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**“A Roadmap to the Use of EB-5 Capital: An Alternative Financing
Tool for Commercial Real Estate Projects”**

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“A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects”¹

I INTRODUCTION

From an immigrant’s perspective, the EB-5 Immigrant Investor Program (“EB-5” or the “Program”) represents merely one of several paths to obtain a visa.² The EB-5 visa is based on the immigrant’s investment of capital in a business that creates new jobs.³ However, from a real estate developer’s perspective, the immigrant’s investment to qualify for the visa creates an alternative capital source for the developer’s project (“EB-5 capital” or “EB-5 financing”).

Despite the Program’s enactment by Congress in 1990, for many years EB-5 was not a common path followed by immigrants to seek a visa.⁴ However, when the traditional capital markets evaporated during the Great Recession, developers’ demand for alternate capital sources rejuvenated the Program. Since 2008, the number of EB-5 visas sought, and hence the use of EB-5 capital, has skyrocketed.⁵ EB-5 capital has become a capital source providing extraordinary flexibility and attractive terms, especially to finance commercial real estate projects. Consequently, many developers routinely consider EB-5 capital as a potential source to fill a major space in the capital stack.⁶ As the financing tool becomes more widely known and understood, this source of capital should become even more popular.

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² Immigration and Nationality Act (INA) section 203(b)(5);

<http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/act.html>. The term “EB-5” refers to the fifth category of the five permanent resident visas available in the employment-based preference system that prioritizes immigrants based on their skills. This paper sometimes interchangeably refers to a “visa” and a “green card”, although there are technical differences between them. <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor>

³ Technically, rehabilitation projects that preserve jobs are also eligible for EB-5 investment; however, the overwhelming majority of EB-5 projects involve new development projects that create new jobs.

⁴ For example, according to a 2005 report by the Government Accounting Office, only 6,024 visas under the EB-5 category were issued from its inception through 2004, despite the law’s allocation of 10,000 visas per year. “Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors”, GAO-05-256: Published: Apr 1, 2005. This Report includes a history of the Program until 2004. The current annual quota remains at 10,000 EB-5 visas per year, as discussed on [page 18](#).

⁵ For example, 1,258 EB-5 visa applications (I-526 petitions) were filed during fiscal year 2008, compared to 10,928 during fiscal year 2014. This represents an increase of 769% [(10,928-1,258)/1,258] over this 6-year period. Furthermore, the number of applications filed during 2014 alone represented more than 25% of the applications filed since the Program’s inception in 1990.

http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performancedata_fy2014_qtr4.pdf;

http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526-I829_performancedata_fy1991-2013_qtr1.pdf

⁶ For example, I-Fei Chang, CEO of Greenland USA, the U.S. branch of Greenland Holdings (“Greenland”), a partially state-controlled, Shanghai-based development conglomerate with more than \$50 billion in assets, remarked in a recent interview that EB-5 has “now become almost a conventional way [to raise capital] for large-scale developers in America”. Crain’s New York Business, November 10, 2014 “Chinese development firm puts down roots in Brooklyn”, by Joe Anuta. http://www.crainsnewyork.com/article/20141112/REAL_ESTATE/141119948/chinese-development-firm-plants-roots-in-bklyn. In 2013, Greenland acquired a 70% ownership stake in the \$5 billion

The EB-5 investor's motivation for making the investment accounts for the relative flexibility and favorable terms afforded by EB-5 capital compared to conventional capital sources. Unlike that of the conventional capital providers (such as banks, private equity funds, REITs, life insurance companies and pension funds), the EB-5 investor's reason for making the investment is to secure a visa. Thus, his primary objective at the time of making the investment is to satisfy the EB-5 visa requirements. Consequently, so long as the investor believes that the investment will qualify for the visa and result in the safe return of his capital, he is willing to accept a below market, if not minimal, return on the investment.⁷ Furthermore, the investor might not require some of the other protections that more sophisticated, conventional real estate investors typically seek.⁸

Sometimes, critics refer pejoratively to EB-5 as the "visa for sale" or "cash for visa" program.⁹ However, the immigrant's investment is not a purchase of a visa, but instead an investment in a U.S. project that will create jobs with the expectation that the investor's capital will be returned. While the investment must be "at risk", the investor's expectation is that he will recover his investment after it has been outstanding for sufficient time to comply with the EB-5 immigration requirements.

