

How EB-5 Regional Centers Can Prepare For USCIS Audits

By **Jennifer Hermansky and Miriam Thompson** (May 3, 2024)

On April 9, U.S. Citizenship and Immigration Services introduced audit guidelines for EB-5 regional centers as part of the EB-5 Reform and Integrity Act.[1] Prior to the RIA passage in 2022, USCIS infrequently conducted audits of regional centers, and there was no published guidance, or statutory or regulatory consequences for a regional center's failure to comply with an audit.

The RIA now requires USCIS to audit regional centers every five years to verify compliance with immigration and securities laws, and the flow of the EB-5 funds into the projects sponsored by the regional center.

The new audit guidelines highlight the importance for regional centers of meticulous recordkeeping and strategic preparation prior to receiving an audit notification in order to maintain compliance and facilitate a seamless audit process.

USCIS' regional center audits are intended to enhance the integrity of the EB-5 program by confirming the accuracy of regional center applications, certifications and investor petitions. During audits, noncooperative regional centers may face designation termination, although negative findings do not immediately affect the entities or petitioners sponsored by the regional center unless deliberate noncompliance is discovered.

From April 23, audits will align with generally accepted government auditing standards for consistency, and aim to ensure a thorough review of the regional centers' compliance with federal requirements.

Regional centers should expect USCIS auditors to:

- Review applications, certifications and related records;
- Inspect public records and additional information about the regional centers;
- Verify supporting documentation submitted with applications and in annual statements;
- Perform in-person audits through a site visit, when applicable;
- Evaluate the effectiveness of internal controls related to the regional center's administration, oversight and management functions;
- Review and analyze financial documentation;
- Review the flow of investor capital into capital investment projects; and



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- Interview personnel to confirm the validity of the information provided with applications and annual certifications.

Generally, it is likely that USCIS will review updated project information and the flow of EB-5 investor money for each project, the underlying job creation documentation and analysis for each project, any related securities filings for each sponsored new commercial enterprise, and financial information and payments made to third parties, including foreign finders for each project under the regional center's sponsorship.

Importantly, this would also include records relating to pre-RIA projects under sponsorship of the regional center.

A regional center audit begins as of the date of the USCIS' audit notification letter and request for information. An audit includes several stages, including:

1. A virtual conference outlining the procedures and documents required to be prepared and sent before the in-person audit occurs;
2. USCIS' receipt and review of information submitted by the regional center;
3. An in-person or virtual site visit;
4. An exit conference;
5. A closeout memo; and
6. Final audit results.

The timeline of an audit may vary depending on issues presented in the audit and the regional center's timely responses to USCIS' information requests in connection with the audit.

Regional center recordkeeping is critical to prepare for an audit. Preparation does not begin with the receipt of the audit notice, but rather at the time of filing the initial application for regional center designation.

With each new regional center application filed on Form I-956, or on Form I-924 prior to enactment of the RIA, a regional center was required to outline and describe its organizational structure, operating procedures and regional center administration. However, an audit is a more detailed review of the regional center as compared to the compliance reviews that USCIS performed pre-RIA.

Regardless of whether or when a regional center last had a compliance review, the requirement to audit each regional center at least once every five years remains the same.

In preparation for an audit, a regional center should preserve all evidence and documents related to its annual certifications and its I-526, I-526E and I-829 petitions. Regional centers should thereby be ready to present any related information, such as books, ledgers, records and other documentation; updates to that information; and any supplemental information requested in the audit notice that the regional center has not already provided.

USCIS may also ask for additional support to verify information submitted in prior regional

center petitions, applications or annual statements, such as books, ledgers, records and other documentation that the regional center, new commercial enterprise, or NCE, or job creating enterprise uses to support the annual statement and associated petitions.

Specifically, recordkeeping obligations related to USCIS regional center audits and site visits may include:

- I-526 and I-526E template materials for each NCE;
- I-829 template materials, including the full flow of EB-5 funds and job creation evidence for each NCE;
- All corporate offering documents for each NCE;
- Any securities filings made by an NCE or on behalf of an investor;
- All EB-5 loan agreements, amendments and NCE exhibits;
- Copies of finders agreements executed for each NCE or job creating enterprise, if applicable;
- Copies of executed agreements with licensed broker dealers, if any, for each NCE or capital raise;
- Documentation of any compensation paid to the regional center, foreign finders, broker dealers, and NCE managers;
- Documentation relating to all such securities offers, purchases, sales and investment advice during the five-year period beginning on the date of their creation, including:
 - Complete offering documents, subscription agreements, LLC agreements and amendments for each NCE, escrow agreement, etc.;
 - Individual investor files including immigration and identity documents such as passports; I-526, I-526E and I-829 notices; and green card; and
 - Executed legal agreements — such as subscription agreements, LLC agreement signature pages, any executed side letters, and any executed expulsion or withdrawal documents.

The holding period for this evidence is for five years, beginning on the last day of the federal fiscal year in which any transaction occurred. The last day of the federal fiscal year is Sept. 30. For example, if a loan redeployment occurred April 1, 2023, then those records must be preserved for a five-year period starting on Sept. 30, 2023, through Sept. 30, 2028.

Regional center audits create an opportunity for USCIS to confirm, in person, that each regional center is practicing what they have promised. Audit notices that USCIS will be visiting a regional center have a short lead time, and will provide a data-collection list of items to have available for USCIS review, so preparation is key.

Consenting to and participating in a USCIS audit is a requirement for keeping regional-center designation. Creating a smooth audit process for USCIS is critical, not only to maintain regional-center designation but also, most importantly, to help maintain and ensure a successful immigration path for investors.

Many of the documents required for retention over various five-year periods are documents regional centers already keep through the completion of the template materials they provide to investors. However, there could be corporate documents required that should be reviewed, organized and kept in case of a USCIS audit, and for the annual compliance process, such as finders agreements and information on amounts paid by each NCE to third parties.

The updated audit requirements reflect a significant shift in how USCIS intends to oversee and regulate the EB-5 regional center program. For regional centers, staying compliant with these new regulations will be vital to maintaining their designation and supporting their investors' immigration pursuits. Investors, on the other hand, will need to be more diligent in selecting regional centers that consistently adhere to USCIS regulations.

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[1] USCIS has published a new EB-5 Regional Center Audits webpage with detailed information on the audit process at <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits>.