The New World of TEAs:
What Are the Changes & How to Adapt
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The Changes

- Effective November 21, 2019

- More restrictive rule for high unemployment areas ("HUA")

- Major adjudication process change – USCIS versus the States

- Fewer EB-5 Projects will qualify for TEA status

- Decreased demand in both TEAs and non-TEAs

More Restrictive Requirements to Qualify as a HUA TEA

▪ HUA TEA may include *weighted average* of unemployment rates from the project tract and directly adjacent contiguous tracts only

▪ Potential Pros:
  • Fewer EB-5 investors will be needed
  • Lower administrative burden for EB-5 projects (e.g. fewer investors needed)
  • Less pressure to create 10 jobs per investor—more job cushion for compliance-marketing

▪ Potential Cons
  • More projects may require $1.8 million investment minimum
  • Fewer potential investors will have sufficient investment capital at either minimum investment level
  • More difficult/more effort to raise

Shift in HUA TEA Adjudications from the States to the USCIS

- **The states will have no formal role in reviewing and certifying HUA TEA eligibility of Projects**

- Potential Pros:
  - Higher degree of standardization and consistency in TEA certifications for HUAs
  - USCIS could be more objective than the States
  - More investment in sub-municipal areas-census tracts that are distressed

- Potential Cons
  - Higher risk of errors as States have more expertise in labor market analysis than the IPO
  - No process for adjudication of TEA eligibility before formal petition adjudication
  - Greater TEA uncertainty may make planning Project financing more difficult
  - NCEs may mistakenly calculate TEA average unemployment (e.g. not use weighted average)
  - More investment in more distressed areas may lead to fewer Projects/more Project failures

How to Adapt...

- Evidence of HUA TEA eligibility must be carefully researched and presented
- NCE managers must be prepared to argue persuasively against case adjudication errors regarding TEA ineligibility

- Potential Pros:
  - NCE managers will be more fully-informed about the technical case for THUA EA eligibility
  - Investors may become more informed about HUA TEA eligibility requirements

- Potential Cons
  - Higher cost and more effort required to assemble data supporting TEA eligibility
  - USCIS could still make an error in HUA TEA eligibility determination even with investor/project-provided documentation that the HUA TEA should be approved
  - Project developers/regional centers will need to hire and/or acquire technical expertise in labor market analysis-procedures to make evidentiary submissions

How to Adapt…(Continued)

- Get out "in front" on the HUA TEA issue
- Stakeholders Have the opportunity to help influence the interpretation of the new regulations

- For Example:
  - Details of the "request-certification process" itself for TEA HUAs

  - Defining what is a "directly adjacent" and "contiguous" sub-municipal (e.g. census tract) area
    - If the tracts touch at all—even if only a corner—they should be able to be used in the weighted average U-Rate calculation as "directly adjacent" and "contiguous"
  - Which data sets are to be used (e.g. ACS, LAUS, etc.)
  - How to define the "most recent" labor market data available used to calculate the unemployment rate