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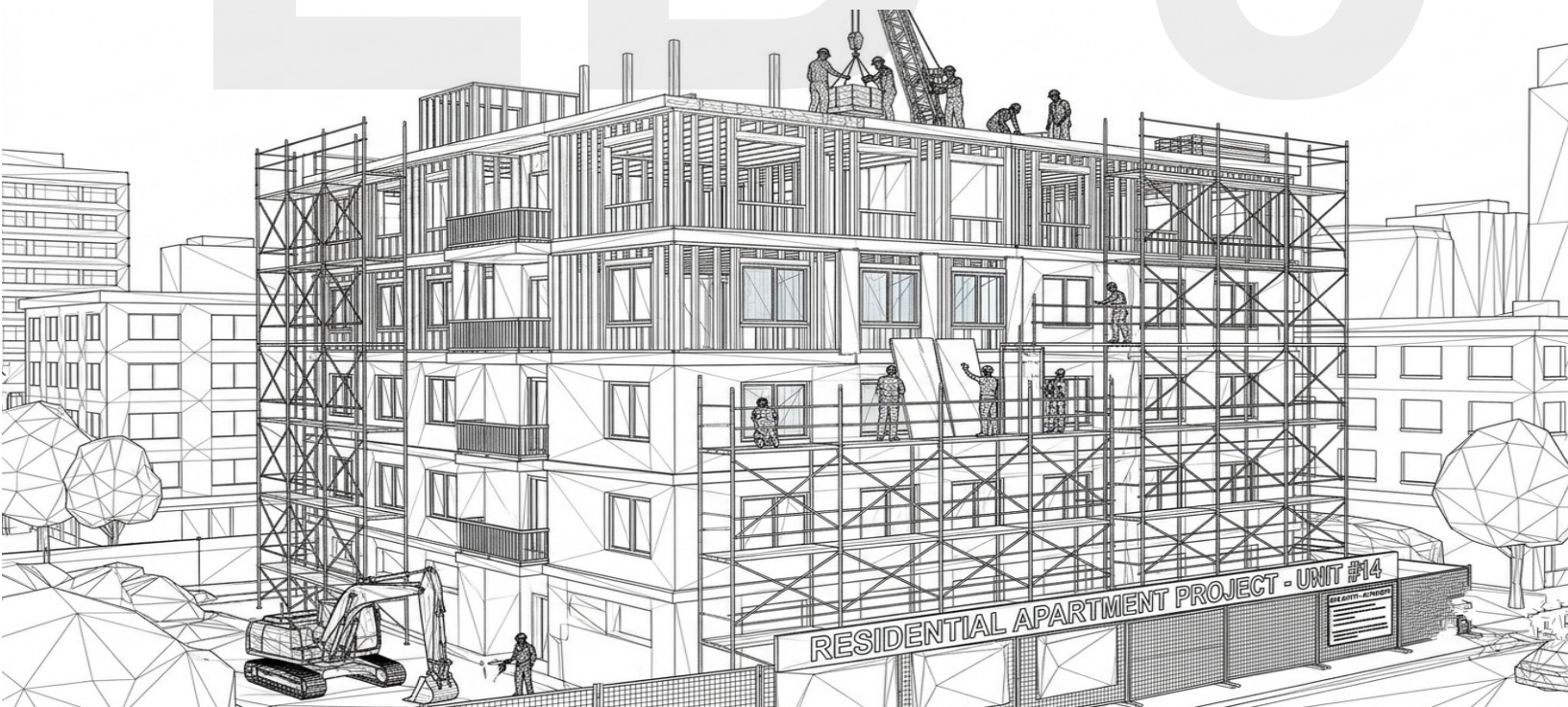
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EB-5 IMMIGRANT INVESTOR VISA REQUIREMENTS, PROCEDURE, AND PRACTICE

Direct Investment | Regional Center Investment | Formation & Operation of Regional Centers
Adjudication Standards & RFE Avoidance | Conditional Residence & Removal of Conditions
Integrity Act Compliance | Securities Law Overlay | Investment Adviser & Broker-Dealer Law

EB-5



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ABSTRACT

This treatise treats the fifth employment-based immigrant preference — the EB-5 immigrant investor visa — as a single integrated subject spanning the three principal ways in which the firm’s practice engages it: representation of the standalone (direct) investor; representation of the **regional-center** investor; and the formation, sponsorship, and ongoing operation of a USCIS-designated **regional center**. Its organizing premise is the lifecycle of the EB-5 matter: a foreign national commits **qualifying capital** to a **new commercial enterprise**, that capital is placed and sustained at risk, the enterprise creates the requisite employment, and the investor progresses from conditional to unconditional lawful permanent residence — with each stage governed by the substantive eligibility rules and integrity obligations imposed by the EB-5 Reform and Integrity Act of 2022.

Part I situates the program historically and statutorily and states the core eligibility architecture common to every case: the **qualifying investor**, the new commercial enterprise, the lawfully sourced capital, the at-risk and two-year sustainment requirements, and the job-creation mandate. Part II treats the two investment models side by side — the direct (standalone) model and its Form I-526 petition, and the regional-center model with its Form I-526E petition, indirect and induced job creation, targeted employment areas, the **visa set-asides** and infrastructure projects, and the annual visa-number caps, per-country limits, and backlogs that govern availability. Part III addresses how a regional center is formed and operated — designation on Form I-956, project approval on Form I-956F, the annual statement on Form I-956G, the **Integrity Fund** fee, the mandatory five-year audit, and the sponsor’s compliance obligations — and then follows the investor through the immigration procedure, from **consular processing** on Form DS-260 or **adjustment of status** on Form I-485 to **concurrent filing**, conditional residence, and removal of conditions on Form I-829. Part IV addresses the cross-cutting dimensions that overlay every matter and the practitioner’s synthesis: the securities-law overlay, **source-of-funds** documentation standards, common grounds for requests for evidence and denial, and integrity and national-security screening, together with a detailed direct-versus-regional-center comparison, engagement structuring, a diagnostic intake checklist, and selected authorities. Part V is a dedicated treatment of representing Russian-national investors — the immigrant-visa issuance restrictions currently affecting Russian nationals, the sanctions, OFAC, and fund-transfer mechanics that govern the movement of capital, the heightened source-of-funds scrutiny these matters attract, and the route-selection and risk-mitigation strategy (adjustment of status, concurrent filing, and second-passport planning) that the firm applies for this clientele.

This treatise is designed as an expert-to-expert reference for the immigration, corporate, securities, and tax attorneys of the firm, for co-counsel and referral partners, and for the sophisticated principals of EB-5 matters — the investors themselves, the developers and sponsors of job-creating projects, and the operators of regional centers — who must oversee the architecture of their own filings. It is equally intended to give those principals a clear, accurate picture of the requirements, the procedure, and the risks, so that the immigration merits and the corporate, securities, tax, and anti-money-laundering dimensions of an EB-5 matter are managed as the single integrated undertaking they are.

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GENERAL INTRODUCTION — THE EB-5 PROGRAM AND ITS LIFECYCLE

A threshold caution frames everything that follows. An EB-5 investment should be weighed with unusual care, because in its very economic nature the program is designed to channel capital into places and projects that conventional American capital has declined to enter — whether because the venture is too risky to attract conventional financing on ordinary terms, or because it sits in a local economic environment so challenging that market capital will not enter it without the added inducement the program supplies. The reduced **targeted-employment-area** threshold, the rural and high-unemployment set-asides, and the program's job-creation premise all point in the same direction: EB-5 exists to fill financing gaps that the ordinary market has left unfilled. Capital that could earn a competitive risk-adjusted return in the open market rarely needs an immigration incentive to attract it. The investor should therefore assume that an EB-5 project sits, by design, in a segment of the economy where profitability is uncertain and where the financial return is frequently subordinated to the immigration objective.

The practical consequence is that the investor is buying two distinct things at once — an immigration outcome and a financial investment — and the two do not rise and fall together. The capital must be genuinely at risk, which means the prospect of partial or total loss is real and cannot be contracted away without defeating eligibility. No return may be guaranteed. A project that promises both a secure return and a green card is either misrepresenting the investment or jeopardizing the visa. Counsel should make clear to every client, at the outset, that EB-5 capital is high-risk gap-filling capital, that the economic merits deserve the same hard-nosed diligence as any speculative private placement, and that the immigration benefit is the reason to accept a risk-return profile the investor would likely reject on purely financial terms.

The EB-5 immigrant investor category is the fifth preference within the employment-based immigrant classifications of the Immigration and Nationality Act. Congress created it in 1990 to stimulate the United States economy through job creation and capital investment by foreign nationals. In 1992 Congress added the Immigrant Investor Program — the “Regional Center” pilot — which permits investors to satisfy the **job-creation requirement** through indirect employment attributable to a USCIS-designated regional center, and it has been reauthorized repeatedly since. See INA § 203(b)(5), 8 U.S.C. § 1153(b)(5); Immigration Act of 1990, Pub. L. 101-649, § 121; Departments of Commerce, Justice, and State Appropriations Act, 1993, Pub. L. 102-395, § 610 (establishing the Regional Center Program).

The governing law was substantially rewritten by the **EB-5 Reform and Integrity Act of 2022** (the “Reform and Integrity Act of 2022”), enacted March 15, 2022 as part of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103). The Reform and Integrity Act of 2022 reauthorized the Regional Center Program, raised the minimum investment amounts, created reserved visa set-asides

for rural, high-unemployment, and infrastructure investments, imposed a new integrity-and-oversight regime on regional centers (annual statements, an Integrity Fund fee, and mandatory audits), and added investor protections. Immigrant visas are currently authorized under the Regional Center Program through **September 30, 2027**, absent further reauthorization. EB-5 Reform and Integrity Act of 2022, Pub. L. 117-103, Div. BB (Mar. 15, 2022); see INA § 203(b)(5)(E)–(F), 8 U.S.C. § 1153(b)(5)(E)–(F) (regional-center authorization through Sept. 30, 2027).

Every EB-5 matter, regardless of model, follows the same lifecycle. A foreign national commits qualifying capital to a **new commercial enterprise** (NCE). The capital is placed and sustained **at risk**. The enterprise (directly, or through a **job-creating entity**) creates at least **ten full-time jobs** for qualifying U.S. workers. The investor obtains **conditional** lawful permanent residence for a two-year period; and, upon proof that the capital was sustained and the jobs created, the conditions are **removed** and the investor and derivatives become unconditional lawful permanent residents. This treatise is organized around that lifecycle and around the three ways the firm will engage it: the direct investor, the regional-center investor, and the regional center itself. See INA § 203(b)(5), 8 U.S.C. § 1153(b)(5); 8 C.F.R. §§ 204.6, 216.6.

How to Use This Treatise

The document is written to serve simultaneously as a client-facing explanation and as an internal reference for the firm’s attorneys and co-counsel. Where a rule is settled, it is stated plainly with its statutory or regulatory anchor. Where a point remains contested, evolving, or dependent on facts, it is flagged as such. Dollar thresholds, visa-availability figures, processing times, and filing fees change frequently. The reader must verify current figures against the USCIS Policy Manual (Volume 6, Part G), the Department of State Visa Bulletin, and the current USCIS fee schedule before relying on any number stated here.

PART I — CORE ELIGIBILITY ARCHITECTURE COMMON TO ALL EB-5 CASES

This Part establishes the substantive eligibility architecture common to every EB-5 case, regardless of investment model. It defines the qualifying investor and the required managerial role, the new commercial enterprise in which capital is placed, the lawfully sourced minimum investment, the at-risk and two-year sustainment requirements that keep capital genuinely deployed, and the job-creation mandate of ten full-time positions per investor. These five elements form the foundation on which the direct and regional-center models in the Parts that follow are built.

Section 1. The Qualifying Investor

An EB-5 petitioner must be a natural person who invests, or is actively in the process of investing, the required minimum amount of lawfully derived capital in a new commercial enterprise that will create the required employment. There is no requirement that the investor manage day-to-day operations, but the investor must participate in management or policy formulation — a role satisfied, in the pooled context, by the rights ordinarily held by a limited partner or an LLC member, such as the voting and information rights typical of a limited-partnership interest. See INA § 203(b)(5)(A), 8 U.S.C. § 1153(b)(5)(A); 8 C.F.R. § 204.6(e), (j)(5); *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998).

The investor's spouse and unmarried children under twenty-one may be included as **derivative beneficiaries** and obtain conditional residence with the principal, and the Reform and Integrity Act of 2022 added protections for derivative children against “aging out” in certain circumstances. Age-out and the marriage of a derivative child are recurring pitfalls: counsel should calendar each derivative's twenty-first birthday against the anticipated **priority date** and visa availability from the outset, and should confirm each derivative's continued eligibility at every stage of the matter. Each dependent added to a later filing must ordinarily file on their own form, so the derivative roster is not a detail to be reconciled at the end of the case but a variable to be tracked from the first intake. See INA § 203(d), 8 U.S.C. § 1153(d); INA § 203(h), 8 U.S.C. § 1153(h) (Child Status Protection Act); 8 C.F.R. § 204.6(g).

Pooling the capital of several investors.

A recurring structuring question is whether several investors may combine their capital in a single enterprise, and whether that pooling is confined to the regional-center model. It is not. The statute and regulations permit **more than one qualifying investor to invest in the same new commercial enterprise**, provided that each investor individually contributes the required minimum amount of lawfully derived capital and that each investor is credited with the creation of at least ten qualifying jobs. Pooling is expressly contemplated by the regulations, which allow the required employment to be allocated among multiple investors in the same enterprise so long as the total job creation is sufficient to give each investor his own ten. Pooling therefore is not a device unique to regional centers. It is a feature of the program available in either model.

The distinction between the two models lies not in whether pooling is allowed but in **how the jobs are counted**. In the direct (standalone) model, each pooled investor must be attributable ten direct, full-time W-2 positions, so a direct pool must create ten jobs per investor countable as the enterprise's own employees — a demanding threshold that in practice limits the number of investors a direct project can absorb. In the regional-center model, by contrast, the enterprise may count indirect and induced jobs derived through an accepted economic methodology, which is what makes larger multi-investor pools practical. So the direct EB-5 program does qualify for a pool of several investors; it is simply constrained by the direct-job-creation arithmetic rather than by any prohibition on pooling.

A two-investor partnership where only one partner seeks EB-5.

A related situation arises where two persons hold a business together and only one of them wishes to pursue EB-5 while the other does not. This is workable, but it must be structured with care. The EB-5 requirements attach to the **individual petitioning investor**, not to the enterprise as a whole. The partner seeking the visa must independently satisfy every element in his own right: he must contribute the full required minimum amount of his own lawfully derived capital, that capital must be genuinely at risk, and at least ten qualifying jobs must be attributable to his investment. The non-petitioning partner's capital does not count toward the petitioner's minimum, and jobs the enterprise creates must be allocated so that the petitioning partner can claim his own ten without double-counting jobs credited to any other investor.

