

## Report on the EB-5 Immigration Investment Program

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### Executive Summary:

1. The program is administered by the U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security ([www.uscis.gov](http://www.uscis.gov)).
2. The EB-5 program makes immigrant visas (green cards) available to qualified individuals seeking permanent U.S. resident status on the basis of their creating new jobs benefiting the U.S. economy by investing in new or financially troubled commercial enterprises
3. Minimum investment is \$1 million or \$500,000 if business is located in a Targeted Employment Area (TEA) where the unemployment rate is 150% of the national average rate. The minimum investment then requires \$500,000/Visa.
4. Investment must create 10 direct new FTE unless the business is in a Regional Center (RC) where the new jobs can be indirect.

### Overview

Congress created the fifth employment based preference EB-5 in 1990 as part of a general overhaul of the legal immigration system. The EB-5 program makes immigrant visas (green cards) available to qualified individuals seeking permanent U.S. resident status on the basis of their creating new jobs benefiting the U.S. economy by investing in new or financially troubled commercial enterprises. The program requires a minimum investment of \$1 million/Visa, unless the investment is in a Targeted Employment Area (TEA) where the unemployment rate is 150% of the national average rate. The minimum investment then requires \$500,000/Visa. The U.S. Bureau of Labor Statistics currently reports the Portland MSA at 10.8% unemployment rate, Multnomah County with a 10.3%, and a national average of 10.0%. There may be areas within the MSA or county with higher unemployment rates, but to be designated as TEA would require additional analysis and a designation as a “high unemployment area” by the state government.

There are two types of EB-5 programs to facilitate the placement of the foreign investment:

**Regular EB-5 Program:** requires a capital investment of at least \$1 million in commercial enterprises creating at least ten new full-time jobs (minimum of 35 hours/week) directly associated with the investment.

**EB-5 Regional Center Program:** an economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increase domestic capital investment within a defined geographic region. A capital investment is required of at least \$1 million in commercial enterprises that creates at least ten new full-time jobs either directly or indirectly as a result of the investment. Designation as a Regional Center can expedite the approval of the individual’s investment in a specific qualified commercial venture by saving 5-6 months in the approval process and eliminate duplication of required submittals.

### Regional Center application process:

1. A clear delineation of the regional center’s geographic scope

2. A detailed description of how capital investment will create qualifying jobs, either directly or indirectly. This analysis must be supported by economically and statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported [if any], and/or multiplier tables.
3. The specific industries or economic activities in which investors in the regional center may invest
4. A detailed economic report showing how investments in each economic activity will create or save 10 direct or indirect jobs per investor
5. Sample corporate documents such as a subscription agreement, operating agreement, and offering memorandum
6. A detailed marketing plan and budget
7. A regional center must also indicate whether it plans to allow investments in targeted employment areas (TEAs) within the regional center (if eligible)

### **Business Plan/Gatekeeper function**

1. Primary focus on implementing the EcDev strategy and initiating development on strategic sites and projects (i.e. Block 47/49, Uwajimaya, Centennial Mills, Post Office)
2. Gatekeeper function primarily defined by business plan submitted to feds. Investors then invest in those type of businesses identified in the approved plan. If RC controls and/or pools investor money and makes decisions of which businesses to invest, then RC takes on risk of business performance, return on investment and job creation per agreement with investor. RC is no longer a pass thru entity and may put investors Visa status at risk. Not an RC model used elsewhere and not recommended by experienced RC managers.
3. Investor applications (I-526) are adjudicated by USCIS for compliance to RC's approved plan

