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October 23, 2012

Export Internationally & EB-5 Financing Seminar

California Lutheran University, Lundring Events Center in Gilbert Sports & Fitness Center
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"By Appointment of the Secretary of Commerce"

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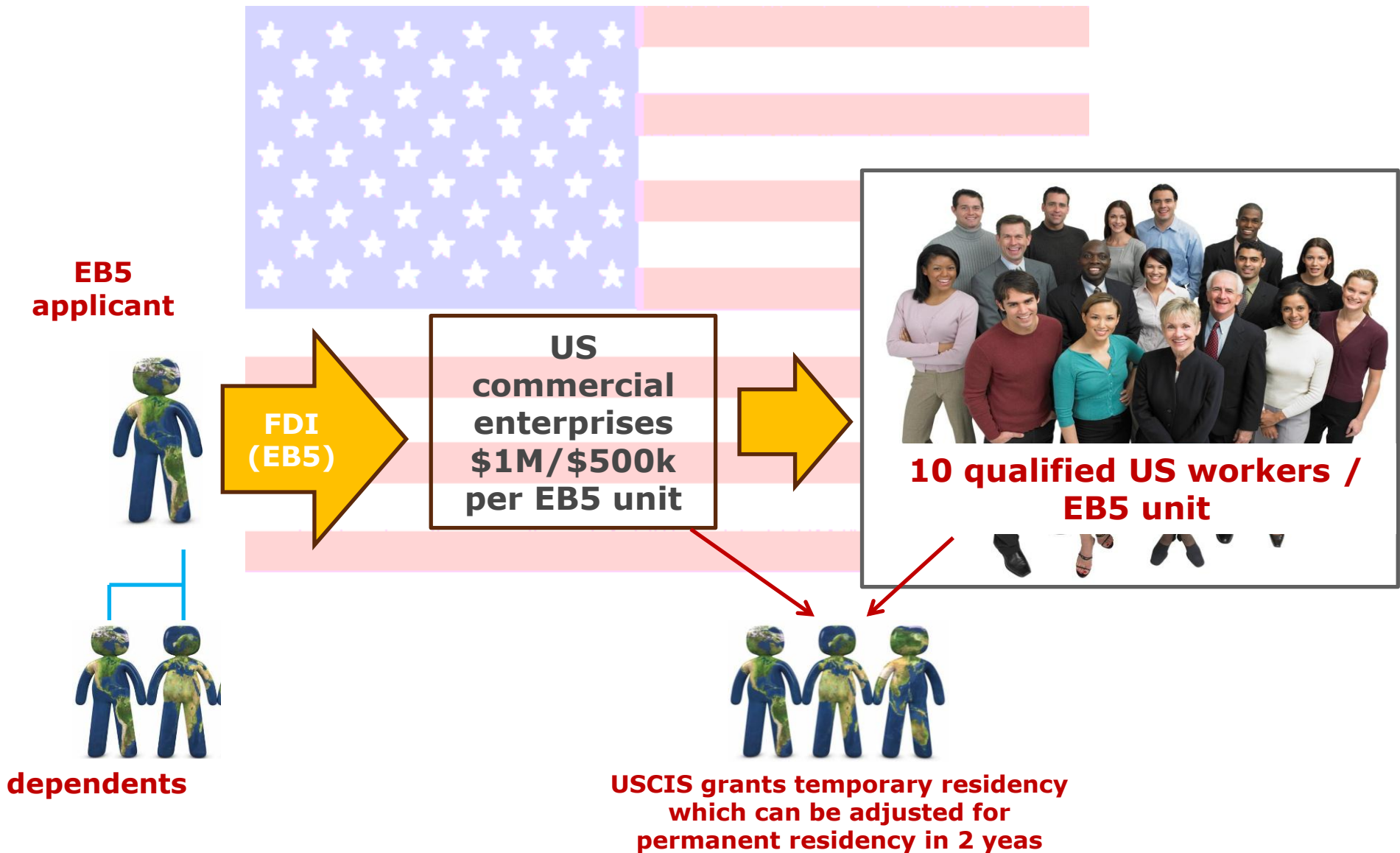
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EB5 – Employment Based Fifth Preference Visa Program administered by USCIS



