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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204 and 216

CIS No. 2595-16; DHS Docket No. USCIS-2016-0008

RIN 1615-AC11

EB-5 Immigrant Investor Regional Center Program

AGENCY: U.S. Citizenship and Immigration Services, DHS

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is considering making regulatory changes to the EB-5 Immigrant Investor Regional Center Program. Based on decades of experience operating the program, DHS has determined that program changes are needed to better reflect business realities for regional centers and EB-5 immigrant investors, to increase predictability and transparency in the adjudication process for stakeholders, to improve operational efficiency for the agency, and to enhance program integrity. This Advance Notice of Proposed Rulemaking (ANPRM) is organized to include requests for comment immediately following discussions of the relevant issues.

DATES: Written comments must be received on or before [Insert 90 days from date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2016-0008, by any one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

- Mail: You may send comments directly to U.S. Citizenship and Immigration Services (USCIS) by mail to Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2016-0008 in your correspondence. This mailing address may be used for paper or CD-ROM submissions.
- Hand Delivery/Courier: You may submit comments directly to USCIS through hand delivery to Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Washington, DC 20529; Telephone 202-272-8377. To ensure proper handling, please reference DHS Docket No. USCIS-2016-2008 in your correspondence.

FOR FURTHER INFORMATION CONTACT: Lori MacKenzie, Division Chief, Operations Policy and Performance, Immigrant Investor Program Office, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M St. NE, 3rd Floor, Washington, DC 20529; Telephone 202-357-9214.

SUPPLEMENTARY INFORMATION:

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List of Acronyms and Abbreviations Used:

ANPRM	Advance Notice of Proposed Rulemaking
DHS	Department of Homeland Security
JCE	Job-Creating Entity
LPR	Lawful Permanent Resident
NCE	New Commercial Enterprise
NOID	Notice of Intent to Deny
NPRM	Notice of Proposed Rulemaking
RFE	Request for Evidence
USCIS	United States Citizenship and Immigration Services

I. Public Participation

This ANPRM provides an opportunity for DHS to hear and consider the views of the public on potential changes to improve and modify the EB-5 Regional Center Program. DHS invites comments, data, and information from all interested parties, including regional centers, investors, advocacy groups, nongovernmental organizations, community-based organizations, and legal representatives who specialize in immigration law, as well as corporate and securities law. DHS welcomes comments on any and all aspects of this ANPRM. Your comments can help shape the outcome of this possible rulemaking.

DHS is issuing this ANPRM to seek comment from all interested stakeholders on several topics, including: (1) the process for initially designating entities as regional centers, (2) a potential requirement for regional centers to utilize an exemplar filing process, (3) "continued participation" requirements for maintaining regional center designation, and (4) the process for terminating regional center designation. While DHS has gathered some information related to these topics, DHS is seeking additional

information that can help the Department make operational and security updates to the Regional Center Program while minimizing the impact of such changes on regional center operations and EB-5 investors.

When submitting comments, please indicate the specific section of this document to which each comment applies, indicate the specific question number to which each comment applies, and provide reasons for each suggestion or recommendation. Feedback that simply states that a stakeholder strongly prefers a particular outcome, unaccompanied by careful reasoning and actionable data, is much less useful to DHS.

DHS is particularly interested in data that would inform a quantitative and qualitative assessment of the costs and benefits of the potential changes described in this ANPRM. DHS is also interested in comments from the public that provide more information how to identify the small entity status of EB-5 stakeholder entities, such as regional centers and new commercial enterprises. DHS specifically requests information on revenue or employment data sources on regional centers and new commercial enterprises.

Instructions: All submissions for this advance notice of proposed rulemaking must include the DHS Docket No. USCIS-2016-0008. Please note that DHS has published a notice of proposed rulemaking entitled "EB-5 Immigrant Investor Program Modernization," DHS Docket No. USCIS-2016-0006, separate from this ANPRM. The NPRM and ANPRM include distinct proposals, so please ensure that you submit your comments to the correct docket.

