

# GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

## ADDENDUM TO INITIAL STATEMENT OF REASONS (ISOR) (Sections 8200-8230 of Title 10 of the California Code of Regulations)

December 19, 2016

**Subject Matter of Proposed Regulations:** California EB-5 Investor Program procedures related to the United States Citizenship and Immigration Services EB-5 Investment Program ("EB-5 Program").

**Sections Affected:** Code of Regulations, Title 10, Chapter 13, Article 3, Sections 8200-8230.

### A. Discussion of Section Affected

(1) Section Affected: Chapter 13, Article 3, Section 8200(k), (l), and (u) – Definitions.

- "Qualifying cities, Census Designated Places ("CDPs"), and Metropolitan Statistical Areas ("MSAs")

#### a. Issue being addressed:

The initial version of the definition used the acronyms first, which was felt to be less clear. In addition, the earlier version did not identify or provide the Employment Development Department's website where the unemployment rate would be obtained.

#### b. Anticipated benefits from this regulatory action:

A clear definition of this important term is necessary to promote accurate and consistent understanding of the EB-5 Program. In order to provide more clarity and transparency, the definition was revised to spell out the key terms first before using acronyms. Even more important than making the definition easier to read, the revised definition provides the Employment Development Department's website where the data will be obtained.

#### c. Underlying data:

No relevant data or empirical studies were available regarding the definition of "Qualifying cities, Census Designated Places ("CDPs"), and Metropolitan Statistical Areas ("MSAs")."

#### d. Consideration of alternatives:

As the EB-5 Program is a federal program, the use of federal definitions, when available, such as in the case of the MSAs, is appropriate and no other alternatives were considered.

- “REGIONAL CENTER”

- a. Issue being addressed:

The initial version of the definition was vague and did not provide sufficient specificity. In addition, the definition was in the plural (“Regional Centers”), which was unnecessary.

- b. Anticipated benefits from this regulatory action:

A clear definition of this important term is necessary to promote accurate and consistent understanding of the EB-5 Program. In order to provide more clarity and transparency, the definition was revised to use the definition of any public and private corporation as described in Government Code section 6315.2.

- c. Underlying data:

No relevant data or empirical studies were available regarding the definition of “REGIONAL CENTER.”

- d. Consideration of alternatives:

As the EB-5 Program is a federal program, the use of federal definitions, when available, is appropriate and no other alternatives were considered. In this case, Government Code section 6315.2 refers to and relies on Regional Centers authorized to operate under the federal Immigration and Nationality Act.

- “USCIS Designation”

- a. Issue being addressed:

This definition is not used in the regulations and therefore its inclusion was deemed unnecessary.

- b. Anticipated benefits from this regulatory action:

The removal of an unnecessary definition streamlines the regulations and facilitates the public’s and the Regional Center’s understanding of the program.

- c. Underlying data:

No relevant data or empirical studies were used or consulted to determine that the term was not needed.

d. Consideration of alternatives:

Although keeping the definition was considered, it was deemed unnecessary at this time because the regulations could be amended at a later time if the term was needed in the future.

(2) Section Affected: Chapter 13, Article 3, Section 8230(c) – EB-5 Survey.

a. Issue being addressed:

The initial version of this section contained unnecessary verbiage and included language such as “Such information may include, but is not limited to;” which resulted in uncertainty as to what each Regional Center would be expected to provide to the Governor’s Office of Business and Economic Development (“GO-Biz”). The revised version was written to provide that certainty. In addition, a number of subsections under Section 8230(c) were eliminated or consolidated to reduce the burden on a Regional Center’s obligation to collect, maintain, and provide data. Finally, the location of the investment was authorized by the enabling statute to be collected by GO-Biz, but not explicitly asked for in the proposed regulations, so this oversight was corrected.

b. Anticipated benefits from this regulatory action:

The revised version explicitly identifies what GO-Biz will solicit from each Regional Center in order for the Regional Center to clearly understand its obligations and prepare for the survey. Government Code section 6315.1(c)(1) requires each Regional Center to provide contact information to GO-Biz. Section 8230(c)(1)-(6) delineates the contact information GO-Biz needs and specifies the frequency with which the Regional Center must provide the information.

Section 8230(c)(7)-(9) requires each Regional Center to provide a copy of USCIS designation letter, a list of projects the Regional Center completed in the past calendar year, and the total completed projects since the Regional Center’s establishment, respectively. This information is needed to confirm the legitimacy of the Regional Center, to prevent fraud in the EB-5 program, as some Regional Centers have failed to invest the funds in the project originally identified or the funds have been misappropriated. In addition, the information collected will assist potential investors in selecting a Regional Center with the right background and experience.

Section 8230(c)(10) is based on Government Code section 6315.1(c)(2)’s requirement that each Regional Center annually provide GO-Biz with the location of investments. Accordingly, Section 8230(c)(10) requires each Regional Center to provide the location, including address, if applicable, in California where the investment was made. This information will assist potential investors with selecting a Regional Center with relevant experience investing in the locality that the potential investor is interested in investing in and is consistent with Section 6315.1(c)(2)’s requirement.

Section 8230(c)(11) is based on Government Code section 6315.1(c)(2)'s requirement that each Regional Center annually provide GO-Biz with the number of direct and indirect jobs created. Section 8320(c)(11) requires a running total of jobs created, instead of a new figure each year. Similarly, Section 8230(c)(12) tracks Government Code section 6315.1(c)(2)'s requirement that each Regional Center annually provide GO-Biz with the location of the investments. Both of these requirements assist potential investors with selecting a Regional Center with experience in the potential investor's proposed project and are consistent with Section 6315.1(c)(2)'s requirements.

In addition, the originally proposed Section 8230(c)(11) (in contrast to the newly proposed 8230(c)(11) addressed immediately above), and Sections 8230(c)(13)-(19) are eliminated in order to reduce the amount and types of information that each Regional Center must collect, maintain, and provide to GO-Biz. This change allows each Regional Center to spend more time promoting economic development and assisting its clients, rather than spending time and energy on administrative tasks of collecting information that do not directly benefit their clients or California's economy. By streamlining the information GO-Biz collects, GO-Biz can more effectively and efficiently collect and process the data.

c. Underlying data:

No relevant data or empirical studies were available on what should be included in the survey.

d. Consideration of alternatives:

The revised section better tracks the language of the statute and authorizes only information that the statute authorizes.

(3) Section Affected: Chapter 13, Article 3, Section 8230(e) – EB-5 Survey.

a. Issue being addressed:

Although the enabling statute requires each Regional Center located in California to provide the information identified and solicited in Section 8230(c), the statute does not provide any guidance as to when the Regional Center should provide the information to GO-Biz. This additional provision provides clarity as to when the information would need to be provided to GO-Biz.

b. Anticipated benefits from this regulatory action:

The new provision provides each Regional Center with clarity as to when the information requested should be provided to GO-Biz. This results in a more efficient program and simplifies the administration of the survey.

c. Underlying data:

No relevant data or empirical studies were available on the survey.

d. Consideration of alternatives:

Leaving unclear when the information would be due to GO-Biz was rejected because each Regional Center will benefit from having clarity on when information is due in order to more efficiently carry out its responsibilities. Having certainty benefits both the Regional Centers and GO-Biz and results in a more efficient program.