U.S. Citizenship
and Immigration
Services

Fifth Employment Based Preference (EB-5)



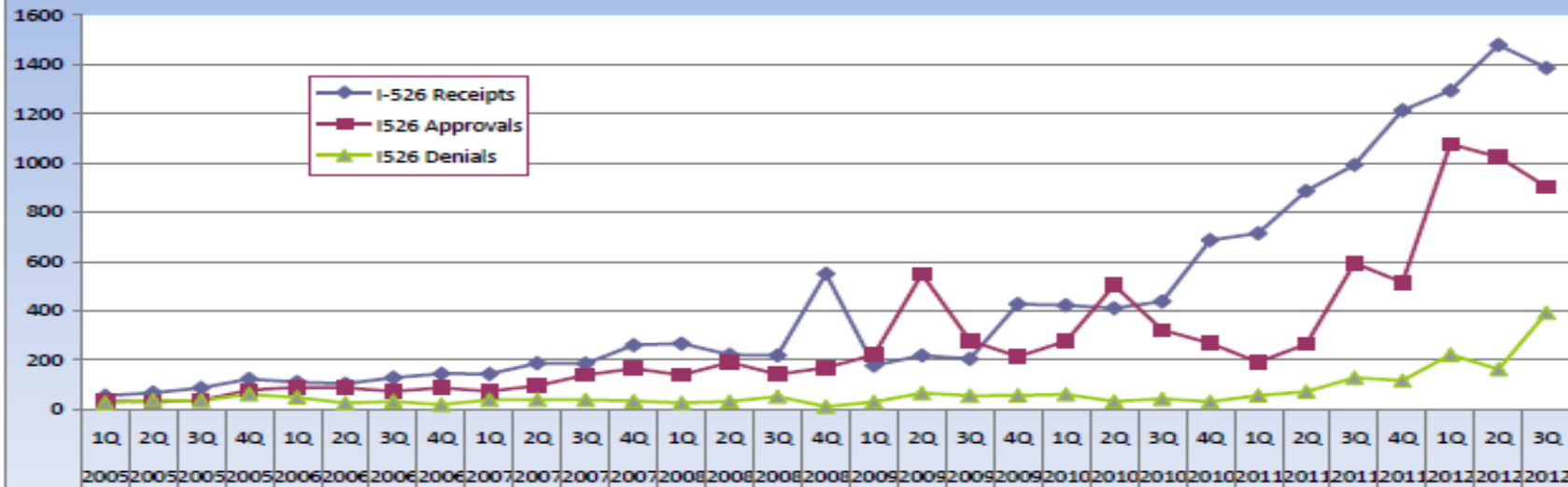
NOTE: EB5 investors and family members are not included in the US job creation count.

Why EB5?