EB-5 capital can fill any space in the capital stack and take the form of debt or equity; ranging from unsecured loans to senior mortgage loans to equity. EB-5 capital raises for individual projects have ranged in size from \$500,000 to more than \$600 million. During the past five years, EB-5 capital has played a key role in financing several large-scale projects, particularly in major urban areas.¹⁰

Simply stated, the Program requires that the immigrant make a capital investment of \$500,000 or \$1,000,000 (depending on whether the project is located in a "Targeted Employment Area"¹¹) in a business located within the United States. The business must directly create 10 new, full-time jobs per investor¹². Thus, the number of jobs that a project will create is a key determinant of the amount of the potential EB-5 capital raise.

Atlantic Yards development project (now known as "Pacific Park", but for consistency referred to in this paper as "Atlantic Yards") in Brooklyn that has utilized a substantial amount of EB-5 capital.

⁷ For example, the EB-5 investors who funded one of the largest capital raises in history relating to the renovation of a Las Vegas casino resort (two tranches totaling almost \$400 million) are entitled to interest at the rate of 0.5% per annum. <http://www.sec.gov/Archives/edgar/data/1606965/000119312514317197/d775866d10q.htm>

⁸ See, for example, the provision that triggered the recent dispute involving the immigrant investors of the Jay Peak Resorts project discussed on [page 59](#).

⁹ "Rules Stretched as Green Cards Go to Investors" by Patrick McGeehan and Kirk Semple, NY Times, December 18, 2011 http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all&_r=0; <http://fortune.com/2014/07/24/immigration-eb-5-visa-for-sale/>

¹⁰ Examples include several projects that have raised, or are in the process of raising, \$200 million or more of EB-5 capital. The Related Companies ("Related") raised at least \$600 million for a mixed-use project in the Hudson Yards on the West Side of Manhattan. Forest City Ratner ("Forest City") raised \$477 million for Phases I and 2 of Atlantic Yards and is in the process of raising an additional \$100 million for Phase III. Silverstein Properties ("Silverstein") has a pending raise of \$250 million for the mixed-use, Four Seasons Hotel and luxury condominium in the Tribeca section of Manhattan. A partnership including Acadia Realty ("Acadia") raised \$200 million for the mixed-use City Point project in downtown Brooklyn. Stockbridge/SBE ("SBE") raised almost \$400 million for the renovation of the SBE's SLS Hotel and Casino Las Vegas (formerly the Sahara Hotel).

¹¹ INA section 203(b)(5)(C)

¹² INA section 203(b)(5)(A)

Most projects create a limited number of direct jobs. However, if the project is affiliated with a government-approved Regional Center, an additional category of jobs may be counted, “indirect jobs”. Typically, a new business generates many more indirect jobs than direct jobs.¹³

Although United States Citizenship and Immigration Service (“USCIS”) is the Federal agency that administers the immigration process, including the EB-5 Program,¹⁴ it regulates only aspects of the immigrant’s investment that enables him to qualify for the visa. The Securities and Exchange Commission regulates the process of soliciting investors, but this aspect plays only a small role in the overall capital formation and capital structure process.¹⁵

In recent years, the overwhelming majority of investors seeking EB-5 visas have invested in commercial real estate projects through Regional Centers.¹⁶ Although the investor’s funds can ultimately be deployed to the project as a loan or equity, EB-5 investments are most commonly structured as a loan.¹⁷ Thus, this paper will primarily focus on EB-5 capital in the context of loans to commercial real estate projects, and specifically, those sponsored by a Regional Center.¹⁸ (Projects that utilize any EB-5 financing in its capital stack sometimes will be referred to as “EB-5 projects”).

The paper is divided into two sections. The first section provides background on the EB-5 immigration process. The second section explains the key features of EB-5 capital and its role in current projects. Below is an overview of the major topics.

Background Topics

A. Overview of EB-5: The paper’s focus is on EB-5 capital as a financing tool, rather than on the immigration aspects of the Program. However, to understand the mechanics of EB-5 capital, one must have a basic knowledge of the Program because the Program’s requirements, as well as the immigrant investor’s preferences, shape the structure of the investment.

B. The capital raise: a simple overview of the process by which the EB-5 capital may be raised overseas (and within the United States).

C. Immigration process: The immigration process affects the investment structure, as well as the timing of developer’s access to EB-5 funds and the exit strategy for the investor’s

¹³ If the immigrant invests directly in the project, rather than through a Regional Center, then only “direct” jobs are counted – jobs where the workers are employed directly by the Job Creating Entity that owns the project.

¹⁴ Prior to 2003, the now defunct “Immigration and Naturalization Service” (“INS”) performed most of these functions. USCIS is an agency of the United State Department of Homeland Security.

¹⁵ See securities law discussion on page 7.

