

REAUTHORIZING AND REFORMING THE EB-5 REGIONAL CENTER PROGRAM: EB-5 Reform and Integrity Act of 2021

The EB-5 Regional Center program began in 1993 as an outgrowth of the EB-5 visa. The current program provides a green card to individuals who invest \$1.8 million in a business in the United States that creates 10 jobs. The investment amount is lowered to \$900,000 in high unemployment and rural areas — areas that typically struggle to attract development and retain jobs. The Regional Center program allows multiple EB-5 investors to pool capital, which can generate significant investment. Since September 2015, the authorization for the Regional Center program has generally been tied to spending vehicles. However, it was decoupled from appropriations during negotiations over the FY21 omnibus appropriations bill in December 2020, and it is currently set to expire on June 30, 2021.

In recent years, the program has come under intense scrutiny. Concerns have been raised related to national security and the program's susceptibility to fraud and abuse.

The EB-5 Reform and Integrity Act of 2021 addresses these concerns by providing vital integrity and national security reforms to the program. This legislation will enable the Department of Homeland Security (DHS) to better guard against abuse and promote program integrity, as well as provide all users of the program critical safeguards against fraud and the stability of a 5-year reauthorization.

Authored by Senators Chuck Grassley (R-Iowa.) and Patrick Leahy (D-Vt.), this bipartisan legislation would do the following:

SECTION 1: Naming legislation the “EB-5 Reform and Integrity Act of 2021”

SECTION 2: Contains the core oversight provisions:

- **Extends the program** through 2026;
- **Requires regional centers, which are responsible for overseeing EB-5 projects, to have policies and procedures in place to protect against fraud;**
- **Requires that regional centers file proposed EB-5 project business plans with DHS,** including offering documents and marketing materials;
- **Requires more disclosures to investors regarding material business risks and conflicts of interest** in EB-5 projects;
- **DHS approval of business plans is binding for subsequent investors in the same project unless there is evidence of fraud, misrepresentation, or a material change;**
- **Strengthens the definition of “created jobs”** to ensure that job creation statistics are supported by validated methodologies and created jobs are new and not simply re-located or estimated to be created through the purchase of publicly available bonds;
- **Requires that regional centers notify DHS of significant changes to their structure;**
- **Requires DHS to audit regional centers every 5 years;**
- **Requires DHS to perform site visits to EB-5 projects;**
- **Requires regional centers to provide annual statements to DHS and to their investors accounting for investor capital and certifying compliance with program requirements;**
- **Requires background checks** of regional center and certain project principals, and requires that regional center principals, responsible for overseeing the foreign investor's participation in this visa program, be U.S persons or lawful permanent residents;

- **Clarifies that EB-5 project offerings are subject to U.S. securities laws** and regional centers must use commercially reasonable efforts to ensure compliance with securities laws;
- **Establishes an “EB-5 Integrity Fund”** in which regional centers and investors would pay fees to be used by DHS to conduct audits and site visits to detect and investigate fraud in the United States and abroad;
- **Requires that foreign agents and third-party promoters of the EB-5 program abroad register with DHS** and adhere to guidelines for representing the visa process and complying with the law;
- **Strengthens DHS’s ability to vet foreign investor capital** to ensure it is lawfully sourced, including any capital gifted or loaned to the investor;
- **Allows good-faith investors who were defrauded the ability to continue participating in the program if they were not involved with the fraud** and they associate with EB-5 entities in good standing and meet all other program requirements;
- **Provides increased authority to DHS to deny or revoke the approval of applications where there is fraud, criminal misuse, or a threat to public safety or national security;**
- **Provides investors and petitioners with administrative appellate review of certain DHS decisions and adjudications;**
- **Requires that investor capital be maintained in non-comingled accounts in U.S. banks** to prevent the misuse of investor funds;
- **Requires that EB-5 projects utilize a fund administrator or commission an independent annual audit** to prevent the misuse of investor funds;
- **Integrity measures would take effect 90 days after enactment.**

SECTION 3: Makes corresponding, technical, and otherwise efficiency-based changes to the EB-5 adjudication process.

SECTION 4:

- Provides definitions for terms used throughout the bill;
- Tightens the definition of EB-5 “capital” to ensure the integrity of investor capital;
- Protects against the age-out of the children of certain EB-5 investors whose petitions are terminated or whose applications to remove conditions are denied, by providing that if the immigrant investor petitions again, an unmarried son or daughter who has reached age 21 may still be considered a child of the EB-5 petitioner.

SECTION 5: Allows investors who have already filed or approved petitions to be adjudicated for program eligibility under existing law.

SECTION 6: Decreases petition processing times, which have been plagued by massive delays, by requiring fees be adjusted to the rate necessary to achieve quicker processing.

SECTION 7: Improves accountability and transparency by requiring that DHS employees document certain communications and by prohibiting preferential treatment.

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