

# DHS: Do More than Just Reverse the Reversal

By: Daniel R. Pérez | May 26, 2021

## In brief...

The Department of Homeland Security reversed course on its proposal to eliminate its International Entrepreneur program. This is a positive step towards increasing innovation and job creation in the U.S. However, rather than defaulting to the Obama-era framework, evidence suggests that making it easier to qualify for the program would produce additional benefits to the U.S. economy.

## A Delayed Start for International Entrepreneurs

At the end of the Obama administration, the U.S. Citizenship and Immigration Services (USCIS) published a [final rule](#) on January 17, 2017 detailing how the agency would exercise its authority to allow foreign entrepreneurs to stay in the U.S. while managing and growing startup businesses. The regulatory framework included criteria the agency would use to determine whether startups were likely to “provide a significant public benefit”—mainly defined as job growth, increased innovation, and other economic indicators. International entrepreneurs vital for the management of these startups (along with their spouses and children) would be approved to stay in the U.S. for up to 30 months and could apply for an additional 30-month stay. The agency cited a wealth of evidence regarding the contribution of startup businesses to job creation and innovation to support the rulemaking as likely to “generate important net benefits to the U.S. economy.” This rule was set to take effect on July 17, 2017.

However, on July 11, 2017 the Trump USCIS issued an [effective date delay](#) for the International Entrepreneur (IE) program regulations until March 14, 2018. In addition, the agency stated its intent to proceed with a notice of proposed rulemaking to eliminate the IE program altogether. The agency cited an executive order [issued](#) by President Trump titled “Border Security and Immigration Enforcement Improvements” as justification for the need to freeze, and eventually eliminate, the program. Even though a federal court [vacated](#) the effective date delay in December of 2017, [evidence](#) suggests that USCIS did not comply with the court’s order to begin processing IE program applications. USCIS proceeded with its proposal to [eliminate](#) the program in May of 2018. This proposal was never finalized under the Trump administration, and on May 11, 2021 the Biden USCIS [withdrew](#) its proposal to eliminate the program. The withdrawal cited an [executive order](#) issued by President Biden that revoked the aforementioned order issued by President Trump in addition to the public comments it received on its removal proposal—the “overwhelming majority” of which opposed the IE program’s removal—in support of retaining the program.

In short, even though USCIS published final regulations for its IE program in 2017, the change in administrations resulted in a four-year delay in its implementation; the agency will now begin processing applications. However, as I suggested in my [public comment on the initial rule](#), the same evidence that the agency relied on to support its rulemaking suggests that lowering the thresholds that USCIS currently uses to determine eligibility could broaden the number of businesses (and applicants) that qualify—increasing the net benefits of the program to the U.S. economy.

## Opportunities to Improve the Program

Although implementing the Obama administration regulations for the IE program is an improvement over the de facto four-year freeze, USCIS could request information from the public to assist it in updating the program's design.

The final 2017 rule lowered the investment amount necessary for a startup to qualify under the program relative to its initial proposal. USCIS specifically cited public comments it received on the rule as the motivation for lowering the minimum threshold from \$345,000 to \$250,000. Numerous public comments, including [mine](#), suggested not only that this threshold be lowered but also that setting the threshold without carefully regarding the substantial heterogeneity in capital costs across industry type and firm location could have important distributional consequences. For instance, areas in the U.S. with lower capital costs (i.e., Detroit) might stand to benefit more from increases in the creation of high growth startups than cities like Palo Alto, but they might also be much less likely to have a business qualify under the IE program if the median startup costs there are much lower than the agency's threshold. Revisiting the threshold with a focus on distributional consequences is in line with President Biden's memorandum on "[modernizing regulatory review](#)."

Additional aspects of the program worth revisiting include what constitutes a "qualified investment," what kinds of individuals the agency considers "qualified investors," and the list of criteria that USCIS considers when deciding whether to grant applicants extensions of their stay in the U.S. Any additional analysis that supports these decisions could similarly benefit from a transparent discussion of the likely distributional effects of various options.

Finally, USCIS should consider how best to plan for retrospective review of the program's effects after its implementation. This is consistent with the directives of President Obama's [Executive Order 13563](#). Clearly identifying measures and timelines for review would assist the agency in making sure the program's regulations are kept up to date and responsive to emerging advances in financing.

The evidence and analysis that USCIS used in its 2017 rule suggested that the IE program would provide substantive net benefits for the U.S. economy. The agency's 2018 proposed elimination of the program was not supported by any evidence that suggested it was a better alternative to maintaining the program. Therefore, the recent decision to retain the program is sensible. However, the agency can take this opportunity to invite additional public comment and reassess the design of the IE program's regulations to ensure that it generates net benefits while being transparent about the distributional impacts of decisions made regarding who qualifies for the program.