Regional Center Compliance Obligations: *A Closer Look*

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The opportunity to operate an EB-5 regional center ("RC") is a privilege. Status as a designated RC is granted by the U.S. Citizenship and Immigration Services (USCIS) only after approval of a comprehensive operations proposal. Designation also imposes significant operational compliance obligations, including the duty to engage in sufficient monitoring and oversight of EB-5 capital investments. A RC's failure to meet those duties serves as a legal basis for USCIS to terminate the designation – in other words, withdrawing the RC's privilege to continue operations. The consequences of a termination decision can be earthshattering. First and foremost, it means the RC cannot sponsor any new EB-5 capital investment projects. Second, and more importantly, it may trigger the automatic denial of all pending petitions, and possibly the revocation of already approved petitions, submitted by RC-affiliated foreign investors.

Stepped up enforcement should naturally result in all RCs launching remedial measures to ensure continued compliance. But, that may not be as easy as it sounds for the simple reason that USCIS has failed to provide clear guidance defining RC compliance requirements.

For example, there is no clear definition of RC "oversight" duties or the associated standard of care required for such obligations. There are no published protocols or parameters defining minimum required "monitoring" actions. Similarly, there is no published checklist of standard RC operational documentation to be collected and maintained, nor any published list of RC records that must be presented to USCIS in an audit. There is no guidance on how an RC can conduct a voluntary self-audit to conform compliance practices and operations.

This article provides an overview of legal context and practical recommendations regarding RC compliance, in two parts: Part I examines the primary legal theories advanced by USCIS in RC termination proceedings based upon the failure to meet compliance standards, or the failure to maintain sufficient oversight and monitoring. Part II shifts the focus to RC self-governance by examining compliance risks of a RC that fails to follow its own self-established monitoring and oversight standards as promised in its USCIS approved I-924 Application for Regional Center Designation, and by proposing a RC engage in a voluntary audit of its existing compliance protocols and to modify practices to match prior commitments made to USCIS. This article represents a condensed version of the author's significantly more in-depth treatment of RC compliance in a forthcoming book (publication anticipated 2019).[1]

1 David M. Morris, Exploring Regional Center Compliance Obligations, Immigration Options for Investors & Entrepreneurs (AILA 2019) (forthcoming). The article includes substantially more detailed material on each of the themes discussed here, and it additionally traces the evolution of RC compliance from its origins in 2005, long prior to the creation of Forms I-924 and I-924A in 2010.

2 See 8 C.F.R. § 103.2(a)(1); see also D.M. Morris, Exploring Regional Center Compliance Obligations, supra note 1, at text accompanying note 37 et seq.

I. Legal Theories Advanced by USCIS In Termination Proceedings Asserting RC Failure To Meet Compliance Requirements, Or To Maintain Sufficient Oversight And Monitoring

USCIS legal theories advanced in termination proceedings on the grounds the RC failed to meet compliance requirements can be divided into two distinct areas: RC failure to comply with I-924A annual reporting, and RC failure to maintain sufficient monitoring and oversight of all EB-5 capital investment activities. In considering these legal theories, it is important to recognize that USCIS views its forms and their instructions as having the force of law and regulation.[2]

- **Compliance Arising from the Form I-924A Supplement**

Once a RC is designated, the regulation at 8 C.F.R. § 204.6(m)(6) requires it to "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 ...." This required annual compliance reporting is executed through the timely submission of the Form I-924A, Annual Certification of Regional Center, with a filing fee. To be clear, however,

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a RC does not achieve compliance by merely filing the I-924A report. A RC must file timely and accurate I-924A compliance packages.

For example, USCIS issued a Notice of Intent to Terminate (NOIT) to the South Dakota Regional Center claiming the submission of "inaccurate or incomplete information to USCIS on its annual Form I-924A filings" occurring over a five-year period.[3] Among many claimed reporting failures, USCIS noted the following:

- Not only are the I-924As incorrect in reporting the EB-5 capital invested into each NCE, the amounts reported on the I-924As are inconsistent with the total amount of EB-5 funds loaned for these projects according to the I-526 and I-829 petitions.
- Information provided in the I-924A filings has discrepancies both within the same filings and between the filings and information provided to USCIS in other filings such as the related I-526 and I-829 petitions.
- In its I-924A filing for the fiscal year ending September 30, 2011, the RC incorrectly identified JCEs as NCEs.
- The RC has not accounted for $5 million in EB-5 capital investment in its filings with USCIS and, therefore, has not provided required information to USCIS.