Comments must be submitted in English, or an English translation must be provided. Written comments may be submitted electronically or by mail, as explained

previously in the **ADDRESSES** section of this ANPRM. To avoid duplication, please use only one of these methods to submit written comments. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at http://www.regulations.gov, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of http://www.regulations.gov.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov and enter this ANPRM's docket number in the search bar.

II. Background

A. The EB-5 Program

As part of the Immigration Act of 1990, Public Law 101-649, 104 Stat. 4978, Congress established the EB-5 immigrant visa classification to incentivize employment creation in the United States. Under the EB-5 program, lawful permanent resident (LPR) status is available to foreign nationals who invest at least $1 million in a new commercial enterprise (NCE) that will create at least 10 full-time jobs in the United States. See INA section 203(b)(5), 8 U.S.C. 1153(b)(5). A foreign national may invest $500,000 if the investment is in a "targeted employment area," defined to include certain rural areas and

areas of high unemployment. Id. The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB-5 classification. See INA section 201(d), 8 U.S.C. 1151(d); INA section 203(b)(5), 8 U.S.C. 1153(b)(5). Not less than 3,000 of these visas must be reserved for foreign nationals investing in targeted employment areas. See INA section 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).

B. The Regional Center Program

Enacted in 1992, section 610 of the Departments of Commerce, Justice, State, and State, and Related Agencies Appropriations Act, 1993, Public Law 102-395, 106 Stat. 1828, established a pilot program that requires the allocation of a limited number of EB-5 immigrant visas to individuals who invest in new commercial enterprises through DHS-designated regional centers.[1] DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, regional productivity, job creation, and increased domestic capital investment. See 8 CFR 204.6(e). While all EB-5 petitioners go through the same petition process, those petitioners participating in the Regional Center Program may meet statutory job creation requirements based on economic projections of either direct or indirect job creation, rather than only on jobs directly created by the new commercial enterprise. See 8 CFR 204.6(m)(3). In addition, Congress authorized the Secretary to give priority to EB-5 petitions filed through the Regional Center Program. See section 601(d) of Public Law 102-395, 106 Stat. 1828, as amended by Public Law 112-176, Sec. 1, 126 Stat. 1326 (Sept. 28, 2012).

[1] Current law requires that DHS annually set aside 3,000 EB-5 immigrant visas for regional center investors. Section 116 of Public Law 105-119, 111 Stat. 2440 (Nov. 26, 1997). If this full annual allocation is not used, remaining visas may be allocated to foreign nationals who do not invest in regional centers.

Requests for regional center designation must be filed with USCIS on the Application for Regional Center Under the Immigrant Investor Program (Form I-924). See 8 CFR 204.6(m)(3)-(4). Once designated, regional centers must provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting an Annual Certification of Regional Center (Form I-924A) on an annual basis or as otherwise requested by USCIS. See 8 CFR 204.6(m)(6)(i)(B). USCIS may seek to terminate a regional center's participation in the program if the regional center no longer qualifies for the designation, the regional center fails to submit the required information or pay the associated fee, or USCIS determines that the regional center is no longer promoting economic growth. See 8 CFR 204.6(m)(6)(i). As of November 1, 2016, there were 864 designated regional centers.[2]

The former Immigration and Naturalization Service last promulgated comprehensive regulations implementing the EB-5 Regional Center Program in 1993. 58 FR 44606. Although Congress has revised the program multiple times since, see Public Law 106-396, 114 Stat. 1637; Public Law 107-273, 116 Stat. 1758 (2002 statutory amendments), the regulations have not been updated to conform to the statutory changes. Neither have the regulations been amended to make improvements to the program based on the Department's experience implementing the program for the last 25 years.

III. Requests for Information

DHS is considering changes to the Regional Center Program regarding the requirements for initial designation and continued participation, a potential requirement

[2] USCIS, Immigrant Investor Regional Centers, https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers.

for regional centers to utilize an exemplar process, and the grounds for terminating regional center designation.

A. Process for Initial Designation and Exemplar Approval

DHS is considering ways to improve the process associated with the initial designation of regional centers and the approval of "exemplar" projects. Currently, an entity applying for initial designation as a regional center may choose whether to present a hypothetical project, an actual project, or an exemplar project with their Application For Regional Center Under the Immigrant Investor Program (Form I-924 application). A request for review of a hypothetical project should be supported by general proposals and general predictions showing that the proposed regional center will more likely than not promote economic growth and job creation. Organizational and transactional supporting documents are not required for a hypothetical project. Previous determinations based on hypothetical projects will not receive deference in the adjudication of subsequent filings.

