

# Roundtable on I-924A and Regional Center Oversight Obligations



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Once designated, EB-5 regional centers have an affirmative obligation to provide USCIS with updated information to demonstrate continued eligibility by submitting an Annual Certification of Regional Center (Form I-924A) or as otherwise requested by USCIS. See 8 C.F.R. § 204.6(m)(6)(i) (B). USCIS will issue a Notice of Intent to Terminate (“NOIT”) if a regional center fails to submit a Form I-924A on or before December 29 each year.

The purpose of this article is to highlight some of the administrative, oversight, and management practices used by established regional centers to effectively prepare Form I-924A in order to demonstrate that they are “continuing to promote economic growth ... in the approved geographic area.” *Id.* We thank CMB Regional Centers, American Dream Fund, and others for their contributions and assistance in preparing this article.

1. Preparing to File the I-924A. It’s advisable to begin preparing a Form I-924A in early September each year, right before the federal fiscal year is ending. Form I-924A requires regional centers to compile information based on each federal fiscal year (October 1 through September 30), so alerting regional center licensees and job creating entities about the information and documents required for the December filing

in September will alert all parties involved about the coming records and documents needed to file the I-924A by December 29. One regional center indicated that preparing for an I-924A should be an ongoing obligation parallel to actual job creation activity within a regional center’s designation. Regional centers should maintain practices for proper oversight and documentation throughout the development and construction activities of each EB-5 project. Following October 1st of each year, the regional center (and its economist(s)) can then work to complete an accounting of the information required for the I-924A.

2. Common Areas of Struggle. Established regional centers agree that completing the I-924A gets easier the more often it is done but it can still be a challenge to get information from third parties. Documents that act as verification for inputs into economic models (such as construction expenditures, income statement and revenue reports, government payroll records, and annual tax returns) may be missing or delayed. The I-924A requires regional centers to identify the amount of investment (both EB-5

*Continued On Page 24*

*Continued From Page 23*

and otherwise) in each industrial category (NAICS code) as well as the resulting job creation from the EB-5 capital investments sponsored through the regional center. Regional centers that consistently track and account for the spending by a job creating entity during the construction process are well-primed to provide the information USCIS requires in the form. When EB-5 capital is loaned in a subordinated debt position or is provided in the form of equity, it may be important to receive certain reporting information from the senior lender as well. The ability to

vital for regional centers to maintain organized files. Every regional center should initiate a recordkeeping management program when associating with a new EB-5 offering. This is important not only for I-924A filings, but also for potential USCIS compliance audits, construction lenders, and Form I-829 petitions. There should be well-organized investor subscription records; EB-5 project landmark documents; construction draw requests and supporting documentation records from each financial source; and corporate, financial, tax, and employment records.

4. Regional Center Licensing/ Services/Affiliation/Sponsorship Agreement. Most regional centers that work with independent developers or third-party licensees agree that it is critical to have a regional center licensing agreement in place that enables the regional center to obtain any necessary information any time it is needed. It could be beneficial to impose semi-annual requirements or compel copies of documents for certain reporting and filing obligations under state or federal law. At minimum, licensing agreements should include a mechanism for ensuring that answers and documents will be timely provided in response to regional center questions or in the event it needs to respond to USCIS. If it is only the new commercial enterprise (or its general partner or manager) that is signing the regional center licensing agreement, then similar provisions should be included in the loan document or other agreements between the new commercial enterprise and the job creating entity. If these requirements are not included, no guarantees can be made that the job creating entity will agree to provide certain types of documentation in the future. Agreements should be designed so that failure to provide this information is met with consequences no different than those imposed after the failure to make an interest payment or after the misappropriation of funds. Additionally, a regional center can record all loan requirements or project performance benchmarks, or at the very least, establish and maintain a process for recording and managing construction progress and tracking progress of job creation. The health of each EB-5 project can also be monitored through the receipt and analysis of ongoing financial reporting, or through site visits to the EB-5 projects. ■

receive copies of the draw requests and approvals are essential, and it may be important for the NCE to negotiate an intercreditor agreement with a senior lender to allow the NCE to receive certain reporting materials, notices, and requests of the borrower.

3. Recordkeeping Management Programs. For proper oversight and administration, it is

Regional centers that handle an onerous number of inquiries would be advised to establish a database or customer relationship management (CRM) tool for properly tracking an investor's progress, from prospect to unconditional permanent residency, including distributions of return on investment and proper tax documentation.

