

U.S. Department of Homeland Security  
*Immigrant Investor Program*  
131 M Street, NE, MS 2235  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

July 7, 2016

Application: Form I-924  
File: RCW#1031910140

Aaron P. Scheibe  
South Dakota Regional Center  
c/o South Dakota GOED  
711 E. Wells Ave  
Pierre SD, 57501

**NOTICE OF CERTIFICATION**

**IN THE MATTER OF:**

Termination of Regional Center Designation for South Dakota Regional Center

**THE FOLLOWING ACTION HAS BEEN TAKEN IN THE ABOVE ENTITLED MATTER:**

SEE ATTACHMENT

**The case has been certified for review to:**

**CHIEF, ADMINISTRATIVE APPEALS OFFICE**

Within thirty (30) days after the date of this notice, you may submit a brief or other written statement for consideration by the reviewing authority. You may waive this thirty (30) day period to submit a brief, but it may not be extended. Your brief or statement or waiver of this thirty (30) day briefing period must be sent directly to:

U. S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, D.C. 20529-2090

Sincerely,

Nicholas Colucci  
Chief, Immigrant Investor Program

cc: Robert C. Divine  
Baker Donelson, Bearman, Caldwell & Berkowitz, PC  
1800 Republic Centre  
633 Chestnut St.  
Chatanooga, TN, 37450

## **NOTICE OF CERTIFIED TERMINATION**

### **Form I-924, Application for Regional Center Under the Immigrant Investor Program**

#### **SOUTH DAKOTA REGIONAL CENTER**

This notice is in reference to the designation of South Dakota Regional Center (the “Regional Center”) as a regional center under the Immigrant Investor Program (“Program”).<sup>1</sup> The purpose of this notice is to notify the Regional Center that the decision to terminate its designation as a regional center under the Immigrant Investor Program (the “Program”) pursuant to Title 8 of the Code of Federal Regulations (“8 C.F.R.”) section 204.6(m)(6) is being certified to the Administrative Appeals Office (“AAO”) of U.S. Citizenship and Immigration Services (“USCIS”).

The regulation at 8 C.F.R. § 204.6(m)(6) provides:

*Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 C.F.R. § 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

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<sup>1</sup> Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); and section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012) (hereinafter “Appropriations Act”).

### **Procedural History**

On April 08, 2004, USCIS designated and authorized the Regional Center's participation in the Program. On September 28, 2015, USCIS' Immigrant Investor Program Office ("IPO") issued a Notice of Intent to Terminate ("NOIT") to the Regional Center which detailed the Regional Center's history and the reasons for which USCIS intended to terminate its designation. The Regional Center was afforded 30 days from receipt to offer evidence in opposition to the grounds alleged in the NOIT.<sup>2</sup> On November 2, 2015, USCIS received a response to the NOIT (the "NOIT Response"), submitted by the South Dakota Governor's Office of Economic Development (the "GOED"), the state entity that holds the Regional Center designation and that operates and currently manages the Regional Center. The NOIT Response did not sufficiently address the grounds alleged in the NOIT. Accordingly, IPO has determined that the Regional Center's participation in the Program should be terminated. Through this Notice of Certified Termination, IPO hereby notifies the Regional Center of its decision to terminate the Regional Center's participation in the Program. The reasons supporting IPO's determination that the Regional Center no longer serves the purpose of promoting economic growth are being certified to the AAO.

### **Reasons for Termination**

USCIS IPO has determined that the Regional Center failed to submit required information and no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

#### **A. Failure to Submit Required Information to USCIS**

As indicated in the NOIT, the Regional Center provided inaccurate or incomplete information to USCIS on its annual Form I-924A filings for fiscal years FY2010 and FY2011. Under 8 C.F.R. § 204.6(m)(6), a regional center:

must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose.

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<sup>2</sup> The Attorney NOIT Response Letter suggested that "given the volume of the allegations, GOED should get more time than is allowed by the 30-day NOIT process to obtain the relevant records, research the correct information, and amend the forms." However, USCIS notes that the State of South Dakota terminated its management contract with SDRC, Inc. in September 2013, a full two years before the NOIT was issued. This should have been ample time for the State to obtain the relevant records needed to administer the operations of the Regional Center and to adequately and timely respond to USCIS' inquiry. For this reason, USCIS determined that additional time to respond to the NOIT was not merited.