If the entity includes an actual or exemplar project proposal with its Form I-924 application, USCIS determines, as part of the Form I-924 adjudication, whether USCIS will accord deference to its approval of that project when USCIS later reviews investor petitions associated with the same regional center and based on the same project. A request for review of an actual project requires a comprehensive and credible business plan that, among other things, provides a description of the business and verifiable detail on how jobs will be created. Organizational and transactional supporting documents for the new commercial enterprise are not required for an actual project. Deference generally will be accorded to prior approval of the business plan and economic analysis in subsequent filings related to an approved actual project.

A request for review of an exemplar project is comprised of a sample Form I-526 petition filed with a proposed actual project containing copies of the new commercial enterprise's organizational and transactional documents. USCIS currently reviews exemplars to determine if they are in compliance with established EB-5 eligibility requirements. If the exemplar project is approved, the determination generally is accorded deference in subsequent related Form I-526 and Form I-829 filings.[3]

DHS believes that the existing process presents two problems. First, the adjudication of initial applications for regional center designation become much more complex when entities seeking such designation "bundle" their initial applications with actual or exemplar projects. Under the current process, regional centers often include a host of documents related to actual or exemplar projects with their Form I-924 applications, including project proposals and related organization and transactional documents, such as private placement memoranda, subscription agreements, operating and partnership agreements, and other information. USCIS must review all such documents submitted with Form I-924 applications, even though the information contained in such documents is frequently unrelated to adjudication of the regional center designation (i.e., determining whether to designate the applying entities as regional centers).

Second, by allowing regional centers to choose whether to submit an exemplar project at all, USCIS effectively lets those entities determine the level of workload for the

[3] Deference may also be accorded to the approval of a regional center investor's Form I-526 or Form I-829 petition in the adjudication of related Form I-526 and Form I-829 petitions based upon an investment in the same investment project with the same project documents. Investors may submit evidence of association with an exemplar project before or while the regional center's exemplar is pending with USCIS, or after the exemplar is approved.

agency related to each EB-5 project. When a regional center submits an exemplar proposal, USCIS must only assess the project once at an initial stage. Any issues related to project approval are considered and resolved at this initial stage, thus making individual immigrant investor petitions submitted pursuant to that project simpler to adjudicate. In contrast, when a regional center does not use the exemplar process, USCIS is presented with the project proposal multiple times, including with each individual immigrant investor petition submitted pursuant to that project. At this stage, issues related to project approval often require USCIS to issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID) to each individual petitioner who is investing in that project. This presents a significant burden on the agency and each individual petitioner, and significantly delays the adjudication of their petitions.

To address these issues, DHS is seeking comment on whether it should bifurcate the Form I-924 application process into two steps, as follows: DHS would first require submission of a more general application for initial designation, and then, subsequent to designation, would require submission of a more specific application for approval of an exemplar project. DHS is considering a different form and fee for each of the two steps. DHS believes these changes would significantly reduce the issuance of RFEs and NOIDs and improve processing times for both applications for regional center designation and immigrant investor petitions. Individual immigrant investors would also bear a lower paperwork burden and would benefit from improved predictability in adjudications. DHS describes each potential change in turn below.

1. General Application for Initial Designation

As noted above, DHS seeks comment on its proposal to require entities seeking regional center designation to submit a more general application for such designation (i.e., without including documentation related to actual or exemplar projects). DHS expects that the information required to be submitted in such an application would generally conform to the requirements contained in the regional center statute, as amended. Under this process, an applicant for regional center designation would only need to include a general proposal based on general predictions concerning the kinds of commercial enterprises that will receive capital from immigrant investors, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive effects such capital investments will have on economic growth. Further information about investments and regional center projects would generally not be required or reviewed as part of this initial filing. After USCIS designates the entity as a regional center, the regional center would be able to request review of investment offering documents and project documents, including the types of documents that typically accompany an "exemplar" project filing under current practice.

