

**Sectional Summary
Amendment “Leahy2”
Improvements to the EB-5 Regional Center Program**

Enacted in 1992, the EB-5 Regional Center Pilot Program was an outgrowth of the EB-5 visa that had been created by the Immigration Act of 1990. The EB-5 visa program provides a green card to individuals who invest \$1 million in a business in the United States and create 10 American jobs.

The Regional Center Pilot program was created with the intent of Congress to permit multiple EB-5 immigrant investors to pool capital in order to finance a new business venture. This ability to pool investments, along with rules to incentivize investments in 1) rural or 2) high unemployment areas,¹ facilitates significant economic development in communities where traditional financing is difficult to obtain. The Regional Center program also permits investors in these partnerships to satisfy the job creation requirement by counting “indirect” jobs—jobs that would be created as the result of the development of a larger project. The flexibility in the Regional Center Program, in combination with the Targeted Employment Area (TEA) designation, which is given to high unemployment and rural areas, encourages foreign investment and ambitious economic development in communities that are most in need of such development.

Leahy2 codifies and makes permanent the EB-5 Regional Center program. In addition to permanence, it makes a number of changes and reforms both to ensure that U.S. Citizenship and Immigration Services, the agency that administers the program, has the tools it needs to maintain program integrity, and to make the program more business friendly for domestic entrepreneurs and more predictable for investors.

Section 4804 Permanent Authorization of EB-5 Regional Center Program

Subsection (a)

Repeal of Regional Center Pilot program.

Subsection (b)

This subsection codifies the Regional Center Program at 8 U.S.C. 203(b)(5)(E), and describes what an application for regional center designation must contain.

Preapproval of Business Plan and Premium Processing Option

Subsection (b) also establishes a process for preapproval, through which a regional center may request that USCIS preapprove a business plan prior to attracting investors to that plan.

¹ The normal required investment amount (\$1 million) is reduced to \$500,000 if the investment occurs within a Targeted Employment Area (TEA). With the reduction of the required investment amount in a , Congress sought to attract foreign investment capital to areas of the country where economic development was needed, and where traditional sources of capital were reluctant to do business.

Preapproval will be binding once given, absent evidence of fraud or misrepresentation. This will ensure that when investors ultimately submit petitions for designation as an immigrant investor under the program, USCIS adjudicators are looking solely at the admissibility of the individual investor, not re-litigating the investment plan pursuant to which multiple investors are investing. The new preapproval section also permits the Secretary of Homeland Security to provide an expedited processing option for individual immigrant investor petitions that are associated with a preapproved investment opportunity.

Regional Center Financial Statements

Subsection (b) also enhances an existing administrative requirement for regional center operators to report information to USCIS. Under the new provision, regional centers must make detailed financial reports on an annual basis. Such reporting will provide an accounting for the use of all investor money invested through the regional center; a description of how such funds are being used to execute the approved plan; progress reports on investor projects; accounting of jobs created directly or indirectly; and certification that the information provided is accurate.

Sanctions

If the USCIS director determines that a regional center has provided incorrect information, or that the regional center is operating in a manner inconsistent with the program's purpose, the Director may impose a range of sanctions on the regional center, including fines, temporary suspension, permanent bar, or termination of regional center status.

Bona Fides of Regional Center Managers

This section requires the Secretary to prohibit regional center participation by any person who has been found liable within the last five years of a criminal or civil violation relating to fraud or deceit. The Secretary is also required to prohibit regional center participation when the Secretary knows or has reasonable cause to believe that a person is engaged or has been engaged in trafficking of controlled substances; espionage or sabotage; money laundering; terrorist activity; human trafficking or human rights offenses; or violations relating to foreign financial transactions. The Secretary is authorized to conduct background checks and take fingerprint information to accomplish this policy. Finally, this section authorizes the Secretary, in his or her unreviewable discretion, to terminate a regional center.

Compliance with Securities Laws

This section requires the Secretary to obtain certification that the regional center and its associated individuals are in compliance with the securities laws of the United States. The Secretary shall terminate a regional center if the Secretary determines that the regional or a party affiliated with the regional center is enjoined by a court in connection with the purchase or sale of a security; or is subject to any final order of the Securities and Exchange Commission (SEC). Termination is also required where a regional center submits a certification under this section that is untrue.

Catchall Provision

New subparagraph (J) gives the Secretary authority to deny or revoke any petition related to the Regional Center Program where the Secretary believes that approval would be contrary to the interests of the United States for reasons relating to fraud, criminal misuse, or threats to national security.

Assistance by Secretary of Commerce

Subsection (c) provides that the Secretary of Homeland Security may consult with the Secretary of Commerce in evaluating a petition for regional center designation, or determining whether a proposed business plan will create the number of jobs predicted.

Section 4805 Conditional Permanent Resident Status for Employment-Based Immigrants, Spouses, and Children

This section of the amendment makes a number of refinements to section 216A of the Immigration and Nationality Act, which governs the removal of conditions for EB-5 immigrant investors.²

Separate Petitions Not Required for the Principal Investor's Spouse or Child

Under current law, when an immigrant investor and his or her spouse and child petition to remove conditional lawful permanent residence status under the EB-5 program and adjust to unconditional lawful permanent residence, the principal investor and his or her immediate family members must all file petitions to remove those conditions. Under this new provision, immediate family members would no longer be required to file their own separate petitions when the principal investor petitions for removal of conditions. The approval of the investor's petition would remove conditions for them all. This change will enhance efficiency and because the removal of conditions inquiry looks solely at the conduct of the principal investor and his or her adherence to program rules and requirements, additional petitions for immediate family members are duplicative. Nothing in this new provision will lessen the agency's evaluation of all immediate family members of the immigrant investor that occurs under section 203(b)(5). The Secretary may nonetheless assess a fee to remove the conditions of the immediate family members.