*1. Failure to Provide Required Information*

The Form I-924A Instructions direct the Regional Center to provide a detailed statement for the last fiscal year which addresses topics including:

- The names, addresses, and industry category title of each job creating commercial enterprise located within the geographic scope of your regional center that has received alien investor capital. For each new commercial enterprise (“NCE”)/ job creating entity (“JCE”) located within the geographic scope of your regional center:
  - The aggregate amount of EB-5 capital investment
  - The aggregate number of new direct and/or indirect jobs created by EB-5 investors;
  - If applicable, the aggregate number of jobs that have been maintained through EB-5 capital investments into a troubled business
- If the NCE(s) serve as a vehicle for investment into JCEs that will create or maintain jobs for EB-5 purposes:
  - Names and addresses of JCEs
  - Amount of EB-5 capital investment in JCEs
  - Number of jobs created or maintained by JCE through EB-5 investments;
- Total number of approved, denied, or revoked Form I-526 petitions filed by EB-5 alien investors, for capital investments sponsored through your regional center.

The South Dakota Regional Center Amendment III approval letter, dated June 25, 2008 provided further notice of the required oversight and reporting responsibilities:

In order for USCIS to determine whether your regional center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated regional center, your administration, oversight, and management of your regional center shall be such as to monitor all investment activities under the sponsorship of your regional center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information for each Federal Fiscal Year. . .

As detailed in the NOIT, the Regional Center failed to accurately report data related to Form I-526 petitions USCIS approved from 2009 through 2011 on its required annual I-924A filings.

In response to the NOIT's assertion that the Regional Center has failed to provide the required data, the GOED argues that it cannot provide the missing data because the "GOED still has not received a complete set of records from SDRC, Inc."<sup>3</sup>, who the state of South Dakota hired to manage the Regional Center from December 2009 to September 2013. In fact, a cover letter from the GOED's attorney (the "Attorney Cover Letter") submitted with the NOIT Response indicates that:

Due to GOED's limited access to full information (the subject of litigation), neither GOED nor the undersigned counsel is in a position to meaningfully review or assess the accuracy or validity of the contents [of the response provided by SDRC, Inc]. This information, which because of the limitations noted above and those imposed by the USCIS deadline is not endorsed by GOED in its separate response, is provided to supplement the case record with no assurance or verification.

According to the documentation submitted to USCIS, including documentation submitted with the NOIT Response, the GOED terminated its management contract with SDRC, Inc. in September 2013, almost two years before USCIS issued the NOIT. The NOIT Response indicates that the GOED has "engaged in extensive efforts to resolve disputes with SDRC, Inc. and its principal, Joop Bollen" but has been forced to bring two lawsuits against SDRC, Inc. to, among other things, "provide the requested information about the projects and investors."<sup>4</sup> Despite assertions by counsel for SDRC, Inc. to the contrary,<sup>5</sup> the GOED maintains that it has failed to locate the records necessary to provide the missing data, which are integral to the operation of the Regional Center. Therefore, based on the GOED's response coupled with its inability to provide the required data, USCIS has determined that the Regional Center has not maintained records, data and information on Regional Center activities sufficient to manage the center and satisfy the reporting requirements of 8 C.F.R. § 204.6(m)(6).

The NOIT Response includes, as a supplement, a letter from the former principal of the Regional Center, Mr. Joop Bollen (the "SDRC, Inc. Letter"). Although the Attorney Cover Letter claims that its submission does not amount to an endorsement by the Regional Center, USCIS has considered the information contained therein for its probative value as evidence offered in opposition to the ground or grounds alleged in the NOIT. In response to the USCIS allegation that I-526 petitions related to Allied Cattle, LLC, Dutch Dakota Dairy LLC and Valley View Dairy LP were approved but not reported on the Regional Center's I-924As, the SDRC, Inc. Letter attempted to shift blame for the inaccuracies in the I-924As to the NCE and JCEs, noting "... it is up to the NCE/JCE applicants and their attorneys involved to advise the Regional Center regarding any I-526 filings."