Two practical consequences follow. First, the enterprise must generate enough job creation to give the petitioning partner a full complement of ten qualifying jobs after setting aside any jobs relied upon by, or attributable to, the other partner. Second, the source-of-funds and at-risk showings must isolate the petitioner's own contribution, so that the record demonstrates his capital — traced from its lawful origin — was invested and exposed to loss, uncommingled in a way that would obscure whose money is whose. A partnership in which one partner has an immigration objective and the other purely a commercial one is entirely compatible with EB-5, provided the governing documents, the capital accounts, and the job-allocation are drawn so that the petitioner's eligibility can be proved on his own facts.

Does the percentage of ownership or control matter?

A frequent misconception is that an EB-5 investor must hold a majority or controlling interest in the enterprise. He need not. There is **no minimum-percentage or control requirement**. What the statute requires is that the investor contribute the required amount of capital, that the capital be at risk, that the requisite jobs be created, and that the investor participate in management or policy formulation at least to the limited degree the regulations demand. Nothing conditions eligibility on the size of the investor's equity stake relative to other owners.

An investor holding a small minority interest — say ten percent — can therefore qualify, in either the direct or the regional-center model, so long as the other elements are met. In the pooled regional-center structure this is the norm rather than the exception: each limited partner or LLC member typically holds a small fractional interest, exercises only the limited voting and information rights of a passive investor, and yet qualifies because he has contributed the full required capital at risk and is credited with ten jobs. The regulations satisfy the “management or policy” element through exactly those limited rights — the voting and information rights ordinarily held by a limited partner or LLC member — without requiring day-to-day control.

The point to keep separate is **capital versus percentage**. Eligibility turns on the **dollar amount** the investor puts genuinely at risk and on the jobs attributable to it, not on the fraction of the company that amount happens to buy. A ten-percent interest that reflects a full qualifying capital contribution qualifies; a majority interest that reflects less than the required capital, or capital not truly at risk, does not. Control, in short, is neither necessary nor sufficient — the qualifying capital and the job creation are what matter, in both the direct and the regional-center models.

Section 2. The New Commercial Enterprise (NCE)

A new commercial enterprise is any for-profit entity formed for the ongoing conduct of lawful business — a sole proprietorship, partnership (general or limited), holding company and its wholly owned subsidiaries, joint venture, corporation, business trust, limited liability company, or other entity, publicly or privately owned. The definition excludes noncommercial activity such as owning and operating a personal residence. “New” means established after November 29, 1990. An enterprise established on or before that date may still qualify if it is purchased and restructured or reorganized so that a new commercial enterprise results, or if the investment expands it so that a substantial change results — a threshold USCIS quantifies as at least a forty-percent increase in net worth or in the number of employees. See 8 C.F.R. § 204.6(e), (h); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2.

In the regional-center context, the NCE is typically a limited partnership or LLC that pools the capital of many investors and lends or contributes it to a separate **job-creating entity (JCE)** — commonly the developer of a real-estate or infrastructure project. Distinguishing the NCE from the JCE is essential: the investor’s capital must go into the NCE, the NCE’s business plan drives job creation, and the flow of funds from NCE to JCE is a focus of both adjudication and regional-center audit. See 8 C.F.R. § 204.6(e), (j)(4); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2.

It bears emphasis that the new commercial enterprise and the job-creating entity may be, and in the regional-center context ordinarily are, two different legal entities. Nothing requires that the entity receiving the investor’s capital be the same entity that employs the qualifying workers. In the typical pooled structure the NCE is a limited partnership or limited-liability company that raises and holds investor capital and then deploys it — most often as a loan, sometimes as preferred equity — to a separate job-creating entity, usually the developer or operating company that actually builds the project and generates the employment. The two entities are commonly under common or affiliated sponsorship, but they remain distinct in form, in their governing documents, and in the flow of funds between them.

Where the NCE and the JCE are separate, three points control. First, the job creation is still attributed to the investor's NCE only if the capital is genuinely made available to the JCE and the economic methodology ties the resulting jobs back to that deployment. A break in the documented flow of funds from NCE to JCE is a recurring cause of requests for evidence. Second, the **at-risk requirement** must be satisfied at the NCE level and must not be defeated by the terms of the NCE-to-JCE loan — a loan on terms that effectively guarantee repayment to the NCE can undermine the at-risk posture of the investor's capital. Third, in the direct (standalone) model the practical distance between the two entities narrows, because the investor generally must show ten direct W-2 jobs, which usually requires that the NCE either employ the workers itself or wholly own the operating JCE so that its employees are counted as the NCE's own.

Section 3. Qualifying Capital and the Minimum Investment Amount

Capital means cash and, in defined circumstances, **cash equivalents**, equipment, inventory, other tangible property, and indebtedness secured by assets the investor owns, provided the investor is personally and primarily liable and the NCE's assets are not used to secure the indebtedness. All capital is valued at fair-market value in U.S. dollars, and assets acquired by unlawful means are not capital. The investor must be the legal owner of the capital and must have obtained it through lawful means. A promise to pay in the form of a **promissory note** can qualify in certain circumstances. See INA § 203(b)(5)(A), 8 U.S.C. § 1153(b)(5)(A); 8 C.F.R. § 204.6(e), (j)(2); *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998).

A mere loan from the investor to the NCE is not a contribution of capital: capital contributed in exchange for a note, bond, convertible debt, or other debt arrangement between the investor and the NCE does not qualify, and neither does the purchase of shares from an existing owner, because the payment goes to the former owner rather than into the enterprise. Capital carrying a guaranteed rate of return, or subject to any agreement giving the investor a contractual right to repayment, is likewise disqualified — with the narrow exception of a buy-back option exercisable solely at the NCE's discretion. See 8 C.F.R. § 204.6(e); *Matter of Izummi*, 22 I&N Dec. 169, 179–88 (Assoc. Comm'r 1998); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2.

For petitions filed on or after March 15, 2022, the Reform and Integrity Act of 2022 amounts apply. The thresholds by filing date and investment location are set out in the table below. See INA § 203(b)(5)(C), 8 U.S.C. § 1153(b)(5)(C) (as amended by the Reform and Integrity Act of 2022); 8 C.F.R. § 204.6(f).

Petition Filing Date	Standard Minimum	TEA / Set-Aside Minimum	High-Employment Area
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)	N/A

Future adjustments are tied to inflation, using the change in the Consumer Price Index for All Urban Consumers (CPI-U) measured from March 15, 2022 to the date of adjustment, and they occur every five years, with the first effective for petitions filed on or after January 1, 2027. Counsel filing near an adjustment date must confirm the amount in force on the actual filing date, and should ordinarily fund to the higher of the two possible amounts where timing is uncertain. See INA § 203(b)(5)(C)(iii), 8 U.S.C. § 1153(b)(5)(C)(iii) (five-year inflation adjustment of minimum investment amounts).

What counts as cash equivalents. Capital is most often contributed as cash, but the regulation also recognizes cash equivalents — instruments so liquid and certain in value that they are treated as the functional equivalent of money. In practice these include certified or cashier's checks, bank drafts, money orders, irrevocable letters of credit payable to the enterprise, and readily marketable securities that can be liquidated to a known dollar amount. The unifying test is immediacy and certainty of value: the item must be convertible to a fixed sum without material contingency. Ordinary receivables, contract rights, or the promise of future earnings are not cash equivalents.

Intangible property generally does not count. As a rule, no intangible asset qualifies as capital. Goodwill, intellectual property, know-how, licenses, franchise rights, sweat equity, and the value of the investor's own services are not capital, because the regulation contemplates cash, cash equivalents, equipment, inventory, other tangible property, and secured indebtedness. Contributing services or expertise in exchange for an interest does not satisfy the minimum investment. The narrow apparent exception is a tangible asset that happens to embody value — equipment or inventory valued at fair-market value — but the intangible itself is excluded.

Debt instruments as the investment — promissory notes. A promissory note given by the investor to the enterprise can, in limited circumstances, count toward the investment, but only on strict conditions and it is heavily disfavored in modern practice. The note must be secured by assets the investor owns, the investor must be personally and primarily liable, the enterprise's own assets may not secure it, and the market value of the collateral must cover the portion of the investment claimed. Critically, the note must be payable in a manner that places the funds at risk within the required period — long-dated or balloon notes maturing years out have been rejected because the capital is not actually at risk in the interim. This is the teaching of the leading authority, *Matter of Izummi*, which sharply confined the use of promissory notes. By contrast, a note or other debt arrangement running from the investor to the NCE in exchange for the interest — i.e., structuring the contribution as a loan

to the enterprise — does not qualify at all, because the investor becomes a creditor rather than an equity participant bearing risk.

Borrowed capital. Borrowed funds can qualify, and the source of the investor's capital need not be the investor's own accumulated savings. An investor may invest money borrowed from a bank or a third party, provided two things are true: the investor is personally and primarily liable on the debt, and the debt is not secured by the assets of the new commercial enterprise or the job-creating entity. A loan collateralized by the investor's own unrelated assets — a home, a securities portfolio, other real estate — is acceptable, and the loan proceeds, once contributed, are treated as the investor's lawfully obtained capital. What is not permitted is a non-recourse loan, or a loan secured by the very project or enterprise assets, because in that case the investor is not truly at risk and the enterprise's assets are being pledged. The investor must also document the lawful source of the lender's funds and the collateral, and the loan itself becomes part of the source-of-funds record.

Whether qualifying capital needs a professional appraisal. There is no blanket requirement that every contribution be professionally appraised, but appraisal is effectively required whenever value is not self-evident from the face of a bank record. Cash and cash equivalents prove their own value and need no appraisal. In-kind contributions of equipment, inventory, or other tangible property must be valued at fair-market value in U.S. dollars, and USCIS will expect an independent, qualified appraisal to substantiate that value. A self-declared figure is not sufficient. Likewise, where a secured promissory note is used, the collateral must be independently appraised to show it covers the claimed amount. The safest course is to contribute cash wherever possible and to obtain independent appraisals for any non-cash component before filing.

Examples of impermissible guaranteed-return provisions. Because the capital must remain at risk, any arrangement that assures the investor of getting money back — in whole, in part, or as a fixed yield — disqualifies the guaranteed portion. Provisions that have defeated the at-risk requirement include: a promise to repay the principal on a date certain; a mandatory redemption or put right exercisable by the investor on demand or upon denial of the petition; a guaranteed or fixed rate of return regardless of the enterprise's performance; a side agreement or 'comfort letter' assuring return of capital; an escrow that returns the funds to the investor upon a specified contingency other than the deal failing to close; and a repurchase obligation binding on the enterprise. The one narrow structure that survives is a buy-back or redemption option exercisable solely at the discretion of the NCE — never at the investor's election and never on fixed terms — because the investor retains no contractual right to compel return of the capital.

Section 4. The At-Risk Requirement and the Two-Year Sustainment Period

To qualify as an investment, the investor must actually place the capital at risk for the purpose of generating a return. A mere intent to invest is insufficient, and the capital must be irrevocably committed. If the investor is guaranteed a return or a rate of return on all or a portion of the capital, the guaranteed portion is not at risk and does not count. A contractual right to repayment — redemption on demand — defeats the at-risk requirement, whereas a buy-back option exercisable solely at the NCE's discretion is permissible. See 8 C.F.R. § 204.6(j)(2); *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2.

For petitions filed on or after March 15, 2022, the capital must be expected to remain invested for at least two years. USCIS interprets that two-year clock to begin when the full qualifying amount is contributed to the NCE and placed at risk — including being made available to the JCE, where applicable — rather than being measured against the period of conditional residence. This is a **material change** from prior practice, and it does not reach every investor: because the Reform and Integrity Act of 2022's removal of the old sustainment rule does not apply to petitions filed before enactment, an investor who filed Form I-526 before March 15, 2022 must still sustain the investment throughout the two-year period of conditional residence to qualify for removal of conditions. Where the investor contributed capital more than two years before filing, the investment generally may still satisfy the requirement, but counsel should confirm the sustainment start and end dates against the current Policy Manual for each matter. See INA § 203(b)(5)(A)(i), 8 U.S.C. § 1153(b)(5)(A)(i) (two-year sustainment); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2 (**sustainment period** for petitions filed on or after Mar. 15, 2022).

Because a project may return capital to the NCE before the investor completes the immigration process, the NCE may need to redeploy returned capital to keep it at risk. **Redeployment** must remain within the scope of the NCE's business and must keep the capital at risk. The geographic and business-scope limits are governed by USCIS policy and by the offering documents. Redeployment planning therefore belongs in the operating agreement and offering memorandum from the beginning, not as an afterthought when capital is returned. See *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2 (redeployment).

Redeployment in detail. Redeployment is the reinvestment of capital that a project returns to the NCE before the investor has completed the immigration process and before the sustainment obligation is discharged. It arises constantly in real-estate lending structures, where the NCE lends investor capital to a developer JCE and the loan is repaid on a construction or bridge horizon — often within eighteen months to three years — well before the investor has cleared conditional residence. If the returned capital simply sits idle or is distributed, it is no longer at risk, and sustainment breaks. The

cure is to redeploy the returned funds into a new at-risk use so that the capital remains continuously deployed for the required period.

Timing and the two-year clock. Under the Reform and Integrity Act, capital must be expected to remain invested for at least two years measured from when the full qualifying amount is placed at risk and made available to the JCE. Where a project returns capital inside that two-year window, redeployment is mandatory to preserve at-risk status for the balance of the period. For petitions governed by the pre-2022 rule, capital had to be sustained throughout conditional residence, which in backlogged cases can extend many years, making redeployment a near-certainty for early returns. In either regime, the return of capital before the sustainment obligation is satisfied is the triggering event, and the redeployment must occur promptly — undue delay in redeploying can itself be treated as a lapse in the at-risk posture.

Permissible scope and risks. Redeployment carries real legal and practical risk. The scope is constrained: the funds must be redeployed within the scope of the NCE's ongoing business and in a manner that keeps them genuinely at risk, and USCIS guidance has permitted redeployment within a reasonable time and within the geographic and business scope described to investors. The principal risks are these. First, scope risk — a redeployment outside the NCE's stated business purpose or into an entirely unrelated venture can be challenged as impermissible. Second, at-risk risk — redeploying into an instrument that is too safe, such as parking funds in a guaranteed or capital-protected vehicle, can itself fail the at-risk test. Third, disclosure and securities risk — redeployment into a new investment is a material event that must have been disclosed in the offering documents and that may itself constitute a new securities transaction. Fourth, investor-consent and fiduciary risk — if the operating agreement did not pre-authorize redeployment, the manager may lack authority to redeploy and may face investor claims. Fifth, immigration-timing risk — the redeployment vehicle must itself remain at risk long enough to carry the investor through removal of conditions.

