

The EB-5 Program: Choosing Between the Direct Investment Route vs. the Regional Center Route

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The EB-5 Visa program is a tried-and-true method of U.S. job creation that enables foreigners to seek a green card while investing significant funds into U.S. enterprises. Foreign nationals from many countries pursue the EB-5 path to U.S. residency.

The EB-5 program enables foreign investors to obtain their permanent residency (“green cards”) by investing in a U.S. business. Also referred to as the Employment-Based Immigration: Fifth Preference, EB-5 applicants are typically required to invest either \$900,000 or \$1.8 million dollars in order to qualify for the program. The applicant’s investment must lead to the creation of 10 fulltime U.S. jobs for a two-year period. After the program has been completed, EB-5 investors, their unmarried children under 21, and their spouse can permanently live and work in the United States.

Within the EB-5 program, there are 2 options available to investors, the Direct Investment program and the Pilot Program or the Regional Center Program.

“ EB-5 Direct investors must create and maintain a minimum of 10 full-time employees.”

An EB-5 Direct investment is just as the name implies. You are starting a business under the regulations of the EB-5 visa program. As an example, a small manufacturing company employing a minimum of 10 people full-time could be an EB-5

qualifying Direct investment. The same holds true if the EB-5 Direct investor purchases a franchise, such as a restaurant or hotel chain, and creates a minimum of 10 full-time jobs.

The EB-5 Regional Center program is defined as “an economic unit, public or private, in the United States that is involved with promoting economic growth. Regional Centers are designated by USCIS for participation in the Immigrant Investor Program.” Rather than a direct investment in a project, this type of EB-5 investment allows investors to pool funds via a Regional Center.



Historical Statistics

Traditionally between 2% to 5% of EB-5 applications are made via the Direct investment route.

In 2018, nearly 250 investors executed the \$1M EB-5 Direct investment approach over the past year. The rest of the thousands and the lion's share has been managed by the Regional Center program for various reasons listed below..

Direct Investment Opportunity vs The Regional Center Management Investment

We recommend that an investor weighs the following important facts, that are also the key differentiators between the two EB-5 options.

A) Active Management:

In the Direct investment program, the principal applicant will have to play an active management role in the business. There are no two ways about that.

In the Regional Center program being a limited partner of the fund, they will have voting rights but do not have to play an active management role.

Being an investor of the NCE (new business / Direct investment) alone does not qualify him/her for approval.

B) Number Of Days To Reside In The US:

The other fact is, in order to prove active management in a business, the investor will have to invest substantially larger amount of time in the US, in order to prove active management.

C) Location Of Residence During Active Management:

While the number of days is one condition, there are also concerns regarding whether an investor will live in the same city during the 2 year period.

In case of the Direct investment, the investor must reside in the same city or within a certain square mile radius for substantial durations of the year so that they can show active involvement.



D) Cost Of Regulatory Compliance:

The Regional Center manages various regulatory and compliance aspects of the investment such as escrow agents, fund administrator, annual filings and updates, econometrics and securities consultants, etc. The cost of these are borne by the General Partner of the fund, when the investor goes through the Regional Center program.

In the Direct EB-5 investor program, all of the above must be coordinated by the investor and the costs borne by the investor. It ultimately may end up costing more, when value of time invested is quantified and added.

E) USCIS Approval & Filing For EB-5 DIP:

Another thing is the fact that the investor will need to get USCIS approvals, filings done and have the funds money moved to escrow in order to file the Direct investment petition, for it to be adjudicated appropriately.

F) Jobs And Calculation Of Jobs:

The Direct program only takes Direct W-2 jobs towards the 10 job requirement, where as the Regional Center program allows for indirect and induced jobs.

Pilot Program or the Regional Center Program was created by Congress in 1993 under Appropriations Act Section 610(c) to direct immigrant investment toward certain regions by creating Regional Centers. The investor pilot program is the program that allows EB-5 applicants to invest in the government's pre-approved Regional Centers while also allowing the applicants to count both direct as well as indirect jobs created in the project for the purpose of meeting the target of creating at least ten new jobs through the EB-5 investment.

G) Exemplar Approval:

An exemplar approval essentially means that the USCIS has already reviewed offering documents, business plan, and job creation methodology and has determined that they are compliant. Investors view exemplar projects favorable because it reduces the risk involved in investing and streamlines their petition process as USCIS has already approved most of the project. Such approvals are only made available through the Regional Center offerings.



Important Thing To Review

Should an investor decide to go down the path of Direct Investor Program, The statute requires the investor “actively participate in the investment,” as they describe it as the same participation as a Limited Partner would have under the Uniform Partnership Act.

We recommend that you check on the regulation from LLC’s in the state where you form it to see what they require as rights and duties of members.

There are several important intangible differences including:

Time: Due to the nature of the Direct program, where the investor is responsible for the entire business plan and investment documentation process, the timeline before making the investment is typically longer with the Direct EB-5 program.

Flexibility: Direct requires investor to actively operate and live near the project, where under the Regional Center program, the investor can live and work wherever they would like.

Adoption: Due to the above, the Direct program only attracts 5% of all EB-5 applicants (versus 95% in the RC program).

Net Net: While an investor MAY be getting a higher return on investment, should the directly invested business succeed, they are going through a higher number of hoops with different regulatory hurdles AND at the same time, highest risk, substantially higher amount of time, money and energy to achieve the same objective.

We feel that for the purpose of immigration, it’s better for investors to apply via the EB-5 Regional Center route with LCR’s offering.

On November 21st, 2019, the new regulations came into force, which includes the increase in the minimum investment amount to be \$900,000 for TEA approved projects and \$1.8 Mn for Non-TEA projects. Please consult your immigration attorney or LCR Commercial Representative for further information.

