

New Rules for the USA EB-5 Immigrant Investor Program – Conducting Project Due Diligence After the EB-5 Reform and Integrity Act of 2022

USA Investor Visas

EB-5 is a U.S. job creation program, with an immigration benefit. By investing either \$800,000 or \$1,050,000 in a direct job creating 10 U.S. workers, or 10 indirect jobs via the more popular Regional Center program, investors can now obtain green cards in the U.S., under certain circumstances, if lawfully present, as opposed to applying through a U.S. consulate or embassy abroad.

Under this new program, an investor can obtain an unrestricted work (or even study) authorization within months provided they meet U.S. legal entry visa requirements. The full green card residence permit approval is based on the success of the job creation but interim work and travel benefits are now available to certain immigrants within the U.S. via concurrent filing and adjustment of status.

From both an immigration and financial/investment perspective, it is critical that immigrant investors perform due diligence on EB-5 projects before investing.

With the passage of the EB-5 Reform and Integrity Act (“RIA”) of 2022 and long-term stability in the EB-5 Program, there is reinvigorated interest in this program. And while some aspects of [EB-5 due diligence haven't changed](#), the RIA establishes new considerations for prospective EB-5 investors. We detail some below:

- **Priority Processing:** The RIA states that USCIS “shall prioritize the processing and adjudication of petitions for rural areas” but does not provide further detail, and to date, USCIS has not provided any clarity on this matter. This is separate from “expedited processing,” which

could always be granted based on specific personal (or potentially EB-5 project related) considerations. Read [WR Immigration's blog on Expedited Processing](#).

- **Reserved Visas:** The RIA “reserves” a percentage of available EB-5 visas each year for new investments in qualifying rural or high unemployment areas or infrastructure projects to provide an incentive for a quicker green card for nationals from countries like China, Vietnam, and India who would otherwise be stuck in a visa backlog. As of today, these “reserved” visa categories are “current,” allowing for “concurrent” adjustment of status filings but those lawfully in the United States. Read WR Immigration EB-5 Partner Joey Barnett’s [in-depth article published in the Regional Center Business Journal](#) for more information on this topic. Note, just because an investor’s priority date is current at the time of I-526E filing does not mean that he/she will not be subject to a visa backlog or the establishment of a final action date at some point.
- **Job Creation:** The RIA limits the number of indirect and induced jobs estimated to be created by a new commercial enterprise or job creating entity to 90%, and to 75% if construction lasts under 2 years, and economists will need to make adjustments to job creation figures in the economic reports. While few industries in the U.S., have an (indirect + induced) job threshold as high as 90% relative to the total size of the total multiplier (direct + indirect + induced) effect, this becomes a more important consideration if construction is under 24 months.
- **Fund Administration:** An entire section of the RIA relates to “Fund Administration,” one of the law’s biggest “integrity” measures. It requires, unless otherwise waived by USCIS, each new commercial enterprise to retain an independent fund administrator to monitor, track, approve, and verify fund transfers of EB-5 capital. Immigrant investors may wish to ensure that the fund administrator is truly independent and has authority for access to information and accounts.

- **Regional Center Terminations:** The RIA does provide some cover for immigrant investors who invested in a project associated with a Regional Center that is terminated due to failure to promote economic growth, provide annual information and certifications, or comply with the RIA's integrity measures. However, it is still important to ensure the Regional Center has complied with its responsibilities to USCIS and to the sponsored new commercial enterprise, and that the new commercial enterprise is ready to act in the event the regional center is terminated by USCIS.

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