Mitigations and drafting. The mitigations are almost entirely a matter of planning at inception rather than reaction at the point of return. The operating or partnership agreement and the offering memorandum should expressly grant the manager broad, pre-authorized discretion to redeploy returned capital; should describe the permissible categories and geography of redeployment with enough specificity to satisfy scope requirements while retaining flexibility; should disclose redeployment as a material risk factor with its immigration and financial consequences; and should align the redeployment horizon with the longest realistic immigration timeline for the investor pool, including backlogged nationalities. Counsel should also confirm that the redeployment target keeps the capital at risk, avoid any structure resembling a guaranteed return, and paper the redeployment as carefully as the original deployment, since USCIS may scrutinize it at the removal-of-conditions stage. Redeployment planning therefore belongs in the deal from the first draft, not as an afterthought when the developer repays the loan.

Section 5. The Job-Creation Requirement

The investment must create full-time positions for at least ten qualifying employees. A **full-time position** requires at least thirty-five hours per week. A job-sharing arrangement in which two or more qualifying employees share one full-time position may count if the weekly hourly requirement is met, but a combination of part-time positions does not qualify even where the hours, added together, would reach the threshold. Intermittent, temporary, seasonal, or transient positions generally do not qualify, though a job expected to last at least two years is generally not treated as any of these. Qualifying employees are U.S. citizens, lawful permanent residents, or other immigrants authorized to work — including conditional residents, asylees, and refugees — but not the investor, the investor's spouse or children, or any foreign national in nonimmigrant status. See INA § 203(b)(5)(A)(ii), 8 U.S.C. § 1153(b)(5)(A)(ii); 8 C.F.R. § 204.6(e), (g), (j)(4).

The jobs may be counted in three forms. **Direct jobs** establish an employer-employee relationship between the new commercial enterprise (or the job-creating entity) and the persons it employs. **Indirect jobs** are held outside the NCE but created as a result of it — for example, employees of the producers of goods or services the project uses. **Induced jobs** arise in the broader community from the spending of direct and indirect employees. In a direct (standalone) case, the investor must generally show ten direct jobs created by the NCE itself. In a regional-center case, up to ninety percent of the job-creation requirement may be satisfied by indirect jobs, and induced jobs may also count, in each instance demonstrated through reasonable economic or statistical methodologies — typically an **input-output model** such as RIMS II or IMPLAN, supported by a qualified economist's report tied to a Matter-of-Ho-compliant business plan. See 8 C.F.R. § 204.6(j)(4)(i)–(iii); *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998).

Job creation need not be complete at the petition stage. A petitioner may rely on prospective job creation, showing through a comprehensive business plan that the required jobs will be created within a reasonable time — a window USCIS measures as roughly two years, and in the standalone context up to two years and six months after it adjudicates the Form I-526. Where, by the time of adjudication, the events described in the business plan should already have occurred, USCIS may seek evidence that the claimed jobs were in fact created and are held by qualifying employees. A petitioner who asserts that employees have already been hired invites the documentary requirements that attach to actual, as opposed to projected, employment. See 8 C.F.R. § 204.6(j)(4)(i); *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 2.

For an investment in a troubled business — one in existence at least two years that has incurred a net loss during the twelve- or twenty-four-month period before the priority date equal to at least twenty percent of its net worth before the loss — the investor may satisfy the requirement by preserving at least ten existing jobs for at least two years rather than creating ten new ones. In assessing whether

the business has existed for the requisite two years, USCIS will consider a successor in interest to have existed for the same period as the business it succeeded. See 8 C.F.R. § 204.6(j)(4)(ii) (troubled business); INA § 203(b)(5)(A)(ii), 8 U.S.C. § 1153(b)(5)(A)(ii).

Indirect and induced jobs defined, and their advantage. Two of the three job categories deserve fuller treatment because they are the engine of the regional-center model. Indirect jobs are positions held outside the new commercial enterprise but created as a consequence of it — the workers of suppliers, contractors, and vendors whose goods and services the project consumes, such as the manufacturers of materials used in construction or the firms that provide services to the operating business. Induced jobs are positions created in the wider community when the wages earned by direct and indirect workers are spent on housing, food, retail, healthcare, and other local goods and services, recirculating through the regional economy. Neither category rests on an employer-employee relationship with the NCE. Both are estimated, not counted head-by-head.

Why they are advantageous. The advantage over direct jobs is decisive for most projects. Direct jobs must be actual, filled, full-time W-2 positions, proved employee by employee with payroll records, and they are counted only if they truly exist — a heavy operational burden and a real execution risk for any investor whose enterprise must itself hire and retain ten qualifying workers. Indirect and induced jobs, by contrast, are demonstrated through accepted economic modeling — an input-output methodology such as RIMS II or IMPLAN, supported by a qualified economist's report tied to a comprehensive, Matter-of-Ho-compliant business plan — based on the project's expenditures and revenues rather than on a headcount the investor must personally generate. In a regional-center case up to ninety percent of the ten-job requirement may be met with indirect jobs, and induced jobs may count as well. This is why capital-intensive real-estate and infrastructure projects, which spend heavily on construction and operations, can model far more than ten jobs per investor and satisfy the requirement on paper before a single tenant opens — and it is the single greatest reason the overwhelming majority of EB-5 capital flows through regional centers rather than the direct model.

PART II — THE TWO INVESTMENT MODELS: DIRECT AND REGIONAL CENTER

This Part treats the two investment models side by side. It examines the direct (standalone) model and its Form I-526 petition, in which the investor forms and actively manages the enterprise, alongside the regional-center model and its Form I-526E petition, with its indirect and induced job creation, targeted employment areas, visa set-asides, and infrastructure projects. It closes with the annual visa-number caps, per-country limits, and backlogs that ultimately govern the availability of an immigrant visa for each investor.

Section 6. Overview of the Direct Model

In the direct model the investor forms or invests in an operating new commercial enterprise that itself employs the qualifying workers. The investor typically exercises meaningful control, the business plan describes an actual operating business, and job creation must be shown through direct, W-2 employment. The direct model suits the entrepreneur who intends to build and run a genuine business in the United States, and it avoids dependence on a third-party regional center and its **set-aside** categories.

One structural limit distinguishes the post-Reform and Integrity Act of 2022 direct model from the regional-center model: pooling is not permitted. USCIS rejects pooled standalone petitions — cases in which several investors contribute to the same non-regional-center NCE — filed on or after March 15, 2022, and will adjudicate such pooled cases only where they were filed before that date under the law then in effect. An investor who wants the benefit of pooled capital and shared project-level evidence must therefore use the regional-center route. See INA § 203(b)(5)(F), 8 U.S.C. § 1153(b)(5)(F) (regional-center pooling); USCIS Policy Manual, Vol. 6, Pt. G (standalone petitions).

Section 7. Form I-526, Immigrant Petition by Standalone Investor

The direct investor files Form I-526, Immigrant Petition by Standalone Investor. The petition must establish, by a preponderance of the evidence, each element of eligibility: a qualifying NCE; investment, or the active process of investing, of the required lawfully sourced capital; the at-risk placement of that capital; and a comprehensive, credible business plan demonstrating a need for at least ten full-time employees together with a timeline for creating them within a reasonable period, generally understood as roughly two years from the investor's admission or adjustment. See INA § 203(b)(5), 8 U.S.C. § 1153(b)(5); 8 C.F.R. § 204.6(a), (j); *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998) (preponderance standard).

The business plan must be “comprehensive and credible” within the meaning of *Matter of Ho*. At a minimum it should describe the business and its structure, the market and the competition, the marketing and operations plan, the management and personnel, and the anticipated financial statements and cash-flow projections — and, critically, it should set out a hiring timetable and organizational plan showing when and how the ten qualifying positions will be filled. A vague or aspirational plan is the most common cause of an I-526 request for evidence in direct cases. See *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998); 8 C.F.R. § 204.6(j)(4)(i)(B).

The petition must be supported by a documentary record proving both the enterprise and the capital. That record ordinarily includes evidence that the NCE is a qualifying, for-profit entity — formation documents, licenses, and filings; evidence that the required amount has been invested or is actively in the process of being invested — wire confirmations, bank statements, escrow releases, capital-contribution records, and equity or membership certificates; evidence that the capital is placed at risk and is subject to no guaranteed return or on-demand redemption; and a complete, documented source-of-funds trail of the kind addressed in Part IV. Because the petitioner must be eligible not only at filing but throughout adjudication, the evidentiary record should be assembled to remain accurate as the project progresses, not merely as of the filing date. See 8 C.F.R. § 204.6(j).

Section 8. The Regional Center Model and the Form I-526E Petition

A regional center is an economic unit, public or private, in the United States that is involved with promoting economic growth and is designated by USCIS for participation in the Immigrant Investor Program. Investing through a regional center allows the investor to count indirect and induced jobs toward the ten-job requirement, which is why the overwhelming majority of EB-5 capital flows through regional-center offerings tied to large real-estate and infrastructure projects. See INA § 203(b)(5)(E), 8 U.S.C. § 1153(b)(5)(E); 8 C.F.R. § 204.6(e), (m).

The regional-center investor files Form I-526E, Immigrant Petition by Regional Center Investor. Because much of the project-level evidence is common to every investor in an offering, the Reform and Integrity Act of 2022 introduced project pre-approval: the regional center or NCE files Form I-956F to obtain approval of the particular investment, its business plan, and its economic analysis, and the individual investor's I-526E then incorporates that approval and focuses on the investor's own eligibility and lawful **source of funds**. The I-526E must remain associated with a filed or approved I-956F throughout, which is why the regional-center track divides the labor between a project-level record the sponsor builds once and an investor-level record each petitioner builds for themselves. See INA § 203(b)(5)(F), 8 U.S.C. § 1153(b)(5)(F) (Form I-956F project approval); INA § 203(b)(5)(E), 8 U.S.C. § 1153(b)(5)(E).

Where an investment is located determines both the minimum amount and the visa category available to it, and three related concepts govern that geography: the **targeted employment area**, the reserved visa set-asides, and the special case of infrastructure projects.

A targeted employment area (TEA), determined at the time of investment, is either a rural area or an area that has experienced high unemployment, and investment in one qualifies for the reduced minimum of \$800,000 for post-Reform and Integrity Act of 2022 petitions and, together with

infrastructure projects, for the reserved visa set-asides. A rural area is any area outside a metropolitan statistical area as designated by OMB and outside the outer boundary of any city or town with a population of 20,000 or more per the most recent decennial census. A high-unemployment area is the census tract or contiguous census tracts in which the NCE is principally doing business — which may include directly adjacent tracts — where the weighted-average unemployment for the specified area is at least 150 percent of the national average. A significant Reform and Integrity Act of 2022 reform moved TEA designation authority to DHS and USCIS rather than the state agencies, constraining the gerrymandered tract combinations that characterized the prior regime. Counsel must confirm the TEA determination is supportable on the specific tracts where the JCE principally does business as of the investment date. See INA § 203(b)(5)(D), 8 U.S.C. § 1153(b)(5)(D) (targeted employment areas); INA § 203(b)(5)(B), 8 U.S.C. § 1153(b)(5)(B) (set-asides); USCIS Policy Manual, Vol. 6, Pt. G, Ch. 3.

The Reform and Integrity Act of 2022 reserves a percentage of the annual EB-5 visa allocation for qualified investors in these specified areas:

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

Set-aside visas that go unused are carried into the same category for one additional fiscal year, and after the second year any that remain are released to the unreserved EB-5 pool in the third fiscal year. Because the unreserved category has faced substantial backlogs for investors chargeable to high-demand countries, the set-aside categories — rural above all — have offered materially shorter waits and have become a central planning consideration. Counsel should consult the current Department of State Visa Bulletin to assess availability for the client’s chargeability and chosen category before recommending a project. See INA § 203(b)(5)(B)(i)–(ii), 8 U.S.C. § 1153(b)(5)(B)(i)–(ii) (reserved visas and carryover).

Among the categories that draw the reduced threshold and a reserved allocation is the infrastructure project — a capital-investment project in a filed or approved business plan that is administered by a governmental entity (a federal, state, or local agency or authority) serving as the job-creating entity, which contracts with a regional center or NCE to receive EB-5 capital as financing to maintain, improve, or construct a public-works project. Infrastructure projects invest at the \$800,000 threshold and draw on the two-percent set-aside. See INA § 203(b)(5)(B)(ii), (D)(iii), 8 U.S.C. § 1153(b)(5)(B)(ii), (D)(iii) (infrastructure projects).

Section 9. Visa Numbers, Per-Country Limits, and Backlogs

The number of EB-5 immigrant visas available each year is capped, and understanding the cap structure is essential both to setting realistic client expectations and to choosing a category. Three overlapping limits apply — an annual numerical limit, the reserved-versus-unreserved split, and the per-country ceiling — and together they determine who waits and for how long.

EB-5 receives 7.1 percent of the worldwide employment-based immigrant limit, which works out to roughly ten thousand visas per year. That figure is not ten thousand investors: the count includes the principal investor and each derivative — the spouse and each child under twenty-one — so a family of four consumes four of the annual numbers, and the number of actual investor “slots” is materially smaller than ten thousand, in practice closer to three to four thousand principal investors per year. Counsel should account for family size when advising a client on likely timing. See INA § 203(b)(5), 8 U.S.C. § 1153(b)(5); INA § 201(d), 8 U.S.C. § 1151(d) (worldwide employment-based level).

Of that annual pool, roughly sixty-eight percent is available in the unreserved categories, and the Reform and Integrity Act of 2022 reserves the remainder as set-asides — twenty percent for rural, ten percent for high-unemployment areas, and two percent for infrastructure. Unused reserved numbers roll within their category for one additional year before ultimately spilling into the unreserved pool. The practical consequence is that the reserved categories — rural above all — have generally remained current even while the unreserved category is oversubscribed for high-demand countries, and USCIS reinforces that design by prioritizing the assignment and adjudication of rural petitions ahead of others. See INA § 203(b)(5)(B), 8 U.S.C. § 1153(b)(5)(B).