DHS believes this change would provide several benefits to stakeholders and USCIS. First, DHS believes the change would reduce confusion by simplifying the application for regional center designation and providing increased guidance on the limited types of information expected by the agency for adjudicating such applications. Second, the change would likely improve adjudication times related to such applications, as USCIS adjudicators would no longer need to review documentation that is unrelated to determining whether the applicant has satisfied the basic requirements for initial designation. Third, the change should reduce the frustration currently experienced by

entities that meet the evidentiary requirements for initial designation but fail to meet the evidentiary requirements necessary to meet applicable deference guidelines for their projects and investment offerings. DHS understands that the inability of entities to file other requests when seeking initial designation as a regional center could effectively delay the ability of entities to receive decisions on those requests. DHS, however, believes these impacts may be outweighed by the clarity provided to stakeholders and the operational efficiencies gained by the proposal.

2. Mandatory Exemplar Process

As noted above, DHS also seeks comment on its proposal to implement an exemplar filing requirement for all designated regional centers. DHS is considering (1) requiring regional centers to file exemplar project requests, both to support individual EB-5 immigrant petitions and to maintain regional center designation and (2) requiring the approval of such a request before any investor may submit his or her EB-5 immigrant petition associated with a project covered by such request. As envisioned by DHS, USCIS would use the approved exemplar as evidence when adjudicating individual immigrant petitions related to the exemplar project.

Under the exemplar filing requirement, regional centers would be required to submit all documentation necessary to establish that investments in the project would satisfy the eligibility criteria related to investment and job creation, in addition to evidence demonstrating the regional center's continued compliance with Regional Center Program rules. Currently, exemplars typically include a comprehensive business plan, economic impact analysis, offering documents and organizational documents. Because DHS wants to ensure investments sponsored by the regional center are fully compliant

with program requirements to maintain regional center designation, DHS is considering requiring that additional documentation be provided with exemplar filings, including (1) any documents related to the investment offering that have been filed with the U.S. Securities and Exchange Commission; and (2) any investment and offering documents that the regional center intends to provide to investors, as well as any agreements between the investor and the regional center.

DHS also seeks comment on the appropriate validity period for the approval of an exemplar project to ensure the regional center is actively promoting economic growth. DHS is considering limiting each exemplar's validity period to a specific period of time, e.g., 2 to 3 years after the exemplar's approval or latest amendment or associated immigrant investor petition. DHS has determined that regional center projects that for 2 to 3 years have not been amended and have not obtained EB-5 investments are generally not active. DHS is seeking public comments on potential exemplar approval validity periods, including the amount of time needed for regional centers to recruit investors, the amount of time needed for investors to file EB-5 immigrant petitions, and the amount of time needed for projects to satisfy job creation requirements.

Finally, DHS seeks public comment on possible modifications to the existing policy governing the impact of a "material change" on an approved exemplar. Current policy requires DHS to deny petitions where, after the petition has been filed, there are significant changes to the exemplar project, including significant changes to the job-creating entity or entities receiving associated EB-5 investment. Under this policy, DHS has also denied petitions, on a case-by-case basis, where in the time between approval of the exemplar and adjudication of the petition, there were significant changes to project

timelines and changes to job creation methodologies.[4] Regional centers and other stakeholders may feel that modifications to this policy may be necessary or wise if DHS were to implement a mandatory exemplar process. Public comment on this issue would help DHS determine whether and how to revise USCIS's current approach to addressing material changes in the EB-5 context to account for a potential mandatory exemplar process.

DHS is considering these process changes as a means of addressing the increasing processing times associated with EB-5 immigrant petitions. DHS believes that by addressing potential issues with EB-5 projects in the exemplar process, the Department would significantly streamline the adjudication process for immigrant petitions filed by associated investors, including by significantly reducing the need to issue RFEs and NOIDs to those investors. Individual immigrant investors would also bear a lower paperwork burden and would benefit from improved predictability in adjudications. Moreover, an exemplar requirement may also lead to substantial government cost savings by reducing the paperwork, staffing, and physical space required to process EB-5 immigrant petitions. DHS understands that a mandatory exemplar process could negatively impact regional centers and investors by delaying investor filings and, as a practical matter given the prevailing structure of many regional center investment offerings, by delaying funding to regional center projects. DHS believes, however, that the operational efficiencies, reduced processing times, increased stakeholder predictability, and reduced paperwork burden resulting from the exemplar process described above would provide sufficient benefits to overcome these impacts.

