FAQs About Proposed Bill S.1501

Does the bill make the regional center program permanent?

No. The bill provides for a 5-year extension of the regional center program until September 30, 2020. (The regional center program is currently scheduled to sunset on September 30, 2015.)

When will all the changes listed in the bill take effect?

Most of S. 1501's provisions are drafted to take effect upon enactment. S. 1501 has *not* been enacted yet. At this point, it is only *proposed* legislation in the initial stages of consideration in the Senate.

For a bill to become law, it must be passed by majority vote in both houses of Congress and signed into law by the President of the United States. Bills can be introduced in either the U.S. Senate or House of Representatives. If a bill is introduced in the Senate, the next step is referral to a committee. The committee can either table the bill (effectively killing it) or act on it by holding hearings on it, marking it up, and then reporting it to the whole Senate. Once a bill is reported out of committee, it is calendared for debate in the Senate, after which it may be amended and then scheduled for a vote. Even if the bill is passed in the Senate, it cannot become law until it undergoes a similar process of introduction, committee action, debate and passage in the House of Representatives, and is ultimately signed into law by the President. The President has the power to veto a bill that has been passed by the Senate and House of Representatives, but only exercises this power in rare cases. The final version of a bill that is passed often looks very different from the bill as it was initially introduced.

Thusfar, S. 1501 has been referred to the Senate Judiciary Committee but a hearing schedule has not yet been announced. Assuming S. 1501 eventually becomes law, we can expect the final version to look different from the initial bill.

How does this bill increase oversight of regional centers?

The bill codifies existing annual reporting requirements that USCIS administers via the Form I-924 process, but enhances them with various certification requirements and authorized sanctions. Violations of the reporting requirements may trigger civil money penalties, permanent bar from program participation, and/or regional center suspension or termination.

In addition, the bill creates new and substantial oversight provisions, which will apply to regional centers whose designations are pending or approved on or after the bill's enactment. For existing regional centers that were approved before enactment, the effective date will be delayed for 1 year.

Key oversight provisions:

1. Mandatory project pre-approval. Every project seeking to receive EB-5 capital through the regional center program must be reviewed and approved by USCIS through a separate application process before investors submit associated I-526 petitions. The application must

be filed by the regional center-affiliated commercial enterprise that will raise EB-5 capital for the project, and must include a comprehensive business plan, economic analysis, documents filed with the Securities and Exchange Commission, offering documents, and a description of policies and procedures designed to ensure securities law compliance. (This procedure is akin to the existing I-924 exemplar application process available to regional centers, except that the regional center-affiliated commercial enterprise would be the applicant instead of the regional center.) Project pre-approvals will be binding with respect to the subsequent adjudication of associated I-526 petitions. In addition, the bill requires the establishment of a premium processing process and fee for project pre-approval applications.

2. Site visits. In connection with project pre-approval applications, USCIS is required to perform at least 1 site visit to each regional center-associated commercial enterprise.

3. Bona fides standards for regional center associated persons. USCIS will run criminal record and other background checks on persons seeking to be involved with regional centers or regional center-associated commercial enterprises. Certain background issues will disqualify persons from direct or indirect involvement, such as a finding of civil or criminal liability relating to fraud or deceit in the previous 10 years; being subject to a final order of a state securities commission or state or federal banking agency for violating a prohibition against fraudulent or deceptive conduct; or being reprimanded or disciplined by a bar association of which the person is a member during preceding 10 years. In addition, a person may be disqualified if "there is reasonable cause to believe" the person is engaged in, has ever been engaged in, or seeks to engage in illicit trafficking of controlled substances or activity related to espionage, money laundering, terrorism, human trafficking, or violation of foreign financial transaction regulations.

4. No foreign regional center owners or operators. All persons directly or indirectly involved with a regional center as owners, principals, administrators, etc. must be U.S. citizens or lawful permanent residents.

5. Securities law compliance. Regional centers must certify to USCIS their compliance with federal and state securities laws as part of any designation or amendment application, and must reissue such certification annually. A regional center may be suspended or terminated for failing to provide the required certification.

6. EB-5 Integrity Fund and $20,000 annual fee. An "EB-5 Integrity Fund" will be established to pay for site visits, audits and investigations by the Department of Homeland Security in connection with the regional center program. It will be funded through the collection of an annual fee of $20,000 from every USCIS-designated regional center. The first fee will be due no later than January 1, 2016, and then on an annual basis no later than January 1 of each year. Newly designated regional centers must pay the initial fee the calendar year following the calendar year of designation. Failure to pay the fee when due will result in a penalty (if not paid within 30 days) or regional center termination (if not paid within 90 days).

7. Oversight of regional center promoters. Direct and third party promoters of regional centers or regional center-associated projects must register with USCIS, meet minimum

qualifications, and comply with offering guidelines and fee rules. Violation of these requirements will result in being suspended or permanently barred from regional center program participation.

