

# EB-5 Options for Developers

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In recent years, developers seeking to raise capital have taken a keen interest in the EB-5 “regional center” investor visa program. “Regional centers” are entities designed to use immigrant investor capital to promote economic growth in a particular geographic area. Any entity, government or private organization may apply for regional center designation by submitting a written proposal addressing each of the requirements for regional center designation. Many developers believe that creating a new regional center is the best or only option to raise capital from foreign nationals. In fact, there are three options under the EB-5 program. The best option depends upon the particular needs and plans of the individual developer. A summary of the three options, including some of the advantages and disadvantages of each, follows: **1. Establishing a Regional Center** Advantages:

- Developers can count indirect and induced employment to meet the 10 job per investor requirement.
- Developers can have individual projects within the regional center pre-approved by USCIS.
- Regional center certification may lend a certain legitimacy that helps in marketing to foreign nationals.

## Disadvantages:

- Certification of a regional center may take from six months to one year.
- Preparing the application for certification is expensive; costs include hiring an economist, a business plan writer, immigration and transactional/securities attorneys; in addition, the filing fee is \$6,230.
- In addition to having the regional center certified, the developer still needs to have its individual capital investment projects approved.
- There are more than 150 regional centers already approved.
- Many regional centers have not been able to attract investors.

- New regional centers find it difficult to compete with regional centers that have been in the business for many years.
- Regional centers have ongoing administrative and filing requirements with USCIS; failure to comply could result in de-certification.

## **2. Having an Existing Regional Center Sponsor a Project Advantages:**

- Eliminates the time and expense involved in developing a new regional center.
- The existing regional center may already have a marketing plan and structure in place and investors ready to invest.
- Developers can still seek pre-approval of their new project.

### Disadvantages:

- The regional center operators will likely require a fee for their services.
- The developer must conduct serious due diligence on the regional center to avoid affiliation with a regional center that doesn't meet expectations.
- The developer may have to give up some control over the project to the regional center operators.
- The developer assumes the risk that the regional center may become de-certified.
- The regional center may need to amend its certification with USCIS to incorporate the new project, which could cause a delay.

## **3. Pooled Investment— Individual EB-5 Petitions Advantages:**

- Avoids expense of obtaining regional center certification.
- Avoids ongoing administration of regional center.
- No delay for certification; as soon as investors are identified, the EB-5 petitions can be filed.
- No ongoing reporting requirements.

### Disadvantages:

- 10 direct positions must be created for each investor.
- Pre-approval is not available.
- Marketing may be more difficult.
- USCIS prefers 10 jobs to have been already created at time of filing petitions.

- Ultimate removal of conditions depends on 10 positions existing at time of condition removal.

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