial enterprises and immigrant investors may be involved in schemes to fraudulently portray job creation or economic activity.

According to GAO, USCIS has taken action to combat fraud in the EB-5 program, such as adding resources for program oversight.³⁸ In addition, although the SEC has no role in administering or overseeing the EB-5 program, working with the USCIS and others, it has investigated and initiated civil enforcement actions alleging securities law violations by EB-5 participants. In February 2013, the SEC filed its first case alleging fraud related to an EB-5 investment in the Chicago Convention Center project.

Objective 2: Initiation and Termination of the State's EB-5 Regional Center

The VRC was an approved EB-5 regional center from 1997 until USCIS's decision to terminate its approval in 2018. The VRC is an "umbrella" regional center in that it does not undertake development of projects directly but approves projects by private developers. Originally established within ACCD, in late 2014, the VRC underwent a major organizational change in which some of its responsibilities (primarily project application decisions and oversight) were shifted to DFR to utilize their securities and financial expertise. USCIS terminated the VRC after concluding that it could no longer promote economic growth. This decision was largely based on the Jay and Burke project frauds. The State has requested that USCIS reconsider this decision and is still running the VRC albeit without seeking new projects.

Vermont Regional Center Evolution

In April 1997, Governor Dean submitted a proposal to the federal immigration agency that predated USCIS³⁹ to request that ACCD be

³⁸ *Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts*, (U.S. Government Accountability Office, GAO-16-828, September 13, 2016).

³⁹ This was the Immigration and Naturalization Service. The Homeland Security Act of 2002 separated this agency into three components, including USCIS, which assumed responsibility for immigration service functions of the Federal government.

designated as an EB-5 regional center. This request was approved on June 26, 1997. In its 1997 proposal, the State cited the planned expansion of the Jay Peak Resort under Mr. Stenger as president to illustrate the job creation potential in Vermont using the EB-5 program. In a letter to Governor Dean, the former Immigration and Naturalization Service stated: “it is our opinion that the ACCD, as a statutorily authorized arm of Vermont government with a broad mission involving job creation and economic development, is certainly well-suited to manage the proposed regional center.”

For many years, the VRC was unsuccessful in soliciting EB-5 immigrant investor capital. In 2006, Governor Douglas asserted the State’s intent to resurrect and restart the VRC and requested that USCIS reaffirm its regional center status. To that end, Governor Douglas designated the Secretary of ACCD as the principal representative of the VRC and ACCD’s general counsel as its principal administrator.

In March 2007, USCIS approved Vermont’s request and reaffirmed its approval and designation of ACCD as an EB-5 regional center.⁴⁰ In a subsequent letter, USCIS cited the State’s responsibility “to monitor all investment activities under the sponsorship of your regional center and to maintain records, data and information ... in order to report to USCIS” annually. In an April 2007 email to ACCD’s general counsel, a USCIS adjudications officer noted that the VRC “needs to have an ongoing oversight and general administrative role relating to any and all business activities that are targeted and receive immigrant investor capital investments.”

The State established the VRC as an “umbrella” regional center in that it did not undertake development of projects directly. Instead, private developers independently obtained EB-5 investments for specific projects that were approved by the VRC. Thus, investors provided funds directly to the EB-5 project. In total, the VRC approved 17 EB-5 projects. Thus, the eight Jay and Burke projects constitute 47 percent of the VRC’s project portfolio. Of the remaining nine projects, five were completed or are ongoing and four were halted.

The VRC’s first sponsored project was the Jay Peak Hotel Suites (Phase I), which was governed by a December 2006 memorandum of understanding (MOU) signed by the ACCD Secretary and Bill Stenger. According to the State, the Federal government’s former immigration agency recommended using an MOU and provided an example that the VRC adopted.

⁴⁰ USCIS subsequently also approved several amendments to the State’s regional center designation to encompass additional investment activities or industries.

