

Exploring the Advantages of EB-5 Program Financing

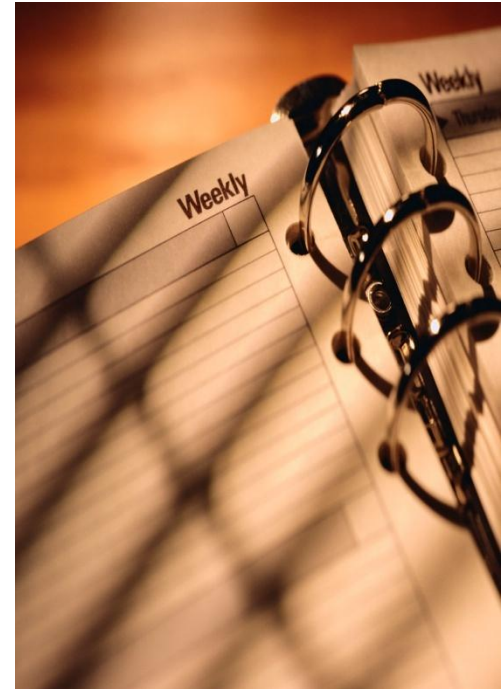
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Agenda

- Overview of the EB-5 Investment Visa Program and its Requirements
- Types of EB-5 Projects and Ways to Use the EB-5 Program
- The Regional Center and Job Creation
- EB-5 Successes
- Criterion for EB-5 Real Estate Projects
- The Benefits of the EB-5 Program



The EB-5 Investment Visa

- The EB-5 Visa for Immigrant Investors is a U.S. employment-based (EB) visa created by the Immigration Act of 1990 to stimulate economic activity and job growth, while allowing eligible aliens to become permanent residents.
- The EB-5 Program provides a method of obtaining a Green Card for foreign nationals who invest money in the United States.
- This Program enables a foreign national to obtain permanent residence status more expeditiously than would most other options.
- The EB-5 Program has evolved into a low-cost source of alternative financing for U.S.-based projects.
 - To obtain the visa, individuals must invest at least \$1,000,000 creating at least 10 jobs full-time (35 hours) for qualified employees.
 - By investing in certain qualified investments or regional centers with high unemployment rates (*i.e.*, "*Targeted Employment Areas*"), the required investment amount is \$500,000.

EB-5 Investment Requirements

- **Investment Amount**

- The investor is required to invest \$1,000,000 (or a reduced amount of \$500,000, if the investment is within a Targeted Employment Area (TEA), *i.e.*, 150% of the national average unemployment statistic).

- **Job Creation Requirements**

- Each investor must create 10 full-time U.S.-based jobs from their investment.
- Job creation can be through both direct and indirect jobs.

- **Source of Investment Funds**

- Investor must demonstrate the EB-5 Visa investment capital is from a legal source, acquired, directly or indirectly, by lawful means (*e.g.*, no criminal acts).
- Investor must document the path of the funds with bank statements plus supporting documents to establish the source.
- Investor can demonstrate a valid "pattern of income" such as through income tax records and savings records to prove funds were accumulated over time.

Types of U.S. Projects Using EB-5 Funds

Real Estate Investments

- Many EB-5 projects pursued by Regional Centers involve real estate development projects, including:
 - office and retail buildings
 - shopping centers
 - hotels, conference centers, and resorts
 - casinos and shipyards
 - big box stores and sports stadiums
 - apartments and condos
 - other commercial/residential mixed-use projects

Private Equity Investments

- Originally, EB-5 project money was used for loans to businesses that demonstrate a new commercial enterprise or a troubled business, in industries as diverse as:
 - manufacturing plants, fishing businesses and dairy farms and IT technology firms
 - medical device companies, hospitals, and architectural firms
 - major motion picture films and television studios
 - other business seeking working capital with job creation to support the loan

Key Ways to Use the EB-5 Program

- Form your own Regional Center
 - Loan to your own project(s)
 - Loan to third-party projects
- Procure a loan from an USCIS-approved Regional Center
 - Confirm the RC's approval in the project's geographical area
 - As of 5/30 Policy Memo, pre-approved labor codes not required
- “Rent” a USCIS-approved Regional Center
 - Per a rental agreement for a fee or a % of a project's revenues
 - Actual partner in a joint venture proposed by an outside party
- Direct Investment by an EB-5 investor directly in a project

The Regional Center

- Most EB-5 investment occurs through a **Regional Center**, which is –
 - An economic entity, public or private, involved with the promotion of economic growth, regional productivity, job creation, and increased capital investment.
 - An entity that has received “Regional Center” designation from the USCIS following the submission of documents supported by an economic report, showing:
 - How the regional center will promote economic growth in a region,
 - How, in verifiable detail (using economic models), it will create jobs directly and indirectly through capital investments, and
 - The amount and source of capital committed to the regional center.
- These Regional Centers act as matchmakers between foreign capital and local developers in need of funds. More and more, the developers are launching their own Regional Center to cut out the middle man.