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<sup>3</sup> NOIT Response, p.4.

<sup>4</sup> NOIT Response, p.2.

<sup>5</sup> See Exhibit G of the NOIT Response, Letter from SDRC, Inc. counsel, dated October 22, 2015: "As you are aware, the Consulting Agreement between SDRC, Inc. and GOED [was] terminated with no cause in September 2013. Shortly thereafter, on October 3<sup>rd</sup>, five boxes of documents and materials were provided to GOED. These include the specific documents and information that you requested in your letter of October 16<sup>th</sup>. Either GOED has not reviewed the information that was provided to them by SDRC, Inc. or simply does not understand the information and documentation that it has."

USCIS finds Mr. Bollen's and the GOED's arguments unpersuasive because pursuant to 8 C.F.R. § 204.6(m)(6), it is the Regional Center that must provide USCIS with updated information annually to demonstrate the Regional Center is continuing to promote economic growth. Similarly, the Regional Center's approval letter quoted above indicates that it is *the Regional Center's responsibility* to monitor all investment activities under the sponsorship of the Regional Center and to maintain records, data and information such that it is able to comply with the regulatory reporting requirement. The Regional Center has failed to monitor all investment activities under its sponsorship, and continues to fail, under the management of the GOED, to maintain records, data and information on these investment activities to be able to provide accurate and complete information on the Form I-924A.

#### **B. Failure to Demonstrate Promotion of Economic Growth**

Under 8 C.F.R. § 204.6(m)(6), "USCIS will issue a notice of intent to terminate . . . upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment."

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act following designation. *See, e.g.,* 8 C.F.R. § 204.6(m)(6). According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6) ("USCIS will issue a notice of intent to terminate . . . upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.").

IPO is certifying to the AAO that the reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and "extend beyond inactivity on the part of a regional center." 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors' ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. *See* Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment by setting aside visas for aliens classified under INA 203(b)(5)). Likewise, a regional center that fails to engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

USCIS IPO has considered all evidence in the record including evidence provided in response to the NOIT "for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence," in determining whether the Regional Center's continued participation is justified under the regulations by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS IPO has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

***1. Lack of Credibility Impacting Regional Center's Ability to Promote Economic Growth***

***a. Diversion of EB-5 funds from job creation purposes***

The NOIT explains that the Regional Center either engaged in or allowed utilization of EB-5 funds for purposes inconsistent with the furtherance of job creation, and inconsistent with the business plans previously submitted to USCIS. The Regional Center bears responsibility for this mismanagement and the failure to oversee the deployment of such funds both because of its responsibility to promote economic growth within its jurisdiction and because the Regional Center and/or its affiliates in some cases also managed the relevant NCEs.

The NOIT specifically referenced the following instances in which the Regional Center failed to ensure that the EB-5 funds were made available for job creation purposes, by engaging in or failing to stop diversion of investor funds: (a) the diversion of EB-5 funds into an offshore account held by Ultracare Holdings Limited ("Ultracare Holdings"), a Cyprus-based holding company of Russian railway companies; (b) draw requests where investor funds were used to pay for Regional Center expenses such as legal fees, agent fees, and other expenses that were unrelated to the particular job creating enterprise; and (c) the use of EB-5 funds to purchase Epoch Star Limited ("Epoch Star"), a special purpose lending company incorporated in the British Virgin Islands.<sup>6</sup> Neither the NOIT Response nor the SDRC, Inc. Letter disputed facts alleged by USCIS. Rather the response, inclusive of the SDRC, Inc. Letter offers three arguments to excuse the diversions: (1) the GOED was unaware of the diversion and does not have access to the files to be able to respond to USCIS (2) there is no need for EB-5 funds to be specifically used for EB-5 eligible expenses and since the diverted funds were not used in job creation calculations, the diversion is not problematic; and (3) even if the diversions did occur, the Regional Center is not culpable. USCIS IPO finds each of these arguments unpersuasive and addresses each in turn.