Does this bill increase the minimum investment amount of $500,000/$1,000,000?

Yes. Currently, the minimum investment amount for EB-5 eligibility is $500,000 for investments made in Targeted Employment Areas (TEAs) and $1 million for investments made in non-TEAs. The new bill increases the minimum amounts to $800,000 for TEA investments and $1.2 million for non-TEA investments. The increases would apply to both standard EB-5 and regional center program investments and would be effective upon the bill's enactment, with an exception for I-526 petitions that are based on investments in regional center projects for which a project pre-approval application was filed or approved before the enactment date. Such I-526 petitions would be grandfathered, i.e., remain subject to the existing $500,000 and $1,000,000 investment thresholds.

Does this bill change the TEA rules?

Yes. The bill makes the following changes applicable to both standard and regional center-associated EB-5 investments:

1. TEA definition. The bill expands the definition of TEA to include closed military bases in addition to rural areas and high unemployment areas.

2. High unemployment area designations. The bill dramatically changes the definition of "high unemployment area" as well as how high unemployment area designations are made. Currently, the EB-5 regulations authorize states to designate "a particular geographic or political subdivision" as a high unemployment area if the unemployment rate for that defined area is at least 150% of the national average unemployment rate based on the most recent available data. Based on the regulations, USCIS allows high unemployment areas to be defined as an aggregation of multiple contiguous census tracts that encompass the investment project site. In addition, USCIS's current policy is to defer to state high unemployment area determinations. However, the bill restricts the geographic boundaries of a "high unemployment area" to "a [single] census tract" and provides that the Department of Homeland Security will make high unemployment area designations without being bound by determinations made by other federal or state entities.

3. 2-year validity. Under the bill, targeted employment designations would be valid for 2 years. For regional center-associated investments, the 2-year period would begin on the date that the project is pre-approved by USCIS. For standard EB-5 investments, the 2-year period would begin at the time of investment. The designation would be renewable in 2-year increments based on the area's continued eligibility as a high unemployment area. Under existing rules, a TEA designation is valid at most for 1 year—from the time a state agency issues a designation letter based on the most current calendar year data available, until the agency publishes data for the subsequent calendar year.

Does this bill change the job creation rules?

Yes. The bill does not alter the fundamental job creation requirement under the existing EB-5 statute: to qualify for EB-5 classification, an investor must show that his or her investment in a new commercial enterprise will result in the creation of 10 full-time jobs for U.S. workers; and for regional center-affiliated investments, eligible jobs include both direct jobs (employees of the new commercial enterprise) and indirect jobs (employment held outside of the new commercial enterprise but created as a result of the new commercial enterprise). However, the bill does place restrictions on the types and number of jobs that may be allocated to foreign investors to satisfy EB-5 requirements under the regional center program.

1. Limited credit for indirect jobs. The bill limits the credit EB-5 investors may receive for indirect job creation. Out of the total jobs that are estimated to be created by the project receiving EB-5 capital, the indirect jobs portion can account for no more than 90% of the jobs allocated to each investor. Implicitly, this creates a 10% direct jobs requirement. It is not clear if those direct jobs would be proven by way of primary employment impacts under the economic model used to estimate total job creation, or by payroll records for employees of the new commercial enterprise or job creating entity.

2. Limited credit for jobs created by non-EB-5 investment. For regional center-associated projects that are capitalized with a combination of EB-5 and non-EB-5 investment, the bill limits the ability of EB-5 investors to take credit for jobs created by non-EB-5 investment. Under current EB-5 rules, *all* jobs created by the *combination* of EB-5 and non-EB-5 investment are allocated to EB-5 investors. The new bill provides that for EB-5 purposes, credit for jobs created by non-EB-5 investment is limited to the percentage of non-EB-5 investment in the capital stack, up to a maximum of 30%. For example:

Percentage of Non-EB-5 Investment Out of Total Investment	**Percentage of Jobs From Non-EB-5 Investment That Can Be Credited to EB-5 Investors**
20%	20%
60%	30% (*not* 60%)

3. Job creation in TEA. For investments in a TEA, the bill requires that at least 50% of the jobs estimated to be created by the capital investment project must be expected to be created within the TEA.

4. No tenant jobs. The bill explicitly disallows job creation estimated "under a tenant-occupancy methodology" without any exceptions, although it does not define "tenant-occupancy methodology."

Does the bill make changes to the lawful source of funds requirement?

Yes.

1. Codification. The lawful source of funds requirement currently exists in the regulations but not the statute governing the EB-5 program. S. 1501 codifies the lawful source of funds requirement,

thereby giving it greater prominence (since statutes enacted by Congress are more authoritative than regulations promulgated by a federal agency).

