

# The Role of EB-5 Financing in Development

2016 Land Use Fundamentals  
20<sup>th</sup> Annual Land Use Conference

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April 28, 2016



## EB-5 Basics

- U.S. Citizenship and Immigration Services (UCSIS) administers the Immigrant Investor Program, also known as “EB-5” created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. (Immigration and Nationality Act § 203(b)(5) – Visa Allocation - Employment based, Fifth preference)
- Under the EB-5 program, eligible foreign investors may receive a conditional Green Card for themselves and family members



## EB-5 Basics

- Required investment in a New Commercial Enterprise (“NCE”):
  - \$1,000,000
  - \$500,000 in a Rural or Targeted Employment Area (“TEA”) defined in 8 C.F.R. § 204.6
    - Rural = any area not within either a MSA or the outer boundary of any city having a population of 20,000 or more



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## EB-5 Basics

- TEA = Unemployment at 150% over the national average
- Geographic area described by census tracts or other descriptions such as blocks, etc.
- In Texas, can be certified by Mayor or County Judge
- Immigrant investor’s money must be “at risk” – guarantee is prohibited
- Immigrant investor must prove clean source of financial funds



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## EB-5 Basics

- Required job creation:
  - NCE investment must create 10 U.S. jobs
    - Direct Jobs – 10 new employees hired on payroll at least 35 hours a week for 2 years – evidenced by W-2s
    - Indirect Jobs - In an approved Regional Center, the jobs may be indirect jobs (preferred by immigrant investors)
      - Indirect jobs determined by construction hard costs through Economic/Jobs Analysis Report
      - Once the project has been constructed, the job creation requirement is met



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## EB-5 Basics

- Regional Center:
  - Created by regional center operator (public or private) - can be used by developers for multiple projects
  - Allows job creation to be indirect rather than direct
  - Approved for specific activities (North American Industry Classification System- NAICS codes)
    - Best NAICS code for development is:  
NAICS 23 – Construction



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First appeared as part of the conference materials for the

20<sup>th</sup> Annual Land Use Conference session

"The Role of EB-5 Financing in Development"