Even more interesting, USCIS took the position in this NOIT that honest error may not be a forgivable excuse. USCIS asserted that "regardless whether the Regional Center has intentionally provided conflicting or incorrect information to USCIS, the magnitude of these discrepancies casts doubts on the credibility of the Regional Center's filings and management."

- **Compliance arising from Duty to Monitor all EB-5 capital investment activities**

USCIS also imposes upon a RC a duty to monitor and oversee all EB5 capital investment activities. However, USCIS has not issued any regulations, nor has it issued any policy statements, memoranda or even FAQs, establishing articulable standards for "sufficient" oversight and monitoring. From a basic due process perspective, that reality cast reasonable doubts as to legitimacy of USCIS enforcement sanctions on those grounds.

To be sure, USCIS has developed a significant body of actions asserting a RC duty to engage in monitoring and oversight - but without ever have defined the conduct or standard of care. First, the duty appeared in RC designation approval letters as a condition of continued operation. USCIS then embedded this monitoring compliance obligation into the updated AFM[4] in 2009 and into the new Form I-924 in 2010. On December 23, 2016, USCIS updated the I-924 and yet again affirmed this monitoring and oversight duty.[5]

RCs have generally acceded to USCIS claims that they owe a duty to engage in management, oversight and administration of EB-5 capital investment activities. Notably, at least one RC rejected this USCIS position. In response to a NOIT, the State of Vermont's regional center (VRC) challenged USCIS assertions of any such duty, writing:

> A regional center's responsibilities for the oversight of day-to-day operations of the separate and unaffiliated sponsored NCEs are not established in any law, regulation, or published policy, and are not defined anywhere. It would be unreasonable to terminate the VRC for a perceived failure to comply with requirements that are not sufficiently enunciated or supported in the law, as due process prohibits arbitrary action by government bodies.[6]

VRC's unique history may support its legal claims. But to the credit of all RCs, VRC refuted USCIS claims of owner oversight duties by invoking the June 19, 2018 congressional testimony of USCIS Director L. Francis Cissna which stated:

> *Enhancing Reporting and Auditing - USCIS is not currently authorized to enhance the regional center annual reporting process, including requiring, as appropriate, certification of the regional center's continued compliance with U.S. Securities laws; disclosure of any pending litigation; details of how investor funds were utilized in a project; an accounting of jobs created; and the progress toward completion of the investment project.*[7]

Asserted by VRC in its appeal brief, Director Cissna's testimony stands in stark contrast to the bases for the notice issued just two weeks later, which terminated the VRC based on its alleged past failure to do those very things.[8]

Notwithstanding Director Cissna's testimony, VRC's other legal arguments may not help RCs formed after November 23, 2010. After that date, all applicants seeking RC designation were required to file the I-924, which mandated oversight and compliance. Moreover, proposals were required to include plans and methodologies to execute these mandated oversight and compliance obligations.

Accepting for discussion purposes only that a RC established upon USCIS approval of an I-924 petition has a duty to engage in the monitoring and oversight of all EB-5 capital investment activities, monitoring and oversight duties "are not defined anywhere."[9] There is no public articulation of standards defining the scope of "oversight." No published protocols or parameters defining minimum allowable "monitoring" requirements. No published checklists of standard compliance documentation that must be collected and maintained.

In the absence of published policy, a RC must attempt to comply with this undefined duty by means of educated guessing. That is certainly not an ideal situation for a regulated entity. It also seems to run afoul of basic principles of due process.

This issue too will surely make its way to the federal courts in the future. In the meantime, a RC must continue to operate and to undertake reasonable compliance measures to protect the immigration interests of all affiliated EB-5 investors.

What little is known about the duty to monitor comes from the small library of USCIS termination decisions involving inaction, mismanagement, theft, or fraud by RCs and their sponsored affiliates. For simplicity, let's call these "Bad Actor" terminations.

These Bad Actor cases typically follow a familiar pattern. First, there is discovery of major fraud or malfeasance by law enforcement

3 South Dakota Regional Center, NOIT (10/31/2015)

4 https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static%20Files%20Memoranda/Adjudicating_of_EB-5_121109.pdf

5 www.uscis.gov/i-924 But without explanation, USCIS added the word "sufficient" as a modifier of the duty; the impacts, if any, of this change are unclear at this time.