[4] See USCIS Policy Manual, 6 USCIS-PM G (Nov. 30, 2016).

3. Specific Questions for Public Input

DHS welcomes public comment on all aspects of the potential changes described above, but would particularly benefit from commenters addressing one or more of the following questions:

1. How can USCIS improve the initial designation process?
2. How would requiring an entity to obtain initial designation as a regional center prior to, and separate from, filing for approval of an exemplar project impact entities seeking regional center designation and investors seeking to associate with designated regional centers?
3. Would a bifurcated initial application process achieve the benefits discussed above—i.e., reduced overall paperwork burdens and improved processing times? Please provide specific data on how such changes would affect time or other burdens in initial documentation preparation.
4. What additional costs or benefits, if any, would occur as a result of adopting the suggested approach?
5. Would adopting the suggested approach impact small entities? If so, how? Please provide data to support your response. Please identify any alternative policy proposals or other recommendations that would accomplish some or all of the goals identified above, while mitigating impacts on small entities.
6. Would it benefit potential immigrant investors to know whether or not an entity has been designated as a regional center, if the initial designation decision notice is solely for designation and does not include any decisions on exemplar projects?
7. Would a streamlined exemplar filing process impact any regional center or investor costs?

8. Should exemplar approval be required prior to a regional center-associated investor submitting an EB-5 immigrant petition? Please support the response by providing information regarding the costs and benefits of alternatives (e.g., by permitting concurrent filing with EB-5 immigrant petitions).
9. What additional costs and benefits would regional centers or investors incur as a result of a required exemplar approval prior to submitting EB-5 immigrant petitions?
10. What documentation should be required to accompany an exemplar application?
11. In what circumstances should a regional center be required to file to amend a previously approved exemplar?
12. For what duration should an exemplar approval be valid, and why?
13. Under what circumstances should USCIS seek to terminate a previously approved exemplar?
14. What effect, if any, should termination or expiration of an approved exemplar have on an investor whose immigrant visa petition has not yet been adjudicated?
15. What concerns, if any, would be raised by the elimination of the "actual" project deference process, wherein regional centers seek approval of the business plan and economic impact analysis associated with an investment offering, but not the investment offering documents?
16. Would some projects be deterred by a requirement to have an approved exemplar? DHS is particularly interested in how the exemplar requirement may affect the number of projects that obtain EB-5 investment and associated parties. Additionally, DHS seeks input on how an exemplar requirement might affect

costs related to project timelines, business plan fees, and regional center administrative fees.

17. Would an exemplar requirement impact the financial structure of regional center investments? For example, would such a requirement decrease or increase the EB-5 capital portion of a project's total finance? Would it impact the overall financing costs and rates of return for investors, regional centers, and developers?
18. How could USCIS define the term "material change" to account for the exemplar process, consistent with applicable regulations and case law, including regulations requiring petitioners to be eligible for the requested benefit at the time of filing and to remain eligible until the benefit is granted? [5] Please discuss how a new material change definition would impact pending EB-5 immigrant petitions.

B. Safeguards for Monitoring and Oversight

DHS has found that current regulations would benefit from additional safeguards to ensure that all regional centers (1) use immigrant investor funds to promote economic growth, and (2) protect against the misuse of such funds. DHS is therefore considering incorporating additional regulatory requirements for initial designation as a regional center. For instance, DHS could require assurances that the regional center commit to an appropriate level of internal monitoring and oversight of investment offerings and business activities associated with the regional center or under its sponsorship. This would include investment offerings and business activities of any associated new commercial enterprises (NCEs) or job-creating entities (JCEs). DHS is seeking to help

[5] See 8 CFR 103.2(b)(1), 8 CFR 205.2; see also Matter of Izummi, 22 I&N Dec. 169 (Assoc. Comm'r 1998), Matter of Tawfik, 20 I&N Dec. 166 (BIA 1990), Matter of Arias, 19 I&N Dec. 568 (BIA 1988), Matter of Estime, 19 I&N Dec. 450 (BIA 1987).

ensure that the stakeholder granted a regional center designation will perform appropriate oversight and monitoring with respect to capital investments, job creation, and business activities under its auspices such that the pooled capital investments at its NCEs and JCEs will promote economic growth.

