

I-956 and I-956F Post-RIA  
Adjudication Trends:

# Considerations & Issues for Regional Centers & Issuers Two Years After the RIA



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It's been over two years since the EB-5 Reform and Integrity Act of 2022 ("RIA") has gone into effect and industry stakeholders have had some time to analyze adjudication trends from USCIS regarding EB-5 petitions across the board. While the majority of post-RIA adjudication data points to positive trends in processing times (reports of both rural and high unemployment I-526Es being approved in under a year for example), there's been less useful information or analysis about I-956 and I-956F data.<sup>1</sup> Below we share our thoughts about I-956 and I-956F adjudication trends from our own personal experience as well as cases we've been asked to co-counsel or retained to respond to RFEs. The hope is to shed some light on USCIS adjudications of I-956 and I-956F filings so the industry can have a broader discussion of what to be aware of and prepare for moving forward.

Positive Trends	Common RFE Issues
Multi-State Geographic Designations	Whether RC has sufficient staffing (both too much and too little)
Faster processing overall (compared to pre-RIA I-924 filings)	Broad focus on persons and entities with potential indirect ownership or control over EB-5 funds
Acceptance of Supplemental I-956/I-956F filings	Clarification of roles and duties for RC key personnel and employees
Acceptance of multi-class offerings and portfolio funds	Requests to unravel ultimate beneficial owners of holding companies or trusts
	Project financing issues (including sources and uses)
	Bridge financing and case-by-case studies

<sup>1</sup> Fortunately, USCIS' processing times seem to have improved across several other immigration categories. Notably, processing times for Employment Authorization Documents are at 3.6 months and Advance Parole documents are at 4.4 months. "Historical Processing Times Trends Fiscal year 2016 - 2024". [https://www.uscis.gov/sites/default/files/document/fact-sheets/historical\\_pt\\_factsheet\\_fy16\\_to\\_fy24.pdf](https://www.uscis.gov/sites/default/files/document/fact-sheets/historical_pt_factsheet_fy16_to_fy24.pdf) (last accessed April 15, 2024).

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We focus on three main areas in our article below: (1) positive trends for RC operators and issuers; (2) potential RFE issues to prepare for, and (3) unresolved issues to be aware of in the future.

## POST-RIA ISSUES AND RISKS TO CONSIDER

### GOOD NEWS: MULTI-STATE GEOGRAPHIC DESIGNATIONS

Whether it's because they want to allow Regional Centers to maximize their ability to promote economic growth post-RIA, USCIS seems to be more open to granting multi-state designations for Regional Centers post-RIA. Whereas it wasn't unusual pre-RIA for Regional Centers to receive detailed RFEs asking for justification of different swaths of a state (Northern versus Southern California for example), post-RIA, USCIS appears to thankfully take a more business-friendly approach lately when it comes to allowing multi-state designations.

Although USCIS maybe more accommodating of requests for multi-state geographic designations, it is critical that the Regional Center provide credible evidence that their proposed projects and pipeline will reasonably promote economic growth in their requested area. A naked request or plea without any verifiable or credible evidence of economic growth in the requested states is likely not very compelling and a good waste of filing fees.

On the other hand, a submission that provides evidence of actual and hypothetical projects in the RC's pipeline, where they are located in the RC's requested area, and the expected economic impact, would be much more persuasive. While the entire I-956 application is important, there are key items that USCIS will find helpful. A well-crafted and researched economic analysis tying together the economic activity of the Regional Center's proposed economic activities should be Exhibit A. In our experience and discussions with economists, we find that acceptable analysis includes commuting data crisscrossing multiple counties, or even supply-chain data showing the "hub and spoke" nature of spending and its resulting impact on surrounding areas. Second, a well-written Regional Center operational plan detailing how the Regional Center intends to oversee and manage a wide range of offerings across multiple states would provide powerful credible data about the Regional Center's sufficient manpower and resources to manage the requested area. Finally, business plans or summaries providing details about the actual or hypothetical proposed projects would tie everything together (and provide objective information/data for the economic analysis).

### SUPPLEMENTAL I-956 AND I-956F FILINGS: UPDATE VERSUS MATERIAL CHANGE?

While USCIS and IPO have confirmed that they will accept supplemental filings for both I-956 and I-956F matters, it is important to consider the actual substance and nature of the supplemental submission that will be interfiled as these petitions are pending.

Given the processing timelines for I-956 and I-956F petitions and the general development timeline of projects, it's natural

that there may be substantive or important updates that a Regional Center or Issuer will want to file with IPO. For one, from a best practices standpoint, there may be outstanding issues that were pending or unresolved when an offering went to market, such as the closing date of a senior loan or other key component of the project's financing. An issuer in such a situation who closes on senior financing would reasonably want to provide an amendment/notice to their current investors, as well as to update USCIS on this key development, both to lower investor anxiety over project viability as well as to preempt a predictable RFE from USCIS.

However, beware that filing a supplemental submission that provides drastically different information may be viewed as a material change and a new I-956 or I-956F may be required. We still believe that a fundamental change in a project's asset class or purpose will likely require a new I-956F filing versus a mere supplemental filing (for example, an I-956F originally filed for a hotel will likely no longer be valid if the developer suddenly pivots to multifamily housing for the same project site).