Job Creation is a Key Factor

- Direct Jobs
 - Identifiable jobs within a new commercial enterprise
 - Permanent full-time jobs defined as a minimum of 35 hours per week over the course of that project
 - Construction jobs exceeding 24 months
- Indirect/Induced Jobs
 - Jobs shown to be created collaterally, or
 - Jobs shown to have resulted from the investment in the new commercial enterprise
 - To include the indirect/induced jobs, the project must be funded through a regional center

Regional Center Basics

- Investor must invest 100% of the \$1,000,000 (\$500,000 in a TEA plus an admin fee) before I-526 can be filed.
- Money can go:
 - ☐ To project immediately
 - ☐ To escrow and released when investor's I-526 is approved
 - ☐ To escrow and released upon a certain benchmark
- Regional Center – administers the EB-5 projects
- New Commercial Enterprise – investors subscribe to this entity
- Job Creating Entity – recipient of the EB-5 funds that creates the actual jobs

Pros & Cons of Using an Existing Regional Center

The **benefits** to the developer of using an existing Regional Center:

- Avoidance of the time and expense associated with setting up a Regional Center
- Developer's only responsibility is to negotiate the loan for the project from the Regional Center or structure rental or joint venture of a Regional Center.
- The Regional Center is responsible for locating foreign investors.

The **downsides** to the developer of using an existing Regional Center:

- Regional Center might reject the project or might require unfavorable terms and high fees, high interest rate, and a percentage of the profit.
- Regional Center would receive the profit spread between the 1-3% pref to the EB-5 investors and the 5-7% (or more) interest on loan to developer, which developer would enjoy with its own regional center.
- Developer is missing the opportunity to have a Regional Center in place to fund a pipeline of real estate projects.

Advantages of Creating a Regional Center

- Regional Center certification provides legitimacy for the project, which may help in marketing to foreign investors.
- Regional Center designation is a one-time designation allowing future projects to be marketed without incurring delays.
- A project may be pre-approved by USCIS.
- In addition to funding their own projects, Regional Centers can profit by funding projects developed by others.
- Remove the middle man for lower costs of financing.
- May count indirect and induced jobs plus direct jobs, in meeting the 10-jobs-per-investor requirement.

Disadvantages of Creating a Regional Center

- Regional Center certification takes between 9 and 12 months.
 - Regional Center certification is not the same as approval of any particular Regional Center project unless the application included an “actual” project vs. an exemplar project.
 - Regional Center certification is no longer a small, privileged group. Nearly 400 regional centers have been certified.
- Newer Regional Centers find it difficult to compete in their marketing efforts with long-existing regional centers with a track record of many immigration approvals
- The costs of locating investors have increased in recent years
- Regional Centers have ongoing administrative and filing requirements with the USCIS to avoid de-certification

Summary of EB-5 Program Successes

- The U.S. issued 3,463 EB-5 visas in 2011 and 7,641 EB-5 visas in 2012;
 - Most investors are from China, South Korea, and other Asian countries.
 - Mexican and Russian visa seekers are now on the rise.
- The Program brought in \$1 billion during the last fiscal year.
- In 2012, the USCIS approved 3,677 I-526 applications from EB-5 investors.
- The U.S. Presidential Council on Jobs and Competitiveness has called for the program to be “radically” expanded over the next few years.
- The USCIS Office of Performance and Quality reports that in recent years:
 - The approval rate for initial investor petitions (I-526) has ranged from approval of 53% of all I-526 applicants in FY 2005 to approval of 79% in FY 2012.
 - Petitions to remove conditions on residence (I-829) have been approved at a rate of 62% of all I-829 petitioners (FY 2005) to 94% of all I-829 petitioners in 2012.
 - This recent trend of increased approval rates is a direct result of the USCIS’s greater confidence in its ability to regulate regional centers.

Criterion for EB-5 Real Estate Projects (1 of 2)

Is your real estate development project appropriate for EB-5 funding?

- Real estate development projects with a tight timeline are preferred as job creation is dependent on the completion of the project.
- Best to avoid real estate developments with too many contingencies.
- Infrastructure phases can be separated into separate EB-5 projects.
- Projects with public/private financing are preferred but not mandatory.
- Projects with “new” job creation are preferred by the USCIS as compared to remodeling of an existing building with increase in size.
- Residential projects work especially when construction periods exceed two years, and the geographic area has a high indirect job multiplier.
- Projects in perimeter states seem easier to sell than in Middle America.

Criterion for EB-5 Real Estate Projects (2 of 2)

- It is preferable but not required that before raising EB-5 funds:
 - Horizontal development is completed.
 - Loan commitment from bank is obtained for some of the total project costs.
 - Anchor office and retail tenants have committed to leasing the spaces and area vacancies in comparable surrounding buildings are low.
- Construction jobs count if the construction period \geq two years.
- If the project's completion is protracted because of approvals and other non-construction delays, best to bring in EB-5 money later in the project.
- The USCIS does not approve “indirect” job creation for remodels of existing structures.
- New structures are most favorable for both direct and indirect job creation.

Residential EB-5 Projects

- Residential EB-5 projects are growing in popularity
- Assuming no or very few direct jobs on the premises of the apartments, condos or housing development, job creation numbers for residential projects rely on:
 - Two year construction period to make use of the construction jobs in the job count
 - If one project's construction period is less than two years, considering bundling one or more projects as one project (must have the same developer)
 - Still doable even with less than a two-year construction period
 - Approved hard and soft costs to benefit from the indirect and induced jobs created in the regional center

EB-5 Program Benefits to the Project

- The EB-5 Program can be used as an alternative funding source —
 - In today's challenging economic times when traditional forms of capital are coming up short, developers seek to close the gap between the development costs and available sources of funds.
 - The EB-5 Program provides much-needed investment capital to projects that otherwise lack capital sufficient for completion.
- Investors are promised a low preferred return (0.5% to 2.75% lately), which makes this investment a low-cost source of funding. By creating a Regional Center, middle man fees are cut out.
- Investors pay an upfront administrative fee ranging between \$45,000 and \$60,000 each to cover the program promoter's broker costs.
- Marketers and finders are available in the foreign countries to assist with marketing the project and finding eligible investors seeking sound investments.

For Questions and Additional Information

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