### **Summary of Informational Conference Calls with Regional Center Managers**

1. USCIS is reluctant to receive applications from local government because of the potential for political pressure that could be applied and will not expedite the typical 1 year review timeline
2. Successful public/private RC structuring:
  - a. Local government is rarely the applicant because it doesn't have enough resources to effectively market the program overseas, which is critical to the success of an RC
  - b. Endorsement by local government very important for the following reasons:
    - i. Indicates political support for the RC
    - ii. Provides appearance of financial stability of the RC
    - iii. The business plan has been endorsed and specific businesses have entitlements
    - iv. Demonstrated public support is very important to Chinese investors
    - v. Multiple governmental entities can leverage support, marketing, foreign liaison connections
  - c. Business plans need to have cache and a "draw of the project" to attract investors
  - d. Set up as an investment basis and repaid on individual project fees
  - e. Structure on recapturing costs to set up RC
    - i. Interest rates on income
    - ii. Equity ownership (private sector only – PDC prohibited by state law)
    - iii. Placement fees
3. What should PDC do?
  - a. Only 10-12 RC's really know what they are doing – marketing is critical to success
  - b. Only commit to setting up a RC if there is \$600,000 + staff to apply, market and administer

- c. If not, partner and/or endorse private RC application subject to city's "business plan" as part of the application
- 4. RC application process should be two steps:
  - a. Submit generic application meeting minimum requirements. A detailed prediction of the proposed regional center's predicted impact regionally or nationally on household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and outside of the geographic area of the proposed Regional Center.
  - b. Once RC established, submit a comprehensive application that includes economic analysis, business and marketing plan The Regional Center Proposal may also include an "exemplar" Form 1-526 petition that contains copies of the commercial enterprise's organizational documents, capital investment offering memoranda, and transfer of capital mechanisms for the transfer of the alien investor's capital into the job creating enterprise. USCIS will review the documentation to determine if they are in compliance with established EB-5 eligibility requirements. Providing these documents may facilitate the adjudication of the related 1-526 petitions by identifying any issues that could pose problems when USCIS is adjudicating the actual petitions.

**Strategic focus of the types of EB-5 investments to be funded in the Regional Center application:**

- 1. Target Industries identified in the Portland Economic Development Strategy
- 2. Tier 1 & 2 projects (PDC)
- 3. Catalytic site development projects (e.g. Goldsmith blocks redevelopment – Uwajimaya mixed-use, Freeway Lands)
- 4. Need viable projects
  - a. Less than \$10 million is challenging because fees and costs to place investment are disproportionately high to return on investment
  - b. \$50-60 million is "sweet spot"
  - c. Over \$60 million requires a phased approach to attract investors

**Estimated costs to apply and administer a Regional Center**

- 1. Costs will vary depending on approach to establish a RC. Various examples:
  - a. Hire a consultant to preparing the application packet: ~\$150,000 in consultant fees
  - b. Public/private partnership: \$0- \$50,000 to defray upfront cost and have say in business plan
  - c. Private entity: absorbs all costs and recaptures using fees, interest on income, and taking equity position in business. City endorsement may influence application's business plan
- 2. Administration of program and quarterly report filings estimated at 1.5 FTE, or the fees of contracting with a consultant to administer is usually included as an expense in the operating costs of the commercial venture (~\$30,000/year/project)
- 3. Effective overseas marketing: +\$500,000/year

**The EB-5 Investor is required to:**

1. Invest a minimum of \$1 million, unless the investment is in an eligible Targeted Employment area. The EB-5 applicant may invest a reduced amount of \$500,000 in a designated Targeted Employment area. Regional Centers help investors take advantage of this opportunity
2. Create at least 10 full time U.S.-based jobs. If the investment is not in an approved regional center the jobs must be directly created by the entity in which the investor is investing
3. Provide evidentiary proof that the sources of investment funds were legally obtained
4. Prove the investment is “at risk” and not secured with the assets of the commercial venture
5. Qualify as an accredited investor as defined:
  - A natural person who has individual net worth, or joint net worth with the person’s spouse, that exceeds \$1 million at the time of the investment; or
  - A natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year

