

Regulatory Bodies with Oversight of EB-5 Investment

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Due to the complex intersection of real estate, corporate, securities and immigration law (among others), an investment in a company under the EB-5 Program can be a complicated affair. One of the reasons an EB-5 investment is complicated has to do with U.S. governmental regulatory bodies with potential oversight over an EB-5 investment. The following is a non-exhaustive list of regulatory bodies in the U.S. which have oversight of an EB-5 investment.

For starters, U.S. immigration is largely regulated by the **U.S. Department of Homeland Security** through its sub-agency the **U.S. Citizenship & Immigration Services (USCIS)**. When seeking benefits under the EB-5 Program, an investor will file a Form I-526, Immigrant Petition by Alien Entrepreneur (I-526), with USCIS. USCIS has a fraud detection and national security unit which can conduct site visits on an EB-5 investment and also has auditors on staff to conduct audits of an EB-5 investment or a regional center. Thus, USCIS is often the first agency to recognize issues with an EB-5 investment.

USCIS also has a memorandum of understanding with the Securities and Exchange Commission in the event USCIS suspects fraud, misrepresentation or other issues with an EB-5 investment, a principal of a regional center, or an EB-5 investor. Additionally, USCIS has a memorandum of understanding with the Financial Crimes Enforcement Network (FINCEN) in order to investigate and flag illicit use of the financial system, which can include instances of money laundering. For instance, misuse of an EB-5 investor's funds, such as diversion through various U.S. banking institutions can raise issues that FINCEN investigates. In addition, USCIS has stated publicly that they discuss EB-5 investments with the Federal Bureau of Investigation, Immigration and Customs Enforcement and the Securities and Exchange Commission. While no system is perfect, this does help ensure EB-5 Program integrity by providing layers of security for an EB-5 investor.

It is worth mentioning that in the broader context, the U.S. Department of Homeland Security's duty is to secure the U.S. from external threats, including antiterrorism, border security, immigration and customs, cyber security and disaster prevention and management, and it has over 240,000 employees. Thus, one of the largest U.S. government agencies has strong resources to help ensure EB-5 Program integrity and EB-5 investor security.

In addition to the U.S. governmental agencies which regulate immigration, an EB-5 investment is a "security" for the purposes of the Securities Act of 1933. This, among other factors, puts an EB-5 investment squarely under the review of the Securities and Exchange Commission (SEC). The

SEC's mission is to protect investors, including EB-5 investors no matter what country they originate from, maintain fair, orderly and efficient markets (such as the marketplace for EB-5 investments), and facilitate capital formation. The SEC oversees securities markets, brokers and dealers, investment advisers, and investment companies. A large part of this is protecting against fraud in the marketplace. As noted above, the SEC and the USCIS have a memorandum of understanding between the agencies in order to ensure integrity in the EB-5 marketplace and transparency in the EB-5 Program. Additionally, when issues with an EB-5 investment rise to the level of criminal conduct, they can be investigated by the Federal Bureau of Investigation and referred, by any of the agencies discussed herein, to the Department of Justice for prosecution.

Furthermore, when an EB-5 investment involves a U.S. licensed broker-dealer, as many do, the conduct of that broker-dealer and certain aspects of the EB-5 investment will fall under the ambit of the Financial Industry Regulatory Authority (FINRA). FINRA is an independent, not-for-profit organization authorized by the U.S. Congress to protect investor's by ensuring the securities industry (which includes EB-5 investment) operates fairly and honestly. To that end, FINRA can, and does, investigate and ensure an EB-5 investment complies with U.S. laws.

It is clear that the EB-5 Program has regulatory oversight by multiple U.S. government agencies which are committed to ensuring integrity, transparency and a fair EB-5 marketplace.

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