



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

October 27, 2023

Ms. Alissa Emmel
Chief Immigrant Investor Program Office
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive,
Camp Springs, MD 20588-0009

RE: Urgent Request for Clarification of New Policy Guidance for Pre-RIA Regional Centers Regarding Deadline to File Form I-956G & Pay Annual Integrity Fee

Dear Ms. Emmel:

This letter is written to request urgent clarification of the Policy Guidance issued on October 11, 2023, specifically relating to pre-RIA Regional Center terminations. The need for clarification is highly time-sensitive given that the Form I-956G filing deadline is **December 29, 2023** and payment of the Annual Integrity Fee is due on or before **December 30, 2023**. At present, previously approved Regional Centers are unable to make informed decisions with respect to both requirements in the absence of the additional guidance now requested from USCIS.

On October 11, 2023, USCIS issued new [Guidance](#) on numerous aspects of the EB-5 program impacted by enactment of the EB-5 Reform and Integrity Act of 2022 (RIA) on March 15, 2022. In particular, the guidance introduces a new winding down concept for pre-RIA Regional Centers based upon termination for “purely administrative noncompliance,” an undefined term. The guidance creates serious questions regarding this termination process and the continued eligibility of EB5 Investors sponsored by such Regional Centers.

Given the enormous impact of this new guidance, both to hundreds of pre-RIA regional centers and to tens of thousands of sponsored EB-5 Investors, AILA urgently requests further clarification with respect to the deadlines referenced above as both are events that potentially create severe termination penalties. USCIS must urgently define the scenarios that will be considered “purely administrative noncompliance” for termination of regional centers with only pre-RIA EB5 Investors.

In pertinent part, the relevant Guidance provides, as follows:

Therefore, pre-RIA investors may, in certain situations, remain eligible based on indirect jobs, as applicable to their petition before the RIA was enacted notwithstanding termination of their associated regional center. Accordingly, where regional center

*termination is based on **purely administrative noncompliance** that does not otherwise directly affect or implicate the underlying investment or job creation, **officers may generally determine, in their discretion and on a case-by-case basis**, that a pre-RIA investor associated with the terminated regional center continues to be eligible for classification as an immigrant investor, notwithstanding the regional center termination.*

USCIS has not defined “administrative noncompliance” fully, only mentioning failure to pay the Integrity Fee is an example of “administrative noncompliance.” USCIS needs to clarify whether failure to file Forms I-956 and I-956H and/or failure to file Form I-956G will result in “administrative noncompliance” or “substantive noncompliance.” The definition of Administrative Noncompliance must be outlined clearly so regional centers can make decisions, including understanding how failure to take certain actions during the FY 2023 compliance period affect their investors with pending or approved Form I-526 Petitions. If Administrative Noncompliance is defined as failure to pay the Integrity Fee, file the Form I-956 Application, or failure to file the Form I-956G Application, then regional centers can “wind down” by not taking these actions and USCIS can continue to adjudicate Form I-526 Petitions for pre-RIA investors pursuant to the October 11, 2023 guidance. AILA urges USCIS to define “administrative noncompliance” as failure to pay the Integrity Fee, failure to file Form I-956 pursuant to the *Behring* litigation settlement, or failure to file Form I-956G.

AILA further requests that USCIS immediately issue guidance to address the following scenario. Assume, for the sake of these questions, that a pre-RIA regional center (or a pre-RIA regional center that was re-approved under the RIA with no new projects under the RIA) seeks to responsibly wind down without creating prejudice to sponsored EB-5 Investors pursuant to the new Q&A issued on October 11, 2023. Assume further that the regional center is otherwise in good standing as a designated entity.

Given the above, please answer the following questions:

1. Can the regional center seeking to wind down submit a formal letter to USCIS requesting termination for purely administrative noncompliance?
2. In response to such a request of the regional center, can USCIS implement, as a standard operating procedure, the issuance of a formal letter documenting a decision to terminate the regional center for purely administrative noncompliance, which can then be distributed to all sponsored EB-5 Investors to confirm the basis for termination?
3. The USCIS web site contains a searchable database of all [Terminated Regional Centers](#). The site does not provide a copy of the termination decision, nor does it specify the basis for termination. In light of the new guidance, can USCIS please update the database to expressly identify any regional center terminated based purely on administrative noncompliance? This clarification is critical to ensure the continued processing eligibility of sponsored EB-5 Investors protected by the new guidance.