*(1) The Regional Center asserts that the GOED was unaware of the diversion of funds and does not have access to the files<sup>7</sup>*

In the NOIT Response, the Regional Center rebuttal to each of the above referenced instances of diversion of funds indicated that the Regional Center was unaware of the allegations and did not have access to the records to respond to USCIS's concerns. Specifically, the NOIT Response indicated that the GOED "lacks the information necessary to respond individually to USCIS' factual assertions" and that GOED "... has never had access to the records of the various entities created by SDRC, Inc. in its role as manager or general partner thereof." USCIS IPO finds the GOED's arguments unpersuasive because as previously noted, 8 C.F.R. § 204.6(m)(6) requires the Regional Center to provide USCIS with updated information annually to demonstrate the Regional Center is continuing to promote economic growth. It is incumbent on the Regional Center to monitor all investment activities under its sponsorship and to maintain records, data and information such that the Regional Center is able to comply with the

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<sup>6</sup> USCIS acknowledges that in spite of these instances, several projects associated with the Regional Center were successful, as evidenced by numerous I-829 approvals.

<sup>7</sup> See NOIT Response, pp. 5-6 and Attorney Cover Letter, pp. 2-3.

regulatory reporting requirement. Accordingly, the rebuttal that GOED does not have access to its own Regional Center records is unacceptable.

On page 5 of the NOIT Response, the GOED claimed “[t]he facts asserted by USCIS in Section B(i)(b) [of the NOIT] with respect to the alleged diversion of EB-5 funds into Ultracare Holdings Limited are new information to GOED.” The SDRC, Inc. Letter further states “[n]o one associated with the Regional Center has knowledge of the wire transfers specified on page 11 of the NOIT to ‘Ultracare Holdings’ during 2007 and 2008.” While it is possible that neither the GOED nor Mr. Bollen had knowledge of these transfers, USCIS is aware that this information was public knowledge disseminated in online news sources.<sup>8</sup>

Furthermore, even if the GOED or Mr. Bollen lacked knowledge of the aforementioned transfers, they failed to ensure that EB-5 funds invested in commercial enterprises associated with the Regional Center were being used consistent with the business plans submitted to USCIS and not diverted away from job creation purposes. The regulation at 8 C.F.R. § 204.6(m)(3)(i) requires a regional center to “[c]learly describe how the regional center focuses on a *geographical region of the United States*, and how it will promote growth through increased export sales, improved regional productivity, job creation and increased domestic capital investment.” (emphasis added). 8 C.F.R. § 204.6(m)(6) further requires that an approved regional center, in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Program by serving the purpose of promoting economic growth. As stated in 8 USC § 1153 (b)(5), the purpose of the 5<sup>th</sup> preference Employment Based Visa is to set aside visas for immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise “which will *benefit the United States economy* and create full-time employment.” (emphasis added). The fact that Northern Beef Packers, LP diverted funds to a Cyprus-based holding company means that the full amount of EB-5 capital was not available to benefit the United States economy as required in the statute.

*(2) SDRC, Inc. asserts that there is no need for EB-5 funds to be specifically used for EB-5 eligible expenses as long as the diverted funds were not used in job creation calculations<sup>9</sup>*

In response to the alleged diversion of EB-5 funds through draw requests, the SDRC, Inc. Letter erroneously concludes from USCIS’s approval of a 2008 amendment and acceptance of the job creation methodologies contained therein, that, “[t]here was no need throughout the loan disbursement process to require every draw request of EB-5 funds to be specifically used for EB-5 eligible expenses...”<sup>10</sup> Similarly, in responding to USCIS concerns about the use of funds to purchase Epoch Star, the SDRC, Inc. Letter repeats the mistaken assertion that EB-5 funds need not be used for EB-5 eligible expenses and continues, “[n]one of the expenditures regarding Epoch [Star] were used as part of the EB-5 eligible

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<sup>8</sup> In fact, an article from the *Madville Times* even referenced annotated snippets of bank statements showing the transfers. ( <http://madvilletimes.com/2013/11/northern-beef-packers-dealt-with-russian-rail-offshore-subsidiary-in-2007-2008/>)

<sup>9</sup> See SDRC, Inc. Letter pp. 10-14.