The Jay Peak Hotel Suites MOU states that Jay Peak will act in an independent capacity and not as officers or employees of ACCD or the State of Vermont. However, it also directs Jay Peak to assist in the management, administration, and overall compliance with U.S. immigration laws and regulations and to provide ACCD written progress reports on their activities quarterly.⁴¹ This assistance to ACCD was to include: (1) providing investment information and supporting documentation to prospective investors, (2) supplying economic analysis and modeling reports, (3) providing assistance in support of individual petitions filed with USCIS by immigrant investors, and (4) providing quarterly written progress reports.⁴² The MOUs for the other seven Jay and Burke projects also included these provisions except (1) they did not all specify that quarterly progress reports be written and (2) the AnC Bio Vermont (Phase VII) and Burke Mountain Resort, Hotel and Conference Center (Phase VIII) MOUs also includes compliance with all state and federal securities laws and regulations.⁴³

In late 2014, the VRC underwent a major organizational change to increase financial oversight over EB-5 projects. Specifically, on September 29, 2014, Governor Shumlin issued a letter to the Secretary of ACCD and Commissioner of DFR asking their organizations to work together in administering the VRC, stating: “my hope is that the securities and financial expertise of DFR staff can assist ACCD with the growing volume of work necessary to fulfill the Regional Center’s mission.”

On December 22, 2014, ACCD and DFR signed an MOU outlining their respective VRC responsibilities. ACCD retained responsibility for: (1) reporting to USCIS, (2) marketing and promoting the VRC, and (3) fielding and responding to inquiries from investors and prospective investors or their respective attorneys. DFR became responsible for: (1) determining whether to approve or deny a project’s application, (2) conducting on-going compliance of approved projects, (3) revoking a project’s MOU due to noncompliance, and (4) investigating investor complaints and determining whether such allegations warrant the filing of administrative or civil charges and/or referral of the matter to another regulatory or law enforcement agency. According to DFR, it immediately began to investigate the financial aspects of the Jay and Burke projects. DFR also worked with the Vermont Attorney General’s Office and an outside forensic auditor, which ultimately

⁴¹ As required by the MOU, the State also notified USCIS of this arrangement.

⁴² According to the MOU, the type of information to be provided in the quarterly written reports pertained to investors (e.g., the total number, the number in various stages of the immigration process).

⁴³ The VRC also entered into MOUs with the other approved projects not affiliated with the Jay and Burke projects. The VRC subsequently revised its EB-5 project MOU model template, adding additional requirements.

led to the State's fraud complaint being filed against Mr. Quiros and Mr. Stenger.

For most of its existence, the State's decisions on the organizational makeup of the VRC and its responsibilities was not directed by statute. According to the State's review of Vermont's EB-5 program, ACCD's enabling statute does not include EB-5 compliance or enforcement provisions.⁴⁴ The Vermont Legislature passed its first EB-5 law in 2011 (Act 52 of that session), which established an EB-5 Special Fund to support the VRC's operating costs (10 V.S.A §21) to be funded by fees imposed by ACCD. In 2016, the Legislature passed Act 149, which added 10 V.S.A. §20. This statute required ACCD and DFR to adopt rules for the administration and oversight of the State's EB-5 program to be modeled after the MOU between the two organizations. The rules were to include provisions related to: (1) securities analysis and standards for project approval; (2) ongoing oversight and compliance of approved projects, including annual audits; and (3) standards for revoking approval of a project. These rules were drafted but never finalized because by 2017 the State had decided not to approve more EB-5 projects.

VRC Termination

In August 2017, citing the allegations of fraud associated with the Jay and Burke projects, USCIS submitted a [notice of intent to terminate](#) Vermont's regional center designation. USCIS found that these fraud allegations—combined with the MOU signed between ACCD and Bill Stenger in which the latter would perform project monitoring, oversight, and management functions—indicated that the VRC “relied excessively—if not primarily—on the third-party project managers to perform oversight functions.” According to USCIS, even when a regional center has an outside party provide management services, the center retains ultimate responsibility for compliance with relevant statutes and regulations.

In [response to this notice](#), the State proposed that it “wind down” its VRC operations by which it would continue to sponsor and oversee existing projects but not approve new projects. This proposed path to closing the VRC is intended to allow the State to honor its commitments to existing EB-5 projects.

Of concern is that termination of the VRC would jeopardize the immigration goals of the investors in VRC-sponsored projects. USCIS considers the termination of a regional center to be a material change to an immigrant's

⁴⁴ *Review of the EB-5 Program in Vermont and the Vermont Regional Center* (DFR, in consultation with ACCD, August 18, 2017).

residency petition.⁴⁵ A material change can lead to the denial or revocation of an immigrant investor's I-526 petition (request to be a conditional permanent resident). In addition, investor immigrants facing possible revocation of their I-526 petition could be required to make an additional \$400,000 investment in order to maintain their priority date in the immigrant visa queue.⁴⁶ The State has argued that terminating the VRC would unfairly harm investors based on an alleged fraud perpetrated by others.

