

# How EB-5 investors can apply with a partial investment and pay the rest later

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The EB-5 investment process to apply for this investor visa requires foreign investors to invest a minimum amount of \$800,000 if the project is in a Targeted Employment Area (TEA) or \$1.05 million if it's anywhere else in the United States. After making this payment, they can file an I-526 petition with the U.S. Citizenship and Immigration Services (USCIS).

Yet, not all EB-5 investors can have those amounts ready when they wish to apply. The partial investment option allows them to pay part of the minimum amount as a regional center or standalone investor to secure timely applications while waiting for other assets to clear.

LCR Capital Partners is among the regional centers that offer this payment option to their EB-5 investors. Suresh Rajan, founder and Executive Chairman, explains in some cases investors prefer this option to leverage exchange rates and other market opportunities. "We have seen this strategy used by those who anticipate a liquidity event by a certain date and do not want to wait to enter the EB-5 queue. Some also use the partial payment option to optimize the effects of currency exchange rate fluctuations. LCR has had clients from various nationalities taking advantage of the partial payment strategy.

According to Pete Calabrese, CEO of CanAm Investor Services, part of Canam Enterprises adds that it is “an important option for certain clients who need funding flexibility for various personal reasons.”

Behring Co. director of EB-5 Investment Platform and USCIS Compliance, Greg Sheehan, says the factors that influence a foreign investor’s decision to leverage the partial investment tool to their benefit are factors “like personal situations such as child age-out risks, tax planning, and professional or policy deadlines.”

Meanwhile, EB-5 immigration attorney Daniel Lundy at Chiesa Shahinian & Giantomasi PC insists there should always be a good reason to use this alternative payment option. “Just because there are a lot of variables and USCIS adjudicators don’t always understand the nuances or the law. It’s really for an investor who has all the money but needs time to transfer it, or someone in the process of selling a property. We know the money will be there, but they just need a little more time. I do not like to use it where the investor needs to earn the money, like they have \$500,000 now, and the rest will come from their salary over the next two years. It’s different if, say, someone knows they are getting a big bonus or will be able to cash out a stock-option at the end of the year. In any case, it needs to be structured carefully by an experienced EB-5 attorney. There are lots of ways it can go wrong.”

## **EB-5 partial investments accepted by USCIS**

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The USCIS widely accepts this payment option, says Tom Martin, COO of EB-5 United. “The law allows investors to either be fully invested in or in the process of investing at the time of filing their I-526E. USCIS seems to be accepting of partial payments and does not consider it a material change if the investor fully funds the project after filing their I-526E.”

Sheehan adds that the USCIS’ Investor Program Office (IPO) routinely approves partial payments as long as there is proof of “commitment and ability to pay when filing the petition.”

As a former USCIS adjudicator and IPO processor, Sheehan explains there is no EB-5 “policy distinction on this point between direct, standalone petitions and regional center petitions.” He adds that the IPO publicly confirmed this funding tool’s legality in 2018, before the renewal of the investor visa program in 2022. “IPO confirmed publicly, directly on the call, that the regulation allows for being ‘in the process’ of investing at the time of filing. The debate on the topic of partial payments being allowed is over and is now part of the I-526E Form itself.”

Both total and partial payment methods have been present since the beginning of the EB-5 program. However, immigration attorneys explain that the partial option has gained momentum since the EB-5 Reform and Integrity Act of 2022 (RIA), renewed and improved

the EB-5 visa program.

Despite its benefits, Lundy cautions about some nuances concerning its application. “Yes, the law does allow the investor to be “in the process of investing” at the time of filing, but there are some nuances. Prior to the RIA, USCIS wanted to see the rest of the money come in within two years and it still required the investor to demonstrate that the funds were fully ‘committed’ at the time of filing. Whether that 2-year period will change as a result of the change in the sustainment period remains to be seen (though it is based more on the 2-year conditional residence period than the sustainment period). USCIS also wants to know the source of the funds at the time the petition is filed. You can’t invest \$500,000 now and simply say I will invest another \$300,000 later. You have to show where the money will come from. There is some flexibility, but not a lot.”

Sheehan adds that the IPO acceptance of a partial investment directly correlates to the investor’s ability to demonstrate their commitment to meeting the statutory requirements.

Rajan also asserts that accuracy in applying this payment method is paramount: “Several of our preferred immigration attorneys have successfully obtained I-526 approvals from USCIS for applications that utilized the partial payment strategy. This experience indicates that USCIS accepts partial payments when executed properly. Consequently, LCR is confident in offering this option, providing another strategy to support our clients in their pursuit of permanent residency in the United States.”

## **How can EB-5 investors make a partial investment?**

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Calabrese highlights that many Canam EB-5 clients pay partially “because they were waiting for a near-term event such as a performance bonus, vesting of stock options, dividends, or sale of a house or similar asset.”

Sheehan says that Behring has even had “investors approved with zero funding at the time of filing in urgent situations, but each partial commitment is determined in careful collaboration of legal counsel considering investor feasibility and the project’s construction timeline.”

These legal considerations must always involve a thorough preliminary review of financial documents, planning a complete funding schedule, and clearing the entire source of funds in advance with the assistance of specialized attorneys and financial advisors.

These regional centers also advise their EB-5 investors on the timing and sizes of the partial investments. These will vary case by case and are “dependent on the funding schedules of the borrowers for the projects we are working with,” Calabrese says.

Martin says: “Typically, full payment should be made within 90 days of filing the I-526E. This timing is especially critical for rural projects that have already received I-956F approvals. We are seeing very fast adjudication times for these I-526E applications, so investors who have only made a partial EB-5 investment should be ready to complete their full investment quickly. USCIS has issued Requests for Evidence (RFEs) for partial payments, and having evidence of the full payment at that time will expedite the response process.”

Rajan adds: “Typically, the full EB-5 investment should be completed within one year. Ideally, you must have the total amount of \$800,000 invested when USCIS is reviewing your I-526(E) application. Therefore, if you apply for EB-5 in a project with priority processing, such as all LCR’s projects, you need to consider the expected processing time to ensure your EB-5 capital is fully invested to avoid receiving Requests for Evidence (RFEs) and Requests for Clarification (RFCs) from USCIS.”

Simply put, even though the investor will pay a partial amount first, the entire investment amount and all sources of funds must be documented and justified when they submit their application to the IPO.

Martin is also adamant about the investor being able to fully justify the source of funds before paying: “We recommend that investors be able to source the full \$800,000 at the time of filing, even if they are only investing a partial amount at the time of filing. They should then demonstrate their ability to access the remaining funds to show the ability to fund the full investment in the project before their I-526E is adjudicated, or shortly after, if an RFE is issued.”

The EB-5 United COO also cautions that the minimum partial investment amount will vary according to the EB-5 project and each regional center requirements. “Some developers may be reluctant to accept partial investments. If this is the case, the investor can still make a partial payment, which will then be held in escrow or in the New Commercial Enterprise (NCE) account until the full \$800,000 is ready to be deployed to the Job Creating Entity (JCE).”

Rajan from LCR affirms that each developer and regional center will set its own rules: “LCR Capital Partners is known for taking a conservative approach to protect EB-5 investors. We believe that 50% of the minimum EB-5 investment is a good initial amount for an investor to file their application. We have had clients who filed with different initial investments, and we are always open to discussing each case individually to accommodate our clients’ needs as much as possible.”

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