U.S. Citizenship
and Immigration
Services

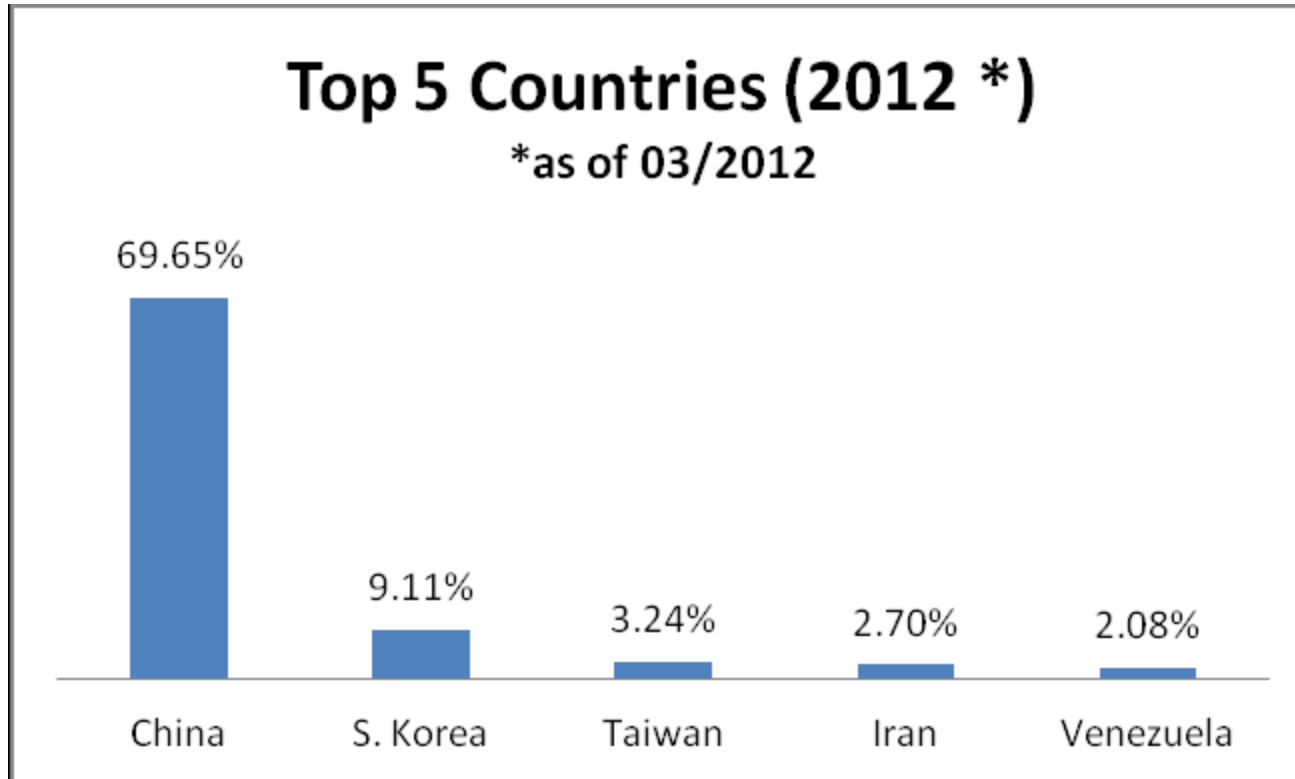
I-526 Receipts, Approvals, and Denials FY2005-2012 3rd Quarter



Each I-526 represents an individual investor making a minimum investment of \$1M or \$500K with an economic impact of over ten U.S. jobs. On 7/26/2012, USCIS reported 3,002 approved I-526 petitions in the first three quarters of FY2012. A full year at this rate will account for just over 4,000 I-526 petitions.

4,000 I-526 petitions will account for a minimum of over \$2 Billion in foreign direct investment with an economic impact of over 40,000 U.S. jobs – in Year 2012 all at no cost to the American taxpayer.

Where Are EB5 Applicants From?



Who Supports EB5 Visa Program?

August 3, 2012 - The U.S. Senate has approved legislation authored by Sen. Patrick Leahy (D-Vt.) to continue the EB-5 foreign investment program that Vermont has used to create hundreds of jobs across the state.

U.S. House of Representatives Approves 3-Year Extension of EB-5 Regional Center Pilot Program

Sept 12, 2012 - in a vote of 412-3, the U.S. House of Representatives voted to pass a three year reauthorization of the EB-5 Regional Center Pilot Program. **S. 3245** provides for a three year extension of the regional center program until September 30, 2015. President Obama is expected to ratify the measure later this week. Members of Congress came together from both sides of the aisle to pass this important legislation. Instrumental in the debate was Chairman of the House Judiciary Committee Lamar Smith (R-TX) who spoke at the EB5investors.com First Annual Southern California Conference held on July 30th in Newport Beach.