### **Advantages to EB-5 investors**

1. Approved investors, their spouse and unmarried children less than 21 years of age all will be granted U.S. Lawful Permanent Residency.
2. EB-5 requirements pertain primarily to investment specifications, unlike other visa programs throughout the world that put conditions on: age, business training, management skills, experience, and language aptitude.
3. EB-5 is an expedient way to obtain permanent U.S. residency. Once investment requirements are met, investors and their families are automatically qualified for permanent Green Card.
4. Investors may work, live, or own their own proprietary businesses anywhere in the U.S., but are not obligated to be employed.
5. EB-5 Visas provide the same education benefits as permanent residents. These benefits include access to state universities and related in-state tuition costs.
6. Permanent residency obtained through EB-5 provides the same benefits extended to every other United States resident
7. Permanent residents do not have to be continuously and physically present in the United States. As a permanent resident, the investor and his or her family are free to return to their homeland for visits or business purposes, as long as a residence is maintained in the United States.
8. EB-5 investors who decide to change their status to “U.S. citizen” can apply their time in the U.S. under the conditional visa toward the five year permanent residency requirement

### **Process of Placing Investment**

1. Investor and RC connect (marketing, referral, immigration attorney, investment fairs)
2. RC presents specific proposal/purpose to investor
3. Investor identifies business in RC’s approved business plan and performs due diligence
4. Investor accepts proposal, signs agreements with business to be an equity partner
5. Investor signs Subscription Form and deposits \$500,000 or \$1 million + admin fees into escrow account
6. Investor attorney prepares and submits I-526 Immigration Petition to feds
7. Feds review and approve petition
8. RC escrow agent releases deposit to investment partnership
9. Investor receives 2 year “conditional” green card
10. Between months 21-24, attorney submits I-829 Petition to remove “conditional” status
11. If approved, investor receives unconditional 10 year green card

12. After 5 years of Permanent Residence status, attorney submits N-400 Naturalization Application
13. Investor receives citizenship in ~1 year.

### **Eligible commercial ventures for EB-5 investment**

#### **New Business Qualifications:**

1. Invest or be in the process of investing at least \$1,000,000. If your investment is in a designated Targeted Employment Area then the minimum investment requirement is \$500,000.
2. Benefit the U.S. economy by providing goods or services to U.S. markets.
3. Create full-time employment for at least 10 U.S. workers. This includes U.S. citizens, Green Card holders (lawful permanent residents) and other individuals lawfully authorized to work in the U.S. (but do not include the investor or family members).
4. Be involved in the day-to-day management of the new business or directly manage it through formulating business policy – for example as a corporate officer or board member.
5. Investment in a business located in a Regional Center needs to create 10 new jobs either directly or indirectly that are related to the approved business plan of the Regional Center.

#### **Troubled business qualifications:**

1. Invest in a business that has existed for at least two years.
2. Invest in a business that has incurred a net loss, based on generally accepted accounting principles, for the 12 to 24 month period before the filing of Form I-526 Immigrant Petition by an Alien Entrepreneur.
3. The loss for the 12 to 24 month period must be at least equal to 20 percent of the business's net worth before the loss.
4. Maintain the number of jobs at no less than the pre-investment level for a period of at least two years. To be approvable, at least 10 jobs must be maintained.
5. Be involved in the day-to-day management of the troubled business or directly manage it through formulating business policy. For example as a corporate officer or board member.
6. The same investment requirements of the new commercial enterprise investment apply to a troubled business investment (\$1,000,000 or \$500,000 in a targeted employment area).

### **Examples of other entities utilizing Regional Center designation:**

#### **Philadelphia Industrial Development Corporation (PIDC) <http://www.phillyfund.com/>**

PIDC uses a consulting firm, CANAM Enterprises to place investors into the program and conducts all the necessary monitoring and reporting requirements. This partnership seems like a role model for Portland's proposed Regional Center. The PIDC focuses its efforts on city wide targeted industries such

as Trade, Technology, Transportation, and Higher Education. Their website is excellent in describing the program and their focus of placing the investments.

