

EB-5 Integrity Fee: Key Question Left Unanswered by USCIS

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As we reported [recently](#), on March 1, 2023, the Department of Homeland Security posted a Federal Register [notice](#) providing information related to the EB-5 Integrity Fund. USCIS is implementing the EB-5 Reform and Integrity Act of 2022 (RIA) to collect the statutorily required annual fee (Integrity Fee) from each designated regional center to finance an EB-5 Integrity Fund. Chiefly, USCIS will require designated regional centers with more than 20 investors in the preceding fiscal year to pay a \$20,000 fee. For those with 20 or fewer investors, the fee is \$10,000. Because USCIS did not implement the RIA quickly enough, it is also seeking to receive payment by April 1, 2023, for those designated regional centers who would have owed this fee as of Oct. 1, 2022. Thereafter, this fee will be due at the start of each fiscal year between Oct. 1 and Oct. 31. However, a key question has been left unanswered by this announcement – which regional centers owe the Integrity Fee?

Which Regional Centers Owe the Integrity Fee

The RIA states: “[o]n October 1, 2022, and each October 1 thereafter, the Secretary of Homeland Security shall collect...an annual fee (aa) except as provided in item (bb), of \$20,000 from *each regional center designated under subparagraph (E)*; and (bb) of \$10,000 from each such regional center with 20 or fewer total [emphasis added].” See INA 203(b)(5)(J)(ii)(I)(aa)-(bb). This language clearly indicates that the payment of the Integrity Fee shall be from “each regional center *designated under subparagraph (E)* [emphasis added].” DHS’ notice published in the Federal Register does not clarify which regional centers, if any, are “designated under subparagraph (E),” and based on other language in the notice, DHS appears to imply that every regional center designated before and after the passage of the RIA will owe the Integrity Fee.

Notably, USCIS’ initial interpretation of the RIA was that all regional centers approved prior to the passage of the RIA were categorically deauthorized. USCIS defended this position in court, until a [settlement agreement](#) modified this interpretation (Settlement Agreement). Had USCIS’ initial interpretation held, no regional centers would have been “designated under subparagraph (E)” as of Oct. 1, 2022.

Instead, the Settlement Agreement confirmed that regional centers designated before the passage of the RIA (a Previously Approved Regional Center) did not automatically lose their designation as a result of the RIA. Rather, the Settlement Agreement outlined a specific step that each Previously Approved Regional Center must take in order to be designated under the RIA, which was to file a

Form I-956 by Dec. 29, 2022. As the Settlement Agreement stated, Previously Approved Regional Centers had to make this filing timely in order to “maintain[ed] their status as an approved regional center.” The Settlement Agreement made clear that upon filing, rather than adjudication, of a Form I-956, a Previously Approved Regional Center could operate under the RIA. Consistent with this requirement, the Settlement Agreement also noted that any Previously Approved Regional Center who failed to take this step “may no longer engage in any activities under the” RIA. See Section D.2. of the Settlement Agreement. Accordingly, Previously Approved Regional Centers who *did not file* a Form I-956 by Dec. 29, 2022, are not “designated under subparagraph (E)” as they are ineligible to operate as a regional center under the RIA. Similarly, it also remains unclear if Previously Approved Regional Centers who have filed a Form I-956 by Dec. 29, 2022, are actually “designated under subparagraph (E)” of the RIA if they have not received approval of such form.

The answer to this question is important because USCIS seeks to collect the Integrity Fee that was supposed to be due Oct. 1, 2022, immediately, and payment must be received by April 3, 2023. Because this payment is a collection of the Integrity Fee that should have been collected on Oct. 1, 2022, it is not clear why a Previously Approved Regional Center who did not file a Form I-956 by Oct. 1, 2022, would owe this fee, because such a Previously Approved Regional Center was not authorized to operate under the RIA per the terms of the Settlement Agreement. Furthermore, USCIS should also clarify that a regional center approved under the RIA does not owe the fee due on April 3, 2022, unless such regional center was approved as of Oct. 1, 2022.

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