Effect on Spouse or Child

This section protects a principal investor's spouse or child if between the period of conditional permanent residence and removal of conditions the child "ages out", or the principal investor dies.

² Like spousal visas, EB-5 investors are subject to a two-year conditional green card period, after which they must petition the agency for removal of such conditions.

Special Rule for Alien Investors in a Regional Center

Under current program rules, at the time an immigrant investor petitions for removal of conditions, the investor must submit documentation that the ten jobs predicted to be created as the result of investment in a regional center limited partnership (pooled investment project) were in fact created. Because the Regional Center Program is intended to ease job-creation requirements on investors in pooled investment projects by allowing for indirect job creation³ to encourage the deployment of substantial capital, the strict section 216A requirement to prove exact compliance with the job creation requirement has been difficult to administer for USCIS and immigrant investors.

Under this new special rule, Regional Center Program investors are not required to submit documentation showing that the 10 predicted jobs had been created at the time the immigrant petitions to have conditions removed from the visa. Instead, because the amendment envisions a new, accurate, and rigorous approval process for proposed business plans, and also requires detailed financial reporting by regional centers, the responsibility to show that an approved project is being executed as planned is left to the regional center. Upon petition for removal of conditions, a regional center investor will be required to append the regional center's most recent financial reporting documents.

This change also acknowledges the reality of the business environment where issues relating to weather, permitting, or other unforeseeable situations cause delay in the execution of a project, such that additional difficulties are met when the investor files for removal of conditions after two years and when a project may be experiencing unforeseeable delay. When an investment project is behind schedule, or in a worst-case scenario, is failing due to fraud or other misconduct, the agency may sanction the regional center. These changes will ease the difficulties associated with "counting" indirect jobs in the context of a large project, while still ensuring rigorous oversight of the Regional Center Program to avoid fraud or abuse. Where multiple investors have invested the required amount in a regional center project, are sustaining that investment, are acting in good faith, and are otherwise in compliance with all laws and regulations, conditions should be removed.

Catchall Provision Giving Secretary of Homeland Security Discretion to Deny Investor Visa

New subsection (f) gives the Secretary unreviewable discretion to terminate the conditional permanent resident status of an immigrant in conditional permanent resident status where that status is contrary to the interest of the United States.

³ Indirect job creation is where an immigrant investor's investment leads to job creation that is ancillary to or the result of the project in which the investor invested. For example, where the investor invests in a project to construct a hotel, and where a new gas station is established near the hotel to serve the additional traffic generated by the hotel, the current program, based on the facts and circumstances of the case, permits the investor to obtain credit for the jobs created by the new gas station.

Section 4806 EB-5 Visa Reforms

Numerical Limitation

Subsection (a) provides that the immediate family members of EB-5 immigrant investors are not subject to the numerical cap for the category.

Targeted Employment Areas; Calculation of Full Time Employment

Targeted employment areas, as discussed at the outset of this document, are areas where the normal investment requirement of \$1 million is reduced to \$500,000 to spur economic development in rural and high unemployment areas. USCIS and many in the stakeholder community have been concerned about efforts by some to evade Congressional intent and obtain TEA designations using questionable methodology. Congress enacted the TEA provision to direct investment to rural and high unemployment areas. The normal investment threshold of \$1 million is available to developers irrespective of unemployment rates. This provision refines the current definitions for high unemployment areas and rural areas to ensure that the intent of Congress is adhered to by regional centers, but will not affect TEA designations approved prior to enactment. It does so by requiring that for a non-rural area to obtain TEA designation based on unemployment data, the proposed area must be made up of a census tract or contiguous census tracts and contains one census tract that has 20 percent of residents living below the poverty line. Additional opportunities are added to the law, however, for non-rural areas to obtain TEA designation—where a state or the Federal Government has designated an area as a economic development incentive program such as an Enterprise Zone, Renewal Community, Promise Zone, Empowerment Zone, or other State or Federal program.

This section also provides a definition for the calculation of “full time employment” to ensure that construction jobs that are intermittent or seasonal may be measured as full time equivalents. This is to ensure that job creation that is the result of construction is counted accurately and fairly.

Minimum Investment Amount

This section gives the Secretary of Commerce the authority to raise the minimum investment amounts, and provides for an automatic upward adjustment of these amounts where no action is taken by the Secretary. The automatic adjustment is pegged to the Consumer Price Index change over a five year period.

Age Determination for Children of Alien Investors

This section protects the children of immigrant investors whose petition to remove conditions under section 216A are denied, by providing that if the immigrant investor petitions again under section 203(b)(5), a child who has subsequently aged out may still be considered an immediate family member and eligible to be an EB-5 petitioner.

Enhance Pay Scale for Federal Employees Administering the EB-5 Program

In light of the expertise required of adjudicators and other officials who administer the EB-5 program, this section gives the Secretary the authority to adjust the compensation of officials charged with administering the program.

Delegation of EB-5 Authority

This section gives the Secretary of Homeland Security the authority to delegate to the Secretary of Commerce some authority to make determinations relative to immigrant investor petitions. The provision provides that rules and regulations may be adopted and also permits the Secretary of Homeland Security to share fee revenue as appropriate with the Secretary of Commerce.

Concurrent Filing of Petitions

This section permits immigrant investors to file the petition to become an immigrant investor and the petition for conditional permanent resident status concurrently. This is intended to add efficiency to the EB-5 petition process.

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