At the conference, Chairman Smith publicly vocalized his support of this program which not only creates U.S. jobs and attracts foreign direct investment to the country but also for its unique ability to attract the best and brightest business people to the U.S. Today, the Chairman cited statistics related to the number of jobs the program has already created while expressing his support of the program. Also, instrumental in the debate were Subcommittee Ranking Member Zoe Lofgren (D-CA), Representative Rick Larsen (D-WA) and Representative Peter Welch (D-VT).

Oct 10, 2012

President Obama renews EB-5 Immigrant Investor Program – the Green Card alternative for foreign investors

Who Supports EB5 Visa Program?

CDFA and IIUSA Sign Partnership on EB-5 Programming

-- Organizations will co-support Immigrant Investor Program training and advocacy --

Washington, D.C. – Earlier this August 2012, the **Council of Development Finance Agencies (CDFA)** and the **Association to Invest In the USA (IIUSA)** agreed to a partnership on programming that supports the rapidly growing EB-5 Immigrant Investor Program. This timely partnership comes on the heels of the Senate acting to reauthorize the EB-5 Program for three years. The House is expected to take up the measure during its short session in September.

“As **a source of gap financing**, the EB-5 program has catalytic potential for economic development, and our 300+ member organizations have been clamoring for more education and resources related to this program,” said Toby Rittner, CDFA President & CEO. “Our entire network of over 15,000 professionals will greatly benefit from this partnership with IIUSA.”

CDFA and IIUSA will collaborate on each organization’s annual conference, professional development, legislative advocacy, and organizational promotion.

“This partnership is indicative of the emerging role EB-5 capital is playing in economic development projects across the country,” Peter Joseph, Executive Director of IIUSA, said. “Our Regional Center members will have access to important, high-level professional development training and events. And IIUSA will provide EB-5 expertise to CDFA members, who play a dynamic role in the economic development process and **can put EB-5 capital to use.**”

Who Endorses EB5 Visa Program?

About SelectUSA

Attracting Investment, Increasing Employment

Recognizing that the competitiveness and job-generating ability of a nation is determined by its desirability as a place for businesses to operate, **SelectUSA was created at the federal level to showcase the United States as the world's premier business location** and to provide easy access to federal-level programs and services related to business investment. SelectUSA is designed to complement the activities of our states—the primary drivers of economic development in the United States.



<http://selectusa.commerce.gov/>

EB5 Financing

EB5 Financing

EB-5 Investor Visa

Fifth employment based Preference (**EB-5**)

An immigrant visa category created in 1990

- 1. Investment of US\$1 million, or US\$500k if the project is in a Targeted Employment Area (TEA)....defined as:**
 - a) High Unemployment @ 150% of National Average
 - b) Rural Area (Not within a MSA)

Note: almost all EB5 projects are in TEA
- 2. Visa Quota of 10,000 per year**
- 3. Invest in commercial enterprises:**
 - a) new commercial enterprise: 11/29/1990
 - b) Troubled Business: (1) loss during the 12-24 period prior, (2) loss \geq 20% of the net worth, (3) maintain existing employees (at least 10 per EB5 unit) for 2 yrs

EB5 Financing

EB-5, Cont. – Basics

4. **Benefit the U.S. economy:** Create 10 full-time equivalent positions for 10 qualified US workers / investment unit
5. **Investor:** engage in the day to day management (unless investor is a limited partner)
6. Investment must be from **lawful source of funds** and **at risk**
7. **Jobs to be created** within the 2-year conditional residency period
8. Invest through a **Regional Center** or **Direct Investment**
9. **EB5 visa application process:** submission of Form I526 with proof of funds, business plan including job creation projection, & transactional documents

Regional Centers

Regional Centers

- 1. Pooling and management of funds**
- 2. Pilot Program:** extended through 2015
- 3. Defined:** an economic unit, public or private - involved with the promotion of economic growth, including increased export, sales, improved regional productivity, job creation, or increased domestic capital investment
4. Most Regional Center investments do not require a daily management role
5. Investments must be within the boundaries of the Regional Center and must be in an investment “cluster” approved by USCIS (see #11)

Regional Centers, Cont.