6 Vermont Regional Center NOIT Response (September 14, 2017) at page 5.

7 Written Testimony of L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, "Citizenship for Sale: Oversight of the EB-5 Investor Visa Program," before the S. Comm. On the Judiciary, at 6 (June 19, 2018).

8 VRC Appeal Brief at p. 6.

9 Id.

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(such as by the SEC). This is followed by USCIS efforts to shut down RC operations by means of a NOIT followed by a Termination Decision.

A primary legal theory advanced by USCIS in RC termination action is the assertion that the RC failed to sufficiently perform its required oversight and monitoring duties. And "but for" the RC's failed oversight actions, the malfeasance or fraud would not have occurred. Supporting that assertion, the termination notices contain USCIS efforts to match specific RC actions (or inactions) against specific failed oversight duties.

This would make perfect sense, except for one big issue - USCIS has never defined these alleged oversight and monitoring duties. This creates the opportunity to challenge the central legal basis of such enforcement actions. It also establishes reasonable justifications for RCs to not blindly adopt compliance practices set forth by USCIS in these specific termination actions.

- **CASE STUDY: State of Vermont Regional Center**

This is best exemplified in the Bad Actor termination action brought by USCIS against of the State of Vermont's regional center (VRC).

In 1997, USCIS designated VRC as a RC and authorized its participation in the Program. Owned and managed by the State of Vermont, VRC did not directly raise or invest EB-5 capital. Rather, VRC operated more like the current "Rent-A-Center" model. Privately owned businesses would apply to VRC seeking immigration sponsorship of their new commercial enterprises (NCE) and EB-5 capital investment projects. If accepted by VRC, the parties would execute a Memorandum of Understanding (MOU) establishing reporting and inspection duties among other

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VRC Noncompliant Actions Claimed by USCIS	Resulting RC Monitoring and Oversight Compliance Duty Claimed by USCIS
VRC became aware of the likelihood that EB-5 funds raised for some Jay Peak projects were diverted, and yet VRC allowed the Jay Peak projects to continue to collect funds that they knew, suspected, or should have known were in jeopardy of not being used in compliance with EB-5 Program requirements.	RC has a monitoring duty to investigate upon receipt of constructive knowledge or reasonable suspicion of possible malfeasance or non-compliant actions by NCE or JCE entity.
VRC failed to collect and investigate quarterly status reports as mandated under its own MOU with the projects, and VRC thereby failed in fulfilling its monitoring and oversight responsibilities.	RC has a duty to follow its own self-established monitoring and oversight standards.
VRC relied excessively, if not primarily, on the Jay Peak project managers to perform oversight functions rather than taking on those responsibilities itself. Where a regional center has an outside party providing management services the ultimate responsibility for compliance with the relevant statues and regulations, remains with the regional center itself.	RC has a monitoring duty and cannot outsource ultimate compliance obligations owed to USCIS.
Multiple Form I-526 petitions were filed in the months after the SEC and Vermont complaints alleging EB-5 funds diversion were made public. USCIS found that VRC failed to take corrective actions to stop subsequent immigration filings containing misrepresentations, false or misleading information about the planned capital investment activity.	RC has a duty to monitor substance of immigration filings of affiliated EB-5 investors. RC has a duty to monitor against submission of false or misleading information to USCIS.
Some Jay Peak projects made material misrepresentations and that court records indicate that several securities offering documents were allegedly contravened, and the resulting fraud could have been avoided "with more and better oversight" from VRC.	RC has a duty to monitor securities offerings conducted by NCEs.
USCIS discovered significant discrepancies between what VRC represented in its I-924A filings and documents provided to individual Form I-526 petitioners, and what USCIS was able to determine independently. VRC began having concerns about whether all material information about certain Jay Peak projects was being disclosed to investors. Yet these concerns were not shared with USCIS, rather VRC remained silent in its concerns and took no action as over 83 petitions for this NCE were approved in 2014 and 2015. There were misrepresentations consisting of false or misleading information about VRC sponsored projects in materials submitted to USCIS and that when VRC became aware of these misrepresentations, it took no corrective action.	RC has an oversight duty to take corrective actions related to any EB-5 related immigration filings.
Form I-924A instructions clearly indicate the requirement to "Answer all questions fully and accurately." As well as a notification that "By signing this form, you have stated under penalty of perjury that all information and documentation submitted with this form is complete, true, and correct." Therefore, it is not sufficient to timely file the I-924A, but the information contained in that filing must be complete, true and correct. The NOIT Response seems to argue that VRC's only oversight responsibility was reporting its activities to USCIS. VRC reporting must be accurate and without effectively monitoring its projects, VRC cannot accurately carry out its reporting requirements and responsibilities to USCIS.	RC has an oversight duty to authenticate the supporting data relied upon to prepare the submitted Form I-924A.