<sup>10</sup> SDRC, Inc. Letter, p. 10.



expenditures for the calculation of job creation.”<sup>11</sup> SDRC, Inc. infers that because the diverted funds were not used to calculate job creation, the diversion itself is not problematic. That conclusion is in error.

As noted in the May 2013 Policy Memo, “[i]n developing the EB-5 Program, Congress intended to promote the immigration of people who invest capital into our nation’s economy and help create jobs for U.S. workers... It is not enough that the immigrant invests funds into the U.S. economy; the investment must result in the creation of jobs for qualifying employees.”<sup>12</sup> “The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.” *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm’r 1998). When EB-5 capital is transferred to the JCE but is then diverted and used for Regional Center expenses and other expenses unrelated to the job-creating project, those funds cannot be considered made available to the job-creating activity. Contrary to the claim made in the SDRC, Inc. Letter, EB-5 funds must be used for EB-5 project related costs.

While it appears true that the diverted funds were not factored into the job-creation estimates submitted, the Regional Center has not offered any evidence to counter the fact that the EB-5 funds were diverted away from the intended job-creating activities. As noted above, when a regional center takes actions that undermine investors’ ability to comply with EB-5 statutory and regulatory requirements, it may no longer serve the purpose of promoting economic growth. *See* Section 610(a)-(b) of the Appropriations Act.

By failing to properly monitor all investment activities under its sponsorship, the Regional Center has not promoted economic growth in compliance with the requirements of the Program.

*(3) The Regional Center asserts that even if the diversions did occur, the Regional Center is not culpable*<sup>13</sup>

Notwithstanding the erroneous assertion by SDRC, Inc. that the diversion of funds for non-EB-5 expenses was permissible, the Regional Center persists in the belief that it should not be held accountable for the occurrence. Again, however, no evidence was provided to counter USCIS’s concerns that the Regional Center allowed these transactions to occur and facilitated them through Mr. Bollen and his involvement in SDRC, Inc.

Rather, as outlined in the NOIT, the evidence shows that the Regional Center’s principal and wholly owned subsidiaries that functioned as general partners, were intimately involved with monitoring the use of EB-5 funds invested in SDIF LP6 and SDIF LP9 for job creation, to include ongoing monitoring of the NCE to JCE loans. Under the Credit Agreement and the Amended Credit Agreement between these NCEs, as lenders and Northern Beef Packers, LP, their associated JCE, as borrower, the NCEs (and by extension, the Regional Center through the NCE’s general partners, each a wholly-owned subsidiary of SDRC, Inc.) had broad oversight over how EB-5 funds were to be used by the JCE. In the case of the

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<sup>11</sup> SDRC, Inc. Letter, p. 13.

<sup>12</sup> May 30, 2013 Policy Memorandum on EB-5 Adjudications Policy, p.15.

<sup>13</sup> NOIT Response, pp. 5-6.

draw requests, the Regional Center principal or his designated loan monitor approved each of the diversions. Therefore, contrary to the claims in the SDRC, Inc. Letter, it appears the Regional Center either was aware of or should have been aware of the diversion of funds as a result of each draw request.

In the case of Epoch Star, no evidence was provided to explain why purchasing that special purpose lending facility was in keeping with the business plan of the beef processing plant submitted to USCIS in support of petitions associated with investment into Northern Beef Packers, LP, nor why assigning that purchase to the NCE, SDIF LP6, was an appropriate use of project funds. Furthermore, contrary to the claimed lack of involvement found in the SDRC, Inc. Letter, the evidence in the record indicates that Mr. Bollen and the Regional Center did orchestrate this improper use of funds. Mr. Bollen was the sole owner of the general partner of SDIF LP6 and signed various agreements submitted to USCIS as SDIF LP6's general partner. As part of the loan agreement between the JCE, Northern Beef Packers, LP, and SDIF LP6, as a precondition to disbursement, the JCE was required to purchase the Epoch Star lender and assign that purchase to SDIF LP6.<sup>14</sup> Specifically, the Amended Credit Agreement signed by Mr. Bollen, states in Section 8.1.13, under the subsection "Conditions of Lending" "Prior to any disbursement of funds Borrower shall provide to Lender proof that an agreement to purchase Epoch Star has been agreed upon and all rights there under assigned to Lender." As noted in the revised 2011 Northern Beef Packers Business Plan the purchase of Epoch Star was "completed on November 4, 2010 using the funds already previously released from SDIF 6."