As of mid-July 2020, at least 41 investors in the Jay and Burke projects had I-526 petitions pending with USCIS.⁴⁷ In addition, the regional center's termination would affect more than the Jay and Burke projects investors. According to the State's September 4, 2018 [appeal of the regional center's termination](#), there were as many as 207 immigrant investors in non-Jay and Burke projects whose immigration goals were at risk with the termination of the VRC.

On July 3, 2018, USCIS rejected the State's wind-down proposal and [terminated VRC's regional center designation](#). The State [appealed](#) this decision, which USCIS [denied](#) in September 2019. On October 25, 2019, the State requested that [USCIS reconsider](#) this decision. As of late-August 2020 this reconsideration request remained outstanding and the VRC continues to operate although it is not approving new projects. In terms of existing projects, the VRC currently is responsible for the oversight of the non-Jay and Burke projects while the receiver is overseeing the Jay and Burke projects.

The basis for USCIS' termination decisions is that VRC had not provided sufficient evidence that the VRC continues to serve the purpose of promoting economic growth.⁴⁸ In its initial decision, USCIS acknowledged that none of the Jay and Burke fraud allegations have been alleged to be committed by state employees, cited improvements in the VRC's oversight processes, and noted other positive aspects of the regional center. Nevertheless, USCIS

⁴⁵ According to USCIS, a change is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision on an immigrant's petition.

⁴⁶ An EB-5 rule effective November 21, 2019 changed the minimum investment for EB-5 regional center projects in targeted employment areas from \$500,000 to \$900,000. Under these new requirements, according to the USCIS IPO chief, in the case of a terminated regional center, an immigrant investor with an approved conditional green card (I-526) could have this approval revoked. If the investor chooses to file for a new conditional green card and the petition is filed on or after November 21, 2019, the investor must meet the new investment eligibility requirement.

⁴⁷ This is an estimate. The receiver provided the SAO with lists of investors that showed their immigration status. However, the receiver is reliant on investors notifying him of changes to their immigration status so these lists may not be up-to-date.

⁴⁸ As stated in a previous section of this report, USCIS can only terminate a regional center if it no longer serves the purpose of promoting economic growth or fails to submit required information to USCIS. Regarding the latter criteria, USCIS found that the VRC had submitted the annual information reports. However, it chastised the State for not reporting on the allegations of wrongdoing pertaining to the Jay and Burke projects, stating "this inaction and the omission or inaccurate reporting of relevant and material facts resulted in USCIS approving Forms I-526 and Forms I-829 associated with the Jay Peak projects that, based on pleadings in the federal and state cases, should not have been approved because, in part, the job creation figures might have been inflated, and thus inaccurate."

concluded that the positive factors were outweighed by negative factors. These negative factors were: (1) a lack of administrative oversight, (2) the diversion of EB-5 funds, (3) material misrepresentations to investors and USCIS related to the Jay and Burke projects, and (4) the adverse effects the extensive unfavorable publicity surrounding the Jay and Burke projects would have on future projects and job creation.

In responses to USCIS' termination documents, the State has disagreed with USCIS's characterization of the VRC's administrative oversight as deficient.⁴⁹ The State has argued that its oversight processes were consistent with, and even exceeded, USCIS guidance and pointed out that it was DFR's oversight (in conjunction with the SEC) that led to the discovery of the alleged fraud. The State also argues that the Jay and Burke projects as well as the VRC's other EB-5 projects continue to provide economic growth to the State. For example, the State cited the capital investments that the receiver has made as evidence.

Conclusions

Immigrant investors using the Federal EB-5 program must place hundreds of thousands of dollars at risk for the potential benefits of obtaining permanent residency in the United States and a return on their investments. USCIS approves regional centers to promote economic growth and oversee the EB-5 projects they sponsor. In Vermont, this oversight role was served for many years by ACCD's VRC, which was an EB-5 regional center. This changed in 2014 when DFR and ACCD became jointly responsible for the VRC because of the need for added financial and securities expertise. Ultimately, DFR's involvement led to civil lawsuits in 2016 alleging fraud by the then Jay Peak and Burke Mountain Resorts owner Ariel Quiros and Jay Peak executive Bill Stenger related to eight EB-5 projects in the Northeast Kingdom. While some of the hardship caused by the EB-5 scandal has been mitigated for some investors, the fallout of this alleged fraud on many of the investors and Vermont is ongoing.