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conditions. Thereafter, the NCE would solicit EB-5 investors, aggregate the foreign capital and deploy those funds into VRC approved job creating enterprises. VRC would remain a passive sponsorship entity throughout the process.

Between 1997 and 2017, VRC sponsored an estimated 20 ventures, which resulted in the filing of nearly 1,100 I-526 petitions, of which nearly 750 were approved by USCIS.[10] On April 12, 2016, the SEC brought a civil action against seven VRC sponsored ventures (collectively hereinafter "Jay Peak") "to stop an ongoing, massive eight-year fraudulent scheme" targeting foreign investors participating in the Program. On April 14, 2016, the State of Vermont filed a civil complaint against the same parties alleging similar claims. On June 12, 2017, EB-5 investors in Jay Peak brought a class action lawsuit against VRC and the State alleging VRC failed to exercise oversight, engaged in misrepresentations to investors, conspired to conceal fraudulent activity in the ventures, and bears responsibility for misappropriation of funds.

On August 14, 2017, USCIS issued a NOIT seeking to terminate VRC on several grounds including VRC's failure to provide adequate and proper oversight, monitoring, and management of Jay Peak.[11] In the NOIT and subsequent termination notice USCIS deconstructs VRC's failing actions and thereby creates a list of very specific compliance duties owed by VRC. What remains unclear, however, is if these alleged duties are legally valid or if they are ultra vires and lack legal authority.

The below chart captures analysis from the Termination Notice and matches compliance duties against USCIS claims of how VRC actions failed to satisfy those duties.

The VRC decision is not the only instance of this type of USCIS action. For example, USCIS issued a NOIT to the South Dakota Regional Center claiming multiple breaches of the monitoring and oversight duties in another Bad Actor situation.[12]

10 NOIT at page 6, https://assets.documentcloud.org/documents/3936313/Review-of-EB5-Program-in-Vermont-Addendum-and.pdf.

11 Id at 13-15.

12 South Dakota Regional Center NOIT (10/31/2015) https://rapidcityjournal.com/blog/on-background/south-dakota-s-eb--termination-notice-read-it-for/article_ce446a42-7804-11e5-bc29-035adb762fee.html See also, https://d2xxqpo46qfujt.cloudfront.net/downloads/matterofs-d-r-c-id13768aaomar-170322020923.pdf

13 https://definitions.uslegal.com/s/standard-of-care/

Important Open Issue – What "Standard of Care"

Assuming for argument's sake that USCIS's claims regarding specific oversight duties are valid, the agency has not specified any legal standard, or "Standard of Care," to measure adequacy of a conduct. According to a leading online dictionary, the term "standard of care" is generally defined as follows:

> *the degree of attentiveness, caution and prudence that a reasonable person in the circumstances would exercise. Failure to meet the standard is negligence, and the person who fails to meet the standard is liable for any damages caused by such negligence.*[13]

Are RCs held to a strict liability standard? For example, does a RC breach its compliance obligations even if it was genuinely deceived by malfeasance of affiliated NCEs or JCEs? Or, are regional centers held to a gross negligence standard? Perhaps defined as "a lack of care

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that demonstrates reckless disregard" for the reasonable execution of duties which is so great it appears to be a conscious violation.[14] Perhaps the standard lies somewhere between these two extremes? As applied to the EB-5 program, a negligence or "reasonable person" standard would require a regional center to engage in compliance duties of monitoring and oversight in a manner consistent with accepted EB-5 industry standards and practices.

PART III Self-Regulation: Compliance Practices Vs. I-924 Promises

In the face of USCIS's refusal to publish compliance guidance defining oversight and monitoring duties, a RC cannot and should not simply waive the white flag of surrender and justify abandonment of its compliance efforts. The reason is simple – the RC almost certainly owes a duty to perform its own self-established monitoring and oversight obligations as promised in the USCIS approved I-924 Application for Regional Center Designation. This is a matter exclusively within the control of the RC and execution is not contingent upon any USCIS action.