### **California:**

The recently approved Bay Area Regional Center expects to fund approximately \$100,000,000 of investments in 2010 through public/private partnerships in several California counties in and around San Francisco. If all the projects go forward, the Bay Area Regional Center will create approximately 2,000 new jobs beginning in 2010 with the total annual economic output of \$380,250,000 to support urgently needed redevelopment in cities such as Oakland, Richmond, Pittsburgh and East Palo Alto.

The Northern California Regional Center has currently selected two projects for investment. The first project will invest in a large dairy farm in California's Glenn County. The second project will invest in a dairy processing facility. An economic study using the IMPLAN input-output model predicts that the dairy farm project will create 175 jobs and generate \$14.5 million in foreign investment. The dairy processing facility project is currently in the developmental stage, but could create anywhere from 385 to 3,850 jobs and generate \$27 to \$270 million in foreign investment.

### **Colorado:**

The Colorado Intercontinental Regional Center (CIRC) has a pending regional center application. CIRC consists of eight rural counties along the Great Divide in Colorado. CIRC's projects will first occur in Lake County, a county with the highest unemployment, smallest population, and second lowest population growth rate of the eight CIRC counties. Direct job creation with its first Timber 2 Homes project, a \$42 million capital project, will approach 500 jobs within 5 years and 700 jobs within 10 years. Indirect and induced jobs from this project will add an additional 500 jobs over the project life. CIRC's second project, called AltaColorado Hotel/Spa, a \$35 million capital project, will add 600+ direct, indirect, and induced jobs. Collectively these projects will add 1600+ jobs to the local economy. The increase in permanent output would approach \$256 million and permanent labor income would increase by approximately \$70 million in 2008 dollars.

### **Maryland:**

The Maryland Center for Foreign Investment has a pending regional center application to create jobs in Maryland. Its first two planned projects are in Baltimore. The Westport Waterfront Development is a \$1.4 billion, 54-acre neighborhood redevelopment project that will create an estimated 18,500 permanent new jobs, increase output by \$2.236 billion, and raise labor income by \$954 million. The Gateway South Development is a \$250 million, 11-acre redevelopment project that will create an estimated 6,286 permanent new jobs, increase output by \$772 million in 2008 dollars, and raise labor income by \$343 million in 2008 dollars. That project will include the "Ray of Hope Center," a new educational and mentoring center headed by Ray Lewis, a linebacker for the Baltimore Ravens, which will help motivate and teach children citywide, while leveraging connections to both business and sports.

### **New York:**

The New York City Regional Center (NYCRC) has three projects in the works. First, the NYCRC plans to provide a \$60 million loan to the Brooklyn Navy Yard Development Corporation to facilitate the construction of two new industrial buildings and a broad range of infrastructure improvements. This \$60

million will be combined with \$58.5 million in city, state, and federal government funding, bringing the total project budget to over \$118 million. The project is anticipated to create over 1,300 jobs.

Second, the NYCRC will provide a \$45 million loan to Steiner Studios to complete Phase II of their movie studio project. The total cost of the project is \$60 million. The loan will be used to renovate a 250,000-square-foot, WWII-era building. This adaptive reuse will provide critical space for entertainment and media companies as well as additional studio space for film and commercial shoots. The project is projected to create over 1,000 jobs.

Third, the NYCRC will provide a \$35 million loan to help fund the transformation of the landmark George Washington Bus Terminal located between 178th and 179th Streets into a modern retail destination and transit center. The \$35 million loan will be combined with over \$40 million of funding from the Port Authority of New York and New Jersey. The project will include a full refurbishment of the bus terminal as well 200,000 square feet of new retail for residents of upper Manhattan. The project is projected to create 700 jobs.

#### **Vermont (State owned and operated program)**

<http://economicdevelopment.vermont.gov/Programs/EB5/tabid/389/Default.aspx>

All EB-5 Visa projects in Vermont must be approved by the **Agency of Commerce and Community Development** which is the **State of Vermont Government Department** responsible for the Regional Center.