DHS seeks data and information on potential methods for ensuring an appropriate level of monitoring and oversight, including through regional center attestations, the submission of detailed information about the regional center's oversight efforts of its NCEs and JCEs, and other compliance and enforcement mechanisms. DHS understands that these and similar measures may be burdensome to stakeholders, but believes that such requirements could improve the regional center program by providing regional centers with the tools to ensure that associated NCEs and JCEs comply with program requirements. This would ensure only regional centers with effective oversight could operate within the program. DHS believes that this would enhance the program's integrity and ultimately benefit both regional centers and investors by providing greater trust in the entities operating within the program.

DHS welcomes public comment on the issues described above, but would particularly benefit from commenters addressing one or more of the following questions:

1. What would be the most effective and efficient way to add monitoring and oversight requirements? Should such requirements be incorporated into the initial designation stage, the exemplar stage, or throughout the period of the regional center's designation?
2. What forms of monitoring and oversight of NCEs, JCEs, and investor funds are regional centers currently utilizing as part of their best practices?

3. Do other entities associated with regional centers engage in monitoring and oversight?
4. What benefits, if any, would additional monitoring and oversight offer to regional centers and to immigrant investors?
5. What types of documentation would be appropriate for regional centers to submit to establish that they will have an adequate monitoring and oversight process in place upon designation?
6. What measures, if any, have regional centers put in place to identify conflicts of interest by regional center participants? What requirements for identification and disclosure of conflicts of interest would be appropriate in the regional center context?
7. What investment and other economic impacts could be expected from the establishment of new monitoring and oversight requirements?
8. What data and information should USCIS consider affirmatively disclosing to increase transparency in the EB-5 program?
9. What additional costs would stakeholders incur in setting up and maintaining a monitoring and oversight process?
10. Would an additional filing fee or additional costs to regional centers in preparing documentation for separate filings be too burdensome to support or justify the suggested initial filing framework?
11. Would any of the potential changes described above either deter or incentivize participation in the program, or directly affect the viability of certain types of investment projects? If so, how could USCIS best measure the likely effects?

12. Would any of the potential changes described above impact small entities? If so, how? Please provide data to support your response. Please identify any alternative policy proposals or other recommendations that would accomplish some or all of the goals identified above, while mitigating impacts on small entities.

C. Continued Participation

DHS is considering ways to clarify the requirements for regional centers to maintain their designation. Under the current regulatory framework, regional centers must provide USCIS with updated information to demonstrate they are continuing to meet program requirements—i.e., promoting 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 or as otherwise requested by USCIS, generally by filing the Annual Certification of Regional Center (Form I-924A). See 8 CFR 204.6(m)(6). USCIS will issue a notice of intent to terminate the participation of a regional center in the EB-5 program if a regional center fails to submit the required information or upon a determination that the regional center no longer meets program requirements. Id.

The requirement that regional centers continue to serve the purpose of promoting economic growth is subject to varying interpretations, and regional centers have expressed uncertainty regarding the requirements for continued participation. In addition, DHS has found that a number of regional centers have maintained their designation

without actually engaging in work related to the EB-5 program, which has led to growing concerns of potential fraud.

