

EB-5 Regulations Summary

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As previously blogged (see [EB-5 Regulations Published for Public Inspection](#)), the EB-5 regulations have been published as of July 24, 2019, as final, to take effect Nov. 21, 2019. Below is a summary of the changes that will impact the EB-5 program:

1. **Priority Date Retention:** Generally, priority date retention can be retained from an approved I-526 petition if the investor needs to file a subsequent I-526 petition, even if it was a petition that was approved and then later revoked (unless revoked for fraud or a willful misrepresentation of a material fact by the investor, or if USCIS determines that the petition approval was based on a material error). However, if the petitioner uses the approved petition's priority date to obtain conditional permanent residence, that priority date may no longer be used for subsequently filed EB-5 petitions.
2. **Increased Investment Amounts:** The rule increases the minimum investment amount from \$1 million to \$1.8 million, which represents an adjustment for inflation from 1990 to 2015. Future inflation adjustment formulas will be based on the initial investment amount set by Congress in 1990 (\$1 million). For those investors who are investing in a new commercial enterprise principally doing business in a Targeted Employment Area (TEA), the minimum investment amount will be \$900,000, an increase from the original \$500,000. The final rule also sets for adjustments to occur every five years.
3. **TEA Designations:** The new TEA definitions clarify that any city or town with a population of 20,000 or more outside of a metropolitan statistical area (MSA) may qualify as a TEA, and substitute "contiguous" for "directly adjacent" when describing census tracts that can be added for purposes of defining a TEA (under distress criteria). This is different from the proposed rule that allowed any city or town with a population of 20,000 or more to qualify as a TEA, regardless of being in or out of an MSA. In addition, these regulations remove any mention of "geographic and political subdivisions" for special designations. DHS believes this will ensure consistency in TEA adjudications that adhere closely to congressional intent. DHS will make these designations, which eliminates the current practice of a state being able to designate certain areas as high unemployment areas.
4. **Removal of Conditions:** If derivative family members were not included in the petition to remove conditions, they must separately file their own petitions to remove the conditions on their permanent residence. This also includes a provision where the following individuals may

be included in the investor's petition or each file a separate petition: 1) a child who has reached the age of 21 or who married during the conditional permanent residence period; or 2) a former spouse who became divorced during this period. If the investor dies, the spouse and children may file separate petitions or be included in one petition.

5. For pending petitions on or after the effective date: DHS will not deny the petition if the project documents are amended to meet the new criteria.

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