



IIUSA Member Perspectives

USCIS Publishes Draft Registration Form for EB-5 Promoters

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USCIS has published for public comment a draft Form I-956K and instructions for use by EB-5 securities “promoters,” implementing a new and unusual statutory requirement for promoters to register with USCIS, certify that they are not “prohibited persons,” and confirm the existence of a written agreement with the securities issuer or related party. Registration of promoters will not be required until the 60-day comment period ends and USCIS considers comments and publishes the final form. The form gives rise to several important questions that the instructions do not answer. Also it gives rise to important obligations for EB-5 securities issuers and sponsoring regional centers.

The EB-5 Reform and Integrity Act of 2022 (“RIA”) enacted INA Section 203(b)(5)(K) that requires promoters to register and requires each EB-5 petition to include a written disclosure of all fees, ongoing interest, and other compensation paid to any agents, finders, or broker dealers. Although USCIS has issued for immediate use other forms implementing RIA, the I-956K is published in draft only for now. Nevertheless, the same [Federal Register notice](#) calls for comment on new EB-5 forms I-956, I-956F, I-956G, and I-956H (not I-526 or I-526E).

Who must register should be clearer. The RIA does not specifically define “promoter.” The provision requiring fee disclosures applies to payments to “agents, finders, or broker dealers.” The form requires the registrant to self-identify whether the person is a “direct promoter,” “third-party promoter,” or “migration agent,” or some combination, without any definition of those terms or any discussion of the implications. The form is for use by individuals and entities. It is not clear whether registration is required only of an individual or entity with an agreement to market EB-5 securities or whether. The form asks if the registrant is employed to work as a promoter or otherwise engaged as a promoter on behalf of another promoter,” which implies that employees or agents of primary registrants must also register, but it is not clear what kind of a role in a promoter organization subjects one to the registration requirement. Also it is not clear how an employee or sub-agent completes the portion of the form collecting information about the registrant’s written agreement with the securities issuer or related party, and explanations in the addendum may be needed.

Also unclear is whether registration is required for a promoter of investments only in regional center sponsored projects or also for “stand alone” projects involving only one investor. The RIA is unclear on this, and the form and instructions make no mention of the issue. Newly published Form I-526 for stand alone investors mentions nothing about several “integrity measures” of RIA that might have been intended only for regional center projects.

Promoters must register or update registration every time they enter or get out of an agreement with any entity to sell or promote EB-5 investments. Each registration lists the promoter's current agreements in effect.

I-956K should be done online with no filing fee. The written agreement with the securities issuer or related party itself is not submitted but must be available for review. USCIS may require the registrant to appear for biometrics at an Application Support Center if the registrant is in the U.S. or at a U. S. consulate abroad (or a contractor retained by the consulate) in the registrant's country.

The law requires promoters to register, but regional centers are required to make sure that all persons involved in the securities offering are complying with the immigration, securities, and other laws, and that includes promoters. Agreements with promoters must be written and should require the promoter and all agents, sub-agents, and employees interacting with prospective investors to register with USCIS using Form I-956K. Agreements may also require promoters to provide evidence of such registration. Issuers considering a particular investor's subscription should consider requiring proof of USCIS registration for all persons (individuals and entities) who interacted with the investor in the sales process and up the chain to the person having the written promoter agreement with the issuer. Failure of registration of such parties could lead to termination of the sponsoring regional center and debarment of the issuing entity. A promoter whose misbehavior contributes to termination or debarment by USCIS of a regional center, new commercial enterprise, or job creating entity can be permanently debarred from promoting EB-5 investments.

USCIS needs to clarify several issues above in the final form and instructions.