

Regional Center Regulatory Paradigm Shift

By Joseph P. Whalen (Friday, November 25, 2016)

8 C.F.R. § 204.6 Petitions for employment creation aliens.

(m) Immigrant Investor **Pilot** Program --

Effective on and before December 22, 2016 ∞	Effective on and after December 23, 2016
<p>(6) Termination of participation of regional centers.</p> <p>**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.</p> <p>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.</p> <p>The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination.</p> <p>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.</p> <p>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 CFR 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.</p> <hr/> <p>**In the CFR, the above is one continuous passage without any breaks in it, as shown here.</p> <hr/> <p>∞ This version only became effective when the Regional Center forms were launched in 2010.</p>	<p>(6) Continued participation requirements for regional centers.</p> <p>(i) Regional centers approved for participation in the program must:</p> <p style="margin-left: 20px;">(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.</p> <p style="margin-left: 20px;">(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and</p> <p style="margin-left: 20px;">(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(WW).</p> <p>(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:</p> <p style="margin-left: 20px;">(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or</p> <p style="margin-left: 20px;">(B) USCIS determines 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.</p> <p>(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.</p> <p>(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.</p> <p>(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.</p> <p>(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.</p>

Rather than making wild speculations on what *might* happen under a new administration, I figured I would back up a bit and look more closely at something solid, firm, and real. The most recent EB-5 regulatory *action*¹ by USCIS, stems from the fee rule. The tenor of the regulation shown above has changed profoundly. In fact, I think it a *profound enough* change that I feel comfortable calling it the beginnings of a paradigm shift for the governmental oversight and management of the EB-5 Regional Center Program. Instead of starting the paragraph with the word “*Termination of participation*” it now begins “*Continued participation*”. I would say that simple change is a move away from the “Culture of NO!” that has been pervasive among Adjudicators for decades, since the old I.N.S. days. Another obvious change is found in the easier to read and follow “outline” format instead of a complex, convoluted, and confusing, long single paragraph, without any breaks, or a chance to come up for air, rather like the run-on sentence you are struggling to read right now, and as run-on sentences go, this one is rather short.

In addition, the option to *voluntarily withdraw* from participation rather than being forced to go through the formal termination process is a welcome procedural advancement. *Voluntary withdrawal* is very much faster and much less expensive all around. As long as *voluntary withdrawal* is not used in order to hide something unethical or criminal, it should serve to conserve IPO resources. In the long run I predict that this route will be utilized primarily by Regional Centers that fail to thrive. They are the ones that will not want to pay the new I-924A fee. A few struggling Regional Centers may get one final year to try to pick up momentum **if** they manage to file an I-924A before the revised form with new fee takes effect.

Am I interpreting this regulatory action and its various effects correctly? It sure looks like USCIS’ IPO is attempting to be more helpful and customer friendly. While I do not want to read too much into it, I sincerely hope this is a correct interpretation. I will leave this discussion for others to continue, I’m done.

That’s My-Two-Cents, For Now!

¹ I am excluding the more recent FR Notices related to form updates and routine OMB renewals.