

PUBLICATION

Settlement Allows Previous EB-5 Regional Centers to Sponsor New Investors

Authors: Robert C. Divine

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An agreement settling litigation against USCIS overturns its initial interpretation of the EB-5 Reform and Integrity Act of 2022 (RIA) and allows regional centers (RCs) that were designated before RIA enactment to sponsor new investors. This avoids a practical shutdown of EB-5 investment. The settlement also does not seem to disturb USCIS's initial interpretation that investors who filed Form I-526 before RIA enactment may continue their immigration progress based on the law in effect when they filed and without regard for the continued designation or operation of the RC that sponsored them. Both results are a win for EB-5 investors.

Two lawsuits were brought against USCIS by different RCs and were joined by Invest in the USA (IIUSA), the industry association of RCs, challenging USCIS's initial interpretation of RIA that previous designations of approximately 900 RCs were void. That interpretation required brand new applications for any RCs and prevented them from sponsoring new investors until the applications were adjudicated, which could take years. The court ruled in a preliminary injunction that RIA was not meant by Congress to have that effect and that previously designated RCs could sponsor new projects after filing a new mandatory "project application" (similar to the previously optional "exemplar" application). The [settlement](#), which is expected to be approved by the court very soon, locks in that ruling with some extra details:

- To sponsor new investors, Previously Approved Regional Centers (Pre-RIA RCs) must have been "in good standing" upon RIA enactment. Unfortunately, the settlement does not clarify what is meant by "good standing". Some RCs had failed to file annual reports in late 2021 because USCIS had declared the expiration of the RC law on June 30, 2021, to prohibit new filings. It seems unlikely that USCIS will challenge those RCs' "good standing," and it is not even clear if they can try to retroactively file FY2021 reports.
- Pre-RIA RCs who wish to sponsor new investors must file Form I-956 by December 29, 2022 (if not already filed) as an amendment, showing that they have required RIA policies and procedures in place, but they will not need to wait for approval to continue sponsoring investors. In that amendment, RCs may keep their previous geographic area of designation without further showing, but they can submit new project plans and economic analysis to support requests to expand the prior area to contiguous areas.
- A Pre-RIA RC that already submitted a Form I-956 may interfile documents to request a larger area.
- Because investors must include in their I-526E petitions proof of a receipt notice from the sponsoring RC's I-956F project application, if USCIS takes longer than 10 calendar days to issue a proper I-956F receipt, investors can use the RC's evidence of physical delivery and filing fee payment and then interfile the receipt numbers once received. This applies also to I-956Fs already filed. For at least the first 16 weeks after the judge approves the settlement, USCIS will also issue I-956F receipt notices by email.

- New investors in projects with pre-RIA I-924 exemplar approval still need to have the RC file I-956F to show qualification under new RIA requirements, but USCIS should defer to the prior approval about unchanged requirements.
- While it is not completely clear, it appears that USCIS acknowledges that new provisions with protections for good faith investors whose RCs get terminated or NCEs or JCEs get debarred can apply to pre-RIA investors.
- USCIS will initiate notice and comment rulemaking soliciting comment about its new forms I-956, I-956H, I-956F, I-956G, and I-526E (as well as I-526 for standalone projects), but those forms remain in effect in the interim.
- USCIS will publish an FAQ about the settlement within 21 days of judge approval.

Our [original analysis of the effect of the RIA](#) remains valid, other than the paragraph about "Confusion for Existing RCs," as that confusion is resolved by the settlement. Nevertheless, we look for USCIS to re-confirm its generous approach to pre-RIA investors in relation to a sponsoring RC that chooses to file I-956 and then gets in trouble.

Of course, many other RIA issues await USCIS interpretation and implementation. In early May we submitted to USCIS a set of "[Questions and Comments](#)" to help guide USCIS through its implementation. We note that our proposal regarding Pre-RIA RCs was exactly where the court and the parties ended up.

If you have any questions about these developments, contact [Robert Divine](#).