Although the NOIT Response asserts "[i]t is not entirely clear that the financing arrangements involving Epoch Star were contrary to job creation in the beef operation, even if they seem to have been on unfavorable terms." No evidence was provided to USCIS indicating why the purchase of a lending institution in the British Virgin Islands was consistent with the business plan to construct and operate a beef packing plant in South Dakota. Therefore absent additional information, it appears that the funds used to purchase the lending entity were not made available for job creation purposes, that Mr. Bollen and the Regional Center played an active role in the diversion of funds to purchase the lending facility, and that these expenses are inconsistent with previous business plans submitted to USCIS for the use of EB-5 funds associated with SDIF LP6 and with the promotion of economic growth by the Regional Center.

The diversion of EB-5 investment funds away from job creating activities, as mentioned in the three instances described above, is contrary to the intent of the Program as it undermined investors' ability to comply with EB-5 statutory and regulatory requirements and jeopardized their eligibility for EB-5 classification. It also indicates that the Regional Center failed to engage in proper monitoring and oversight of the capital investment activities under the sponsorship of the Regional Center. The fact that some projects associated with the Regional Center may have been successful, as evidenced by approval of petitioners' Forms I-829, is not enough to overcome the problems associated with the Regional Center's diversion of EB-5 investments funds. After reviewing the evidence in the record, including what was submitted in response to the NOIT, it appears that the Regional Center was aware of, allowed, and at times even required that EB-5 funds be used for purposes unrelated to the business activities of the JCE.

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<sup>14</sup> See Section 8.1.13 of the Amended Credit Agreement between Northern Beef Packers, LP and SDIF LP6 signed March 4.2011.

Therefore, USCIS IPO has determined that the Regional Center is not promoting economic growth in compliance with the requirements of the Program.

b. Lack of regional center due diligence, monitoring and oversight

In the NOIT, USCIS noted:

Now that SDRC, Inc. is no longer contracted to assist the Regional Center in monitoring, evaluation and oversight of investment activities under the sponsorship of the Regional Center, it is unclear how the current management of the Regional Center is fulfilling its monitoring and oversight responsibilities, specifically over any commercial activities affiliated with the Regional Center that will be relied upon by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises sponsored by the Regional Center.

In response to the allegations of a lack of regional center due diligence, monitoring and oversight, the NOIT Response sought to separate the actions of SDRC, Inc. from the Regional Center, arguing in effect that the Regional Center should not be held responsible for any possible misdeed by SDRC, Inc. However, the NOIT Response did not provide any evidence that the GOED engaged in due diligence, monitoring and oversight in the past, that they are currently engaged in these activities, or that the GOED has any tangible, credible, plans to perform these duties in the future. Instead, the Regional Center's recent approach to monitoring and oversight has been to avoid sponsoring any new projects.<sup>15</sup>

In the NOIT Response, the Regional Center states "The State of South Dakota, through GOED, takes the responsibility of administering the regional center seriously..."<sup>16</sup> However a critical component of the responsibility of administering a regional center is the requirement to engage in due diligence, monitoring, and oversight. It appears that the state: (1) did not engage in monitoring and oversight previously during the term of the management contract with SDRC, Inc.; (2) is not engaging in these activities currently now that the contract with SDRC, Inc. has been terminated; and (3) has no plans for due diligence, monitoring, and oversight in the future.