### REGIONAL CENTER STAFFING: HOW MUCH IS ENOUGH?

In terms of regulatory or enforcement priorities, the agency has seemed to put a particular focus on ensuring Regional Centers have transparent staffing, operations, and ownership structures. Whether a Regional Center has no employees or over 50, they should be prepared to address questions about whether the Regional Center has sufficient personnel to run their operations and who are their key personnel with decision-making authority over operations and EB-5 financing.

From a staffing standpoint, Regional Centers with only a handful of people (including owners) may receive a RFE requesting evidence that they have sufficient personnel to oversee their various projects, investor database, I-956G reporting, etc. Since a number of Regional Centers may be new or may have vastly different staff post-RIA (and post-COVID), it is helpful to dedicate extra space in a Regional Center Operations or Compliance manual to explaining the staffing in place is sufficient staff to effectively oversee its operations now and in the future if necessary. For example, some Regional Centers are simply winding down their past offerings and don't need a large payroll to manage the I-829/repayment process. Others have invested in software or fund management platforms that have largely centralized and automated such functions. A Regional Center can also explain that its staffing is sufficient for now but that it will hire additional people as it grows and as it becomes necessary. The above are real-life factual scenarios that are specific to each group and all have been approved. A viable and commonsense plan is most important.

### REGIONAL CENTER STAFFING: FORM I-956H AND KEY PERSONNEL?

Regional Centers with mature operations and staffing may run into a different issue – USCIS may issue a broad request

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demanding information about each Regional Center employee and whether or not they have decision-making authority or substantive control over Regional Center Operations or EB-5 financing under INA §203(b)(5)(H). Regional Centers can expect adjudicators to list almost every Regional Center staff member identified on their website who appears to be involved with sales, marketing, finance, or investor relations. It would be effective to explain who the Regional Center's ultimate decision makers are, and the chain of command of people that actually have power or control over such decisions.

### REGIONAL CENTER: INDIRECT OWNERSHIP OR FINANCIAL INTEREST?

Similarly, USCIS has taken a similarly broad analysis of the entities and individuals that it deems to have indirect ownership or financial interest in a Regional Center. This most commonly appears in Regional Centers that are owned by layers of holding companies and individuals.

USCIS' main focus is identifying all potential owners, regardless of whether they claim to have only a passive financial interest, to run I-956H background checks on them to ensure they are qualified to participate or be associated with a Regional Center under the RIA. Corporations and trusts should expect to file I-956H not only for the entity, but for the ultimate individuals or beneficiaries behind such owners. USCIS has made similarly broad requests for any foreign ownership of a Regional Center, whether the ownership interest is held as an individual or through an entity.

### PROJECT FINANCING: SHOW ME THE MONEY

One thing remains unchanged with USCIS adjudication of EB-5 offerings – any EB-5 offering that doesn't clearly have all the financing in place to complete construction of its project should expect an RFE requesting evidence that all financing has been secured (or will be imminently secured) before USCIS will approve the underlying I-956F. The rationale for this is straightforward and dovetails with advice we give our own investors – one of the simplest ways of mitigating project risk is to simply pick a project that has all its financing in place already (and EB-5 would presumably be only to payoff bridge financing or lower the cost of capital elsewhere). USCIS is right to be concerned about whether projects are ultimately viable, especially if a chunk of their necessary capital is to be determined in the future. Issuers who go to market before all financing is secured can expect similar questions from agents and investors during the due diligence phase. If senior financing is secured after the initial offering, we advise that a supplemental I-956F be interfiled to update USCIS on this critical information.

USCIS has also taken careful approach with analyzing bridge financing. USCIS has always stated that whether bridge financing qualifies is determined on a case-by-case basis, and issuers are advised to provide a careful factual analysis of why they believe their bridge financing qualifies to be taken out by EB-5 funds.<sup>2</sup> This is especially important because stakeholders tend to forget the importance of laying out a strong factual framework to help USCIS understand why something was or wasn't intended to be short-term. In terms of recent history, if a developer was forced to take on burdensome financing due to volatility with development plans and financing availability due to COVID-19 and roller coaster interest rates, it should clearly be explained. Similarly,

if a developer was forced to take on exorbitant financing or otherwise be in danger of losing a deal or to remove building restrictions imposed by local government, evidence should be provided showing the above. Declarations from the developer or those involved with project financing, and explanations/evidence provided by key construction personnel such as engineers or General Contractors, would be a good start here. Strong facts are needed to help the agency understand why the circumstances of a particular project needed bridge financing.

### CLOSING THOUGHTS

While there are still unanswered questions and issues for which stakeholders await guidance from USCIS, the above article paints some themes that the agency is clearly focused on.

While USCIS and IPO may be more accepting of a wide range of Regional Center structures and offerings, they clearly have zeroed in on transparency of Regional Center operators, ownership, and financing. This makes sense given that USCIS recently announced it would begin to roll out Regional Center audits under the RIA despite a number of other RIA issues that remain unresolved.<sup>3</sup> However, the positive news is most of the issues raised in this article are manageable and can be navigated by EB-5 stakeholders and we hope USCIS continues to fairly and swiftly adjudicate I-956 and I-956F petitions moving forward. ▀

<sup>2</sup> See, e.g., "EB-5 Bridge Financing: A Study of Market-Driven Applications & Definitions," by Nima Korpivaara, Phuong Le & et al., IIUSA Regional Center Business Journal, Volume 6, Issue 1 (April 2018).

<sup>3</sup> See "EB-5 Regional Center Audits" (last updated April 9, 2024). <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits> (last accessed April 15, 2024).