7. **Less restrictive Jobs Counts:** direct, indirectly, or induced
8. Indirect **Job Calculations:** projected by an econometric report based on reasonable methodologies
9. Indirect jobs may be outside the geographic boundaries of the Regional Center
10. **243 USCIS approved Regional Centers** in the US... thus far
 1. 55 in California
 2. 19 in Florida, 12 in New York
 3. The State of Vermont operates the Vermont Regional Center
11. **Most popular industries:** manufacturing, hospitality, healthcare services, educational services, retails, entertainment, and commercial real estate– high labor intensive
12. **Range of EB5 raise** per RC project: \$10M - \$100M and up
13. **EB5 capital ratio:** 35%-85% of project cost

Sample EB5 Projects

Well Known Projects Funded by EB5

Vermont's Regional Center – a national leader in using the federal program -- has been a successful **private-public partnership** between **the State of Vermont and several Vermont businesses**, bringing economic development and job growth since 1997. Two Vermont ski resorts, Jay Peak and Sugarbush, are active participants in the program and have used it to launch major development projects. Vermont's projects have drawn business and tourism to the state, fueling local economies and creating jobs.



Well Known Projects Funded by EB5

LA Live: a \$172-million, 23-story tower on Olympic Boulevard:
174-room Marriott Courtyard and a 218-room Marriott
Residence Inn – open in 2014
EB5 financing: \$118 million



Well Known Projects Funded by EB5

W Hollywood Hotel Expansion:

11,000-square-foot rooftop nightclub and and Drai's, a 7,000-square-foot ground-floor restaurant

EB5 financing: \$17M



Drai's Restaurant



Rooftop Nightclub

Lesser Known EB5 Funded Projects



Gas Stations



Sports Field Operations(no real estate)



Vineyards



Schools
Medical Offices
Commercial Buildings



Almond Farms



Childcare Centers

EB5 Regional Center

Case Study: CMB Regional Center ("California Military Bases") was formed in 1997 to assist California communities facing military base closures by Federal Base Realignment and Closure Commission ("BRAC"). The geographical focus of CMB consists George Air Force Base, Norton Air Force Base, Mather Air Force Base, Sacramento Army Depot, McClellan Air Force Base and the realigned March Air Force Base and each respective county.

CMB EB5 Projects:

- 1. Mill Street Project(1st project funded)** - a \$650,000 direct public sector investment to the Inland Valley Development Agency ("IVDA").
- 2. CMB Infrastructure Investment Group II** - 26 million for
(a) Inland Valley Development Agency (IVDA) & The San Bernardino International Airport Authority (SBIAA) @ Norton Air Force Base
(b) McClellan Park master developer
- 3. CMB Infrastructure Investment Group VIII** - \$65 million raise for Hillwood master developer