DHS is therefore considering certain changes to the regulations governing continued regional center designations, including changes that would require existing and newly designated regional centers to demonstrate that they continue to meet applicable statutory and regulatory requirements. Specifically, DHS is considering the following requirements for continued participation:

- Requiring evidence of active participation in the regional center program. Such evidence could include having an approved and currently valid exemplar; having pending exemplar applications that were filed within a specific time frame; or the existence of pending Form I-526 or I-829 petitions that are associated with the regional center and that were filed within a specific time frame.
- Requiring periodic demonstrations that the regional center has active monitoring and oversight activities as described in the previous section.
- Requiring prompt notification to DHS of significant changes to the regional center through the timely filing of amendments to the regional center designation. The effect of such a requirement would turn on how DHS interprets the term "significant" in this context. For instance, DHS currently considers the following change to the regional center to be significant:[6]
    - Changes to the regional center's name;
    - Changes to the regional center's ownership;
    - Changes to the regional center's organizational structure;

[6] See 81 FR 73292; Form I-924 is available at http://www.uscis.gov/I-924.

- Changes to the regional center's administration that affect its oversight and reporting responsibilities;
- Changes to add or remove regional center principals; and/or
- Changes to the geographic scope of the regional center.

DHS is considering whether or not other changes may be deemed significant, such as material changes to an approved exemplar filing.

DHS welcomes public comment on all aspects of the potential changes described above, but would particularly benefit from commenters addressing one or more of the following questions:

1. How would regional centers or immigrant investors benefit, if at all, from an explicit requirement that the regional center actively participate in the Regional Center Program?
2. What activities demonstrate active participation in the Regional Center Program? What evidence should regional centers be required to provide to demonstrate active participation?
3. If DHS conditions a finding of active participation on evidence that the regional center is associated with an approved and valid exemplar, a pending exemplar application, or a pending Form I-526 or I-829 petition associated with the regional center, how long should the regional center be able to retain its designation in the absence of such approved or pending exemplar or pending petition? Why is such a timeframe appropriate?
4. How would a continual monitoring and oversight requirement impact currently designated regional centers?

5. How would a monitoring and oversight requirement impact small entities? Please provide data to support your response. Please identify any alternative policy proposals or other recommendations that would accomplish some or all of the goals identified above, while mitigating impacts on small entities.
6. In what circumstances should a regional center be required to amend a regional center designation during an out-of-cycle filing?
7. What additional changes to the regional center amendment process would assist stakeholders in complying with the process?
8. Should DHS reconsider the current filing structure for notifying USCIS of the suggested changes—i.e., filing an amended Form I-924 petition with a fee? If so, what would be appropriate alternatives, and why?

D. Termination

Currently, USCIS can issue a Notice of Intent to Terminate and subsequently terminate a regional center designation if the regional center fails to submit required information annually, or if USCIS determines that the regional center no longer serves the purpose of promoting economic growth. See 8 CFR 204.6(m)(6). DHS is considering providing additional regulatory guidance to help stakeholders better understand the actions that can lead to termination of a regional center designation. Providing more detail about the types of activity (or inactivity) that may result in termination of the regional center would help regional centers better understand their obligations. This guidance would assist USCIS in more efficiently terminating non-compliant regional centers and ultimately help strengthen program integrity by providing a consistent framework for adjudication of these decisions. Finally, this guidance would

help ensure that regional centers are legitimately pooling capital investment and promoting economic growth consistent with the purpose of the Regional Center Program.

Some of the activities that DHS is considering explicitly listing as activities that would result in termination of the regional center include:

- Failure to meet the continued participation requirements;
- Obtaining designation by fraud or misrepresentation;
- Using unlawfully sourced funds to run regional center operations; or
- Misusing investor funds, including, but not limited to, use in any unlawful activity (e.g., Ponzi schemes).

DHS is seeking stakeholder input on actions that would cause USCIS to initiate termination actions against a regional center. DHS welcomes public comment on all aspects of the termination considerations, but would particularly benefit from commenters addressing one or more of the following questions:

1. What should DHS do to more effectively regulate the regional centers participating in this program?
2. Should the failure to maintain approved exemplar filings result in termination?
3. What activities should be considered a failure to promote economic growth and result in termination of the regional center?
4. What impact, positive or negative, would changes to clarify the termination grounds and process have on regional centers and/or investors? What impact would the changes have on small entities? Please provide data to support your response. Please identify any alternative policy proposals or other

recommendations that would accomplish some or all of the goals identified above, while mitigating impacts on small entities.

5. What other factors impacting the regional center and/or investors should DHS consider when terminating a regional center?

_____

Jeh Charles Johnson,
Secretary.
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