



Legislative Changes to the EB-5 Immigrant Investor Program

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The [EB-5 immigrant investor program](#) provides lawful permanent resident (LPR) status to foreign investors (and their spouses and unmarried children under age 21) who invest a specified amount of capital in a new commercial enterprise (NCE) in the United States that creates at least 10 jobs. The program is administered by U.S. Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security (DHS). Investors who choose a *targeted employment area* (TEA)—a rural area or area of high unemployment—qualify for reduced investment amounts. The law permits the admission of approximately 10,000 investors/qualifying relatives annually (7.1% of all employment-based visas).

EB-5 offers two pathways. In the standard or stand-alone pathway, foreign nationals invest in a new or existing enterprise that uses the capital for direct job creation. The second and more common pathway, the [Regional Center Program](#), allows investors to pool investments into an NCE, which are typically used to fund a separate job-creating entity (JCE). Regional center investors may count [indirect jobs](#) toward the job creation requirement. Regional centers must be designated by USCIS to be eligible for EB-5 investments; USCIS may terminate designations for those not in compliance.

The Regional Center Program was initially authorized as a pilot program and has never been made permanent; it must be regularly reauthorized. On June 30, 2021, its authorization expired and the program [remained lapsed for nearly nine months](#), during which time USCIS [did not process pending applications](#) and rejected new applications associated with regional center investments.

EB-5 Reform and Integrity Act of 2022

In March 2022, Congress passed the EB-5 Reform and Integrity Act of 2022 (hereinafter, “2022 Act”) as part of an omnibus funding package (P.L. 117-103). The legislation, codified in [Section 203\(b\)\(5\)](#) of the Immigration and Nationality Act (8 U.S.C. §1153), reauthorized the Regional Center Program, and implemented a number of changes and requirements for investors and regional centers.

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Capital Investment Requirements

Prior to the 2022 Act, investment requirements remained unchanged from 1990 (\$1 million/\$500,000 in a TEA) until a [2019 federal regulation](#) increased them (\$1.8 million/\$900,000 in a TEA). However, in June 2021, that rule was [vacated](#) by a federal district court and amounts reverted to those in place prior to 2019.

The 2022 Act set new requirements: minimum investments of \$1,050,000, or \$800,000 in a TEA or infrastructure project (see “TEAs,” below). The new amounts reduce proportionally the discount for TEA investments from 50% to 24%. These amounts are to be adjusted for inflation every five years beginning January 1, 2027.

TEAs

Since the EB-5 category was enacted, the law has defined *high unemployment areas* as those that have experienced at least 150% of the national average unemployment rate. In the past, state officials would designate geographic or political subdivisions as areas of high unemployment. Certain such designations were subject to [gerrymandering](#) allegations.

Under the 2022 Act, only USCIS may designate high-unemployment TEAs, which include the census tract or contiguous census tracts in which the NCE is principally doing business. The act specifies that the weighted average of the unemployment rate for the census tracts must be at least 150% of the national average.

Rural areas are areas outside Metropolitan Statistical Areas, as designated by the Office of Management and Budget (OMB), or areas outside of cities and towns with populations less than 20,000, based on the most recent decennial census. The 2022 Act specifies that USCIS shall prioritize processing and adjudicating EB-5 petitions for regional center investments in rural areas.

The 2022 Act specifies certain EB-5 immigrant visa set-asides for those who invest in TEAs, including the following:

- 20% for qualified immigrants who invest in a rural area,
- 10% for qualified immigrants who invest in a high-unemployment area, and
- 2% for qualified immigrants who invest in an *infrastructure project*.

The 2022 Act defines an infrastructure project as a “capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment ... as financing for maintaining, improving, or constructing a public works project.”

Regional Center Program

The 2022 Act re-authorizes the Regional Center Program through September 30, 2027. As a result, USCIS resumed processing regional center-based applications. Applications are subject to the law in place at the time of filing (e.g., investment requirements). In the event of a future lapse, the act directs USCIS to continue processing petitions filed before the expiration date. It also specifies parameters for indirect jobs, which may count toward 90% of the job creation requirement.

USCIS interpreted the 2022 Act to mean that all previously designated regional centers were no longer authorized and required them to reapply for designation. [Litigation](#) regarding regional centers ensued. In June 2022, [a federal district judge ordered USCIS](#) to allow previously designated regional centers to continue participating in the EB-5 program while the litigation was pending, stating that USCIS’s

interpretation “was almost certainly legal error.” In a subsequent [settlement agreement](#), USCIS agreed to allow previously designated regional centers to retain their designation.

Oversight Measures

The 2022 Act includes a number of oversight measures, primarily targeted toward regional centers, that address concerns that had been raised about [fraud and abuse](#) in the program. It establishes an *EB-5 Integrity Fund*, funded by annual regional center fees (\$20,000, or \$10,000 for those with 20 or fewer investors) and \$1,000 fees from each [Immigrant Petition by Regional Center Investor](#) filed.

USCIS must use the fund for investigations, including detecting and investigating fraud and other crimes related to the program, determining compliance, and conducting regional center audits (every five years) and site visits (for each new NCE or JCE). The 2022 Act sets requirements for fund administration, business plans, and annual statements. DHS may sanction those who submit fraudulent statements. The 2022 Act also sets rules and standards for third-party promoters of a regional center, NCE, or JCE.

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