

# MCAP Realty Advisors, LLC

3309 Via Lido Newport Beach CA 92663

## EB-5 Investment Visa Program Summary

Draft #4 February 2021

The EB-5 Visa for Immigrant Investors is the 5th 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.
- The 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 \$1,800,000 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 \$900,000.00.

### Investment Amount

- The investor is required to invest \$1,800,000 (or a reduced amount of \$900,000, 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.

### 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

### **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

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" ("RC") designation from the USCIS following the submission of documents supported by an economic report, showing:
  - How the RC 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 RC
  - RC's act as liaison between foreign capital and local developers in need of funds.

### **Job Creation Requirements:**

- 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 RC.

Investor must invest 100% of the \$900,000 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

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 RC.
- Developer is missing the opportunity to have a RC in place to fund a pipeline of real estate projects.

Regional Center certification provides legitimacy for the project, which may help in marketing to foreign investors.

- RC 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, RC's 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.

RC certification takes 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.

- Newer Regional Centers find it difficult to compete in their marketing efforts with long-existing RC’s with a track record of many immigration approvals
- The costs of locating investors have increased in recent years
- RC’s have ongoing annual administrative and filing requirements with the USCIS to avoid de-certification
  
- “Renting” a regional center means you will control the entire offering process, from drafting the offering documents, to hiring marketing agents and marketing the offering
- You will pay a rental fee to the regional center
- The RC will be responsible for only supervising the offering and making the required filings with the USCIS.
- Not every RC will accept this arrangement.
- You may want the RC to do the marketing. If so, you will want to understand about their marketing experience, what marketing agents they work with, how they market, and agree on a budget for marketing expenses, to know your costs for the EB-5 offering.

Before making any payment to the RC, you will want a binding agreement (LOI) with the RC, describing all of the material terms including:

- the minimum and maximum amount of the EB-5 offering;
- the time period within which the EB-5 offering will be completed,
- the fees that will be paid to the RC as compensation for sponsoring the offering,
- who is responsible for marketing the offering, including the engagement of overseas agents,
- whether the offering proceeds will be invested as debt or equity in the project,
- the conditions that will be required in order for the funds to be invested in the project,
- the procedure for funding the investment, including construction draw requirements,
- if the investment will be –
  - o debt: the interest rate, maturity, payment terms and any security pledged for the debt,
  - o equity: the class of equity (common or preferred), the return and any put/call rights,
- the costs that each party will be responsible for, *e.g.*, legal fees, economist fees, translation fees, marketing fees and costs of offering materials, seminars, travel expenses, etc.,
- the identity of the economist and other parties responsible for preparing the offering documents and USCIS filings (if any),
- the rights of each party to terminate and the terms that will apply following the termination.

**Loan Model Terms:**

- interest rates offered will vary between 3.0-5.5%
- origination fee will vary

between 0-2.5% of the loan

- legal costs from borrower range

between \$50k-\$200k

- marketing costs range from \$20k-\$100k depending on loan size plus the admin fee
- termination fees if borrower cancels

### **Rental Model Terms:**

- the developer sets its own interest rates and terms since it's running the show
- the developer either will market its own project to investors or hire the RC to market for a fee/costs
- the developer will pay a rental fee to the RC:
  - An Annual fee or
  - 1.0-2.0% of the EB-5 annually or
  - a flat rate per investor (i.e., \$7,500)

### **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 (2) years, and the geographic area has a high indirect job multiplier.

### **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 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 (2) year construction period to make use of the construction jobs in the job count
- If one project’s construction period is less than two (2) 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

The EB-5 Program can be used as an alternative funding source –

- Developers seek to close the gap between the development costs and available sources of funds with EB-5.
- 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 1.75% lately),
  - Investors pay an upfront administrative fee ranging between \$75,000 and \$100,000 each to cover the program promoter's foreign marketing agent’s costs.
  - Marketers and finders are available in the foreign countries to assist with marketing the project and finding eligible investors seeking sound investments.

---

Important Disclaimer: This document is the property of MCAP Realty Advisors, LLC is an internal document intended for use by MCP Realty Advisors, LLC only and does not constitute an offer to provide any legal advice or to sell or a solicitation of any offer to sell or buy any securities. Offers are made only by prospectus or other offering materials. None of the information or analyses presented are intended to form the basis for any investment decision, and no specific recommendations are intended. Accordingly, this document does not constitute investment or legal advice or counsel or solicitation for investment in any security. No party may claim any rights against the other by reason of this document or by taking any action in reliance thereon.

