

Summary of S.2415: EB-5 Integrity Bill



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On December 17, 2015, two days after Senate and House leadership recommended a “clean” extension of the EB-5 program until September 30, 2016, Senator Flake (R-AZ), with Senator Cornyn (R-TX) and Senator Schumer (D-NY), introduced S.2415, the “EB-5 Integrity Act of 2015.” This is the first new piece of EB-5 reform legislation introduced since the EB-5 program’s original sunset date of September 30, 2015. It is the sixth bill introduced in the 114th Congress that seeks to reform the EB-5 program.

The bill includes significant oversight and integrity reforms, many of which reflect earlier Senate legislation introduced in June of 2015. The integrity measures included in S.2415, as with those in prior bills, have been largely welcomed by the EB-5 industry. Several of these provisions follow recommendations from the Department of Homeland Security (DHS), the Government Accountability Office (GAO), and leaders in the Congress. The majority of the provisions mirror the reforms proposed in S.1501 and later discussion draft bills that circulated amongst stakeholders in November and December 2015. The following are some of the main integrity measures designed to reform the EB-5 program:

- **Regional Center Program:** the bill sets out job creation requirements, prohibits the use of investor funds to purchase publicly available bonds, and provides guidelines for Regional Center amendments.
- **Business Plan for Preapproval:** the bill provides that an application must be filed prior to an investor’s filing of a petition. The bill lays out the numerous requirements for the business plan, and provides that approval of the business plan will be binding on future adjudication absent certain circumstances.

- Reporting requirements in regional center annual statements are strengthened and expanded.
- Bona Fides of Persons Involved with a Regional Center: the bill requires background checks and provision of biometric information for those involved with the regional center.
- Ownership of a regional center by a foreign government or governmental entity is prohibited, including financial support.
- New authorities for DHS: the bill provides broad new authorities for DHS to terminate a regional center, debar or suspend regional center program participants, or deny or revoke investor petitions based on a variety of enumerated grounds including threats to the national interest, fraud, or misrepresentation.
- Annual regional center certification is required to demonstrate compliance with securities laws.
- The bill establishes an EB-5 Integrity Fund, funded by regional centers through a \$20,000 or \$10,000 fee per regional center, depending on the size of the regional center, and \$1000 per investor.
- Enhanced oversight of direct and third party promoters: such promoters must register with U.S. Citizenship and Immigration Services (USCIS) and meet certain requirements. Investors must sign a disclosure reflecting an understanding of the rules and procedures, and the fees involved.
- New source of funds requirements: gift restrictions and loan restrictions enumerated. The required documentation includes a provision for 7 years of tax returns, if applicable in the taxing jurisdiction.
- Effective dates: all amendments made under the Regional Center Program will be effective 90 days after date of enactment. The provisions governing source of funds and amendments to the regional center will be effective on the date of enactment.
- New reports: the bill requires reports from the GAO and a multi-agency inspectors general report.
- Transparency of agency operations: the bill contains provisions to enhance transparency of agency operations, monitor agency communications with stakeholders, and ensure non-preferential treatment of regional center and investor petitions.

This EB-5 Integrity Act of 2015 does not include reforms to current policies such as the definition of Targeted Employment Areas or minimum investment amounts. It is likely that when Congress returns from the winter recess for the second session of the 114th Congress, hearings and additional legislation may follow. The EB-5 Integrity Act represents another step by Congress toward the significant reform of the EB-5 Regional Center Program. The EB-5 Regional Center Program is set to expire on September 30, 2016.

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