

Five Proactive Steps for Strengthening the EB-5 Immigrant Investor Program



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The EB-5 Immigrant Investor Program offers a path to permanent residency for immigrants who invest in approved U.S. business projects. Its intent is to encourage the growth of the U.S. economy and to allow qualified applicants to be part of the American dream of freedom and opportunity. Recently, several news stories have reported alleged fraud and mismanagement by some EB-5 investment projects and investors. But the fact is that despite a few issues, this program has brought billions of investment dollars to our country and created thousands of American jobs over the past 25 years, all at no cost to the taxpayer. Rather than eliminating a program that has proven its benefit to investors, business projects and the U.S. economy, what's needed is to implement reforms to ensure projects and investors are rigorously vetted.

The program's positive effects are clear. Since its inception in 1990, the EB-5 program has attracted at least \$15 billion in investments (\$4.2 billion in FY15 alone), created at least 77,150 American jobs and provided more than 44,400 visas to the United States. EB-5 program investors have helped finance a Hollywood movie studio, a New York sports arena, office parks in Texas and the FBI office building in San Diego, among hundreds of successful projects.

It's also clear that the program needs some improvement, particularly in the areas of rigorous enforcement of compliance, enhanced oversight of project integrity and increased transparency for investors and the public. To this end, Congress is currently considering H.R. 5992, the American Job Creations and Investment Promotion Reform Act, which proposes, "To amend section 203(b)(5) of the Immigration and Nationality Act to implement new reforms, and to reauthorize the EB-5 Regional Center Program, in order to promote and reform foreign capital investment and job creation in communities in the United States, and for other purposes."

While some reforms are needed, many businesses that work with the EB-5 immigrant investor program are concerned that the government's approach could have some unintended negative consequences. There are immediate steps the industry can proactively take to adopt higher professional standards, as do firms in real estate and law. In doing so, the industry will be positioned to work more effectively with the government to maximize the benefits of the EB-5 program for those who wish to settle and invest in the United States, as well as for our country's economic growth and prosperity.

Many successful and effective business executives agree that best practices for any business should be built on the fundamental values of integrity, transparency, compliance and oversight. Industry-wide implementation of five basic standard practices based on these values would go a long way toward bringing a higher level of integrity to the EB-5 program, as well as greater success and value.



1. Disclosure of fees and financial information

A commitment to transparency means that EB-5 service providers should charge no hidden fees and take no short cuts. Using both numbers and charts, they explain exactly how the fee is applied to services that benefit investors, who also have full access to the financial reports on the project in which they are investing.

The proposed legislation rightly specifies that service providers and promoters of regional centers and investment projects register with the United States Citizenship and Immigration Service (USCIS) for public listing. It also requires that they provide specifics of their qualifications, submit guidelines for offering investment opportunities and provide details of the fee arrangements. Investors should sign off on these fee arrangements as well. Those in the industry who don't have these practices as standard operating procedures should take immediate steps to adopt them.

2. Management and ownership of regional centers

A commitment to full compliance with all current regulations and rigorous oversight of the projects being promoted to our investors is fundamental. Independent service providers are able to work with a range of regional centers to ensure that the best investment project is recommended for each individual investor. Staff should perform thorough due diligence on prospective projects, and also oversee the project's progress and fund disbursement through the regional center so that there are strong third-party financial controls.

The industry should use the types of controls outlined in the proposed legislation, which would require that New Commercial Enterprises (NCEs) and the Job Creating Enterprises (JCEs) – that is, the developer and the project manager – be separate entities to ensure essential checks and balances in the process. NCEs and JCEs should be rigorously evaluated to ensure that they are owned and operated by U.S. citizens or lawful permanent residents, and that no foreign government could provide funding or own, directly or indirectly, an interest in a regional center, NCE or JCE.

3. Regional center termination

The principles of compliance and oversight are also the foundation for how USCIS decides when and if to terminate a regional center. Dormant, non-performing regional centers put a strain on the entire system, so it's essential to have a standard procedure for closing them when needed. Currently, USCIS has indicated it has the authority to terminate a regional center only if it fails to file a Form I-924A each year or if USCIS determines it no longer serves the purpose of promoting economic growth.

However, one of the concerns voiced about the EB-5 program is that it does not provide sufficient safeguards for national security. The proposed legislation rightly gives USCIS additional authority to deny or revoke EB-5 benefits if approval “is contrary to the national interest of the United States for reasons related to threats to public safety or national security” or for fraud, misrepresentation, or criminal misuse. EB-5 service providers and the industry should work to ensure that these security provisions are put in force.



4. Site visits

Regular visits to EB-5 investment project sites and regional centers should be standard operating procedure for service providers that are committed to compliance and transparency. Only during a site visit can service providers see for themselves and on behalf of their investors how the project is progressing. During the site visit, it's important to check that all forms are being filed correctly and on time, that job creation is on target and that financial records are truly in order. This oversight information should be fully available to investors.

The proposed legislation rightly stipulates that USCIS be required to perform site visits to regional centers and to EB-5 project locations. Professionally conducted with advance notice to legal counsel and to those involved, site visits would likely improve the reputation and credibility of the EB-5 program and help regional centers boost the confidence of EB-5 investors.

5. I-924A information requirements

Every regional center must submit the I-924A form annually to maintain approval in the EB-5 program. The form requires that regional centers report their project progress, including total capital investment, economic impact and jobs created.

The proposed legislation would require much more extensive financial and administrative updates from regional centers each year. Proposed requirements include details of commissions or similar transaction-based compensation paid to any third parties who locate individual investors, as well as records, data and information relating to all offers, purchases, sales and investment advice associated with an offering. Most of these additional requirements would be beneficial by contributing to additional transparency and understanding of the value of EB-5 projects.

However, it's important to recognize that much of the industry's success has been because of the hard work of agents worldwide, who educate potential investors through expensive marketing endeavors. The role of agents in the EB-5 industry is like that of realtors, who are critical to maintaining vibrant real estate markets, and insurance agents, who are critical to ensuring a robust economy. Requiring compensation details could imply that agents are not acting in good faith, placing these critical players in poor light. In addition, rules for agent compensation vary from country to country, creating difficulty in comparison and evaluation.



Overall, the proposed legislation could bring much needed improvement to the EB-5 program, and proactive implementation of the five recommendations above by the EB-5 industry would show good faith and create greater transparency, oversight, compliance and integrity.

There is another action the U.S. Congress could take that would go a long way toward stabilizing and regulating the EB-5 program. That is to authorize the program permanently so that time and energy aren't wasted each year on concern that the program will lapse, but instead can be used for improving and expanding its positive impact on the U.S. economy and on providing opportunity for people around the world who want to make new lives for themselves in the United States.

The EB-5 Immigrant Investor Program offers proven benefits to investors who are interested in settling in the United States, to business leaders who can find a broad base of investment for worthwhile projects and to service providers who offer valuable services to facilitate a process that is necessarily complex. The industry needs to build on success by implementing the standard practices discussed here, ensuring that integrity, transparency, compliance and oversight are the program's fundamental values.

USEFUL WEBSITES FOR THE INVESTOR

[Nysa EB-5, LLC](#)

[United States Citizenship and Immigration Services](#)

[Invest In the USA](#)

[Congress.gov: H.R.5992 - American Job Creation and Investment Promotion Reform Act of 2016](#)

SOURCES

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