No single country of birth may take more than seven percent of the annual allotment, measured across the employment- and family-based categories and pro-rated among them. In practice this ceiling binds only for a few very high-demand countries — historically China and India — because other countries do not generate enough demand to reach it. When a country hits its per-country limit, the category becomes unavailable for that country until the fiscal year resets on October 1. This is not theoretical: in FY 2026, India reached its per-country limit in the EB-5 unreserved category, halting unreserved issuance and adjustment approvals for Indian nationals for the remainder of the year while the reserved categories remained available. Chargeability is determined by country of birth rather than citizenship, and a derivative spouse may sometimes cross-charge to the other spouse’s more favorable country of birth — a planning point worth checking in every case, and one USCIS will weigh in deciding when to assign a petition for adjudication if the investor raises it with the Immigrant Investor Program Office. See INA § 202(a)(2), 8 U.S.C. § 1152(a)(2) (per-country limit); INA § 202(b), 8 U.S.C. § 1152(b) (chargeability).

For most nationalities — including, at present, Russian-born investors — the per-country cap is not the binding constraint, because Russia does not generate China- or India-level demand. The binding

constraints for the firm's typical client are instead the general processing queue and the U.S. immigrant-visa and sanctions environment addressed in Part V. Even so, the reserved categories' priority processing and their insulation from unreserved oversubscription make a rural or high-unemployment regional-center project the default recommendation. Because visa availability shifts monthly, counsel must confirm the current Department of State Visa Bulletin for the client's chargeability and chosen category before recommending any project.

PART III — FORMATION, OPERATION, AND IMMIGRATION PROCEDURE

This Part follows the EB-5 matter through formation and procedure. It addresses how a regional center is designated on Form I-956 and secures project approval on Form I-956F, the ongoing compliance and integrity obligations imposed by the Reform and Integrity Act, and then traces the investor through the three-step immigration process — petition, immigrant visa or adjustment of status, and removal of conditions on Form I-829 — that carries the client from conditional to unconditional lawful permanent residence.

Section 10. Designation and Project Approval — Forms I-956 and I-956F

To obtain designation, the sponsor files Form I-956, Application for Regional Center Designation. The application must define the regional center's geographic scope and the industries in which it will promote economic growth, and must describe the policies and procedures the center will use to comply with the Reform and Integrity Act of 2022's integrity requirements, monitor its NCEs and JCEs, and oversee the flow of investor capital. The obligation to monitor is a continuing one: a regional center must maintain policies and procedures reasonably designed to keep its associated enterprises in compliance with the immigration, criminal, and securities laws, and must make and preserve the records underlying its annual filings and the investor petitions it supports. Because no single checklist fits every center, USCIS assesses compliance case by case — which is why the monitoring program should be built into the entity's governance from day one rather than assembled in response to an inquiry. See INA § 203(b)(5)(E), 8 U.S.C. § 1153(b)(5)(E) (Form I-956 designation and monitoring duties).

Under the Reform and Integrity Act of 2022, the persons involved with a regional center, its NCEs, and its JCEs are subject to good-faith and eligibility screening. Each such person must submit Form I-956H, attesting to and documenting their bona fides, and may be required to provide biometrics so that USCIS can confirm their compliance. A missed biometrics appointment can itself hold up adjudication of the associated Form I-956 or I-956F. The statute requires disclosure of the identities of the principals and promoters and imposes continuing duties to supervise offerings, promoters, and the flow of funds, and it bars individuals who have engaged in specified misconduct from involvement. Counsel forming a regional center should conduct diligence on every principal against the Reform and Integrity Act of 2022's disqualification criteria before filing and should treat the bona-fides record as a living obligation, since new persons brought into the structure trigger fresh screening. See INA § 203(b)(5)(H), 8 U.S.C. § 1153(b)(5)(H) (bona fides of persons involved; Form I-956H); INA § 203(b)(5)(P), 8 U.S.C. § 1153(b)(5)(P) (disqualifying misconduct).

Designation is not a one-time event but a status with maintenance obligations. A designated regional center must file a Form I-956 amendment no later than 120 days before implementing significant proposed changes to its organizational structure, ownership, or administration — including a sale of the center or any arrangement that would bring new persons within the Reform and Integrity Act of 2022's screening requirements — and must also amend to change its approved geographic area or its name. Planning any material change to a center therefore begins months ahead of the change itself. See INA § 203(b)(5)(E)(v), 8 U.S.C. § 1153(b)(5)(E)(v) (amendments; 120-day notice of material changes).

With designation in place, the regional center turns to project approval. Before or concurrently with investor petitions, it files Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, for each particular offering. The I-956F carries the project-level evidence — the Matter-of-Ho-compliant business plan, the economic-impact analysis supporting the claimed job creation, the offering and organizational documents, the TEA and set-aside evidence where claimed, and the required securities and disclosure representations — and its approval establishes the project record on which each investor’s I-526E relies. Because the statute requires the I-956F to be on file before any associated I-526E and structures the investor’s eligibility around it, USCIS decides the project application before adjudicating the investor petitions that depend on it. See INA § 203(b)(5)(F), 8 U.S.C. § 1153(b)(5)(F) (Form I-956F approval of investment in a commercial enterprise).

Section 11. Ongoing Compliance and Integrity Obligations

Designation carries a standing compliance burden that runs for the life of the regional center, built around an annual statement, an annual integrity fee, a periodic audit, and the consequences of non-compliance. Each obligation is enforceable by sanction up to and including termination, and each is best treated as a continuous discipline rather than a year-end scramble.

Every designated regional center must file Form I-956G, the Regional Center Annual Statement, reporting on its NCEs and JCEs, its capital-investment activity, its job creation, and its compliance with program requirements. The statement is filed for each federal fiscal year — October 1 through September 30 — on or before December 29 of the calendar year in which that fiscal year ended. A center designated on or before September 30 must file for the same year, while one designated on or after October 1 files in the following year. The obligation reaches every designated center, including those approved before the Reform and Integrity Act of 2022 and those with a pending amendment, and USCIS may sanction a center that fails to file, up to and including termination. See INA § 203(b)(5)(G), 8 U.S.C. § 1153(b)(5)(G) (annual statement; Form I-956G).

The Reform and Integrity Act of 2022 also established the EB-5 Integrity Fund, financed by an annual fee that each designated regional center must pay beginning October 1 of each year. The amount turns on the number of investors sponsored across the center’s NCEs in the preceding fiscal year: a center with twenty-one or more investors pays \$20,000, and a center with twenty or fewer pays \$10,000. USCIS began collecting the fee in 2023, and the fund finances program administration, audits, site visits, and fraud detection. Non-payment is not a technicality — USCIS will terminate the designation of any center that does not pay within ninety days after the fee is due. See INA § 203(b)(5)(J), 8 U.S.C. § 1153(b)(5)(J) (EB-5 Integrity Fund and annual fee).

Under the integrity regime added by the Reform and Integrity Act of 2022, USCIS must audit each designated regional center at least once every five years. The audit reviews the documentation the

center is required to maintain and the flow of immigrant-investor capital into each capital-investment project, and USCIS generally applies Generally Accepted Government Auditing Standards — the “Yellow Book.” The practical implication is continuous readiness: a regional center should keep its capital-flow records, job-creation evidence, and compliance files audit-ready at all times rather than reconstructing them once an audit is announced. See INA § 203(b)(5)(E)(vii), 8 U.S.C. § 1153(b)(5)(E)(vii) (audits at least once every five years).

USCIS may terminate a regional center’s designation for non-compliance, and it maintains public lists of approved and terminated centers together with termination notices. Termination does not automatically end an investor’s case. The Reform and Integrity Act of 2022’s good-faith-investor protections allow an investor who was not a knowing participant in the underlying misconduct to remain eligible notwithstanding a center’s termination or a debarment of the NCE or JCE — in some circumstances by showing that the capital was sustained and the required jobs already created before the termination, and in others by curing the defect, whether by the NCE reassociating with an approved regional center or by the investor making a qualifying investment in another NCE. When USCIS terminates a center it revokes an approved project application (Form I-956F) and denies any that was pending, and it notifies the affected investors, who then generally have 180 days to respond, either by confirming continued eligibility or by amending the petition. A post-Reform and Integrity Act of 2022 investor who amends a Form I-526E to reassociate or to redirect the investment need not pay the \$1,000 Integrity Fund petition fee a second time, since that fee attaches only to the initial filing. Two limits deserve emphasis: these protections reach only termination or debarment, so a project’s failure standing alone is not a basis to retain eligibility; and an investor who knew of the misconduct cannot invoke them. Counsel representing investors in a terminated center should move quickly to assess the remedial options, which are fact-specific and continue to evolve. See INA § 203(b)(5)(E)(vi), 8 U.S.C. § 1153(b)(5)(E)(vi) (termination); INA § 203(b)(5)(M), 8 U.S.C. § 1153(b)(5)(M) (good-faith-investor protections).

Section 12. The Three-Step Process: Petition, Visa, and Removal of Conditions

The immigration procedure follows the same three steps regardless of model, tracking the lifecycle from petition through unconditional residence. The process begins with the qualifying petition — Form I-526 for the direct or standalone investor, Form I-526E for the regional-center investor — whose approval establishes the investor’s eligibility and priority date but does not by itself confer any status. See 8 C.F.R. § 204.6 (Form I-526 / I-526E); INA § 203(b)(5), 8 U.S.C. § 1153(b)(5).

Once a visa is available for the investor’s category and chargeability, as shown on the Visa Bulletin, the investor obtains status by one of two routes. Under consular processing, the investor files Form

DS-260 with the Department of State to obtain an EB-5 immigrant visa abroad and to seek admission to the United States. Under adjustment of status, the investor files Form I-485 with USCIS, provided the investor is present in the United States in a status that permits adjustment. The Reform and Integrity Act of 2022 authorizes concurrent filing of the I-485 with the underlying petition where a visa number is available — together with the petition, during its pendency, or after approval — which can yield an employment authorization document and advance parole while the petition is pending. Upon approval of the I-485, or upon admission on an EB-5 immigrant visa, USCIS grants conditional permanent residence to the investor and derivative family members for a two-year period. One procedural trap recurs here: the Reform and Integrity Act of 2022's separate-fee rule requires that the petition and any concurrently filed I-485, I-131, or I-765 each carry its own fee payment, and since September 1, 2022 USCIS has rejected a single combined payment and returned the fee. Filing fees themselves are not static — a November 2025 fee schedule reverted the EB-5 filing fees to their pre-April-2024 amounts following litigation over the 2024 fee rule — so counsel should confirm the current fee for each form on the date of filing. See INA § 245(a), 8 U.S.C. § 1255(a) (adjustment of status; Form I-485); INA § 203(b)(5)(M)(iii), 8 U.S.C. § 1153(b)(5)(M)(iii) (concurrent filing); INA § 216A, 8 U.S.C. § 1186b (conditional residence).

The final step removes the conditions. The investor must file Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, during the 90-day period immediately before the second anniversary of obtaining conditional residence. The I-829 must establish that the investor invested — or was actively in the process of investing — the required capital, sustained it at risk throughout the required period, and created (or, for a troubled business, preserved) the required jobs, or, where jobs are still coming, that the enterprise falls within the framework USCIS accepts for job creation completed within the applicable window. If USCIS approves, it removes the conditions from the investor's and the derivatives' status, and they become unconditional lawful permanent residents, eligible in due course to pursue naturalization. See INA § 216A(c), (d), 8 U.S.C. § 1186b(c), (d); 8 C.F.R. § 216.6 (Form I-829; 90-day filing window).

Profitability is not the test for removing conditions. A frequent misconception is that the enterprise must be profitable to qualify for removal of conditions. It need not be. The statutory test for the Form I-829 is that the investor invested — or was actively in the process of investing — the required capital, sustained that capital at risk throughout the required period, and created (or, for a troubled business, preserved) at least ten full-time jobs for qualifying workers. Job creation and sustainment, not profit, are what USCIS adjudicates. An enterprise can be operating at a loss, or can even be winding down, and the investor may still remove conditions provided the jobs were created and the capital was genuinely kept at risk for the required period. Indeed, profitability is in tension with the at-risk premise: a guaranteed profit would suggest the capital was never truly at risk. What matters is that the capital was exposed to the risk of loss and that the required employment materialized.

What a troubled business is. A troubled business is a defined category with its own, more forgiving job standard. It is a business that has been in existence for at least two years and that has incurred a net loss, during the twelve- or twenty-four-month period before the priority date, equal to at least twenty

percent of the business's net worth before the loss. For a qualifying troubled business, the investor need not create ten new jobs. Instead, the investor may satisfy the requirement by preserving the existing number of employees — at least ten — at no less than the pre-investment level for at least two years. In assessing the two-year existence requirement, USCIS treats a successor in interest as having existed for the same period as the business it succeeded. The troubled-business route is a job-preservation rather than a job-creation standard, and it exists precisely because rescuing a failing enterprise and saving its jobs serves the program's economic purpose as much as creating new ones.

Fluctuations in the job count. Employment rarely holds at a flat headcount, and counsel must know how USCIS treats a workforce that rises and falls — twelve qualifying jobs one month, nine the next. The governing requirement is that the ten full-time positions be created and be permanent in the sense of ongoing rather than seasonal or transient. It is not a requirement that exactly ten employees be on the payroll on every single day. What USCIS looks for at the removal-of-conditions stage is that the required jobs were in fact created and that they are the kind of durable, full-time positions the business genuinely needs, evidenced over a representative period through payroll records, tax filings, and quarterly wage reports rather than a single snapshot. Ordinary turnover — an employee leaving and being replaced — does not destroy a job. The position persists even as the person filling it changes. The safest posture is to maintain a cushion above ten so that normal attrition never drops the sustained count below the threshold, and to document the positions as roles that continue to exist and be filled, not merely as a headcount on one date.

Momentary gaps versus structural shortfalls. A brief, explicable dip — a vacancy between a departure and a hire, a short furlough tied to a defined event — is materially different from a structural shortfall in which the business never sustains the ten positions it projected. The former can be explained and is generally tolerated where the overall record shows the jobs were created and remain genuine ongoing positions. The latter is a job-creation failure. The evidentiary answer to fluctuation is longitudinal proof: wage reports and payroll across multiple quarters demonstrating that the positions existed and were filled over time, with any gap explained and shown to be temporary.

Gaps and delays in the project itself. Projects also slip. Construction is delayed, openings are pushed, and job creation arrives later than the business plan projected. EB-5 accommodates this to a degree: job creation need not be complete at the petition stage and may be shown prospectively, with USCIS generally allowing a reasonable period — measured as roughly two years, and in the standalone context up to two years and six months after adjudication of the petition — for the projected jobs to materialize. Where the jobs are still coming at the removal-of-conditions stage, the investor must show that the enterprise falls within the framework USCIS accepts for job creation completed within the applicable window, supported by an updated business plan and credible evidence that the remaining jobs will be created within a reasonable time. Material deviations from the plan on which the petition was approved should be explained and reconciled, not ignored.

