

Monitoring, Compliance and Preparing for Success Through I-829

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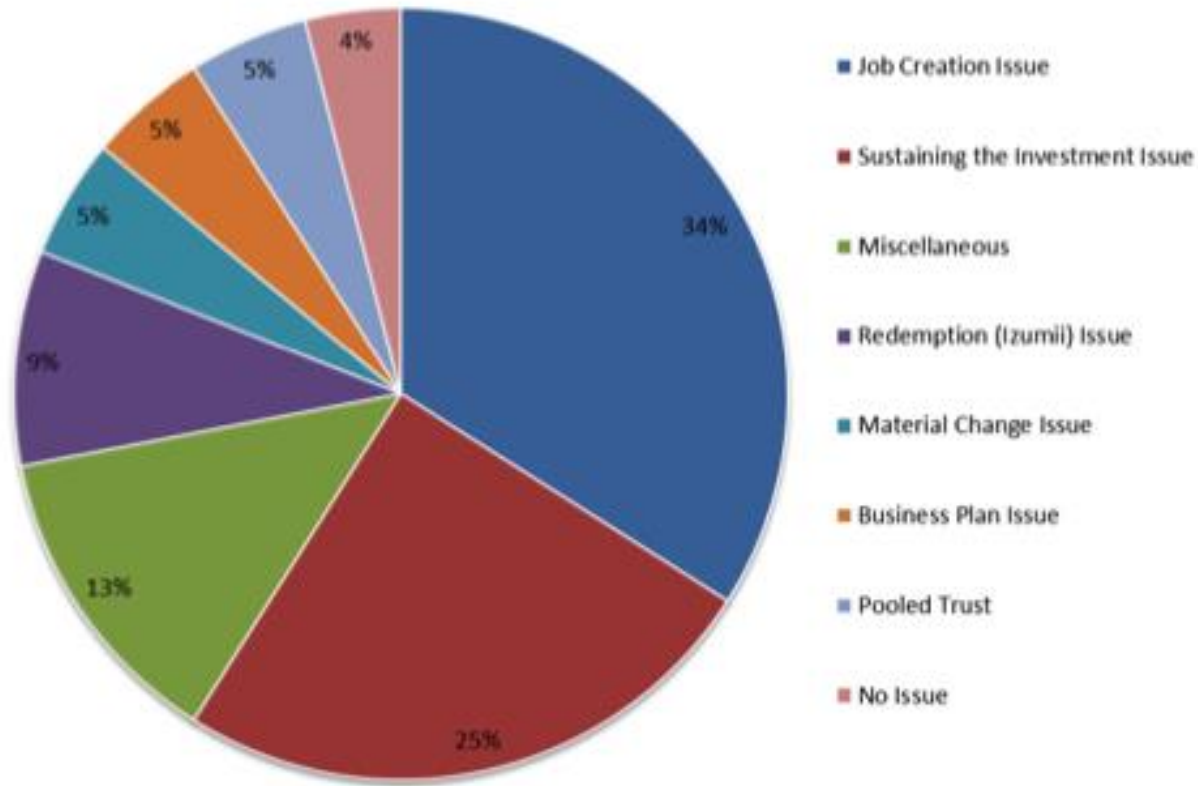
EB-5 Sector Complexity & Scale



- **829 Success depends on careful setup at start**
- **Now, what has to be done at start and during life is changing**
 - Legislation pending in Congress
 - Rules pending in DHS/USCIS
- **All versions share most of same themes:**
 - Implement safeguards to protect investors and enhance Program integrity
 - Increase RC oversight – monitor compliance
 - RC types = independent (3P) // NCE-owned // JCE-owned
 - Same duties (924A) but different impacts due to independence or lack of
- **Distinguish differing roles of RC –vs- NCE –vs- JCE**

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Common Reasons for RFE at I-829 stage

