



The Importance of a Regional Center Operational Plan

By Tom Martin

With heightened scrutiny and increasing RFEs/NOIDs by IPO of regional center applications and I-924 Exemplars, a well-drafted regional center operational plan is a critical piece of the I-924 application. According to Form I-924 instructions¹ for regional center designation, an application must include a business plan for how the principals of the regional center anticipate they will manage and operate the regional center once approved. USCIS refers to this as a regional center's "operational plan," and they recently provided guidance on their website on the Suggested Order of Form I-924 Documentation². The following list provided by USCIS outlines a few of the key expectations of what should be contained in this operational plan:

- **A general description** of how EB-5 investors will be recruited
- **Examples** of the capital investment opportunities that will be offered
- **Details** on how the regional center will conduct its due diligence to ensure, among other things, that only lawful sources of immigrant investor funds are associated with the regional center's new commercial enterprises (NCEs)
- **A description of any and all fees**, profits, surcharges, or other remittances that will be paid to the regional center or any of its principals, managing companies or agencies, or agents through the NCEs into which EB-5 investors will invest capital

- **A statement** from the regional center principal(s) that explains the methodologies that the regional center will use to track the infusion of each EB-5 investor's capital into each NCE and any related job-creating entities
- **A detailed description of the past, present, and future promotional activities** for the regional center, including a description of the promotional efforts taken and planned by the sponsors of the regional center (which should also include a budget for these activities)

The above list is a key indicator of the kind of compliance and transparency USCIS is expecting of regional center operators, individuals or entities participating in the program. Those looking to set up their own regional centers should be prepared to present how they will operate their centers once approved. Gone are the days of submitting a regional center application with a generic plan and then figuring out how to run one once approved.

Further, based on issues raised in RFEs relating to the ability to manage a regional center, USCIS has indicated it does not believe a single individual can effectively operate a regional center. USCIS has increased its issuance of Requests for Clarification of regional center petitioners seeking additional information regarding who will be running and operating a regional center. Such requests ask for "the full legal name and date(s) of birth for the additional management companies/agencies, regional center principals, agents, individuals, or entities who are or will be involved in the management, oversight, and administration of the regional center as requested in Part 3 Section D of the Form I-924."³ For applicants which list only one principal and no other managers or agencies, it looks as though USCIS may be questioning whether or not a single person can effectively perform all these duties.

It would behoove regional center applicants to seriously consider providing a comprehensive list of additional managers, agents, attorneys, consultants, etc., that they anticipate working with in order to sufficiently track the details needed to be fully compliant with annual reporting requirements. Also, increased integrity measures contained within newly proposed legislation expected to be passed this year should motivate regional centers to provide a fully transparent plan that provides clarity on how they will interact with investors under their sponsorship to provide details about project

status, job creation milestones, fund management, fee allocation and exit status.

For currently approved regional centers as of 2016, USCIS has begun regional center audits. Details are still sparse, but early reports of audited regional centers indicate the operational plans submitted at the I-924 application have been used as a benchmark for USCIS to evaluate how closely the regional center is following its own business plan.

Regional centers should strongly consider updating, or at least reviewing, their operational plan on an annual basis. Any updates to a regional center operational plan can be submitted with the annual Form I-924A, Annual Certification of Regional Center. An annual review would allow regional centers to provide USCIS current information regarding operations of the regional center, including how the regional center is currently marketing, recruiting investors, and tracking investments and job creation, as well as any additional managers or consultants assisting in the operation of the center.

An operational plan can play a vital role in USCIS's ongoing efforts to strengthen a regional center's transparency and accountability. Those wishing to participate in the EB-5 program as a regional center should seek professional guidance to ensure the creation of the document effectively describes the operation and administration of a regional center. The plan should initially be prepared using best practices that carefully and clearly outline how the regional center will perform its expected responsibilities. The operational plan should then be reviewed and revised, at least annually, to describe any changes to its business model and document any updates to its management team.

Baker Tilly's EB-5 team is available to answer any questions you have regarding regional center operational plans. We also have the capability and experience to help you create a new operational plan or update an existing one. Please do not hesitate to contact us if you require assistance.

¹ <https://www.uscis.gov/i-924>; see also <https://www.uscis.gov/policy-manual/HTML/PolicyManual-Volume6-PartG-Chapter3.html>

² <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/suggested-order-form-i-924-documentation>

³ Source: As part of standard language from USCIS Courtesy Request for Clarification - Form I-924 emails

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