Accordingly, a RC should look back to its original I-924 application package and scrutinize all promises establishing compliance obligations. Then the RC should conduct a voluntary self-audit to investigate if they are, in practice, adhering to those promises. If the audit reveals the RC's operations surpass promised monitoring and oversight standards, then compliance is achieved. But if the audit reveals deficiencies then the RC has constructive knowledge of noncompliance, and therefore must take appropriate remedial actions.

The compliance plans composed by a RC and inserted in its I-924 proposal represent its own set of unique promises and methods; there is no "one size fits all" or industry-standard boilerplate language. But an unscientific sampling of several members of AILA's EB-5 Committee suggests there may be some general commonality among plans across many RCs. Perhaps this is a result of a relatively small number of law firms that helped a majority of +900 approved RCs prepare and file their I-924 applications.

From this unscientific survey, we can attempt to construct a composite compliance plan that tracks perceived industry norms, as follows:

> Administration, management, and oversight of the regional center will be handled by [RC] in compliance with 8 CFR § 204.6(m)(6), including:
>
> - [RC] will be responsible for overseeing and monitoring all investment activities under its authority.
> - [RC] will follow the oversight and reporting requirements outlined in the approval letter for the regional center upon regional center designation by USCIS.
> - [RC] will identify and evaluate proposed projects, monitor project progress, and maintain records on projects, investors, and business activities.
> - [RC] will provide reports on its operations to USCIS each federal fiscal year by filing a Form I-924A.
> - [RC] will keep detailed records of all projects that have received alien investor capital and in what amounts.
> - [RC] will keep records, data, and information related to all investors as well as the investments, the projects involved and the movement of funds to and from each new commercial enterprise established within [RC].

In the absence of USCIS establishing minimum standards, the RC seemingly has the right to interpret the meaning and scope of its own promises. And if the RC subsequently executed its self-defined operational compliance procedures and protocols thereby fulfilling its I-924 promises, then USCIS would be deprived of a primary legal theory asserted in some termination actions.

- **Four Steps to Develop Compliance Policy?**

There are myriad ways a RC could develop its own compliance polices and protocols. One possible method that may make sense to some RCs involves the execution of a simple (and hopefully intuitive) four-step process outlined below. While space limitations preclude providing sample policies here, a more comprehensive version of this article published elsewhere offers illustrative examples.[15]

Step #1: Identify Operations That Merit A Compliance Policy

The first step in developing a compliance program is to identify operational activities that need to be tracked, monitored or supervised within the RC's definition of "all investment activities." Assuming for purposes of discussion the NCE is making a loan to a third-party JCE, these may include, but are not limited to, the following:

1. Investor Intake: Initial Screening & Eligibility Compliance
2. Subscription of Investor & Agreement Execution
3. Escrow and management of Administrative Fees
4. Escrow and management of EB-5 Investment Funds
5. Management of Capital Funds Upon Release of Subscription Escrow
6. NCE-JCE Loan Transaction & Recordkeeping
7. Processing JCE Loan Draw Request
8. Investor Relations & Reporting
9. Tax & Accounting: Financial Statements, Procedures & Recordkeeping
10. Immigration Compliance
11. Securities Compliance: Offering Documents, Marketing, Updates
12. Project Due Diligence: Procedures, Reports & Recordkeeping
13. RC-NCE Sponsorship and Compliance Agreement

Step #2: Develop SOPs for Every Identified Operation

From the final list, the RC would develop a compliance policy for each operation supported by specific compliance objectives. As a condition of sponsorship, each NCE would be required to develop its own compliance plan and Standard Operating Procedures (SOPs) to meet the RC's stated objectives, and these standards would thereby establish governance rules.

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14 See for example https://www.law.cornell.edu/wex/gross_negligence

15 See D.M. Morris, supra note 1, at Appendices 1 & 2.

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For both the RC and the NCE, developing an effective compliance policy requires careful consideration as well as advice from various professionals, including immigration lawyers, securities lawyers, finance professionals, and often, construction inspection experts.

Step #3: Time for Testing

As an ongoing condition of RC sponsorship, the NCE must commit to periodic compliance audits. Testing is one of the most critical elements of an effective compliance program. Without testing, it is difficult or impossible to understand what is working and what needs enhancement. Likewise, audits serve as an early warning to the RC to identify - sooner rather than later - potential NCE compliance issues.

The RC, or third-party contractor reporting to the RC, should undertake periodic testing of all mandated NCE compliance policies. The assessment of factors may include the following:

- NCE's level of awareness of compliance related laws and regulations;
- NCE's compliance with applicable federal regulations related to Eligibility;
- Compliance with the terms of NCE's own Offering Documents governing Eligibility;
- Adequacy of NCE's own internal policies, procedures and controls related to Eligibility;
- Compliance with NCE's own internal policies and controls related to Eligibility.