2. Administrative fees. The bill expands the lawful source of funds requirement by requiring that each investor prove the lawful source of *both* the capital investment *and* administrative costs and fees associated with the investment. The current EB-5 statute and regulations do not require sourcing of administrative fees and costs, which are typically around $40,000 to $50,000 beyond the investor's capital contribution and payable to the regional center or manager of the new commercial enterprise.

3. Intermediaries. The bill explicitly requires EB-5 petitions to identify all persons who transfer funds to the U.S. on the EB-5 investor's behalf, both for the capital investment amount and administrative fees and costs. It is unclear how much identity documentation would be required to satisfy this requirement, particularly if the "person" acting as an intermediary is an entity rather than individual.

4. Gift restrictions. The bill creates a restriction on the use of gifted funds for EB-5 investment. Only gifts from the EB-5 investor's spouse, parent, child, sibling, or grandparent may be counted toward the required investment mount. In addition, the gift must be made in good faith, meaning that a gift transfer cannot be used to obscure an unlawful source.

5. Loan restrictions. The bill also creates a restriction on the use of loan proceeds for EB-5 investment. Capital "derived from indebtedness" will only be counted toward the minimum investment amount for EB-5 purposes if it is secured by the EB-5 investor's own assets and is issued by a reputable and properly chartered banking or lending institution.

Does this bill do anything to streamline the immigration process for EB-5 investors?

Yes.

1. Adjustment of Status: For investors who are already in the U.S. in a lawful nonimmigrant status, the bill provides for the *concurrent filing* of I-526 petitions and I-485 adjustment of status applications. This means that if a visa number would be available to an investor at the time of I-526 filing, the investor may (but is not required to) submit his/her I-485 application at the same time as the I-526 petition. This is an improvement upon current law, which requires EB-5 investors to wait for I-526 approval before filing the I-485 application.

   In addition, the bill would extend Immigration and Nationality Act Section 245(k) coverage to EB-5 investors. Section 245(k) permits nonimmigrant status violators to file adjustment of status applications despite having been out of status or worked without authorization for an aggregate period of up to 180 days since the date of the alien's last lawful admission.

2. I-829 Petition Filing: Under current law, regardless of how long ago an EB-5 investor made his/her investment before obtaining conditional permanent resident status, the investor must wait 21 months before being able to file an I-829 petition for removal of conditions. The bill states that if an investor has already sustained his/her investment for what would have been the conditional residence period (i.e., 2 years) by the time the investor is initially admitted to the U.S.

as a lawful permanent resident, the investor need not wait 2 more years for the removal of conditions. Instead, the investor may be admitted as an "unconditional" permanent resident immediately upon obtaining approval of an I-829 petition.

For regional center project investors who have obtained conditional permanent resident status, does this bill provide any protections in the event that the regional center or regional center-associated new commercial enterprise is terminated before the removal of conditions?

Yes. If a regional center or regional center-associated new commercial enterprise is terminated during an investor's conditional lawful permanent residence (CLPR) period, S.1501 gives the investor a chance to preserve CLPR status based on a new investment without having to restart the EB-5 process all over again. Following the termination of the regional center or new commercial enterprise, the investor's CLPR status will continue to be authorized for 180 days. During the 180-day period, if the investor makes a subsequent qualifying investment—the new commercial enterprise affiliates with a different regional center, the investor invests in a different new commercial enterprise with a different regional center, or the investor invests in a different new commercial enterprise affiliated with the same regional center (as applicable)—the investor's 2-year CLPR period will restart from the date of the subsequent investment.

Does the bill provide any relief for children of investors who are at risk of aging out due to visa backlogs?

There is no explicit visa backlog relief for children in S. 1501. However, the bill does give some relief to aged-out children of petitioners whose conditional status is terminated. If the petitioner files a new I-526 petition, the child can be included as a derivative under the new I-526 as long as the child remains unmarried and the petitioner files the new I-526 within a year of conditional status termination.

Does the bill increase the number of EB-5 visas available?

No. currently, the number remains at 10,000 per fiscal year.

Does this bill increase petition filing fees?

The bill essentially mandates fee increases for EB-5 filings by requiring USCIS to review current fees within 30 days of the bill's enactment. The bill also specifically requires fees to be high enough to ensure that adjudications are completed in 4 months for regional center designation and project pre-approval applications; 5 months for I-526 petitions; and 6 months I-829 petitions. (Faster processing times require more adjudicators and staff, which need to be funded by higher filing fees.)

How does the bill address fraud and national security concerns?

The bill gives the Department of Homeland Security "unreviewable discretion" to shut down EB-5-related activities in the interest of national security or for reasons relating to fraud, misrepresentation or criminal misuse. Based on any of these grounds, USCIS may deny or revoke approval of I-526 petitions, I-829 petitions and project pre-approval applications, and terminate regional center designations and CLPR status without being subject to judicial review.