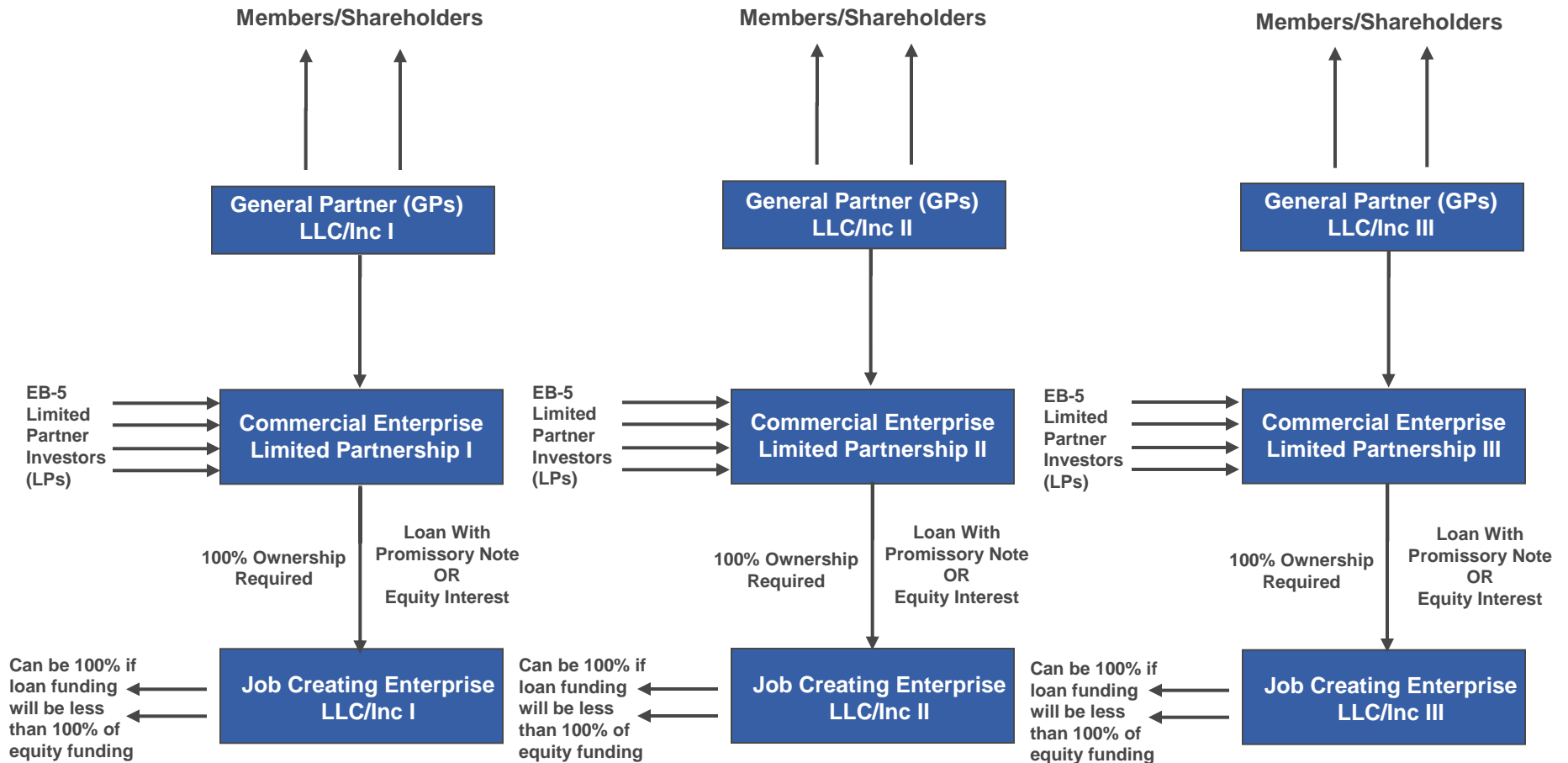
Direct Investment Model

Typical Direct Investment Multiple Business Structure

This program is based on the original 1990 EB-5 law and does not sunset.

This is NOT a Regional Center, and qualified employees must be on payroll.

Form I-9 is required by law. Fragomen strongly recommends utilizing the eVerify program as well



