

About the EB-5 visa category

The United States Citizenship and Immigration Services (USCIS) is responsible for administering the EB-5 Immigrant Investor program. The program was created by Congress in 1990 to stimulate the U.S. economy through capital investment and job creation by foreign investors. Under a program that was first implemented as a pilot in 1992 and has been periodically reauthorized since then, investors can also qualify for the EB-5 visa category by making investments that promote economic growth through USCIS designated regional centers. On December 20, 2019, President Trump signed a bill extending the Regional Center program through September 30, 2020.

USCIS includes the EB-5 review policy in Section 6, Section G, of the USCIS Policy Manual.

All EB-5 investors must invest in a new commercial enterprise, the enterprise shall be::

- . Established after 29 November 1990, or
- . Established on or before 29 November 1990, i.e. :

The creation of a new commercial enterprise by the purchase and reorganization or reorganization of an existing enterprise, or

Increase the company's net assets or the number of employees by at least 40% by expanding investments

A commercial enterprise is any lawful business establishment constituted for the purpose of carrying on an ongoing profit-making activity, including:

- . Sole proprietorship enterprise
- . Jointly operate company (whether limited or ordinary)
- . Holding company
- . Joint venture
- . Registered company
- . Business trust, or
- . Other entities, which may be public or private.

This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each subsidiary continues to carry on business activities of a legal, profit-making nature.

The definition does not include non-commercial activities, such as owning and managing a private residence.

About the requirements for job creation

The EB-5 investor must invest a specified amount of money into a new commercial enterprise and thus create full-time jobs for at least 10 eligible employees.

- . For a new commercial enterprise that is not affiliated with a regional center, the counted full-time position must be directly created by that commercial enterprise. This means that the business enterprise (or its wholly owned subsidiary) must be the employer of these eligible employees.
- . For new commercial enterprises affiliated with regional centers, full-time jobs can be directly or indirectly created by the enterprise.
- . Direct employment establishes an employer-employee relationship between a new business enterprise and its employees.
- . Indirect work is a job that is performed outside a new enterprise and created by the establishment of that enterprise.
- . If an EB-5 investor invests in a failing business, the EB-5 investor can preserve existing jobs.
- . The investor must demonstrate that the number of employees in the business and the number of employees in the next two years will remain at the pre-investment level.

A failing business is defined as one whose business has been in existence for at least two years and has generated a net loss in the 12 or 24 months prior to the priority date on the Immigrant Investor's Form I-526, which must be at least 20% of the business's pre-loss net worth. To determine whether the business has been in existence for two years, USCIS takes into account the receivers of a failing business to assess whether they have been in existence for the same age as the business they took over.

An eligible employee is a U.S. citizen, lawful permanent resident, or other immigrant authorized to work in the United States. These include residents with conditions, temporary residents, political asylum seekers, refugees, or those living in the United States on deferred deportation. This definition does not include the investor himself, the investor's spouse and children, or any alien in non-immigrant status (such as a non-immigrant in H-1B status) or not authorized to work in the United States.

Full-time employment is defined as an employee who meets the requirements of the new commercial enterprise and must each work at least 35 hours per week. In the case of regional central investment projects, full-time employment also means indirect employment of eligible employees, each of whom must work at least 35 hours per week.

A job sharing arrangement is one in which two or more eligible employees share a full-time job. This position is considered a full-time position only if the combination meets the requirement of working hours per week. However, this concept does not include a combination of part-time jobs, even if the combination meets the weekly hours requirement.

Intermittent, temporary, seasonal, or erratic work does not qualify as a full-time position. However, jobs that are expected to last at least two years are generally not considered intermittent, temporary, seasonal, or unstable in nature.

About the requirements regarding capital investment

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and assets secured by the immigrant investor, which are owned and for which the foreign entrepreneur has personal and primary responsibility. Assets owned by a new commercial enterprise on which the immigration application of a foreign entrepreneur depends may not be used as collateral to secure any debt. All capital should be valued at fair market value in dollars. Under Section 203(b)(5) of the Act, assets acquired directly or indirectly through illegal means, such as criminal activity, shall not be considered as capital.

Note: The investor immigrant applicant must prove that he or she is the legal owner of the invested funds. In some cases, the investment capital may include an irrevocable commitment by the immigrant investor (such as a note promising payment/repayment).

The minimum investment required by date of application and place of investment is:

Application date	Minimum investment - 8CFR 204.6(f)(1)	Target employment area investment - 8CFR 204.6(f)(2)	High employment sector investment - 8CFR 204.6(f)(3)
11/21/2019之前(Before)	\$1,000,000	\$500,000	\$1,000,000
11/21/2019当日或之后(on or after)	\$1,800,000	\$900,000	\$1,800,000

Future adjustments will be linked to inflation (based on the consumption index of all urban consumers, known as the CPI-U) and will be adjusted every five years.

Target Employment Area (TEA) means that during the investment period:

- . Suburban/rural areas; or
- . Is in a region where unemployment is at least 150% of the national average.

Suburban/rural is defined as an area with a population of 20,000 or more outside the Metropolitan Statistical Area (as designated by the Office of Management and Budget) or outside the boundaries of any city or town according to the most recent decennial U.S. census.

A high unemployment area can be one of the following if it is an area in which the new commercial enterprise primarily operates and where the average unemployment rate is at least 150% of the national average.

- . Metropolitan Statistical Area;
- . A particular county in a metropolitan statistical area;
- . A county in which a town has a population of 20,000 or more; or
- . A town with a population of more than 20,000 located outside a metropolitan statistical area.

A high-unemployment area also includes a census tract in or adjacent to the census tract in which the new commercial enterprise primarily operates, and it may also include any or all of the directly adjacent census tracts. If the weighted average unemployment rate for each district in the designated area, as measured by the Labor Force employment indicator, is higher than the national average of 150% (one and a half times).