Step #4: Update The RC-NCE Sponsorship & Compliance Agreement

As a final step in the compliance process, the RC should review and update its legal relationship with the NCE it is sponsoring to ensure the integration of all compliance policy mandates.

While not a USCIS requirement, every RC should have a defined set of rules mandating operational duties and obligations as an ongoing condition to its agreement to NCE sponsorship. Some RCs memorialize these sponsorship rules in a Memorandum of Understanding, others call it a license, but for simplicity let's call it the NCE Sponsorship and Compliance Agreement ("Agreement").

Unlike the RC, however, the NCE has no legal relationship with USCIS – no duty to issue reports, no duty to follow any immigration compliance rules. And yet, most of the RC's compliance promises to USCIS hinge on underlying actions executed by the NCE. Thus, the Agreement plays a critical role in RC compliance because it requires the NCE to conform its practices to approved standards.

The NCE's failure to operate within those standards should be defined in the Agreement as an event of default giving the RC a right to terminate its sponsorship – the lifeblood of the NCE. The Agreement could also include an additional remedy upon default that gives the RC the right to replace the NCE's managers for the protection of affiliated EB-5 investors, as well as monetary damages.

The Agreement should obligate the NCE to submit to audits and compliance testing, and to establish a schedule of fees and the RC's right to reimbursement for costs related to compliance monitoring.

Lastly, the Agreement may also serve another valuable purpose: to help protect the RC against non-compliance claims from USCIS. At minimum, an Agreement that incorporates the RC's efforts to develop and implement a compliance policy and monitoring activities serves as a demonstration of its commitment to ethics and compliance.

- **Risks In Creating Compliance Plan?**

Some RCs have resisted developing a compliance plan in the absence of USCIS policy defining such obligations. There appear to be two primary reservations raised by this group.

Let's assume the RC developed its own robust compliance policies and protocols. The first expressed worry relates to risk of "over self-regulation" - what if the RC obligates itself to standards that are more rigorous and more burdensome then those ultimately imposed by USCIS? Efforts to be proactive, the claim would be made, penalizes this RC and makes its operations more onerous then fellow RCs that pursued no compliance efforts.

The second worry relates to execution risk - what if the RC fails to fully implement and execute its own compliance plan? Critics fear that the RC is making promises to engage in specified conduct and there may be consequences for failing to live up to these promises. The worry is that the RC could be opening itself to greater liability in this case by failing to pursue its own standards of care.

There may be some merit to these concerns, but do they outweigh the risks of inaction? In the end, each RC will need to weigh all the factors, both positive and negative, to reach a final decision about establishing a self-defined compliance plan in advance of long overdue USCIS policy guidance.

Conclusion

Right or wrong, USCIS is convinced that every RC owes broad compliance duties as a condition of continued designation, and these duties include the obligation to engage in sufficient monitoring and oversight of all EB-5 capital investments. Until a federal court dissuades USCIS of that notion, every RC should presume to follow those mandates to avoid termination.

Exactly how to comply is a harder question. In the absence of published policy defining these compliance duties and standards, RCs are relying on educated guesses. Some insights can be extracted from published termination decisions, but this does not create the robust body of knowledge the weighty subject deserves. That same lack of official guidance does create opportunity by empowering the RC to develop its own compliance policies and methodologies as needed to fulfill promises made in the I-924 application.

Diligent RCs should not miss that opportunity. Given stepped up enforcement efforts by USCIS, RCs should take proactive measures to review and update their compliance policies and procedures. Voluntary audits and testing of SOPs will help RCs and NCEs to understand internal controls, assess risk, and test compliance controls. Operational procedures should then be updated to correct deficiencies and bring the NCE back into compliance as required by the RC's sponsorship agreement.

Of course, the RC and NCE should not devote scarce resources to compliance for the sake of simply meeting USCIS demands. Monitoring and oversight practices should be sharpened because these serve as a key mechanism to deter or catch fraud. If left unchecked, instances of fraud will grow and hasten USCIS efforts to terminate RCs. Most importantly, fraud left unchecked will result in the loss of investment capital and the loss of immigration benefits for all affiliated EB-5 applicants and their family members. Those last two consequences should be motivation enough for RCs to strive for effective compliance and oversight.