¹⁶ IIUSA, the national trade association for EB-5 Regional Centers, estimates that 95% of all EB-5 capital is raised and invested through Regional Centers (although not all of the capital is invested in real estate projects). <https://iiusa.org/en/eb-5-regional-center-investment-program/>. The EB-5 investor does not typically invest directly in the project entity, but instead invests through a New Commercial Enterprise, an EB-5 required investment vehicle described on page 27.

¹⁷ As explained further in the Capital Stack section, many EB-5 investors prefer loans to equity because their prime motive to make the investment is to secure the visa. They believe the features of a secured loan increase the likelihood that they will be recover their investment. A fixed maturity date and a default remedy including foreclosure impose pressure on borrower.

¹⁸ The relationship between the Regional Center, on the one hand, and the developer and its project, on the other hand, is sometimes referred to as “sponsorship”, “affiliation”, “association” or “hosting”. This paper refers to these terms interchangeably.

recovery of his capital. We explain the two-step process for an individual to seek an EB-5 visa (submission of I-526 and I-829 petitions), as well as the Regional Center designation process (submission of I-924 application).

D. The Regional Center and its relationship to the developer and the investor: A developer whose project might be suitable for EB-5 capital has two fundamental options - either to seek project sponsorship by an existing, third party Regional Center or to form its own “in-house” Regional Center. The selected option will influence the terms and structure of the EB-5 investor’s investment. Use of a Regional Center generally involves a two-tier structure: the New Commercial Enterprise to which the investors contribute their equity capital; and the Job Creating Entity that owns the project, receives the EB-5 capital from the New Commercial Enterprise and creates the jobs.¹⁹ Another variation available to developers is to rent an existing Regional Center. The immigrant’s investment in the New Commercial Enterprise must comply with the Program’s “at-risk” and related requirements. The investment proceeds can be deployed into the project as debt or equity.

E. The factors that make certain projects more suitable for EB-5 capital investment.

Capital Stack Topics

A. Capital stack: Even though EB-5 capital can fill any part of the capital stack, gap financing in the form of mezzanine loans or preferred equity is the most common use. After simply explaining the capital stack in conventional projects, including the use of gap financing, we describe the method by which one determines the size of the EB-5 capital slice, as well as the interplay between immigration risk and financial risk. We then compare: (a) EB-5 mezzanine debt vs. conventional mezzanine debt, including the developer’s cost of capital; (b) investment structures of third party Regional Centers vs. those of developer Regional Centers; and (c) EB-5 preferred equity vs. conventional preferred equity, as well as vs. EB-5 mezzanine debt.

B. Escrow of the investors’ contribution and the developer’s need for bridge financing: Although escrow of the funds is not a legal requirement, the Regional Center, in response to investor concerns, often escrows the funds until the investor’s immigration petition reaches a certain stage. Due to the extended duration of the immigration process, developers are increasingly turning towards bridge financing, offered by banks and other lenders, to fund part of their projects until the release of the investors’ contributions for use in these projects.

C. Following the lead of private developers’ use of EB-5 capital to fund large-scale development projects, local governments are increasingly accessing EB-5 capital to fund large-scale public infrastructure projects, albeit under a different structure than private developers.

We have prepared a Sample EB-5 Mezz Loan Structure Diagram attached as [Appendix A](#) - Sample EB-5 Mezzanine Loan Structure to illustrate some of the key points discussed in this paper.

Databases. The paper provides two selective databases: (1) some of the largest real estate projects in urban areas that have utilized EB-5 capital (“Select Large-Scale Projects Database”); and (2) some of the well-established, successful Regional Centers and their

¹⁹ As discussed in the Regional Center vs. NCE vs. JCE section, if the EB-5 capital is deployed to the project as equity capital rather than debt capital (a loan), a one-tier structure generally applies. However, EB-5 capital is more typically deployed as a loan to the project entity.

affiliated real estate projects (“Assorted Regional Center Database”). Each database emphasizes key variables analyzed in this paper.

Related Topics Outside of the Paper’s Scope

As will become apparent upon reading this paper, properly integrating EB-5 financing into the capital stack requires expertise in immigration law, corporate and securities law, real estate law, tax law, finance, and economics. However, this paper does not seek to address all aspects of EB-5 financing.

Securities laws considerations

The securities law aspects of EB-5 financing are beyond the scope of this paper. The EB-5 investor’s capital contributions to the investment vehicle “New Commercial Enterprise” (“NCE”)²⁰ constitutes a “security” for purposes of the Federal securities laws.²¹ Like most conventional real estate projects, an EB-5 project is typically exempt from the registration requirements of the Federal securities laws.

