

PUBLICATION

USCIS Publishes Draft Registration Form for EB-5 Promoters

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The U.S. Citizenship and Immigration Services (USCIS) has published a draft Form I-956K for public comment with instructions for use by EB-5 securities "promoters," implementing a new and unusual statutory requirement for promoters to register with USCIS, certify that they are not "prohibited persons," and confirm the existence of a written agreement with the securities issuer or related party. Registration of promoters will not be required until the 60-day comment period ends and USCIS considers comments and publishes the final form. The form gives rise to several important questions that the instructions do not answer. It also gives rise to important obligations for EB-5 securities issuers and sponsoring regional centers.

EB-5 Reform and Integrity Act of 2022

The EB-5 Reform and Integrity Act of 2022 (RIA) enacted INA Section 203(b)(5)(K), which requires promoters to register and requires each EB-5 petition to include a written disclosure of all fees, ongoing interest, and other compensation paid to any agents, finders, or broker dealers. Although USCIS has issued other forms for immediate use implementing RIA, the I-956K is published in draft only for now. Nevertheless, the same [Federal Register notice](#) calls for comment on new EB-5 forms I-956, I-956F, I-956G, and I-956H (not I-526 or I-526E).

Who must register should be more clear. The RIA does not specifically define "promoter." The provision requiring fee disclosures applies to payments to "agents, finders, or broker dealers." The form requires the registrant to self-identify whether the person is a "direct promoter," "third-party promoter," or "migration agent," or some combination, without any definition of those terms or any discussion of the implications. The form is for use by individuals and entities. It is not clear whether registration is required only of an individual or entity with an agreement to market EB-5 securities. The form asks if the registrant is employed to work as a promoter or otherwise engaged as a promoter on behalf of another promoter, which implies that employees or agents of primary registrants must also register, but it is not clear what kind of a role in a promoter organization subjects one to the registration requirement. Also, it is not clear how an employee or sub-agent completes the portion of the form for collecting information about the registrant's written agreement with the securities issuer or related party, and explanations in the addendum may be needed.

Also unclear is whether registration is required for a promoter of investments only in regional center-sponsored projects or also for "standalone" projects involving only one investor. The RIA is unclear on this, and the form and instructions make no mention of the issue. The newly published Form I-526 for standalone investors mentions nothing about several "integrity measures" of RIA that might have been intended only for regional center projects.

Promoter Registration Requirements

Promoters must register or update registration every time they enter or get out of an agreement with any entity to sell or promote EB-5 investments. Each registration lists the promoter's agreements currently in effect.

I-956K should be done online with no filing fee. The written agreement with the securities issuer or related party itself is not submitted, but must be available for review. USCIS may require the registrant to appear for

biometrics at an Application Support Center if the registrant is in the U.S. or at a U.S. consulate abroad (or a contractor retained by the consulate) in the registrant's country.

Takeaway

The law requires promoters to register, but regional centers are required to make sure that all persons involved in the securities offering are complying with the immigration, securities, and other laws, and that includes promoters. Agreements with promoters must be written and should require the promoter and all agents, sub-agents, and employees interacting with prospective investors to register with USCIS using Form I-956K. Agreements may also require promoters to provide evidence of such registration. Issuers considering a particular investor's subscription should look at requiring proof of USCIS registration for all persons (individuals and entities) who interacted with the investor in the sales process and up the chain to the person having the written promoter agreement with the issuer. Failure of registration of such parties could lead to termination of the sponsoring regional center and debarment of the issuing entity. A promoter whose misbehavior contributes to termination or debarment by USCIS of a regional center, new commercial enterprise, or job-creating entity can be permanently debarred from promoting EB-5 investments.

USCIS needs to clarify several issues above in the final form and instructions. If you have questions or need assistance with navigating this process, reach out to [Robert Divine](#).