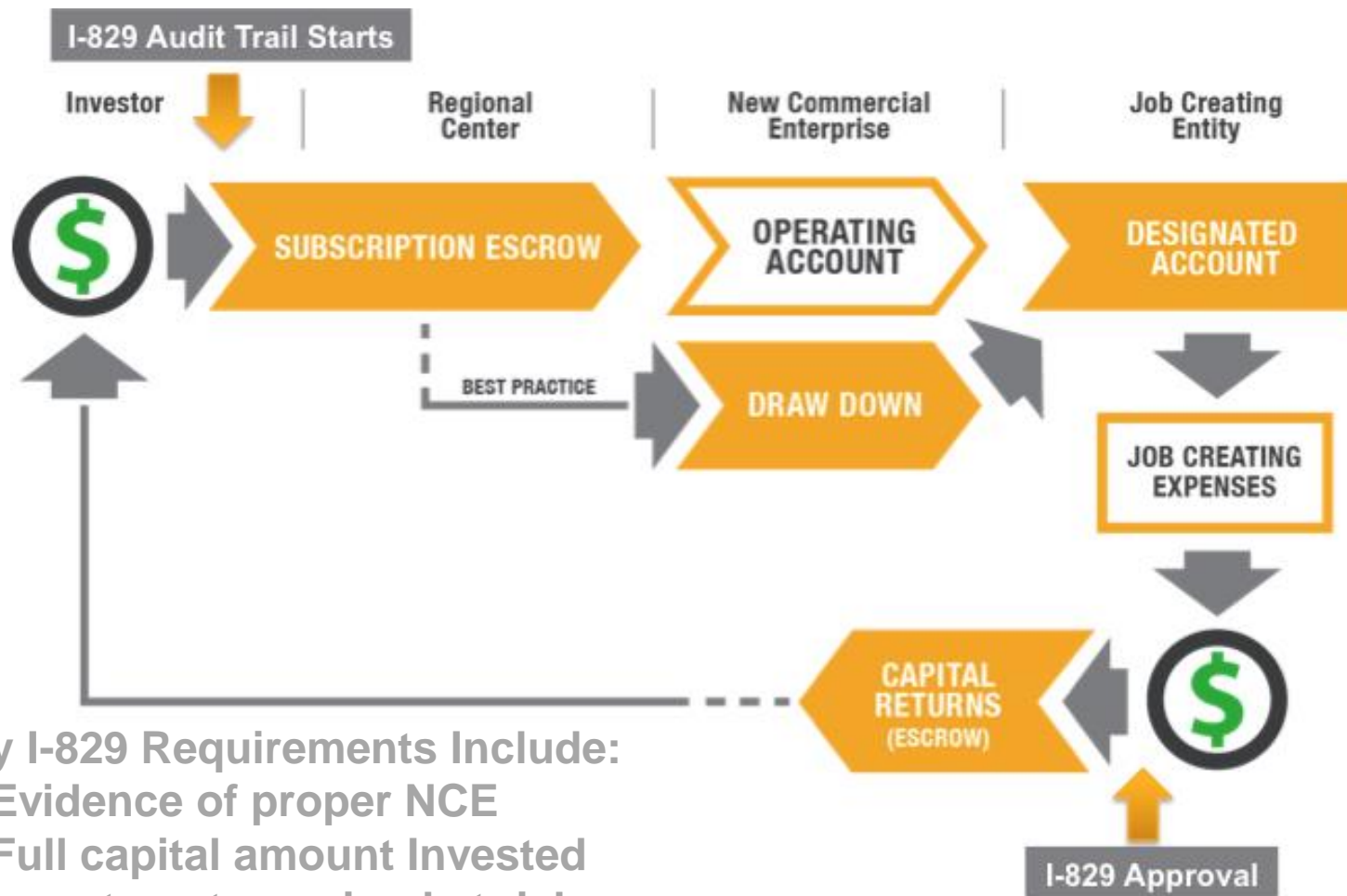


Source: IIUSA FOIA results 2014

- Investment process:


- Concept → form team → structure → draft docs (BP, EA, securities, financing) → solicit investors
- Investor vetting and preparation
 - Source of funds and other personal issues (loan, minority, move money, etc) and petition review
- Subscription → escrow → release \$ to NCE → tranche \$ to JCE → ... **WAIT** ... → 829 → repay

EB-5 Funds Flow Through Multiple Entities



Key I-829 Requirements Include:

- Evidence of proper NCE
- Full capital amount Invested
- Investment remained at risk
- Job creation requirements were met

- Investment process (post-sub):
 - Subscription → escrow → release \$ to NCE →
tranche \$ to JCE → ... **WAIT** ... → 829 → repay
 - Most FRAUD occurs here 
 - Especially where common ownership of NCE and JCE
(lender and borrower) – but not only

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Financial Fraud to Date within EB-5



- **Now, add new integrity provisions**
 - **RC oversight – monitor compliance**
 - certifications, maintenance (924A, fees), reports
 - **Fund Administration**
 - **Due diligence review**
 - **Financial and business reporting**
 - **Securities compliance – do what promised**
 - Federal and state
 - **Corporate protections – shareholder rights**
 - under state law

- **RC oversight – monitor compliance**
 - **Certifications – compliance, no bad actors**
 - **Maintenance (924A, fees)**
 - **Challenge = RC is not issuer or project co**
 - **Securities compliance is issuer's duty**
 - **Reporting to shareholders is issuer's duty**
 - **Financial statements (audited, reviewed) – notes, reconcil**
 - **Business updates**
 - **Periodic reporting akin to public co's? 10-K, 10-Q, 8-K**
 - **Business performance is project co's duty (and info)**
 - **Should be right to rely on others' reports**

Third-Party Controls Verifying Movement of Funds



Latest legislative draft outlines rules around 3rd parties

EB-5 Fund Administration Requires Specialized Expertise

- **Investor motivation is different**
- **Stakes are high and personal**
- **Regulations are unique and evolving**
- **Tracking requirements extend beyond the financial**

Success for investor is I-829 removal of conditions

Increased Compliance Requirements are Emerging

- **Separate Accounts**
- **Independent Fund Administration**
- **Third-party verification of fund movement**
- **Investor notifications and increased transparency**
- **Increasing reporting requirements on Regional Centers**

Due Diligence 2.0 includes emphasis on Compliance

- **Regional Center Compliance Platform**
- **Operational Oversight – and Controls?**
 - Financial
 - Operational (construction monitoring)
- **Transparency & Reporting Strategy – by Issuer and RC**
 - Both dependent on JCE (the actual operating company)
- **Third-Party Oversight – by RC, Fund Admin, Const Admin**
- **Team Member Track Records on Best Practices**
 - Professionals needed on ongoing basis through life of project

- **Additional best practices**
 - Expand info needed in I-924A
 - Additional securities issues – investment company, investment adviser
- **Special issues at 829 stage**
 - Material change
 - Job creation not accomplished
 - Sustaining investment – loan extension or redeployment

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