In contrast to the conventional real estate project (without EB-5 capital), an EB-5 project involves a two-step securities analysis.²² The first step is to determine whether the immigrants’ investment in the NCE is exempt from registration. The second step is similar to the analysis that applies to any conventional real estate project: whether the investment in the project entity (in the EB-5 capital case, the JCE) is also exempt from registration.²³

The conventional real estate project developer entity relies upon the registration exemption under the SEC’s Rule 506 of Regulation D related to “private offerings”.²⁴ The NCE, as issuer, relies upon the same exemption. However, in light of the foreign investors who may be solicited abroad, the NCE also relies on the exemption under Regulation S related to “offerings made outside the United States.”²⁵

²⁰ As discussed [on page 27](#), the investors contribute equity capital to the NCE, which in turn invests the proceeds in the entity that owns the project, the “Job Creating Entity” (“JCE”). As discussed on page 28, sometimes the NCE and JCE are the same entity.

²¹ See SEC “Investor Alert” Investment Scams Exploit Immigrant Investor Program”, Release date October 1, 2013 http://www.sec.gov/investor/alerts/ia_immigrant.htm

²² This assumes, as discussed [on page 27](#), that the NCE and JCE are separate.

²³ The second step is required only if the NCE and JCE are separate entities. As discussed [on page 28](#), sometimes the NCE and JCE are the same entity.

²⁴ <http://www.sec.gov/answers/rule506.htm>. At least four of the EB-5 projects included in the Select Large-Scale Projects Database are being developed by a public company or its affiliate. Lennar Corporation (NYSE:LEN), the public homebuilder, is the developer of the Shipyard project in San Francisco.

<http://www.bizjournals.com/sanfrancisco/feature/structures/2014/lennar-urban-selling-at-san-francisco-shipyard.html?page=all>. An affiliate of Forest City Ratner (NYSE:FCE) is the co-developer of Atlantic Yards. An affiliate of Acadia Realty Trust (NYSE:AKR), the public REIT, is the developer of City Point in Brooklyn. Felcor Lodging Trust (NYSE:FCH), the public REIT, is the developer of the Knickerbocker Hotel in New York City.

²⁵ <http://www.sec.gov/rules/final/33-7505.htm>. Moreover, the Investment Company Act of 1940, as amended, must also be considered, particularly if the capital raise exceeds \$50 million. See Section 3(c) of the Investment Company Act. Other securities law issues that arise in the EB-5 context in particular include the potential need for

Securities offering documents, including a private placement memorandum, are part of the document package provided to the solicited investors. These documents are also included in the submittal to the USCIS in connection with the Regional Center's designation I-924 application; and in the individual investor's I-526 petition to become a conditional permanent resident.

On a related note, the SEC is targeting allegedly fraudulent securities offering made through EB-5 and a variety of other activities that may involve securities violations.²⁶

Income tax law considerations

Income tax law issues relating to EB-5 projects are also beyond the scope of this paper. United States citizenship status is not required for a person to become subject to U.S. income taxation on worldwide income. Upon becoming a lawful permanent resident of the United States (even if the residency is conditional) the immigrant investor becomes taxable as a U.S. person,²⁷ subject to tax on his worldwide income. The immigrant becomes a conditional permanent resident upon the issuance of the conditional visa, which occurs after the first step of the EB-5 visa process.²⁸ The time between the issuance of the conditional visa and the unconditional visa is at least two years.²⁹ As a U.S. taxpayer, the individual is taxed, not only on payments or distributions relating to the EB-5 project, but also on his unrelated income, subject to treaties and other special provisions.

Lack of transparency by USCIS and Regional Centers

Various sources, including interviews, internet sources and presentations at industry-led conferences, provide the support for information contained in this paper. Two major factors account for the extreme difficulty in obtaining meaningful information about the raising and deployment of EB-5 capital.

First, although Regional Centers and investors file a tremendous volume of financial and legal information with USCIS about particular projects, USCIS is not transparent, and generally makes very little information or data available for public release, even if sought under a FOIA request.³⁰ Second, due to the intensely competitive market for EB-5 capital available from a

broker-dealer registration of the Regional Center and others who solicit investors.

<http://www.uscis.gov/news/alerts/investor-alert-investment-scams-exploit-immigrant-investor-program>.

²⁶ http://www.sec.gov/investor/alerts/ia_immigrant.htm

²⁷ IRC section 7701(a)(30)(A) defines United States person to include a "resident". See Michael Galligan, [U.S. Residence: A Tale of Two \(or More\) Definitions](#), *New York Law Journal* (August 5, 2013).