4. In the Q&A, the USCIS introduced a new and undefined term “purely administrative noncompliance.” In connection with this new term, we have the following questions:
 - a. If the regional center fails to pay the [Annual Integrity Fund Fee](#) by December 30, 2023, USCIS has stated that such action shall result in termination. Please confirm that such termination shall be classified as “purely administrative noncompliance,” and this basis will be clearly reflected in the final termination notice.
 - b. If the regional center fails to file [Form I-956G](#) by December 29, 2023, USCIS has stated that such action shall result in termination. Please confirm that such termination shall be classified as “purely administrative noncompliance”, and this basis will be clearly reflected in the final termination notice.¹
5. Please confirm that if the regional center is terminated for “purely administrative noncompliance” then all sponsored EB-5 investors can continue to prosecute their applications and receive benefits, assuming all other eligibility requirements are satisfied.
6. On October 26, 2023, [USCIS issued a policy alert](#) announcing various changes to the Policy Manual (PM) at Volume 6, Part G, Investors. Prior to this update, Chapter 4 (C) titled “Material Change” provided, in pertinent part, “. . . *the termination of a regional center associated with a regional center immigrant investor’s Form I-526 petition constitutes a material change to the petition.*” The October 26, 2023 update appears to have removed that specific language.
 - a. Please confirm that if a regional center is terminated for “purely administrative noncompliance,” such termination is NOT a “Material Change” impacting continued eligibility of all previously sponsored EB-5 Investors (including those investors with pending or approved Form I-526 petitions who have not yet obtained conditional resident status).
7. The guidance creates a broad and unsettling level of discretion for adjudicators by incorporating such terms as “officers **may generally determine**, in their **discretion** and on a **case-by-case basis....**” AILA believes it is unreasonable for pre-RIA investors, most of whom have been waiting for years in case backlogs to be subsequently subjected to such adjudicatory uncertainty. Please provide clarity to ensure reasonable predictability for the protection of good faith investors. Specifically, we request the following:

¹ As stated in the Directions to Form I-956G, it is “used by approved regional centers to provide required information, certifications, and evidence to support their continued eligibility for regional center designation.” As a result, this form is not solely a matter of submitting investor status data (like the prior Form I-924A), but rather this requires evidence of satisfaction of substantive compliance matters required under the RIA. This raises a concern that USCIS could claim that a strategic decision not to file the Form I-956G triggers termination for substantive grounds and not “purely administrative noncompliance” grounds. Accordingly, USCIS is requested to specifically clarify this critical issue.

- a. AILA urges USCIS to confirm in the Policy Manual that, if a regional center is terminated for “administrative noncompliance,” USCIS will continue to adjudicate the Form I-526 to determine if it is otherwise approvable even though the regional center has been terminated.
 - b. Please confirm that the language relating to officer discretion referenced above has no relevance to “administrative noncompliance” determinations, but rather is applicable to the other substantive EB-5 requirements under the law. Specifically, we request clarification that once it is decided that the regional center termination is for “administrative noncompliance,” then USCIS will apply that determination to all investors associated with that regional center.
8. Finally, please confirm that a pre-RIA regional center that was re-approved under the RIA, and which has no new projects under the RIA, can also request termination for “purely administrative noncompliance,” thus affording the same benefit of continued processing eligibility to its EB5 investors.

Conclusion

Thank you for your prompt attention to this urgent and time-sensitive matter which, it should be noted, would have been an excellent subject for a single-topic public engagement that would have allowed USCIS and stakeholders to engage in a meaningful exchange of ideas.

Please do not hesitate to contact Sharvari (Shev) Dalal-Dheini, AILA Director of Government Relations by email at sdalal-dheini@aila.org or David Morris, Chair of the AILA EB-5 Investor Committee by email at morris@visalawgroup.com, if you would like to discuss this important issue in more detail.

Regards,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC.

Michael Valverde, Associate Director, Field Operations Directorate
Avideh Moussavian, Chief, Office of Policy and Strategy
Nathan Stiefel, Acting CIS Ombudsman
Elissa McGovern, Director of Policy, CIS Ombudsman
Gary Merson, Chief of Staff, CIS Ombudsman



December 19, 2023

Sharvari Dalal-Dheini
Director of Government Relations
American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 20005

Dear Ms. Dalal-Dheini,

Thank you for your October 27, 2023 letter requesting clarification on termination for “purely administrative noncompliance” of regional centers designated prior to the EB-5 Reform and Integrity Act of 2022 (RIA). We understand your questions to include:

- (1) Is “purely administrative non-compliance” a new termination category and if so can USCIS define it?
- (2) How does a regional center leave the EB-5 program?
- (3) What is the effect on regional centers that fail to file Form I-956G?

