

EB-5 Immigrant Investor Program

U.S. Citizenship and Immigration Services - USCIS administers the EB-5 Program. Under this program, investors (and their spouses and unmarried children under 21) are eligible to apply for lawful permanent residence (become a Green Card holder) if they:

- Make the necessary investment in a commercial enterprise in the United States; and
- Plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers.

This program is known as EB-5 for the name of the employment-based fifth preference visa that participants receive.

Congress created the EB-5 Program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. In 1992, Congress created the Immigrant Investor Program, also known as the Regional Center Program, which sets aside EB-5 visas for participants who invest in commercial enterprises associated with regional centers approved by USCIS based on proposals for promoting economic growth.

About the EB-5 Visa Classification

USCIS administers the EB-5 Immigrant Investor Program, which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a program first enacted as a pilot in 1992 and regularly reauthorized since then, investors may also qualify for EB-5 classification by investing through regional centers designated by USCIS based on proposals for promoting economic growth. On March 15, 2022, President Biden signed the EB-5 Reform and Integrity Act as part of the Consolidated Appropriations Act, 2022 (Public Law 117-103), which created new requirements for the EB-5 immigrant visa category and the Regional Center Program. Immigrant visas are authorized under the Regional Center Program through Sept. 30, 2027.

This page provides a brief overview of the basic requirements for an EB-5 immigrant visa under the EB-5 Reform and Integrity Act. USCIS policy on EB-5 adjudications is in Volume 6, Part G of the USCIS Policy Manual for petitions filed before and after the enactment of the EB-5 Reform and Integrity Act. USCIS will continue to update its Policy Manual with the provisions of the EB-5 Reform and Integrity Act.

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All EB-5 investors must invest in a new commercial enterprise that was established:

After Nov. 29, 1990; or

On or before Nov. 29, 1990, that was: Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results; or Expanded through the investment, resulting in at least a 40% increase in the net worth or number of employees.

A new commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business, including:

A sole proprietorship;

Partnership (whether limited or general);

Holding company and its wholly owned subsidiaries (provided that each subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business);

Joint venture;

Corporation;

Business trust;

Limited liability company; or

Other entity, which may be publicly or privately owned.

This definition does not include non-commercial activity, such as owning and operating a personal residence.

Job Creation Requirements

An EB-5 investor must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees.

- For a new commercial enterprise not located within a regional center, the new commercial enterprise must directly create the full-time positions to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.
- For a new commercial enterprise located within a regional center, the new commercial enterprise can directly or indirectly create the full-time positions. Up to 90% of the job creation requirement for regional center investors may be met using indirect jobs.
 - Direct jobs establish an employer-employee relationship between the new commercial enterprise and the persons it employs.
 - Indirect jobs are held outside of the new commercial enterprise but are created as a result of the new commercial enterprise.
- In the case of a troubled business, the EB-5 investor may rely on job maintenance.
 - The investor must show that the number of existing employees is, or will be, no less than the pre-investment level for a period of at least two years.

A troubled business is one that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period before the priority date on the immigrant investor's

Form I-526. The loss for this period must be at least 20% of the troubled business' net worth before the loss. When determining whether the troubled business has been in existence for two years, USCIS will consider successors in interest to the troubled business when evaluating whether they have been in existence for the same period of time as the business they succeeded.

A qualifying employee is a U.S. citizen, lawful permanent resident, or other immigrant authorized to work in the United States, including a conditional resident, temporary resident, asylee, refugee, or a person residing in the United States under suspension of deportation. This definition does not include immigrant investors; their spouses, sons, or daughters; or any noncitizen in any nonimmigrant status (such as an H-1B nonimmigrant) or who is not authorized to work in the United States.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the regional center program, full-time employment also means employment of a qualifying employee in a position that has been created indirectly that requires a minimum of 35 working hours per week.

A job-sharing arrangement where two or more qualifying employees share a full-time position will count as full-time employment provided the hourly requirement per week is met. This definition does not include combinations of part-time positions even if, when combined, the positions meet the hourly requirement per week.

Jobs that are intermittent, temporary, seasonal, or transient do not qualify as permanent full-time jobs. However, jobs that are expected to last at least two years are generally not considered intermittent, temporary, seasonal, or transient.

Capital Investment Requirements

Capital means cash and all real, personal, or mixed tangible assets owned and controlled by the immigrant investor. All capital will be valued at fair-market value in U.S. dollars.

The definition of capital does not include:

- Assets acquired, directly or indirectly, by unlawful means (such as criminal activities);
- Capital invested in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise;
- Capital invested with a guaranteed rate of return on the amount invested; or
- Capital invested that is subject to any agreement between the immigrant investor and the new commercial enterprise that provides the immigrant investor with a contractual right to repayment, except that the new commercial enterprise may have a buy back option that may be exercised solely at the discretion of the new commercial enterprise.

Note: Immigrant investors must establish that they are the legal owner of the capital invested. Capital can include their promise to pay (a promissory note) in certain circumstances.

The minimum investment amounts by filing date and investment location are:

Petition Filing Date	Minimum Investment Amount	Targeted Employment Area Investment Amount	High-Employment Area Investment Amount
Before 3/15/2022	\$1,000,000	\$500,000	\$1,000,000
On or After 3/15/2022	\$1,050,000	\$800,000 (includes infrastructure projects)	N/A

Future adjustments will be tied to inflation using the change in the [Consumer Price Index for All Urban Consumers](#) (CPI-U) from March 15, 2022, to the date of adjustment. These adjustments will occur every five years, with the first such adjustment effective for petitions filed on or after Jan. 1, 2027.

A targeted employment area can be, at the time of investment, either:

- A rural area; or
- An area that has experienced high unemployment (defined as at least 150% of the national average unemployment rate).

A rural area is any area other than an area within a metropolitan statistical area (MSA) (as designated by the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more according to the most recent decennial census of the United States.

A high-unemployment area consists of the census tract or contiguous census tracts in which the new commercial enterprise is principally doing business, which may include any or all directly adjacent census tracts, if the weighted average unemployment for the specified area based on the labor force employment measure for each tract is 150% of the national unemployment average.

Regional center investors may choose to invest in a new commercial enterprise engaged in an infrastructure project. An infrastructure project is a capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment under the regional center program from alien investors or the new commercial enterprise as financing for maintaining, improving, or constructing a public works project of these set-aside visas that go unused are held in the same set-aside category for one more fiscal year. After the second fiscal year, any remaining unused immigrant

visas in these set-aside categories are released to the unreserved EB-5 immigrant visa numbers during the third fiscal year.

Immigrant Visa Set-Asides

The EB-5 Reform and Integrity Act created new EB-5 immigrant visa set-asides for qualified immigrant investors. Each fiscal year, a certain percentage of EB-5 immigrant visas are available to qualified immigrants who invest in specific areas:

Area Invested In	EB-5 Immigrant Visas Set-Aside Each Fiscal Year
Rural Area	20%
High Unemployment Area	10%
Infrastructure Project	2%

Any of these set-aside visas that go unused are held in the same set-aside category for one more fiscal year. After the second fiscal year, any remaining unused immigrant visas in these set-aside categories are released to the unreserved EB-5 immigrant visa numbers during the third fiscal year.

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