USCIS IPO does not find the argument that the Regional Center should not be held responsible for any possible misdeed by SDRC, Inc. persuasive: even where a regional center has hired an outside party to provide management services, the ultimate responsibility for compliance with the relevant statutes and regulations, remains with the regional center entity and cannot be transferred. Even though the GOED had a management contract with SDRC, Inc., the GOED, as the Regional Center entity, retained ultimate responsibility for monitoring SDRC, Inc.'s performance of that contract and ensuring that the Regional Center was operating in accordance with the regulations and statutes governing the Program. Throughout the NOIT Response, the GOED sought to separate the actions of the GOED from SDRC, Inc. However, the regional center designation in 2004 was granted to the state of South Dakota, and it has always been

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<sup>15</sup> NOIT Response, p. 2.

<sup>16</sup> NOIT Response, p. 1.

the state's responsibility to ensure monitoring, oversight and due diligence. There is nothing prohibiting a regional center from engaging the management services of a firm through a management contract or another type of service agreement. However; due diligence, monitoring and oversight are non-transferable obligations and the responsibility for these obligations ultimately rests with the regional center.

Because the Regional Center is unable to respond to USCIS's concerns regarding actions and reporting that happened during the tenure of SDRC, Inc., USCIS IPO has determined that the Regional Center was not properly engaged in monitoring, evaluation or oversight of the investment activities during the tenure of SDRC, Inc.

In addition, it does not appear that the Regional Center is currently engaged in monitoring, evaluation and oversight of the investment activities under the sponsorship of the Regional Center. Rather, the NOIT Response indicated that the Regional Center currently does not have a complete set of records relating to the past and present Regional Center activities,<sup>17</sup> which implies that the Regional Center is unable to currently engage in monitoring and oversight of existing investment projects. While those records are the subject of current litigation, the lawsuit was not filed by the GOED until after the NOIT was issued, a full two years after the GOED cancelled its contract with SDRC, Inc. It is unclear when, if ever, the GOED will have access to the records that it considers essential to be responsive to USCIS. The NOIT Response also noted, "GOED has not sponsored any new projects since terminating SDRC, Inc.'s contract. . . [and] is *evaluating whether to continue* to sponsor EB-5 projects and *if so how to perform* the necessary oversight and diligence required for participating projects." (Emphasis added).<sup>18</sup> Therefore, it appears that the Regional Center is not currently engaged in and is unable to engage in monitoring, oversight and due diligence of any existing or new projects. Similarly, the GOED has not yet developed a plan for how to engage in monitoring, evaluation and oversight of the investment activities under the sponsorship of the Regional Center in the future.

Therefore, USCIS IPO has determined that the GOED has not fulfilled its monitoring and oversight responsibilities since terminating the SDRC, Inc. contract in 2013 and is unlikely to do so in the future.

The issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program. For these reasons, USCIS IPO has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

### **Conclusion**

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. § 204.6(m)(6), USCIS IPO has determined that the Regional Center has failed to submit the required information to USCIS and

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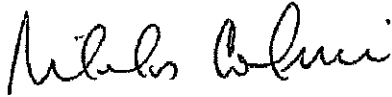
<sup>17</sup> The Regional Center appears not to have even the rudimentary records to identify investors in order to obtain Privacy Act releases. See NOIT Response, p.4.

<sup>18</sup> NOIT Response, pp.2 and 6.

no longer serves the purpose of promoting economic growth. USCIS IPO has determined that the Regional Center's participation in the Program should be terminated.

Pursuant to 8 C.F.R. § 103.4, your case has been certified directly to the Administrative Appeals Office for review and issuance of a final decision due to the complex and novel issues raised in your case. This decision is not considered final until it has been considered by the Administrative Appeals Office. You may submit within thirty (30) days after receipt of this notice a brief or other written statement for consideration by the Administrative Appeals Office. You may waive this thirty (30) day period to submit a brief, but it may not be extended. You will receive a decision on your case directly from the Administrative Appeals Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Colucci".

Nicholas Colucci  
Chief, Immigrant Investor Program

Enclosure:

(1) Notice of Intent to Terminate issued on September 28, 2015