The phrase “purely administrative noncompliance” is not intended to be a new termination category or term defined by U.S. Citizenship and Immigration Services (USCIS), but rather a plain language description of the potential circumstances of noncompliance on the part of regional centers that are not typically related to petitioner eligibility (illustrated in the context of failure to pay the EB-5 Integrity Fund fee). Its potential impact on associated investors will be evaluated on a case-by-case basis. Accordingly, USCIS will not indicate on the USCIS website the reasons for the regional center termination, as has been past practice. Termination notices, however, will include the reason(s) for the regional center termination including, for example, failure to pay the required EB-5 Integrity Fund Fee within the specified time period.

When an approved regional center does not want to continue its participation in the Regional Center Program for any reason, a regional center may elect to withdraw from the program and request a termination of its regional center designation pursuant to 8 CFR 204.6(m)(6)(vi). The RIA did not change this process. The regional center must notify USCIS of such a decision in the form of a letter. Once a termination request is received, USCIS will evaluate the request and will notify the regional center of its decision regarding the termination request in writing. USCIS will evaluate the impact of the regional center’s termination on its pre-RIA investors on a case-by-case basis.

Pre-RIA investors may, in certain situations, remain eligible based on indirect jobs, as applicable to their petition before the RIA was enacted notwithstanding termination of their associated regional center. As indicated in recent USCIS guidance, where regional center termination is based on failure to pay the EB-5 Integrity Fund fee, which would generally not otherwise directly affect or implicate the underlying investment or job creation, officers may generally determine, in their discretion and on a case-by-case basis, that a pre-RIA investor associated with a terminated regional center continues to be eligible for classification as an immigrant investor, notwithstanding the regional center termination and without the need to reassociate with another approved regional center or make an investment in another new commercial enterprise. Such determinations will be made in accordance with applicable USCIS policy regarding deference to prior determinations to ensure consistent adjudication. Also, USCIS generally will not consider it a material change that impacts continued eligibility. While regional center termination for failure to pay the required EB-5 Integrity Fund Fee may generally not have an impact on pre-RIA investor eligibility in many, or even most, circumstances, it is certainly possible that an investor may invest with a regional center that both fails to pay the required EB-5 Integrity Fund Fee and also has project-related eligibility concerns, such that petitioner eligibility is affected separate from the regional center's termination for failure to pay the required EB-5 Integrity Fund Fee. If the pre-RIA investor's eligibility is affected, they may need to reassociate with another approved regional center or make an investment in another new commercial enterprise in order to retain eligibility under INA 203(b)(5)(M) since they may not continue to be eligible.

Post-RIA investors, however, are not subject to the same grandfathering provisions of the RIA as pre-RIA investors but are subject to the new requirements added by the RIA, such as the requirement under INA 204(a)(1)(H)(ii) to remain associated with an approved project application under INA 203(b)(5)(F) (Form I-956F). Consequently, post-RIA investors associated with a terminated regional center may retain their eligibility under INA 203(b)(5)(M) if: (1) their new commercial enterprise reassociates with another approved regional center (regardless of the regional center's designated geographic area); or (2) they make a qualifying investment in another new commercial enterprise. In either case, the post-RIA investors should generally continue to be associated with an approved Form I-956F (filed by their new regional center for their existing new commercial enterprise or otherwise associated with the different new commercial enterprise into which they've invested) for purposes of remaining eligible under all applicable requirements. USCIS will notify investors of the termination of their associated regional center and impacted investors generally have 180 days after USCIS has provided them such notice to amend their petition to meet applicable eligibility requirements.

With respect to failure to file Form I-956G by December 29, 2023, INA 203(b)(5)(G) requires that each designated regional center shall submit an annual statement, in a manner prescribed by the Secretary of Homeland Security. The Secretary has designated the Form I-956G, Regional Center Annual Statement, as the manner to collect this information. INA 203(b)(5)(G)(iii) states that USCIS shall sanction designated regional centers who do not file the annual statement. In accordance with this statutory directive, USCIS will sanction regional centers who fail to comply with the requirement to file their Form I-956G, up to and including termination from the Regional Center Program.

Your letter and a copy of this response will be published on the USCIS Electronic Reading Room pursuant to the communication protocols in Sec. 107 of the RIA. Further, USCIS is updating the FAQs on our website to include this additional information. Thank you for your interest in this issue.

Sincerely,

A handwritten signature in black ink that reads "Alissa Emmel". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Alissa Emmel
Chief, Immigrant Investor Program Office