

Practices

EB-5 Immigrant Investor Program

The EB-5 program enables a foreign investor to obtain citizenship by investing in a U.S. project or business, either as an investor with other EB-5 participants in a project or business owned and operated by others, or as a “direct” investor in a project owned and operated by the investor. Invest in the USA (IIUSA) reports that since its inception, the EB-5 program has generated \$42 billion of foreign direct investment into a broad range of projects.

The program was modified significantly through the Reform and Integrity Act (RIA) adopted in March 2022. The prime purposes of the RIA are to provide greater effectiveness in directing EB-5 capital to impacted areas and greater transparency in information provided to investors and their agents, and to reform the review and processing of Green Card applications.

These program modifications have been followed by significant upheaval in the U.S. economy and financing markets whereby capital from conventional sources is harder to access and terms are less favorable as interest rates continue to rise and bank loan terms become even less favorable to developers. As a result, the EB-5 program has become an even more important source of financing for projects and businesses, while at the same time, the program’s goals, framework, and operating procedures have become more complex.

Successfully moving an EB-5-funded project from conception to completion requires legal counsel

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Our Team

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fully versed in the program that is facing significant changes. Akerman guides developers, investors, agents, regional centers, and financial institutions throughout the entire EB-5 process, helping clients understand the structure and marketing process necessary to successfully complete an EB-5 project, as well as the obligations, implications, and responsibilities involved in this type of foreign investment. With a national platform and lawyers experienced in all legal aspects needed to move a project from conception to completion, Akerman provides its EB-5 clients with a “best practices approach” and the bench strength to staff large, complex projects with speed and efficiency.

The Akerman EB-5 team also assists foreign companies seeking to establish, develop, and manage their presence in the United States. As one of the leading law firms in the U.S. for immigration law (*The Legal 500*), Akerman also represents multinational, foreign, and domestic companies, as well as individual professionals and employees, in all aspects of immigration and nationality law.

Ranked Tier One in the United States in Real Estate and Corporate Law by *Best Lawyers*, Akerman has strong experience and capabilities in all of the support services often needed for EB-5 projects, including securities offerings, registration and regulation of securities brokers, and all facets of real estate development, including acquisitions and sales, financings, and restructurings.

What We Do

Akerman provides all of the professional services needed for both the specific EB-5 transaction as well as the support services for those transactions.

Direct services:

- Legal structure and other legal services for EB-5 transactions

- Compliance with all United States Citizen and Immigration Services (USCIS) regulations
- All documentation for offering plans and support materials
- Regional center designation
- Immigration counseling and representation
- Securities review and compliance
- Broker-dealer registration and regulation
- Contracts between the various participants

Support services:

- Real estate acquisitions
- Construction
- Financing and development
- Federal and state income tax and estate tax planning and representation
- Business organization and planning
- All other legal services required for any EB-5 transaction

Value-Added Services

In addition to its legal services, Akerman provides a broad, and in many cases, a unique range of value-added services. These include arranging incentives and entitlements that enhance value for developers and investors, structuring projects and business opportunities to increase attractiveness for investment, connectivity between regional centers, developers, agents, investors and other participants and other value-added services. This enables Akerman to at times act as comprehensive counsel for projects, taking responsibility for structuring projects, finding and/or enhancing projects and business opportunities, structuring and enhancing the capital raising process, and other work to put all the pieces together.

An Overview of the Major Changes to the EB-5 Program Under the RIA

New Investment Amounts:

- For investments in Target Employment Areas (TEA) and rural areas = \$800,000
- Other areas = \$1,050,000
- Amounts are subject to CPI increase every five years

Reserved Visas:

- 20 percent for rural
- 10 percent for high unemployment
- 2 percent for infrastructure
- Unused reserves are carried over for the next year, but released if unused for three years

Target Employment Areas:

- Previously determined by state agencies, now set by USCIS
- Once established, a TEA designation lasts for two years

Indirect Job Limits:

- 90 percent maximum for indirect jobs
- 75 percent limit for construction jobs that last two years or less – construction jobs lasting more than two years remain “permanent employment”
- Tenant occupancy can count, but not for relocation within a TEA
- Bond purchases are no longer permitted

Redeployment:

Funds must remain “at risk” until an investor’s conditional designation is removed. Redeployment may be anywhere within the U.S. Further, if a regional center fails to redeploy on one project, all pending investor petitions fail.

Regional Center Reforms:

- All immigration fees must be disclosed
- Subject to project and regional center audit every two years
- Must maintain all investor records for 5 years
- No foreign ownership of a new commercial enterprise (NCE) or regional center
- USCIS to perform site visits on each project with 24-hour advance notice
- Regional centers must file annual reports certifying securities law compliance
- Fines of up to 10 percent of funds raised for misstatements and non-compliance
- Annual reports must be shared with investors
- Migration Agents must file with USCIS and are subject to USCIS supervision
- New designation needed for every regional center to sponsor new projects

Project Filings:

Project level filings are required prior to investor petition filings, but do not need to wait for project approval for investors to file their I-526 petitions.