Unexpected circumstances. When something genuinely unforeseen intervenes — a market disruption, a natural disaster, the loss of an anchor tenant, a financing failure, or a broader economic shock — the analysis turns on whether the core requirements can still be met notwithstanding the event. The at-risk requirement actually cuts in the investor's favor here: because the capital was exposed to risk, some loss or underperformance does not by itself defeat the petition, so long as the capital was sustained at risk and the required jobs were nonetheless created or are within the accepted completion framework. Redeployment may become necessary if capital is returned early because of the disruption. The essential discipline is contemporaneous documentation: record the unexpected event, the enterprise's response, and the continuing at-risk deployment and job position, so that the removal-of-conditions record explains any variance from the original plan on facts rather than on argument.

The removal-of-conditions deadline, and missing the window. Removal of conditions is bounded by a firm deadline: the Form I-829 must be filed during the ninety-day period immediately preceding the second anniversary of the date the investor obtained conditional permanent residence. Filing is mandatory and time-sensitive. If the investor fails to file within that window, the conditional status is automatically terminated and the investor becomes removable, subject to USCIS's discretion to excuse a late filing only for good cause and extenuating circumstances shown in a written explanation. Late filing is not a reliable option and should never be planned around.

When the project has not caught up to the two-year window. A recurring hard case is the project that, for legitimate reasons — construction delay, phased development, a slow ramp to full operations — has not yet produced all ten jobs by the time the I-829 window opens. The deadline to file does not move, but the substantive job-creation test tolerates jobs still in progress if the record shows they will be created within a reasonable time. The investor therefore files the I-829 on time and demonstrates, with an updated business plan and credible evidence, that the enterprise is on a trajectory to complete the required job creation within the period USCIS accepts. USCIS may hold the adjudication in abeyance or issue a request for evidence to allow the remaining jobs to be documented as they come online. What the investor must not do is allow the filing deadline itself to pass because the jobs are incomplete. The correct course is a timely filing coupled with a well-supported showing that the jobs are coming. Where a project has genuinely failed to fit within the window and the jobs will not be created at all, the good-faith-investor protections and, in some cases, reassociation or redeployment into a compliant alternative may be the only avenues, and each is fact-specific and should be assessed with counsel well before the window opens.

PART IV — CROSS-CUTTING DIMENSIONS AND THE PRACTITIONER'S SYNTHESIS

This Part addresses the cross-cutting dimensions that overlay every EB-5 matter and synthesizes them into practice. It covers the securities-law overlay, source-and-path-of-funds documentation standards, integrity screening and the common grounds for requests for evidence and denial, and the frequent causes of project failure. It then turns to the practitioner's synthesis: choosing between the direct and regional-center models, structuring the engagement and managing conflicts, conducting diagnostic intake, and consulting selected authorities.

Section 13. Source and Path of Funds

The single most frequently dispositive issue in EB-5 adjudication — especially for investors from jurisdictions with opaque financial systems — is proof that the invested capital was **lawfully derived** and is traceable from its source into the NCE. The petitioner bears the burden of documenting both the **source** of the funds (how the investor lawfully earned or acquired them) and the **path** of the funds (how they moved from the investor to the NCE). See 8 C.F.R. § 204.6(j)(3) (lawful source of capital); *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998).

Typical supporting evidence includes, as applicable:

- Five years of tax returns (foreign and, if applicable, U.S.) and evidence of income — employment, business ownership, dividends, or professional earnings.
- Documentation of specific source transactions: sale of real property or a business (deeds, contracts, closing statements), gift (gift deed plus the donor's own lawful source), inheritance (probate records plus the decedent's source), loan (loan agreement plus collateral and the lender's source), or investment proceeds.
- Complete banking records tracing each transfer from source through any intermediary accounts into the NCE or escrow, reconciling every step without unexplained gaps.
- Where funds move cross-border, evidence of compliance with the source country's currency-control and remittance rules, and documentation of any third-party exchange or transfer mechanism.

The Reform and Integrity Act of 2022 expanded scrutiny of source of funds — including of **administrative and other fees** and of gifted or loaned funds — and reinforced anti-money-laundering expectations. Counsel should build the source-of-funds narrative as a single, internally consistent story supported at every link, and should anticipate that gifts and loans will draw heightened requests for evidence directed at the ultimate lawful origin. See INA § 203(b)(5)(L), 8 U.S.C. § 1153(b)(5)(L) (source-of-funds and fee scrutiny); 8 C.F.R. § 204.6(j)(3).

Section 14. Integrity Screening and the Common Grounds for RFEs and Denials

The Reform and Integrity Act of 2022 strengthened USCIS’s tools to combat fraud and protect national security — site visits, information-sharing, bars on certain foreign-government involvement, disclosure of promoters and fees, and the audit and Integrity-Fund regime described in Part III. Both investors and sponsors should expect that misrepresentations, whether in the source-of-funds record, the business plan, or the promoter disclosures, carry serious consequences, including denial, termination, and potential inadmissibility findings. See INA § 203(b)(5)(E)(vii)–(viii), (H)–(N), 8 U.S.C. § 1153(b)(5)(E)(vii)–(viii), (H)–(N) (site visits, information-sharing, and integrity measures).

That screening environment shapes where cases actually falter. The recurring grounds for requests for evidence and denials, across all case types, are the following:

- **Incomplete or internally inconsistent source- and path-of-funds documentation** — the leading cause across all case types.
- **A business plan that is not “comprehensive and credible” under *Matter of Ho***, or an economic analysis using unsupported inputs or an inapplicable methodology.
- **Capital that is not genuinely at risk** — guaranteed returns, on-demand redemption rights, or funds parked rather than deployed.
- **TEA or set-aside determinations** not supported on the specific tracts as of the investment date.
- **Job-creation shortfalls**, or reliance on jobs outside the period or framework USCIS accepts.
- **Regional-center deficiencies** — incomplete I-956 or I-956F records, late or inaccurate I-956G statements, unpaid Integrity-Fund fees, or adverse audit findings.

Section 15. Frequent Causes of EB-5 Project Failure

The recurring reasons EB-5 matters fail are, for the most part, structural rather than idiosyncratic, and they cluster into a small number of patterns that counsel learns to recognize at intake. Because a defect on any single one of these dimensions can be dispositive — a project may be sound on every other axis and still fail — it is worth cataloguing them and understanding why each is fatal on its own. The unifying theme is that EB-5 is a job-creation program with rigid capital and durational

requirements, and that many otherwise attractive real-estate transactions collide with one or more of those requirements in ways that no amount of drafting can cure.

The most common and most decisive failure is the absence of a genuine job-creation engine. EB-5 requires the creation of at least ten full-time positions for qualifying U.S. workers per investor, and construction employment generally does not count, because USCIS treats it as intermittent, temporary, or transient unless the construction activity is expected to last at least two years. A build-and-sell project — the classic spec-home or short-cycle development — therefore produces no qualifying permanent jobs: once the asset is completed and sold there is no operating business and no ongoing payroll for the ten jobs to attach to. Indirect and induced jobs, which is how residential development realistically reaches the ten-job threshold, may be counted only through a USCIS-designated regional center, supported by an economist's report using an accepted input-output methodology tied to a comprehensive, Matter-of-Ho-compliant business plan and an approved Form I-956F. Projects conceived as ordinary asset flips, with no operating enterprise and no regional-center affiliation, fail this test at the threshold, and this is a feature of the underlying business model rather than a defect that better paperwork can remedy.

A closely related failure is capitalization below the qualifying minimum, often compounded by heavy leverage. Each investor must contribute at least the applicable minimum — the standard amount, or the reduced targeted-employment-area amount where that route is used — as equity placed at risk. Two errors recur. The first is simply raising too little equity per investor, so that the contribution never reaches the statutory floor. The second is more subtle: because only the investor's own equity counts toward the minimum, debt supplied by a construction lender does not enlarge the qualifying contribution. A capital stack engineered to maximize leveraged equity returns — a thin equity slice beneath a large senior loan — therefore shrinks the EB-5-eligible base rather than expanding it. Deals designed for conventional return-on-equity optimization frequently prove to have too little qualifying equity, and the leverage that flatters the projected returns is precisely what undermines EB-5 eligibility.

The third pattern is a holding period too short to satisfy sustainment. Capital must be expected to remain invested for at least two years, measured from the date the full qualifying amount is placed at risk and made available to the job-creating entity, and in practice it must remain deployed well beyond two years because the investor must also progress through petition adjudication, conditional residence, and removal of conditions. A project that returns capital to investors on a short flip — twelve, eighteen, or thirty months — returns that capital before, or around, the point at which the investor could complete the immigration process, breaking sustainment unless a compliant redeployment mechanism was built into the operating agreement and offering memorandum from the outset. Short-horizon transactions that contemplate no redeployment are structurally incompatible with the EB-5 timeline, however profitable they may be as standalone deals.

The fourth pattern is the wrong legal architecture. EB-5 requires the investor's capital to flow into a new commercial enterprise whose business plan drives the job creation, ordinarily paired with a job-creating entity and, for indirect jobs, a designated regional center. Many failed matters are instead built as single-asset private syndications with a sponsor promote — developer fees, management fees, profit-share carries, and subordinated sponsor tranches — which is a conventional real-estate structure, not an EB-5 structure. Retrofitting a promote-driven flip into the NCE, job-creating-entity, and regional-center framework is a rebuild rather than an amendment, and matters that attempt to bolt EB-5 onto an architecture designed for something else tend to fail at the point where the two frameworks prove incompatible.

The fifth pattern lies in the source-and-path-of-funds record, which is the single most frequently dispositive issue in adjudication generally and an independent cause of denial even where the project is sound. Incomplete or internally inconsistent documentation of how the investor lawfully earned the capital, and of how it moved from its origin into the NCE without unexplained gaps, defeats petitions that would otherwise succeed. Gifts and loans draw heightened scrutiny directed at the ultimate lawful origin, and cross-border transfers must be reconciled against currency-control and remittance rules. A project can create every promised job and still fail investor by investor if the source-of-funds records are not built to withstand requests for evidence.

Two further patterns are less about the deal's design than about the parties. Related-party and conflict-of-interest problems — most often acquisitions from an affiliated seller described as being “at cost,” without independent verification of the cost basis or the finished value — attract intense scrutiny under both the EB-5 integrity regime and the securities laws, and undisclosed self-dealing is among the most common bases for both denial and enforcement. And regional-center compliance failures — deficient designation or project-approval records, late or inaccurate annual statements, unpaid integrity-fund fees, or adverse audit findings — can lead to termination of the center, revocation of the associated project approval, and, absent the good-faith-investor protections, loss of eligibility for the investors who relied on it.

Finally, the securities-law compliance gap discussed in the preceding section is itself a frequent cause of failure, and one whose consequences are uniquely severe in EB-5. Offerings marketed on the strength of promotional materials rather than a proper private placement memorandum — without adequate risk-factor disclosure, without accredited-investor verification, without disclosure of the fee and promote structure, and without attention to broker-dealer and promoter issues — expose the sponsor to rescission, enforcement, and private liability, and, because the Reform and Integrity Act of 2022 welded the two regimes together, to collateral immigration consequences that can cost investors both their capital and their status. Overselling the immigration outcome — presenting the visa as assured when nothing about it may be guaranteed — recurs across enforcement actions and is among the surest ways to convert a viable project into a failed one.

The practical lesson for counsel is that these failure modes are best treated as a diagnostic checklist applied before capital is committed rather than as risks to be managed after the fact. A matter that cannot demonstrate a genuine job-creation engine, qualifying equity at the required minimum, a hold long enough to sustain the investment through adjudication, the correct enterprise architecture, a defensible source-of-funds record, clean related-party dealings, regional-center compliance, and a proper securities posture is not a matter to be repaired — it is a matter to be restructured or declined. The most efficient path to EB-5 capital is almost never to force a small, short-horizon, promote-driven transaction into the program, but to design a purpose-built, regional-center-sponsored project large enough to model the required jobs per investor, with the economic, corporate, securities, tax, and anti-money-laundering apparatus that EB-5 demands assembled from the beginning.

Section 16. Choosing the Model: Direct vs. Regional Center

The choice between the direct (standalone) model and the regional-center model is the single most consequential structural decision in an EB-5 matter. The two models are compared below across the dimensions that matter to the client, followed by the practical judgment the firm applies.

Consideration	Direct (Standalone)	Regional Center
Job counting	10 direct W-2 jobs the enterprise itself creates	Direct, indirect, and induced jobs all count. Up to 90% may be indirect
Investor role	Typically an active operator of the business	Passive. Holds an interest in the fund entity
Capital flow	Invested directly into the job-creating NCE	Into a fund NCE that loans/invests to the project JCE
Best-fit client	Entrepreneur building/running a real U.S. business	Investor whose priority is the green card
Set-asides access	Only if the project itself qualifies	Where the rural/HUA/infrastructure set-asides live in practice
Processing speed	Generally slower. No priority	Rural I-526E often ~4–12 mo.; HUA ~18–24 mo. (varies)
Control vs. reliance	High control, high personal execution risk	Reliance on center, sponsor, and project quality
Diligence focus	Business plan, market, and hiring plan	Sponsor track record, project, securities, fund terms
Prevalence	Minority of cases	The large majority of EB-5 visas

The direct model suits the genuine entrepreneur who intends to build and control an operating U.S. business and can credibly generate ten real W-2 positions. It offers control and avoids dependence on a third-party regional center, but it places all execution and job-creation risk on the investor and

generally proceeds without the priority processing and set-aside access that make the regional-center route attractive.

For the immigration-motivated client — the profile of most of the firm’s EB-5 practice — the regional-center model is usually the better fit. Counting indirect and induced jobs makes the ten-job requirement far easier to satisfy, and the model is the practical gateway to the rural and high-unemployment set-asides, which currently offer both shorter waits and priority processing. The trade-off is reliance on third parties, which makes diligence on the regional center, the sponsor’s track record, and the specific project the decisive work. For most clients — and especially anyone sensitive to backlog or timing — a rural regional-center project is the firm’s default recommendation, with the direct model reserved for true operating-business entrepreneurs.

Timing can also protect a petition through grandfathering. Filing a qualifying petition in a reserved category before the applicable Reform and Integrity Act of 2022 grandfathering deadline can preserve the petition under current rules even if a visa is not issued before that date — the protection generally turns on the petition having been properly filed before the deadline, not on visa issuance. Because that protection and the set-aside advantages are time-sensitive, category choice should be raised with the client early rather than deferred, and counsel must confirm the current deadline and its requirements against USCIS guidance for each matter.

PART V — SECURITIES, INVESTMENT-ADVISER, AND BROKER-DEALER REGULATION OF EB-5 OFFERINGS

This Part examines the securities-law framework that overlays every pooled EB-5 offering. It analyzes the offering itself and the registration requirement and its exemptions, the antifraud reach of Rule 10b-5 and the required filings, the "cold offer" problem and the substantive pre-existing relationship, and the investment-adviser and broker-dealer registration questions that arise when EB-5 interests are structured, marketed, and sold as securities.