Managements' Comments

On August 26, 2020, DFR's General Counsel provided oral comments on a draft of this report. These comments were of a technical nature and we made changes to the report as applicable. On September 1, 2020, the Secretary of ACCD sent an email stating that the agency had no comment on the draft report.

⁴⁹ These responses were submitted by a law firm representing the State in this matter.

Appendix I

Scope and Methodology

This report is being issued as an interim product of an on-going audit. To obtain the necessary context for this report, we obtained and reviewed various legal documentation pertaining to the Federal and State civil and criminal proceedings pertaining to the Jay and Burke projects. We also reviewed documentation on the [receiver's website](#) and sought clarification from him as necessary.

To address the first objective of this report, we obtained and reviewed (1) Federal EB-5 statutes and rules, (2) a USCIS policy manual, and (3) statements by USCIS and SEC officials. We also reviewed audit reports on the EB-5 regional center program conducted by the GAO and the Department of Homeland Security's Office of the Inspector General.

To address the second objective of this report, we obtained and reviewed documentation pertaining to (1) USCIS's approval of the initial and amended applications for ACCD to house a regional center (2) the State's August 2017 review of the EB-5 program in Vermont, (3) the MOUs between the VRC and the Jay and Burke projects, and (4) the MOU between ACCD and DFR. We also reviewed the termination correspondence between the State and USCIS.

On the advice and request of the Attorney General's office, we did not conduct interviews of current or former State employees because of the ongoing legal cases. The objectives of this report were crafted to take this into account. We also did not identify internal controls as significant to our audit objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II Abbreviations

ACCD	Agency of Commerce and Community Development
C.F.R.	Code of Federal Regulations
DFR	Department of Financial Regulation
EB-5	Employment-based fifth preference program
GAO	Government Accountability Office
IPO	Immigrant Investor Program Office
MOU	Memorandum of understanding
SAO	State Auditor's Office
SEC	Securities and Exchange Commission
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services
VRC	Vermont Regional Center
V.S.A.	Vermont Statutes Annotated

Appendix III

Jay and Burke EB-5 Projects

Table 1 describes the major elements of each of the eight Jay and Burke projects, the number of investors, the amount invested, and the project status. The investors in the Phase I and Phase VII projects have been repaid by the receiver. The receiver plans to pay the other Jay Peak project investors (Phases II to VI), from the proceeds of the sale of the Jay Peak Resort when it occurs. The receiver plans to distribute these funds on a pro-rata basis, subject to review by the SEC and approval by the Court.⁵⁰ Regarding the Burke Mountain Resort, Hotel and Conference Center (Phase VIII), according to the receiver’s latest report, this project has not yet generated sufficient jobs for all investors in the project and the sales price based on its current financial performance would be extremely low.⁵¹ Thus, it has not been marketed.

Table 1: Description and Status of Jay and Burke Projects

Project Name	Year of MOU	Description of Project to Investors	# of Immigrant Investors	\$ Invested (in millions) ^a	Status of Project
Jay Peak Hotel Suites Also known as Phase I or Tram Haus Lodge	2006	Acquire land and construct six-floor building comprising a new hotel that would contain 57 bedroom suites and commercial and service units to provide guest services, food and beverage, and recreation facilities.	35	\$17.5	Completed. The receiver paid off these investors from the Raymond James & Associates settlement. ^b
Jay Peak Hotel Suites Phase II Also known as Hotel Jay	2008 ^c	Acquire land and construct a multi-story building that would contain 120 bedroom suites and a commercial unit to provide spa facilities, a conference center, restaurants and retail facilities. Construct a waterpark, a golf clubhouse, an indoor ice rink arena, a bowling center and a building that contains administrative offices, a grocery, and a deli.	150	\$75.0	Hotel suites completed but DFR determined that the number and quality of the units were not as described to investors. The bowling center and spa facilities were not built.

⁵⁰ Receiver’s [Sixth Interim Report](#) covering the period from July 1, 2018 to April 30, 2019. According to this report: “Although the Jay Peak Resort was built in phases, in reality, it is a single resort. It has common accounting, marketing, management and operations. It is impossible to separate the financial performance of one phase from another as, in many cases, the assets are physically combined. Moreover, no single phase owns the mountain and its improvements.”

⁵¹ Receiver’s [Eighth Interim Report](#) covering the period from October 1, 2019 to February 29, 2020.