Each **\$500,000 EB-5 Visa investment** is applied to the expansion of resort facilities and accommodations at long established highly successful ski and championship golf resorts in Vermont, North America.

#### **Highlights Of The EB-5 Visa Program**

- **The only Designated Regional Center in the U.S., controlled and supervised by State Government**
- **A 100% success record for EB-5 Visa approval** and faster approval times
- No day to day business management
- **2 weeks annual accommodation** with Ski-ing & Golfing Privileges
- Resort has been trading successfully with a successful **track record for over 50 years**

#### **Highlights of the EB-5 Visa**

- A direct route to a Green Card
- Permanent Residency in the United States for you, your spouse and any children under the age of 21
- Freedom to live, work and retire anywhere in the United States
- US Citizenship route after 5 years of being a Green Card holder

- Children may attend college/university at U.S resident costs

### **Why EB5 investors choose Vermont**

- **Faster Approvals.** A 100% success rate for EB-5 Visa approvals and Vermont's status as an approved Regional Center means that investors' petitions are given priority by US Citizen and Immigration Services, resulting in a faster path to approval.
- **Easier Access.** Nearly the entire states is a Targeted Employment Area, thus reducing the required investment level by half to \$500,000US. Additionally, investors only need to show indirect employment - 10 jobs created in the Regional Center economy - as a result of the investment, versus 10 direct jobs required in other areas.
- **State Oversight.** The state Agency of Commerce and Community Development operates the Vermont Regional Center. The Agency's day to day involvement with the Vermont business community means we are well informed of business activity in the region and can ensure our projects are well qualified.
- **Stable Economy.** Vermont's economy is comprised of a brod range of industries. This industry diversification results in a healthy economy, stable employment and a better ability to weather economic cycles.

### **Washington:**

The American Life Inc. regional center in Seattle, Washington reports that over the last 10 years, over 650 EB-5 investors have invested \$325 million in approximately 30 commercial real estate projects in a formerly run-down part of Seattle known as Sodo (south of downtown). Another 390 U.S. investors have invested in the same projects. Overall the Seattle regional center has raised over \$450 million in equity for its projects. If the economic forecasts prove accurate, these projects will create over 7,000 direct, indirect and induced jobs in the area. The regional center has revitalized Sodo, converting Seattle's old port region from warehouses and dilapidated commercial buildings to new business properties.

The Whatcom Opportunities Regional Center (WORC) pools investor funds to develop and operate retirement communities in Whatcom County, Washington. To date, WORC has raised approximately \$10 million and has begun development on an active-adult community encompassing 135 independent retirement cottages, two clubhouses/recreational facilities, an administrative office, and assisted care services. Over the next 12 months, WORC expects to raise an additional \$12 million through immigrant investors to provide personal care and medical services to over 200 senior citizens.

### **Regional Center Summary:**

These examples illustrate that although the number of EB-5 investors is small compared to other green card categories, the EB-5 program packs a powerful economic punch. Consider the incredible impact on the U.S. economy if all 10,000 EB-5 green cards were used each year. The math is simple: 10,000 times \$500,000 each is \$5 billion dollars. Yet the economic impact is far greater than that. EB-5 investors invest considerably more in the U.S. economy than the minimum capital required. They do so by buying houses, sending their children to private universities, paying local, state and federal taxes, and investing



in our economy both through publicly traded securities as well as in private investments. Their job-producing capacities far outstrip their actual EB-5 investment.

In addition to the huge economic contribution EB-5 investors themselves add to the economy, their investments in EB-5 regional centers also prime small and large projects that would otherwise not go forward. In the current depressed economy, EB-5 money is filling the gap in the traditional levels of equity to debt. For example, the CARc regional center is poised to prime over \$1 billion of real estate investment to transition unproductive portions of the real estate market in the District of Columbia. These projects will not only produce thousands of indirect jobs, but also a similar number of careers in our economy. All this occurs at no expense to the U.S. taxpayer.