Title 10, Chapter 13, Article 3, Sections 8200-8230
California EB-5 Investor Program

Notice published August 26, 2016

NOTICE OF PROPOSED RULEMAKING

The Governor's Office of Business and Economic Development (GO-Biz) proposes to adopt the proposed regulations described below for Title 10, Chapter 13, Article 3, Sections 8200 - 8230 after considering all comments, objections, and recommendations regarding the Proposed Action. These proposed regulations are hereafter referred to as the "Proposed Action."

PUBLIC HEARING

A public hearing on the Proposed Action will be scheduled upon request. To request a hearing, send a letter to the address listed above no later than **fifteen days prior to the close of the written comment period.**[1] GO-Biz will send notice of the hearing to the requestor, associated economic development authorities, and the notice will also be posted on the GO-Biz website at least ten days before the public hearing date pursuant to Government Code section 11346.8(a). The notice will provide the date, time, and location of the hearing. If a hearing is scheduled and you have special accommodation or language needs, please contact Brian Peck via email at eb5info@gov.ca.gov at least one week in advance of the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Action to GO-Biz at the address below. Comments may also be submitted by email to eb5info@gov.ca.gov. The written comment period closes at **5:00pm on October 10, 2016.** GO-Biz will only consider comments received at the GO-Biz office by that time. Submit comments to:

Governor's Office of Business and Economic Development
Attn: Van T. Nguyen
1325 J Street, Suite 1800
Sacramento, CA 95814
Email: van.nguyen@gov.ca.gov

AUTHORITY AND REFERENCE

California Government Code section 6315.1 authorizes GO-Biz to set the terms and conditions for issuing a state designation letter for targeted employment areas within the structure of the EB-5 Investment Program. In order to effectively administer the Program, GO-Biz is required to promulgate regulations

[1] If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-text users may dial 7-1-1 for the California Relay Service.

because it is not exempt from the rule making process under the Administrative Procedure Act. The Proposed Action implements, interprets, and makes specific, sections 6315.1 of the California Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 204.6(i) of Title 8, Code of Federal Regulations governing alien entrepreneur immigrant visa petitions under the United States Citizen and Immigration Services (USCIS) administered EB-5 visa program authorizes the state government of any state of the United States to designate a particular geographic or political subdivision within a metropolitan statistical area or within a city or town having a population of 20,000 of more within such state as a high unemployment area if the area experienced an unemployment rate of at least 150 percent of the national average.

Governor Edmund G. Brown Jr. signed Assembly Bill 2012 (Perez, Chapter 294, Statutes of 2012), which designated the GO-Biz as the state agency primarily responsible for international trade and investment and repealed said authority from the Secretary of Business, Transportation, and Housing. As a result, GO-Biz became the state agency primarily responsible for international trade and investment, including the federal EB-5 visa for immigrant investors program ("EB-5 Program"). As a result, one of the responsibilities of the International Affairs and Business Development unit is to establish a process by which applicants can seek a GO-Biz letter designating that the location for a project under the EB-5 Program is located in a high unemployment area, also known as a Targeted Employment Area (TEA).

The purpose of the EB-5 Program is to attract foreign direct investment ("FDI") projects to the United States. The EB-5 Program involves granting permanent resident status to immigrants who invest at least $1,000,000 into a new commercial enterprise or $500,000 into a new commercial enterprise made in a Targeted Employment Area ("TEA") that creates or preserves at least 10 jobs for US workers. California is the beneficiary of more FDI projects than any other state in the United States. In order for an applicant to obtain an EB-5 visa and invest less than $1,000,000, the state of California, through GO-Biz, must verify that the new commercial business is located in a TEA.

The EB-5 regulations provide a framework for GO-Biz to administer its responsibilities regarding the EB-5 Program, including establishing procedures for designating and certifying a TEA, outlining the process to obtain and renew a TEA certification letter, and how GO-Biz will conduct the annual survey of the regional centers' performance.

Anticipated Benefits of the Proposed Action:

The EB-5 regulations provide a framework for GO-Biz to review applications from investors seeking to obtain a federal EB-5 immigrant visa based on investing in a business located in a TEA within California. The regulations also set forth and make clear the process to renew a TEA certification and the EB-5 survey.

To effectively manage the application process and the overall EB-5 Program, GO-Biz is proposing to adopt 4 distinct regulatory sections under Title 10, Chapter 13, Sections 8200-8230 to provide the

framework of how the application process will be administered and how the annual survey of the regional centers' will be conducted. Specifically, GO-Biz is proposing to adopt the following sections: (1) the definitions; (2) the designation and certification process for qualified TEAs; (3) the renewal of state designated TEA certification process; and, (4) the EB-5 survey process. The rationale for each of these sections, its benefits, the alternatives considered, and the reliance on any other third-party data or empirical study, if any, are addressed below, unless explicitly excluded because the regulations are essential self-explanatory on their face.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

During the process of developing these regulations and amendments, GO-Biz has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations. No other currently existing state agency has issued any regulations related to the proposed regulations; therefore there are no inconsistencies or incompatibilities with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

GO-Biz has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: GO-Biz is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the Proposed Action.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Small business determination: The regulations will not have any discernible economic impact on small businesses because it is an optional program focused on alien investors rather than established small businesses already located within California.

Results of the Economic Impact Analysis/Assessment:

The regulations will contribute to California's economy by increasing foreign direct investment in the state by providing clarity to potential investors on how to invest in California.

The regulations make clear the information potential investors will need to gather and submit as part of the application process.

GO-Biz concludes that:

- It is likely that the proposed changes will not adversely affect the creation, or result in the elimination, of jobs within California.
- It is likely that the proposed changes will not adversely affect the creation of new business, or result in the elimination, of existing business.
- It is likely that the proposed regulations will promote the expansion of both new businesses and businesses currently active within the State.

Benefits of Proposed Action: The EB-5 regulations provide a framework for GO-Biz to review applications from investors seeking to obtain a federal EB-5 immigrant visa based on investing in a business located in a TEA within California. The regulations also set forth and make clear the process to renew a TEA certification and the EB-5 survey. As a result of these regulations, GO-Biz anticipates that there will be an increase in foreign direct investment within California, resulting in a positive impact on California's economy.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), GO-Biz must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

GO-Biz invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Governor's Office of Business and Economic Development
Attn: Van T. Nguyen
1325 J Street, Suite 1800
Sacramento, CA 95814
Email: van.nguyen@gov.ca.gov

Back-Up Contact Person:

Attn: Brian Peck
Email: brian.peck@gov.ca.gov

Please direct requests for copies of the text of the proposed amended regulations, the ISOR, or other information upon which the rulemaking is based to Van T. Nguyen at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

GO-Biz will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by downloading them at www.business.ca.gov or contacting Van T. Nguyen at van.nguyen@gov.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, GO-Biz may adopt the proposed regulations substantially as described in this notice. If GO-Biz makes modifications which are sufficiently different from the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before GO-Biz adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Van T. Nguyen at the address indicated above. GO-Biz will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Van T. Nguyen at the address above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the proposed amendments can be accessed through the GO-Biz website at www.business.ca.gov.