Appendix III Jay and Burke EB-5 Projects

Project Name	Year of MOU	Description of Project to Investors	# of Immigrant Investors	\$ Invested (in millions) ^a	Status of Project
Jay Peak Penthouse Suites Also known as Phase III	2010	Construct 55 penthouse suites on top of the Hotel Jay and build a mountain activity center.	65	\$32.5	Completed, but DFR determined that the number and quality of suites were not as described to investors.
Jay Peak Golf and Mountain Suites Also known as Phase IV	2010	Construct golf cottage duplexes, wedding chapel, and other facilities.	90	\$45.0	Completed.
Jay Peak Lodge and Townhouses Also known as Phase V	2010	Construct 30 vacation rental townhouses, 90 vacation rental cottages, and a café.	90	\$45.0	Completed.
Jay Peak Hotel Suites Stateside Also known as Phase VI	2010	Construct an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center.	134	\$67.0	The hotel was completed. The receiver did not construct 24 cottages (60 were completed) and eliminated the medical center. In their stead, the receiver constructed a more comprehensive recreation center and athletic fields.
Jay Peak Biomedical Research Park Also known as AnC Bio Vermont and Phase VII	2012 ^d	To purchase land and construct a biomedical research facility in Newport to rent out “clean” rooms to researchers and to produce stem cell therapy and certain types of artificial organs for which it would purchase intellectual property rights from a South Korean entity.	169 ^e	\$84.5 ^e	Monies were spent on site preparation for the proposed facility. As part of his guilty plea in the criminal case related to this project, Mr. Quiros admitted that he used investor money to pay a \$6 million personal tax bill. Criminal charges are pending against three other co-defendants. All investors received their investments back (but not the administrative fee). Fifty-eight investors redeployed their funds to an EB-5 project in New York. ^f

Appendix III Jay and Burke EB-5 Projects

Project Name	Year of MOU	Description of Project to Investors	# of Immigrant Investors	\$ Invested (in millions) ^a	Status of Project
Burke Mountain Resort, Hotel and Conference Center Also known as Q-Burke or Phase VIII	2013 ^g	Acquire land and construct two five floor buildings that would contain a hotel with 112 rooms and suites and commercial and retail condominium units. Construct a tennis complex, indoor aquatic center, and a mountain bike park.	121 ^h	\$60.5 ^h	The hotel and conference center were completed. The tennis complex, indoor aquatic center, and mountain bike park were not constructed. The receiver authorized the purchase of a ski lift and additional snowmaking capabilities.
Total			854	\$427.0	

- ^a Does not include the non-refundable administrative fee charged to investors, which could be up to \$50,000.
- ^b In 2014, Jay Peak converted the equity interests of Phase I investors to debt by issuing them promissory notes. The receiver paid off the balance of these notes.
- ^c The phase II MOU was signed in July 2008 but immigrant investors began subscribing in March 2008.
- ^d The 2012 Jay Peak Biomedical Research Park MOU superseded a prior MOU dated in 2009.
- ^e The AnC Bio Vermont project was not fully subscribed. It was authorized to raise \$110 million from 220 investors. The amount in the table does not include \$249,961 returned to one individual who did not complete his investment.
- ^f As of July 7, 2020, the receiver was holding the funds for two of the AnC Bio Vermont investors in escrow at their request.
- ^g The 2013 Burke Mountain Resort, Hotel and Conference Center MOU superseded a prior MOU dated in 2012.
- ^h The Burke Mountain Resort project was not fully subscribed. It was authorized to raise \$98 million from 196 investors.

SEC and State of Vermont Civil Lawsuits

In April 2016, the [SEC](#) and the [State of Vermont](#)⁵² filed separate civil cases against Mr. Quiros and Mr. Stenger alleging fraud related to limited partnership securities offerings made to EB-5 investors.⁵³ These civil lawsuits alleged that these individuals engaged in a “Ponzi-like” scheme in which money from later projects was misappropriated to fund deficits in earlier projects. In addition, Mr. Quiros was alleged to have improperly used at least \$50 million of investor funds for personal use, including the purchase of a luxury condominium and the acquisition of the Jay Peak and Burke Mountain Resorts. Both the SEC and the State of Vermont lawsuits were settled with both defendants.

SEC Settlements

On February 5, 2018, [Mr. Quiros](#) and [Mr. Stenger](#) separately settled their cases with the SEC without admitting or denying the allegations.