Direct Investment vs Regional Center

| | <u>Direct Investment</u> | <u>Regional Center</u> |
|--|---|--|
| Active Business Operation Management | day-to-day or through policy | day-to-day or through policy |
| Applicable Business Sectors | all that creates required jobs | all that creates required jobs |
| Business Plan | required | required |
| EB5 Investor Eligibility | must be accredited | must be accredited |
| EB5 Investor Participation | directly affiliated with US entity | capital investment through a Regional Center sponsorship |
| EB5 Investor Relationship with US Entity/Project | Direct | indirect |
| Escrow of Funds | may be utilized | mostly utilized |
| Job Creation Requirement | 10 full-time job for qualified US workers | 10 full-time job for qualified US workers |
| Job Counts | direct employment | direct / indirect / induced |
| Job Creation Verification | job projection / payroll tax returns | project specific economist report / subject to the final approval of USCIS |
| Project Specific Economist Report | n/a | required |
| Proof of EB5 Investment Funds | must be verifiable | must be verifiable |
| Recommended Capital Investment Range | \$500,000 - 5 million per site | 5-10 million or higher per project |
| Targeted Employment Area (TEA) | if qualified, eligible for the reduced \$500,000/ EB5 unit | is qualified, eligible for the reduced \$500,000/ EB5unit |
| Transactional Documents | required and per business structure | required and per business structure |
| USCIS Application Process | lengthy, could be shorter than Regional Center applications | lengthy, as posted by USCIS or longer |

US Investors Visa Categories

Comparisons of Investor Type Visas

| <u>COMPARE</u> | NIV E-2 Treaty Visa | NIV L-1A Intracompany Transfer Visa | IV EB-5 Employment Creation – Permanent Investor Visa |
|--|--|---|--|
| Type | Non Immigrant Visa | Non Immigrant Visa | Immigrant Visa Green Card |
| Duration | Indefinite while treaty and investment exists | 7 years in increments Start over after being out of the US for 1 year | Conditional for two years; then permanent; and US citizenship after 5 years |
| Citizenship Requirement | Yes only nationals of treaty countries with E-2 visa provision | No | No |
| At Risk Investment | Yes by implication | Yes by implication | Yes by statute |
| Proof of Lawful Source of Funds (SOF) | Yes with some details | Yes with some details | Yes with extremely detailed documentation |
| Application Timing | 1-3 months at US Consulate | 1-2 months at USCIS and then at US Consulate | I-526 up to 8 months AOS/CP up to 10 months |

Comparisons of Investor Type Visas Cont.

| <u>COMPARE</u> | NIV E-2 Treaty Visa | NIV L-1A Intracompany Transfer Visa | IV EB-5 Employment Creation – Permanent Investor Visa |
|--|--|---|--|
| Minimum Investment | Not Prescribed – Substantiality test – usually more than \$ 150,000 | Enough to permit Business to operate and meet its expenses. Usually \$100,000+ for startups | \$500,000 or \$1,000,000 depending on location of the employment creating project |
| Work Authorized | Yes | Yes | Yes |
| Spouse | Yes 90 day application | Yes 90 day application | Yes |
| Children Under 21 & unmarried | No | No | Yes |
| Travel | Yes with visa | Yes with visa | Yes |

Comparisons of Investor Type Visas Cont.

| <u>COMPARE</u> | NIV E-2 Treaty Visa | NIV L-1A Intracompany Transfer Visa | IV EB-5 Employment Creation – Permanent Investor Visa |
|--|--|--|--|
| Travel | Yes with visa | Yes with visa | Yes |
| Time to Green Card | Not Available through E-2 | Less than 1 year after qualifying for the application I-140/I-45 | Not Applicable, already a Green Card |
| US Citizenship | No | Yes, 5 years after Green Card and Qualifying | Yes, 5 years after Conditional Residence and Qualifying |
| Worldwide Taxation Consult professional as the answers given here are generic | Yes after 180 days or average of 120 days per year over 3 years See internal revenue code (IRC) | Yes after 180 days or average of 120 days per year over 3 years See internal revenue code (IRC) | Yes upon issuance of Conditional Green Card |

Q & A

For further information on all EB-5 regional center filing and amendments, related matters, individual investor regional center filing, direct investor filing,

Contact David Hirson

dhirson@fragomen.com

+ 1 949 660-3504

For further information on packaging your projects for EB-5 financing, particularly through direct investment method for \$3-10 million raise, and marketing abroad and promoting your projects,

Contact Janet C. Wang

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