Part IV addresses the cross-cutting dimensions of an EB-5 matter. This Part sets out in full the securities-law framework that overlays every pooled EB-5 offering, and adds the two adjacent registration regimes that the firm's EB-5 practice must observe whenever a project is presented to investors: the regulation of the **offering** itself, the regulation of any person who acts as an **investment adviser**, and the regulation of any person who acts as a **broker-dealer**. These are three separate regimes, and a single arrangement can implicate more than one. They are additional to — not a substitute for — the EB-5 eligibility requirements treated elsewhere in this treatise: a project may be a valid private securities offering and still fail as an EB-5 investment, and the reverse is equally true.

Section 17. The Offering Itself: Registration and Exemption

An interest in a pooled EB-5 vehicle is a **security** — an investment contract under *SEC v. W.J. Howey Co.*, because the investor commits capital to a common enterprise expecting profit from the efforts of the sponsor and manager. Section 5 of the Securities Act of 1933 therefore requires that every offer and sale be **registered** unless an exemption applies. EB-5 offerings are not registered. They are conducted under exemptions, and “exempt” means exempt from registration only — not from the anti-fraud rules or from state notice obligations.

Two exemptions do the work. **Regulation D, Rule 506** governs offers and sales to U.S. investors, including foreign nationals who are already in the United States. **Regulation S** governs offers and sales made entirely offshore to non-U.S. persons. The two are frequently run side by side in a single EB-5 raise — Regulation D for the U.S.-side investors and Regulation S for those subscribing from abroad — provided the two channels are kept strictly separate.

Key defined terms. An **accredited investor** is, for a natural person, one whose income exceeded \$200,000 individually or \$300,000 jointly in each of the two most recent years with a like expectation for the current year, or whose net worth, excluding the primary residence, exceeds \$1,000,000. The same thresholds apply to foreign investors, though documenting them from foreign assets is the practical challenge. A **sophisticated investor** is one who, alone or with a purchaser representative, can evaluate the merits and risks of the investment — a separate and lower standard than accreditation. **General solicitation** is any offer made through public or broad means, or to any person with whom the issuer or its agent lacks a substantive, pre-existing relationship. It is prohibited under Rule 506(b), and a single instance can destroy the exemption for the entire offering. **Rule 506(b)** forbids general solicitation and permits investor self-certification of accredited status; **Rule 506(c)** permits general solicitation and advertising but requires that every purchaser be accredited and that the issuer take reasonable steps to verify that status. **Integration** treats ostensibly separate offerings as one where they are sufficiently related, a doctrine of particular importance where several EB-5

projects are consolidated or where a series of small offerings is marketed to the same pool of prospects.

General solicitation illustrated — even a private pitch to one person. The reach of general solicitation is wider than most sponsors assume, and concrete illustrations make the danger vivid. General solicitation is not limited to advertisements, mass emails, websites, or seminars. An offer made privately, in person, and to a single individual can still be a prohibited general solicitation if that individual is a person with whom the issuer or its agent lacks a substantive, pre-existing relationship. In other words, a quiet one-on-one sales conversation over dinner with a newly introduced prospect — no advertisement, no crowd, no publicity — can defeat the Rule 506(b) exemption for the entire offering, because the vice is the absence of a pre-existing substantive relationship, not the size of the audience. The privacy of the setting provides no safe harbor.

Illustrations of unknown 'general' audiences. The exemption is most often lost through contact with persons the issuer does not truly know. Examples that have been treated as general solicitation include: pitching an unvetted referral passed along by a third party; presenting to attendees of a conference or networking event gathered without regard to their financial qualifications; contacting names from a purchased or borrowed list; responding to an inbound inquiry from someone who found the sponsor online; presenting through a migration agent to that agent's general roster of clients whom the issuer has never vetted; and posting project information where the public or an indeterminate group can see it. In each case the recipients are, in the eyes of the rule, an unknown 'general' audience because the issuer cannot show it had, before the approach, enough knowledge of each person's financial circumstances and sophistication to form a reasonable belief that the person was a suitable private-offering investor.

Compliance and violation under Rule 506(b) and Rule 506(c). The two rules chart different compliant paths. Under Rule 506(b), the compliant course is to offer only to persons with whom a substantive, pre-existing relationship already exists — for instance, an established client whose income, net worth, source of assets, and sophistication the firm already knows from a prior engagement — and to permit those investors to self-certify accredited status. The violation is any general solicitation, including the single private cold pitch described above. Under Rule 506(c), general solicitation and advertising are affirmatively permitted — the sponsor may market publicly, hold seminars, and approach strangers — but the compliant path requires that every purchaser be accredited and that the issuer take reasonable steps to verify that status through actual review of income or net-worth documentation (tax records, brokerage statements, or a qualified third party's written confirmation), not mere self-certification. The violation under 506(c) is selling to any non-accredited purchaser or relying on a checkbox instead of genuine verification. Illustration: a sponsor who advertises the project on a website and then accepts a subscriber on the strength of a self-certification alone has violated 506(c) by advertising without verifying, and cannot fall back on 506(b) because the advertising already destroyed that exemption. Conversely, a sponsor relying on 506(b)

who makes one cold approach to an unvetted prospect has forfeited 506(b) for the whole raise and, absent verified accreditation of all purchasers, cannot retroactively claim 506(c).

Section 18. Rule 10b-5 and the Required Filings

Rule 10b-5 imposes no filing. Promulgated under Section 10(b) of the Securities Exchange Act of 1934, it prohibits any material misstatement or omission in connection with the purchase or sale of a security. There is nothing to file, and exemption from registration confers no exemption from it. Every projection, comparable-sales figure, return estimate, and risk statement in an EB-5 project presentation is subject to it, which is why the operative instrument is a complete private placement memorandum with full risk factors and a documented, reasonable basis for every projection — not any filing.

The filings that are required are a federal Form D and state notices. The issuer files **Form D**, a brief notice of an exempt offering, with the SEC through EDGAR within **fifteen days after the first sale** — the date the first investor signs the subscription, not the closing — with no fee. In addition, because Rule 506 interests are “covered securities,” states may not require registration but may require a **notice filing**: a Form D copy, a consent to service of process, and a fee, in each state where a purchasing investor resides.

The state of filing does not follow the state of incorporation. A Delaware vehicle does not file in Delaware merely because it is organized there. State notice filings follow **investor residence**: a New York-resident investor requires a New York filing; a Pennsylvania or Connecticut investor requires a filing in that state; a purely offshore Regulation S investor with no U.S. residence generally triggers no state notice; and Delaware is implicated only if a Delaware-resident invests. Because most states require the notice before or shortly after the first sale and do not permit late filing to cure an omission, the investor roster and residences should be fixed before the first sale.

Do the required filings apply to a Regulation S offering? The filing obligations described above are creatures of Regulation D and of state blue-sky law, and they do not attach to an offer and sale made in reliance on Regulation S alone. Regulation S is a separate safe harbor for offers and sales made outside the United States to non-U.S. persons. It has no Form D requirement, and because a purely offshore Regulation S sale to a non-U.S.-resident investor involves no U.S. state of residence, it ordinarily triggers no state notice filing either. In a raise that runs Regulation D and Regulation S side by side, the Form D and the corresponding state notices are required for the Regulation D (U.S.-side) investors, while the Regulation S (offshore) investors generate neither — provided the two channels are kept strictly segregated so that no directed selling effort reaches the United States and no U.S.-resident is sold under Regulation S. The practical caution is that the analysis follows the actual facts, not the label: if an ostensibly Regulation S investor is in fact a U.S. resident or is solicited within the

United States, the offering is thrown back onto Regulation D and its filing obligations, and the failure to have made the Form D and state filings then becomes a live problem. The anti-fraud rules, by contrast, apply to a Regulation S offering just as they do to a Regulation D offering; Regulation S exempts registration, not honesty.

Section 19. The “Cold Offer” and the Substantive Pre-Existing Relationship

The manner in which the firm presents an EB-5 project to a client is itself a securities-law act. Presenting a project as an “in-person private cold offer” is hazardous, because a **cold offer** — an approach to a person with whom the firm has no substantive, pre-existing relationship — is the paradigm of general solicitation, and it is no less so for being made privately and in person. Characterizing the presentation as informational materials rather than a binding communication provides no protection: an “offer” includes any solicitation of investor interest for value, whether or not it is contractually binding. A single cold approach can forfeit the Rule 506(b) exemption for the entire offering.

The distinction that preserves the practice turns on the phrase “**substantive, pre-existing relationship.**” The relationship must be **pre-existing** — formed before the person was approached about the particular investment, so that the contact is not itself the solicitation. It must also be **substantive** — the firm must already possess enough information about the person’s financial circumstances and sophistication to form a reasonable belief that the person is a suitable private-offering investor. An existing client whom the firm already represents on an EB-5, tax, or corporate matter ordinarily satisfies both prongs, because the representation has already disclosed the client’s income, net worth, source of assets, and sophistication — precisely the knowledge on which accreditation turns. A newly met prospect, an unvetted referral, or a person who has merely inquired about EB-5 does not, without more, qualify, and an offer to such a person is a cold approach even if cordial.

There is no fixed waiting period. The frequently cited intervals are not safe harbors. As a practical matter, before presenting any project the firm should be able to answer, in the file, three questions: **when** the relationship was established, **what** the firm knows of the person’s income, net worth, and sophistication, and **how** it came to know it. If those answers rest on facts pre-dating the offer, a substantive pre-existing relationship exists. If they would require information obtainable only by pitching the investment, it does not, and the firm should either build the relationship first or proceed under **Rule 506(c)** with verified accreditation. For the firm’s foreign clientele, a further rule applies: a Regulation S offer is available only while the client is **physically outside the United States** at the moment of offer and of subscription, so presenting a U.S. project to a client who is visiting or residing

in the United States forfeits Regulation S and throws the offer back onto Regulation D's limits. Each foreign investor's physical location at offer and subscription must therefore be recorded.

Section 20. Investment-Adviser Registration

A person is an **investment adviser** under the Investment Advisers Act of 1940 (and its state analogues) if the person, for compensation, is engaged in the business of advising others as to the value of securities or the advisability of investing in them. All three elements must be present. Adviser status turns on giving advice about securities as a business, for compensation — not on presenting a particular transaction — which separates the two situations the firm confronts.

The attorney presenting a project. The Advisers Act excludes a lawyer whose securities advice is **solely incidental** to the practice of law. Where a client asks the attorney about a project in the course of a legal engagement and the attorney's comment is incidental to the legal services, the attorney is not an investment adviser. The exclusion is forfeited, however, where the attorney holds himself out as recommending investments or is **compensated for the investment advice or for channeling clients into the investment** — by referral fee, commission, finder's fee, or carried interest. Compensation contingent on the investment converts incidental legal advice into a business of advising, and the exclusion is lost. So long as the attorney receives only the ordinary legal fee, adviser registration is unlikely to be required.

A fund manager offering the project. Where the project is held through a **pooled investment vehicle** and a manager, for compensation, exercises discretion over its investments, that manager is an investment adviser and must register or perfect an exemption. Registration authority divides by assets under management: generally the **states** below approximately \$100 million and the SEC above that threshold. Given the anticipated size, the manager would ordinarily register with **New York State**. An adviser solely to private funds with less than **\$150 million** under management may instead qualify as an "exempt reporting adviser," filing a lighter notice rather than registering fully. Some states also provide a de minimis exemption. If, instead of a managed fund, each project is a separate offering with no ongoing discretionary management of a pool, adviser status may be avoidable — but the broker-dealer question in Section 27 remains.

New York illustration — the exclusions and exemptions a fund manager or counselor may use to avoid investment-adviser registration. A concrete New York example clarifies how the fund-manager and attorney analyses actually resolve in practice. Suppose a manager in New York City organizes a pooled EB-5 fund and will manage that pool for compensation. Size alone does not exempt anyone: because the fund's assets under management sit far below the roughly one-hundred-million-dollar federal threshold, registration authority falls to New York rather than the SEC, and New York's adviser regime is administered under the General Business Law (the Martin Act, Article 23-A) and Part

11 of the Attorney General's regulations. The practical question, then, is which of New York's recognized exclusions and exemptions the manager or the counseling attorney can rely on so as not to have to register at all.

The “solely incidental” exclusion for attorneys and other professionals.

New York, like the federal Advisers Act, excludes from the definition of investment adviser a lawyer (or accountant, engineer, or teacher) whose performance of advisory services is **solely incidental** to the practice of his profession. An attorney who, in the course of a legal engagement, comments on an EB-5 project as part of rendering legal services is not thereby an investment adviser. The exclusion is forfeited only where the attorney holds himself out as an adviser or is compensated for the investment advice or for channeling clients into the investment — by referral fee, commission, finder's fee, or carried interest. So long as the attorney takes only the ordinary legal fee, the incidental-professional exclusion is available and no adviser registration is required.

The de minimis exemption (fewer than six New York clients).

New York recognizes a *de minimis* exemption for an adviser who neither maintains a place of business in New York nor holds itself out generally to the public as an adviser and who has had **fewer than six** New York clients in the preceding twelve months. This is the classic out-of-state adviser's shelter: a manager based elsewhere who advises only a handful of New York-connected investors may avoid New York registration entirely. It is of limited use to a manager who is itself located in New York City, because maintaining a New York place of business defeats the exemption, but it can matter where the managing entity is organized and operated outside the state.

The private-fund adviser and exempt-reporting-adviser treatment.

The exemption most often relevant to an EB-5 pool is the **private-fund adviser** exemption. An adviser whose only clients are private funds — pooled vehicles relying on Section 3(c)(1) or 3(c)(7) of the Investment Company Act — and that has less than one-hundred-fifty-million dollars in private-fund assets under management may qualify federally as an **exempt reporting adviser**, filing an abbreviated Form ADV notice rather than registering fully; New York coordinates its treatment with that federal category. Because a single-project EB-5 fund raising well under that threshold is precisely such a private fund, a manager who confines himself to advising his own pooled vehicle, and who does not take on separately managed clients, will frequently fall within this lighter-touch treatment rather than full registration.

Structuring around adviser status altogether.

The exemptions above presuppose that the manager is giving investment advice for compensation about securities. A manager can also stay outside the definition in the first place. If, instead of running a discretionary managed pool, each project is offered as a **separate, self-liquidating offering with**

no ongoing discretionary management of a pool of client assets, the “business of advising others as to the value of securities” element may simply not be met, and adviser status can be avoided. Likewise, a manager compensated purely through the fund’s **management fee and carried interest** — fund-level compensation — rather than by per-investor or per-transaction fees is on far safer ground than one paid transaction-based compensation, which raises the separate broker-dealer question addressed below.