- Mr. Quiros settled his case for a total of \$84,859,964, which consisted of disgorging (giving up) \$81,344,166 in profits gained as a result of the conduct alleged in the complaint, \$2,515,798 in interest, and \$1 million in a civil penalty. To meet this obligation, Mr. Quiros gave up \$416,574 in cash that had been frozen after the SEC filed its case and transferred ownership of 14 properties in Vermont, including his interest in the Jay Peak and Burke Mountain Resorts and two condominiums in New York City to the receiver. The receiver has sold, is attempting to sell, or plans to sell the properties. For example, the receiver sold the two New York condominiums for a total of \$6.2 million. In addition, the Jay Peak Resort is for sale and the receiver plans to put the Burke Mountain Hotel up for sale in the future.
- Mr. Stenger paid a \$75,000 civil penalty to settle his case.

State of Vermont Settlements

While neither admitting nor denying liability, in [August 2018](#), Mr. Quiros agreed to transfer ownership of five Vermont properties to the State of Vermont to satisfy his \$2 million obligation to settle the case.⁵⁴ According to

⁵² The State of Vermont complaint was made by the Commissioner of the DFR and the Attorney General.

⁵³ The State of Vermont complaint was [amended](#) in June 2016.

⁵⁴ Act 42 (2019) authorized the Department of Buildings and General Services to sell these properties and transfer the net proceeds to the Newport Economic Development Settlement Fund. According to appraisals obtained by the Department of Buildings and General Services in late 2019, these properties were estimated to be worth \$1,637,000. As of July 28, 2020, the State had accepted a bid of \$135,000 for one of the properties. The Department of Buildings and General Services either did not receive bids or rejected bids on the other four properties. The department plans to use a licensed Vermont broker to market the four unsold properties.

Appendix IV

Summary of Federal and State Lawsuits

the consent order, proceeds from the sale of these properties are supposed to promote economic development in the Northeast Kingdom.

In [July 2018](#), Mr. Stenger settled his case with the State in which he admitted that he did not adequately or properly supervise the administration of investor funds entrusted to his care and oversight.⁵⁵ These funds then became subject to misuse, misappropriation, and commingling. Mr. Stenger agreed to pay \$100,000 to a fund maintained by ACCD to be used for economic development in Newport.⁵⁶

U.S. Attorney for the Vermont District Criminal Lawsuit

In May 2019, the U.S. Attorney for the District of Vermont announced a [criminal indictment](#) of four individuals for the AnC Bio Vermont project. One defendant, Mr. Quiros, pled guilty to three charges in this indictment on August 14, 2020: (1) conspiring with his co-defendants in a multi-year wire fraud scheme, (2) money laundering, and (3) concealing material facts in a matter within the jurisdiction of a Federal agency (USCIS). Mr. Quiros also agreed to cooperate with the U.S. Attorney on ongoing matters. In return, the plea agreement states that the appropriate jail term is 97 months or less. The actual sentence will be imposed by the judge pending the cooperation of Mr. Quiros.⁵⁷

The case against the other three defendants remains outstanding:

- Bill Stenger faces 10 charges, including wire fraud and conspiracy to commit wire fraud and concealment and false statements.
- William “Bill” Kelly faces 10 charges, including wire fraud and conspiracy to commit wire fraud and concealment and false statements. Mr. Kelly was a long-acting advisor to Mr. Quiros and was the chief operating officer of the Jay Peak Resort.
- Jong Weon “Alex” Choi, a long-term business associate of Mr. Quiros, faces 10 charges, including wire fraud and conspiracy to commit wire fraud and concealment and false statements. Mr. Choi is a South Korean citizen who ran AnC Korea, which was supposed to design the AnC Bio Vermont

⁵⁵ The stipulation and judgement order was signed by the Court on August 7, 2018.

⁵⁶ The \$100,000 is to be satisfied by an initial payment of \$20,000 and four subsequent payments of \$20,000 on July 1 of 2019, 2020, 2021, and 2022. As of July 8, 2020, Mr. Stenger has paid \$40,000 to ACCD, which has set aside these payments in a separate account for Newport economic development. No monies had been disbursed from this account.

⁵⁷ The plea agreement allows Mr. Quiros to withdraw his plea if the judge rejects the plea agreement’s sentencing cap.

Appendix IV

Summary of Federal and State Lawsuits

facility, provide the technology for its operations, and use part of the completed facility. Mr. Choi was convicted of multiple frauds in Korea related to his management of AnC Korea.