



July 16, 2024

PA-2024-20

## Policy Alert

SUBJECT: EB-5 Regional Center Noncompliance and Sanctions

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to address the new provisions added to the Immigration and Nationality Act (INA) by the EB-5 Reform and Integrity Act of 2022 (RIA) relating to the consequences to regional centers, new commercial enterprises, job creating entities, and investors for noncompliance in the EB-5 program.<sup>1</sup>

### Background

The INA makes immigrant visas available in the EB-5 category to qualified investors who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers. EB-5 investors have historically had the option of participating in the Regional Center Program, which allows an investor to rely on indirect job creation when they invest through a USCIS-designated regional center.

On March 15, 2022, the RIA was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions (as well as protections for good faith investors).<sup>2</sup> USCIS published revised guidance for investor petitions to align certain content with the new law.<sup>3</sup>

This guidance, contained in Volume 6 of the Policy Manual, further updates Part G, Investors, to incorporate statutory reforms included in the RIA. The reforms add new authority for USCIS to sanction regional centers at various levels for noncompliance with statutory requirements, such as paying the EB-5 Integrity Fund fee. The reforms also provide new protections for good faith investors. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

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<sup>1</sup> See EB-5 Reform and Integrity Act of 2022, Division BB of the Consolidated Appropriations Act of 2022, [Pub. L. 117-103](#), 136 Stat. 49, 1070 (March 15, 2022).

<sup>2</sup> See EB-5 Reform and Integrity Act of 2022, Division BB of the Consolidated Appropriations Act of 2022, [Pub. L. 117-103](#), 136 Stat. 49, 1070 (March 15, 2022).

<sup>3</sup> See [EB-5 Reform and Integrity Act of 2022](#), PA-2022-23, issued October 6, 2022. See [EB-5 Regional Center Program Reform](#), PA-2023-31, issued October 26, 2023.

## Policy Highlights

- Explains how good faith investors, including those who filed their petitions prior to the new law, may retain eligibility if USCIS terminates or debars the investor’s regional center, new commercial enterprise, or job creating entity.
- Provides the process and factors USCIS generally considers when assessing sanctions, including terminations, debarments, and suspensions, consistent with the plain meaning of the statute.
- Explains what typically constitutes threats to the national interest, fraud and material misrepresentation, deceit, and criminal misuse, consistent with the plain meaning of the statute.
- Explains that USCIS does not sanction individuals or entities for pre-RIA actions, but may still consider significant or recurring pre-RIA violations for the purpose of evaluating the severity of sanctionable post-RIA violation.

## Summary of Changes

Affected Section: Volume 6 > Part G > Chapter 3 > Section E, Good Faith Investors Following Program Noncompliance by a Regional Center, New Commercial Enterprise, or Job-Creating Entity

- Adds new italicized subheading “Special Considerations for Investors Who Filed Their Form I-526 Petitions Before March 15, 2022” and content at the end of section.

Affected Section: Volume 6 > Part G > Chapter 4 > Section H, Terminations, Suspensions, and Other Sanctions

- Revises Subsection 2 (Violations Permitting Various Sanctions) throughout.

Affected Section: Volume 6 > Part G > Chapter 5 > Section E, Revocations and Sanctions

- Revises second paragraph.

Affected Chapter: Volume 6 > Part G, Investors

- Adds new Chapter 8 (Sanctions and Discretionary Determinations).

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

## Citation

Volume 6: Immigrants, Part G, Investors [[6 USCIS-PM G](#)] (Chapters 3, 4, 5, and 8).

### *Additional Considerations*

#### **Applicability**

The law exempts interpretive rules from notice and comment rulemaking procedures.<sup>4</sup> Interpretive rules are those “which merely clarify or explain existing law or regulations,” “do not change any existing law or policy,” and do not “remove any previously existing rights.”<sup>5</sup> Interpretive rules only “explain what the more general terms of the Act” provide.<sup>6</sup>

USCIS is issuing this guidance to advise the public that it is interpreting the statutory requirements and penalties generally in accordance with their plain meaning.

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<sup>4</sup> See [5 U.S.C. 553\(b\)\(A\)](#).

<sup>5</sup> See *Powderly v. Schweiker*, 704 F.2d 1092, 1098 (9th Cir.1983).

<sup>6</sup> See *Powderly v. Schweiker*, 704 F.2d 1092, 1098 (9th Cir.1983).