

EB-5 Investor FAQ for Due Diligence on Regional Centers

By Boyd F. Campbell
Attorney and Civil Law Notary
visaus.com

As an investor, you should ask tough questions about regional centers and their EB-5 investment projects, such as:

Q. When was the regional center approved by USCIS, and has it been audited by USCIS?

A. Regional centers that have more recently been approved may have little or no track record of successful immigrant petitions or of job creation. Some regional centers have become inactive, and some have not been audited. Some regional centers that have been audited have seen their approval revoked.

Q. Is the regional center affiliated with any government entity?

A. It can be, but you should look carefully. Does the government entity that has this affiliation have any track record in job creation or economic development? The government entity may have some or no experience in this regard.

Q. How many years of experience do the general partner or principal in the investment project have in working with immigrant investor programs?

A. Although some project developers may have experience with the EB-5 Program, most will not. Do not conflate the regional center with the investment project, if the two are separate and distinct. Such investors invest "through" the regional center and into the job-creating entity (the investment project). Some of the general partners or regional center principals have little or no experience with the EB-5 Program. Others have extensive experience both in the United States and with investor immigrant programs in other countries.

Q. Should I ask how many years of experience the principals involved in the regional center have in job creation?

A. Very good question, and you should ask it. The EB-5 Program is very young, but some of the regional center principals have been involved in job creation and economic development for a long time. Regional center principals who have such experience should be considered in your plan to invest.

Q. Does the regional center investment include direct job creation, indirect job creation, or both?

A. Most regional centers include direct and indirect and induced job creation. A safer alternative is an investment project that relies upon direct job creation only, with a plan to produce an economic impact study showing indirect and induced job creation if needed at the I-829 (removal of conditions) stage.

Q. Can I ask about the regional center's track record -- how many I-526 petitions approved/denied, how many I-829 petitions approved/denied?

A. You would be foolish not to ask these important questions. If the regional center will not provide

this information, do not pursue an investment through that regional center. The safest regional centers at this point in time are those that have I-829 approvals, but there are very few of these.

Q. Do I have to deposit or pay a fee to get a copy of the securities offering?

A. Some regional centers charge a deposit, which is applied to the regional center's administrative services fee if you invest. Some regional centers charge a flat fee to receive a copy of the securities offering. Other regional centers charge no fee for the privilege.

Q. What amount do I have to pay to invest?

A. In most regional centers, the investment amount is \$500,000. Regional centers generally charge an administrative services fee of from \$25,000 to \$50,000.

Q. Do I make a payment into an escrow account? Is the investment amount refunded if the I-526 is not approved?

A. Most regional centers use escrow accounts to deposit the investor's \$500,000 and the regional center's administrative services fee. The provision of an escrow account with the money remaining in escrow until the I-526 petition is approved is a critical security feature for the investor. This is perfectly appropriate for EB-5 cases.

Q. Can I redeem my investment following conditions removal?

A. We certainly hope so. With some regional centers, this is fairly certain; with others it is not. Although third-party indemnity insurance contracts are permitted by USCIS, there is that nagging doubt that such contracts may not meet the regulatory "at risk" requirement.

Q. What provisions are made regarding the security of the investment?

A. The federal law governing the EB-5 Program states that your investment is "at risk". You should perform due diligence regarding the likely security of your investment. Professional financial advisors can help you.

Q. What use is made of the investor's funds? What is the type or types of projects?

A. Regional center investments may involve commercial building projects, condominiums, hotels, film, studios, heavy and light manufacturers, warehouses, real estate, and other types of projects.

Q. What form of investment should I invest in? Are there different business models out there?

A. Yes. The most common investment vehicle is a limited partnership that loans money to a job-creating entity. Other forms of investment structure include limited liability companies that may be a partnership, equity investments, venture capital funds, and real estate investment trusts (REITs). These types of projects vary from regional center to regional center.

Q. What has been the rate of return to investors historically?

A. It varies. Usually 2 to 5 percent. Regional centers promising outrageously high returns -- such as 15 to 30 percent -- are probably investments that are too good to be true. Then again, an investment project offering a 2 percent return might be a much safer and more secure investment. Investors may need to balance the importance of immigration track record, security of the investment

and rate of return on the investment project's structure. For example, a project may have more than a few ways to take you out (i.e., return your \$500,000), thus increasing the likelihood that you will get your money back.

Q. Does the regional center provide regular reporting of the status of the investment to the investors, and at what intervals?

A. Yes, the best ones do. You should expect regular reports with an update on the investment project, job creation and new investment opportunities, at least quarterly.

Q. Once I have invested my money, how do I monitor job creation? What steps are taken if the requisite job creation has not occurred?

A. The investor should look for an investment project with detailed job reporting on a regular basis and with a provision that failure to create the required jobs establishes a basis for reinvestment of the proceeds in another project, so as to keep the investor's immigration and investment process on schedule.

Q. Do you have a lawyer I have to use?

A. Some regional centers require the investor to use the regional center's lawyer to file the investor petition, and others do not. The regional center's immigration attorney may provide review and counseling to an investor's lawyer. A general counsel of a regional center, such as myself, will work closely with the investor's lawyer to insure EB-5 compliance. A few regional centers do this.

Q. Does the regional center's attorney contact the foreign national directly, or can the referring attorney maintain all contact with the foreign national?

A. With some regional centers, the lawyer deals directly with the investors. With others, even if the regional center's lawyer handles the investor petition, the lawyer may deal only with the referring lawyer at the referring lawyer's request.