The Martin Act anti-fraud overlay never disappears.

One caution qualifies every exemption above. New York’s Martin Act is an unusually broad **anti-fraud** and registration statute administered by the Attorney General, and it reaches securities activity conducted from or into New York regardless of the modest size of the offering. An exclusion or exemption from the **registration** requirement is not an exemption from the **anti-fraud** requirement: even an adviser who need not register remains fully subject to the Martin Act’s prohibitions on misrepresentation and omission. A New York-based sponsor or manager should therefore confirm the current registration-and-exemption posture with New York securities counsel before soliciting a single investor, and should treat Martin Act anti-fraud compliance as a live obligation from the outset, because the small size of the project provides no shelter.

Section 21. Broker-Dealer Registration

Independently of adviser status, Section 15 of the Securities Exchange Act of 1934 requires a **broker** — any person engaged in the business of effecting transactions in securities for the account of others — to register with the SEC, join FINRA, and satisfy state requirements. This regime is the exposure most likely to arise from the firm’s EB-5 plans, and it has been a recurring subject of enforcement in the EB-5 context, where transaction-based fees are often paid to persons who solicit foreign investors.

Transaction-based compensation is the hallmark. No single factor is dispositive, but the most important is compensation contingent upon, or measured by, the completion or size of a securities transaction — a commission, a success fee, a percentage of capital raised, or a referral or finder’s fee paid only if the investment closes. Additional indicia include soliciting investors, participating in negotiations, advising on the merits, handling investor funds, and doing so regularly. As in the offering analysis, calling a communication “informational” or “non-binding” does not remove it from the broker analysis. Conduct and compensation control, not the label.

There is no reliable “finder’s” exemption. The common assumption that one may “introduce” investors for a fee is unsafe: there is no general federal finder’s exemption, and a person who solicits, recommends, or is paid a fee contingent on the investment is acting as an unregistered broker. **The issuer’s exemption (Rule 3a4-1)** permits a sponsor’s own officers and employees to sell the

sponsor's securities without broker registration, but only where they receive **no transaction-based compensation** and are not associated persons of a broker-dealer. It does not protect a third party — such as the attorney or an outside marketer — who is paid to bring in investors.

Application. The attorney is not the issuer and cannot use Rule 3a4-1. If he solicits or recommends the investment and receives any transaction-based compensation, he is presumptively an unregistered broker, and the “non-binding” label is no defense. The attorney remains outside broker regulation only by receiving no compensation contingent on any investment. A **fund manager** who sells interests in his own fund and is compensated through the fund's **management fee and carried interest** — rather than by per-transaction selling commissions — generally is not acting as a broker, but this depends on fund-level rather than transaction-based compensation and on his not selling other issuers' securities. Any commission per investor or per dollar raised triggers registration. Where a selling function must be compensated on a transaction basis, it should be conducted through a **registered broker-dealer** or licensed placement agent.

Consequences. Acting as an unregistered broker is not a technical lapse. It exposes the actor to enforcement, disgorgement, civil penalties, and potential criminal liability; it can taint the offering; and it may give investors a **right of rescission** — the ability to unwind the investment and recover their money — because contracts made in violation of the broker-registration requirement may be voidable. The exposure therefore reaches the viability of the offering itself, not merely the individual actor.

Section 22. Synthesis — Compensation Is the Pivotal Fact

Across all three regimes, the decisive variable is the **firm's compensation structure**. Where the attorney takes only the ordinary legal fee and confines any comment on a project to advice incidental to the representation, he is likely neither an investment adviser nor a broker, and the offering's Rule 506 or Regulation S exemption can be preserved by presenting only to clients with a documented substantive pre-existing relationship. Where any compensation is made contingent on an investment — a referral fee, a share of the raise, a finder's fee, or carried interest tied to the deal — the attorney risks forfeiting the adviser exclusion and, more seriously, becoming an unregistered broker, with rescission exposure that reaches the offering. The prudent course is to keep the legal engagement and its ordinary fee strictly separate from any transaction-based compensation, to route any compensated selling function through a registered broker-dealer, and to confirm each offering and each proposed compensation arrangement against its actual facts — the investor roster, residences, physical locations, marketing history, entity and fund structure, and the presence or absence of transaction-based compensation — before any project is presented or any arrangement is implemented. These securities, adviser, and broker-dealer requirements sit atop the EB-5 eligibility requirements addressed elsewhere in this treatise and must be satisfied in addition to them.

Closing note for the firm. The EB-5 practice sits at the intersection of immigration, corporate, securities, tax, and anti-money-laundering law — precisely the combination the firm already brings to its private-capital work. The disciplines that make a source-of-funds record survive adjudication are the same disciplines that make a private-fund offering survive scrutiny. Handled with that integrated rigor, EB-5 is a natural and defensible extension of the firm’s existing practice.

PART VI — REPRESENTING RUSSIAN-NATIONAL INVESTORS

This Part is a dedicated treatment of representing Russian-national investors. It addresses the immigrant-visa issuance restrictions currently affecting Russian nationals, the sanctions, OFAC, and fund-transfer mechanics that govern the movement of capital out of Russia, and the heightened source-of-funds scrutiny these matters attract. It concludes with the route-selection and risk-mitigation strategy — adjustment of status, concurrent filing, and second-passport planning — that the firm applies for this clientele.

Because the firm’s EB-5 clientele is primarily composed of Russian citizens, this Part consolidates the issues that specifically affect them. None of these issues changes the substantive EB-5 eligibility rules — EB-5 contains no nationality bar, and Russian nationals remain eligible to petition — but each materially affects whether, how, and by which route a Russian-national matter can succeed. Every item in this Part is fast-moving. Counsel must verify current status for each client before advising, and must not treat any statement here as settled.

Section 23. Eligibility and the U.S. Restrictions Affecting Russian Nationals

EB-5 is available to Russian citizens as a matter of program law: there is no nationality-based exclusion from the fifth preference, and Russian nationals have historically been among the more active EB-5 participants. The obstacles are not eligibility obstacles but practical ones — a U.S. immigrant-visa issuance restriction that currently names Russia, the sanctions and fund-transfer mechanics that govern the movement of capital, and heightened source-of-funds scrutiny in adjudication. The correct threshold message to the client is therefore that they are eligible, but that the route and the documentation must be planned around a restrictive and shifting U.S. posture toward Russian nationals.

As of early 2026, that posture is shaped by two distinct instruments that must not be conflated:

- **The immigrant-visa issuance freeze — the constraint that reaches EB-5.** In January 2026 the Department of State announced a suspension of immigrant-visa issuance for nationals of a large group of countries — a list that includes Russia — on public-charge grounds. Because EB-5 is an immigrant visa, a Russian national consular-processing abroad on Form DS-260 is directly exposed to this freeze. It is an administrative policy distinct from the travel-ban proclamations.
- **The travel-ban proclamations — Proclamations 10949 and 10998.** These restrict entry for a separate set of countries. As of this writing Russia is not on the full or partial travel-ban lists, so the relevant constraint for Russian nationals is the immigrant-visa issuance freeze rather than a categorical entry ban. Counsel should nonetheless re-check both lists for each client, because they have changed repeatedly and Russia’s status could change.

Two exceptions to the issuance freeze are of central practical importance to Russian clients: lawful permanent residents are exempt, and a national of a restricted country who also holds citizenship of a non-restricted country may apply on that other passport. These two carve-outs drive much of the route-selection and risk-mitigation planning that follows.

The practical consular bar for Russian nationals. Beyond the immigrant-visa issuance freeze, a distinct and equally practical obstacle must be emphasized. The United States has drastically curtailed its consular presence in Russia, and routine immigrant-visa interview appointments are effectively unavailable within the country. A Russian national who must be interviewed for an immigrant visa generally cannot obtain a consular appointment in Russia at all. In practice this means that a Russian applicant proceeding by consular processing must, in most instances, either qualify to interview at a U.S. embassy or consulate in a third country — which itself requires lawful presence or residence there sufficient for that post to accept the case, and many posts will not take third-country nationals absent residence — or hold citizenship or permanent residence of another country through which the case can be processed. The correct message to the client is therefore twofold: eligibility for EB-5 is unaffected by nationality, but the consular route is, as a practical matter, foreclosed for a Russian national without either third-country citizenship or permanent residence abroad, or a path to adjust status inside the United States. This is why adjustment of status and second-citizenship planning dominate route-selection for this clientele.

Two qualifications keep this accurate. First, the landscape shifts, and the availability of third-country processing, the posture of individual posts, and any bilateral changes must be verified for each client at the time of filing rather than assumed from this description. Second, the consular constraint is separate from, and additional to, the public-charge issuance freeze and the sanctions and fund-transfer mechanics. A client may clear one and still be caught by another, so all three must be analyzed together before a route is chosen.

Section 24. Selected Authorities

INA § 203(b)(5); the EB-5 Reform and Integrity Act of 2022 (Pub. L. 117-103, Div. BB).

- 8 C.F.R. Parts 204 and 216; Forms I-526, I-526E, I-829, I-956, I-956F, I-956G; Form DS-260; Forms I-485/I-131/I-765.
- USCIS Policy Manual, Volume 6, Part G (Immigrant Investors).
- *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm’r 1998) (business-plan standard); *Matter of Izummi* (regional-center/at-risk principles).
- Department of State Visa Bulletin (monthly); USCIS EB-5 pages on regional centers, audits, and the Integrity Fund.
- INA §§ 202(a)(2), 202(e), 203(b)(5) (per-country and EB-5 numerical limits); INA §§ 212(f), 215(a) (entry-suspension authority).
- Presidential Proclamations 10949 (June 4, 2025) and 10998 (Dec. 16, 2025); Dept. of State immigrant-visa issuance suspension (announced Jan. 14, 2026) — verify current country lists and status.
- 31 C.F.R. Ch. V (OFAC); Russia-related sanctions programs and the SDN List and 50% Rule; Bank Secrecy Act / FinCEN AML framework.

Section 25. Moving Capital, Documenting Source, and Selecting the Route

Distinct from immigration law, the U.S. and allied sanctions regime imposed after the invasion of Ukraine constrains the movement of the money — which in an EB-5 matter is not a side issue but a core element, because the capital must lawfully reach the NCE and be traced end-to-end. Three constraints shape how that capital can move:

- **Sanctions exposure and the self-incrimination problem.** A Russian investor who has held funds in a sanctioned Russian financial institution may, in certain circumstances, be exposed to sanctions risk arising from the account relationship itself, and the documentation an EB-5 source-of-funds record ordinarily demands can compel the investor to lay out that relationship in detail. The planning imperative is to satisfy the lawful-source burden without producing self-reporting, self-incriminating statements that create or enlarge sanctions exposure. The source-

of-funds narrative and the sanctions analysis must be developed together, so that the evidentiary record proves lawful origin and clean transfer while avoiding admissions that would themselves generate legal jeopardy. Where the two are in tension, counsel should structure the proof — and, where lawful and feasible, the funding path — to rely on non-sanctioned institutions and assets, and should obtain sanctions-specific advice before any disclosure is made.

- **OFAC screening and licensing.** The investor, the source of the funds, and every intermediary must be screened against the SDN List and evaluated under the 50 percent Rule, and certain transactions may require an OFAC general- or specific-license analysis before capital moves. A blocked or sanctionable counterparty anywhere in the chain can defeat the investment and create independent legal exposure.
- **Offshore-source structuring.** Russian investors whose wealth or business income sits outside Russia, in a non-sanctioned jurisdiction, are frequently better positioned, because those funds can often be documented and transferred without engaging the Russian banking channel. Using lawfully derived offshore business profits as the EB-5 capital is a common and defensible approach where the facts support it.

This analysis sits squarely within the firm’s existing sanctions and AML practice. It should be run before the client commits capital, not after, and coordinated with the securities and tax workstreams. It also feeds directly into the source-of-funds record, which for Russian applicants must be built to a higher standard than usual. Source and path of funds is the single most frequently dispositive issue in EB-5 adjudication generally, and practitioners report that adjudicators apply heightened, more expansive scrutiny to Russian applicants specifically — noticeably more demanding than for Western European or Canadian applicants. The record should therefore be assembled from the outset to the following standard:

- **Document the ultimate lawful origin of the wealth**, not merely the most recent account — business ownership and profits, sale of a business or real property, dividends, salary, gift, or inheritance — each with primary-source evidence and certified translations.
- **For gifts and loans, document the donor’s or lender’s own lawful source**, which USCIS routinely probes. Anticipate expansive requests for evidence.
- **Trace every transfer through each intermediary account**, reconciling amounts and dates without gaps, and explain any use of currency exchange, third-party payment, or offshore accounts.
- **Address currency-control compliance in the source jurisdiction**, and pair the narrative with the OFAC and sanctions screening above so that the lawful-source story and the sanctions-compliance story are consistent.

The objective is a single, internally consistent evidentiary record — lawful source, clean path, and sanctions compliance — assembled to withstand the more invasive review these cases attract. With source and sanctions addressed, route selection is often decisive, because the immigrant-visa issuance freeze reaches the consular route:

- **Prefer adjustment of status where available.** A Russian client already in the United States in a status that permits adjustment, and for whom a visa number is available, is far better positioned: the Reform and Integrity Act of 2022 permits concurrent filing of Form I-526E with Form I-485, and adjustment runs through USCIS rather than consular immigrant-visa issuance, the channel affected by the freeze. Concurrent filing can also yield employment authorization and advance parole while the petition is pending.
- **Leverage a second passport.** A client who also holds citizenship of a non-restricted country may pursue the consular route on that passport, materially de-risking issuance. Where a client is contemplating or already holds a second citizenship, coordinate the chargeability and passport strategy early.
- **Mind chargeability versus citizenship.** Visa-number chargeability turns on country of birth, while the issuance freeze turns on nationality and passport. The two can diverge, and cross-charging to a spouse's country of birth may help on the numbers even where it does not help with the freeze.
- **Choose a reserved-category (rural) project** for priority processing and to avoid unreserved oversubscription, subject to current Visa Bulletin availability.
- **Sequence the work.** Run OFAC, sanctions, and source-of-funds analysis before capital moves; confirm the current immigrant-visa and proclamation status for the specific client; and select the route — adjustment versus consular, and which passport — in light of both.

Finally, because the U.S. posture toward Russian nationals has changed repeatedly and may change again, the firm should re-verify the applicable restrictions at each major milestone — engagement, filing, and visa availability — rather than relying on the position that obtained when the matter opened.

Complex holding structures — a double-edged sword. Many investors, particularly those with cross-border wealth, prefer to hold and move capital through sophisticated multi-tier arrangements — chains of holding companies, family trusts, private foundations, and offshore companies in low-tax or asset-protection jurisdictions. Such structures are lawful and often sensible for tax, succession, and asset-protection reasons, and their mere use does not disqualify an EB-5 investor. But they can materially jeopardize an EB-5 matter if they are not managed with the program's evidentiary demands in mind, and the risk grows with each additional layer.

Why complexity creates risk. The core difficulty is that EB-5 requires the petitioner to trace the capital from its ultimate lawful source, through every intermediary, and into the new commercial enterprise, without unexplained gaps. Every entity, trust, or foundation in the chain is another link that must be documented — its formation, its ownership and control, its own lawful funding, and the lawful basis for each transfer into and out of it. A structure that is opaque, that commingles funds, or whose beneficial ownership is deliberately obscured is precisely what draws expansive requests for evidence and, at the extreme, denial. Trusts and foundations raise the added question of who is the true owner of the capital: if the investor has irrevocably given assets away to a trust or foundation such that they are no longer the investor's, a question arises whether the investor is truly investing their own capital, whereas if the investor retains control the structure must be shown to be theirs. Offshore companies in secrecy jurisdictions compound the problem because the underlying records may be hard to obtain and adjudicators may view them with heightened suspicion. For Russian-national clients, layered offshore structures also intersect with sanctions screening, since every entity and controller in the chain must be cleared against the SDN List and the fifty-percent rule.

Managing the risk. The structure does not need to be dismantled, but it must be made transparent to the adjudicator. Counsel should map the entire ownership and control chain from the ultimate individual source to the NCE; obtain the constitutive documents, ownership registers, and financial records for each layer; document the lawful source of funds at the origin and the lawful basis and paper trail for every inter-entity transfer; and resolve, in advance, the ownership question raised by any trust or foundation so that the record shows clearly whose capital is being invested. Where a layer adds nothing but opacity, simplifying the path for the specific tranche of capital used in the EB-5 investment — for example, distributing funds out to the individual investor and investing in their own name, with the distribution fully documented — is often the cleaner course. Complexity is not fatal. Undocumented complexity is.

Section 26. Offering Documents Counsel Should Prepare Before an Offer

First-tier documents — to be prepared before the proposal is made.

These are the documents that must exist before the project is ever presented to a prospective investor. They establish the firm's internal basis for offering the matter, the disclosure package, and the suitability record, and their absence at the proposal stage is the recurring securities failure in EB-5.

- **Project / Investment Screening Memorandum.** Counsel's internal diligence memorandum screening the project and sponsor before the firm presents it — sponsor track record and background, capital stack and leverage, TEA or set-aside basis, I-956F status, job-creation

cushion, redeployment plan, related-party dealings, and the securities posture — and recording the basis on which the firm is willing to present the matter to a client.

- **Engagement Letter and Conflicts Documentation.** The written engagement defining scope and identifying who is and is not the client, with any informed written conflict waivers, distinguishing the ordinary legal fee from any transaction-based compensation that would raise adviser or broker-dealer issues.
- **Comprehensive Business Plan (Matter-of-Ho compliant).** The plan that drives job creation and supports both the immigration petition and the offering: the business and its structure, the market and competition, the marketing and operations plan, management and personnel, financial statements and cash-flow projections, and — critically — a hiring timetable and organizational plan showing when and how the required jobs will be created.
- **Economic Impact Report.** The qualified economist's analysis, using an accepted input-output methodology (such as RIMS II or IMPLAN) tied to the business plan, that models the direct, indirect, and induced jobs and supports the job-creation claim in the I-956F and the investors' petitions.
- **Private Placement Memorandum (PPM).** The central disclosure document. There is no government-mandated form, but the anti-fraud rules effectively require that it disclose, fully and without material omission: the terms of the securities and the offering (price, total raise, use of proceeds, and the complete capital structure, including all senior debt, sponsor tranches, and the promote or waterfall); a candid, specific set of risk factors addressing the immigration risks separately from the investment risks; the sponsor and principals, their track record, and any litigation or regulatory history; all related-party transactions and conflicts of interest; every element of fee and compensation to management, affiliates, agents, and promoters; the flow of funds from investor through the NCE to the JCE, with any escrow arrangements; and financial projections resting on a reasonable, disclosed basis and clearly labeled as projections.
- **Investor Questionnaire (Accreditation/Suitability).** The instrument that establishes accredited-investor or sophistication status and, under Rule 506(c), supports the reasonable-verification requirement. For a substantive pre-existing relationship under Rule 506(b), it documents what the issuer knew of the investor's finances and when.
- **Suitability / Relationship Memorandum.** For each prospective investor approached under Rule 506(b), a short memorandum documenting the substantive pre-existing relationship — when it was established, what the firm knows of the person's income, net worth, and sophistication, and how it came to know it — so that the file answers those questions on facts predating any offer.

- **Form D and State Notice-Filing Package.** The prepared federal Form D and the state notice filings for each state of investor residence, ready to file within the applicable deadlines measured from the first sale.

Second-tier documents — to be prepared before closing (before the investor contractually enters the project).

These are the documents that must be finalized and executed before the investor is bound and before capital is released — the operative contracts, the escrow mechanics, and the source-of-funds and sanctions clearances that must be complete before the money moves.

- **Operating Agreement or Limited Partnership Agreement.** The NCE's governing document, defining the investor's interest and the limited rights that satisfy the immigration policy-formulation requirement while keeping the investor passive for *Howey* purposes. It should pre-authorize redeployment of returned capital, define the manager's authority and compensation, and align the investment horizon with the longest realistic immigration timeline.
- **Subscription Agreement.** The contract by which the investor subscribes, containing the investor's representations and warranties — including accredited-investor status and the factual basis for it, sophistication, receipt and review of the PPM, and acknowledgment of the risks — and the mechanics of acceptance and funding. It fixes the point of 'first sale' for Form D timing.
- **Escrow Agreement.** Where funds are held pending a closing condition, the agreement governing the escrow — its release conditions, and its return conditions — drafted so that any return of funds is tied to the deal failing to close rather than to a guarantee to the investor, which would defeat the at-risk requirement.
- **Source-of-Funds Memorandum and Evidence Index.** The organized record establishing the lawful source and clean path of the investor's capital from ultimate origin into the NCE, with an index to the underlying primary-source evidence and certified translations, coordinated with the OFAC and sanctions screening.
- **Sanctions / OFAC Screening File.** The documented screening of the investor, the source of funds, and every intermediary against the SDN List and the 50% Rule, with any general- or specific-license analysis, prepared before capital moves and consistent with the source-of-funds narrative.

Before a project is presented to any investor, counsel should assemble a complete offering package. Presenting a project on the strength of promotional materials, without the documents below, is the recurring securities failure in EB-5 and a frequent cause of both rescission exposure and collateral immigration consequences. The following describes each principal document and its function. The

package is prepared by, or in coordination with, securities counsel, and it must be consistent at every point with the immigration filings and the source-of-funds record.

Section 27. Required Immigration and Compliance Filings

For quick reference, the following consolidates every principal form and filing an EB-5 matter may require, across the immigration, securities, and regulatory workstreams. Not every matter uses every item — the applicable set depends on the model (direct versus regional center), the role (investor, sponsor, or center), the route (consular versus adjustment), and the offering structure — but a matter should be checked against the whole list so that nothing is missed. Forms and fees change. Each must be confirmed in its current edition on the date of filing.

Immigration filings — the investor.

- **Form I-526, Immigrant Petition by Standalone Investor** — the initial petition for the direct (standalone) investor.
- **Form I-526E, Immigrant Petition by Regional Center Investor** — the initial petition for the regional-center investor, filed against a filed or approved Form I-956F and carrying the \$1,000 Integrity Fund petition fee.
- **Form DS-260, Application for Immigrant Visa and Alien Registration** — filed with the Department of State for the investor and each derivative who will obtain the immigrant visa abroad by consular processing.
- **Form I-485, Application to Register Permanent Residence or Adjust Status** — filed with USCIS by the investor and each derivative already in the United States in a status permitting adjustment. May be filed concurrently with the petition when a visa number is available.
- **Form I-131, Application for Travel Document (Advance Parole)** — commonly filed with the I-485 to permit travel while adjustment is pending. Carries its own separate fee.
- **Form I-765, Application for Employment Authorization** — commonly filed with the I-485 to obtain work authorization while adjustment is pending. Carries its own separate fee.
- **Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status** — filed in the 90-day window before the second anniversary of conditional residence, for the investor and derivatives.

- **Form I-290B, Notice of Appeal or Motion** — filed to appeal or move to reopen or reconsider an adverse decision, where the decision permits it.

Immigration filings — the regional center and project sponsor.

- **Form I-956, Application for Regional Center Designation** — filed to obtain, and by amendment to maintain, designation. Amendments are required for material changes, including no later than 120 days before certain significant changes.
- **Form I-956F, Application for Approval of an Investment in a Commercial Enterprise** — the project-level application filed by the regional center or NCE for each offering. Must be on file before an associated I-526E is adjudicated.
- **Form I-956G, Regional Center Annual Statement** — filed for each federal fiscal year, on or before December 29 of the calendar year in which that fiscal year ended, reporting capital, jobs, and compliance.
- **Form I-956H, Bona Fides of Persons Involved with the Regional Center Program** — filed for each person involved with the regional center, NCE, or JCE, attesting to bona fides. May require biometrics.

Background, security, and biometric components.

- **Biometrics (fingerprints, photograph, signature)** — required in connection with adjustment of status, removal of conditions, and I-956H screening. A missed biometrics appointment can hold up the associated adjudication.
- **Security and background checks** — conducted by USCIS in connection with the I-485 and I-829, including checks against government databases. The I-485 record must also establish admissibility and good moral character (e.g., Form I-693 medical examination and vaccination record, where required).
- **EB-5 Integrity Fund annual fee** — paid by each designated regional center beginning October 1 each year (\$20,000 for centers with 21 or more investors in the prior fiscal year; \$10,000 for 20 or fewer).

Securities and other regulatory filings.

- **Form D (federal)** — the SEC notice of an exempt offering under Regulation D, filed through EDGAR within 15 days after the first sale. Required for the Regulation D (U.S.-side) investors and not for purely offshore Regulation S investors.

- **State 'blue sky' notice filings** — a copy of the Form D, a consent to service of process, and a fee, filed in each state where a purchasing investor resides. Driven by investor residence, not state of incorporation.
- **Investment-adviser registration or exempt-reporting-adviser notice** — Form ADV with the SEC or the relevant state (for New York, registration with the state) where a fund manager exercises discretionary management for compensation. An exempt reporting adviser files a lighter notice.
- **Broker-dealer registration** — SEC registration, FINRA membership, and state licensing where a person effects securities transactions for others for transaction-based compensation. A compensated selling function should run through a registered broker-dealer or placement agent.
- **FinCEN and anti-money-laundering compliance** — including any applicable Bank Secrecy Act reporting and, for U.S. persons with foreign accounts, FBAR (FinCEN Form 114) and related tax filings that may bear on the source-of-funds record.
- **OFAC screening and licensing** — counterparty screening against the SDN List and the 50% Rule, and any general- or specific-license analysis required before capital moves, particularly for sanctioned-jurisdiction nationals.



ABOUT THE AUTHOR

Viacheslav Kutuzov is an attorney and counselor-at-law admitted in the State of New York, whose practice concentrates on U.S. and international taxation, commercial law, corporate law, banking and anti-money-laundering regulation. He is the Managing Partner of Kutuzov & Associates, P.C. in New York City, and he serves as a Trustee of the Kutuzov Foundation, a New York non-profit organization. The discussion in this treatise reflects the same body of doctrine and practice that informs his representation of clients across the subject areas treated in the chapters that follow.

His credentials reflect a deliberate concentration in tax and regulatory practice. He was admitted as an Attorney-at-Law in New York, having previously served the bar and the public in successive capacities: as a Foreign Legal Consultant in New York. He is also an Enrolled Agent admitted to practice before the Internal Revenue Service, a federal credential. He is a member of the American Bar Association, the New York State

Bar Association, and the New York City Bar Association.

He holds a Master of Laws (LL.M.) in Taxation from New York Law School and a first degree in law (J.D.) from the School of Law of HSE University in Moscow. His practice reflects a corresponding fluency in cross-border structuring and the interaction of U.S. law with foreign legal regimes.

Business immigration and EB-5. Mr. Kutuzov advises foreign investors, developers, and regional-center principals on the EB-5 immigrant investor program, integrating the immigration merits of the petition with the corporate, securities, tax, and anti-money-laundering dimensions that determine whether an EB-5 matter succeeds. His EB-5 work encompasses standalone (direct) and regional-center petitions (Forms I-526 and I-526E), removal of conditions (Form I-829), and the formation and ongoing compliance of regional centers (Forms I-956, I-956F, and I-956G), together with targeted-employment-area and set-aside analysis, business-plan and economic-impact coordination, and the securities-exemption planning that governs pooled EB-5 offerings.

Cross-border investors and source of funds. Mr. Kutuzov counsels EB-5 investors and their families on the documentation of the lawful source and path of invested capital — the single most frequently dispositive issue in EB-5 adjudication — drawing on the same cross-border tracing, tax-return analysis, and anti-money-laundering discipline that inform the firm’s private-capital practice. His work addresses gifted and loaned funds, sale-of-asset and business proceeds, inheritance, and cross-border remittance under source-country currency controls, assembled into a single internally consistent evidentiary record built to withstand requests for evidence.

Corporate and commercial law. His corporate and transactional practice — the body of work most directly reflected in this covers the equity and capital architecture of investment vehicles — classes and series of stock, preferred and carried-interest structures, and the tax classifications that attach to them — together with legal support for mergers and acquisitions, joint ventures, and corporate reorganizations, including strategic counsel on corporate governance and cross-border structuring. He counsels clients on the drafting, negotiation, and

execution of commercial agreements in lending and financing, information technology, and services, with an emphasis on secured transactions and negotiable instruments and on creating enforceable obligations that allocate and mitigate risk.

Banking, AML, and U.S. sanctions. Mr. Kutuzov advises on compliance with the Bank Secrecy Act and the U.S. anti-money-laundering framework, including the regulations of the Office of the Comptroller of the Currency, drawing on experience in financial due diligence, risk assessment and mitigation, and correspondence with financial institutions and regulatory bodies. His sanctions practice addresses the U.S. regulatory framework under the International Emergency Economic Powers Act (IEEPA), CAATSA, and the Ukraine-/Russia-Related Sanctions Regulations (31 C.F.R. Part 589), and includes counterparty screening against the SDN List and application of the 50% Rule, OFAC general- and specific-license requests, compliance-program development, enforcement defense, and counsel on delisting and remediation.

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