²⁸ If the immigrant's EB-5 petition is ultimately rejected during the second-step of the process, his visa will be revoked subject to his appeal rights, and he will no longer be taxable as a U.S. person. <http://www.irs.gov/publications/p519/ch01.html> (re "Green Card Test"). See also 8 C.F.R. § 216.6 (d) (2) regarding the termination of lawful permanent residence status as of the date of the I-829 denial.

²⁹ The I-829 petition must be filed during the window between 21 and 24 months from the conditional visa issuance. The processing of the I-829 takes longer than three months.

³⁰ USCIS often cites the "proprietary" exemption as the basis for its refusal to release confidential or financial information about a particular project or Regional Center. 5 U.S.C. § 552(b)(4); see also Audrey Singer and Camille Galdes, "Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic

limited supply of potential foreign investors, many Regional Centers and developers are reluctant to disclose details about the capital raise, structure of the transaction or the cost of capital to the developer-borrower.³¹ Some operators of Regional Centers and developers were willing to discuss EB-5 capital, but typically only in the most basic terms.³²

Most Regional Centers' websites do not describe their EB-5 projects available to immigrant investors, including the terms of the investment or the capital structure of the project entity. This might be due to a combination of securities laws concerns and intense competition among Regional Centers for the limited number of EB-5 investors seeking to invest capital under the Program.

In contrast, substantially more information is available on the websites of the migration agents or broker-dealers who are soliciting immigrant investors³³, particularly those of Chinese migration agents.³⁴ We would have preferred to rely upon information provided or verified by the Regional Centers. However, in many cases, the Regional Centers were not responsive to our repeated requests for information. Thus, in some cases, this paper relies on the Chinese websites either to verify information provided by the Regional Center websites and other internet sources, or to fill in gaps where the information was otherwise not available.

To the limited extent this paper considers these Chinese websites as sources, the authors relied upon translation by their Chinese-speaking research assistants as well as by using the Google search translation tool where available.³⁵ Obviously, these Chinese websites are a more remote source since at best they are a secondary source, presumably relying upon information provided by Regional Centers, NCEs or developers, directly or indirectly.

Cross References

Many of the topics discussed in this paper overlap several areas of EB-5 immigration and EB-5 capital. We realize that some readers might focus only on the parts of the paper that are of particular interest to them. Thus, we have included extensive footnotes and cross links with references to other sections of the paper that discuss these or related topics. Readers can click on the underlined cross reference links in blue to jump to the referenced sections.

Development" (report, Brookings Institution, Washington, DC, 2014),

<http://www.brookings.edu/research/reports/2014/02/05-eb-5-investor-visa-program-singer-galdes>

³¹ Michael Gibson is Managing Director of USAdvisors, an investment advisory firm that provides EB-5 due diligence for potential investors. USAdvisors' related website, www.EB5Projects.com, compiles online data of EB-5 projects. However, the authors of this paper independently located substantially all of the project details referenced in this paper, including the databases, by extensively researching internet sources and interviewing Regional Centers, developers, attorneys and other EB-5 participants.

³² Representatives of only a few of the Regional Centers contacted by the authors were willing to discuss their deal structure, including CanAm, Lam Group, EB-5 New York State, US Immigration Fund, Lightstone, American Life, and Silverstein Properties.

³³ See [page 15](#)

³⁴ As discussed in the Immigration Process section [on page 18](#), during fiscal year 2013, more than 85% of all I-526 approvals (the first step in the visa process) were issued to applicants from mainland China.

<https://iiusa.org/blog/research-analysis/quarterly-retrospective-january-issue-regional-center-business-journal/>

³⁵ Jasper Yang and Erzhua Wang, students at the NYU Stern School of Business.

II Background on EB-5 Program and Immigration Process

EB-5 Program Overview

Congress added the EB-5 category of visa as part of the Immigration Act of 1990 to stimulate the creation of new jobs by capital invested by immigrants.³⁶ Under the Program, an immigrant must invest \$1,000,000 in a United States business that creates 10 jobs for each EB-5 investor.³⁷ However, if the project is located in a Targeted Employment Area (“TEA”), the investment threshold is reduced to \$500,000.³⁸ Since the law’s enactment in 1990, the amount of the minimum required investment has remained the same.³⁹

Sources of EB-5 law

The statutory framework for the Program can be found at INA sections 203(b)(5) and 216A, which were modified by inter alia Section 610 of Pub. L. 105-119 and Section 402(a) of Pub. L. 106-396; and Section 4 of Pub. L. 108-156, relating to Regional Center Pilot Program. The regulatory framework can be found at 8 CFR 204.6 and 8 *CFR* 216.6. In addition, USCIS has issued several Policy Memoranda and Policy Manuals that can be found on the USCIS website and are footnoted in this paper.⁴⁰ The four precedent decisions of the USCIS’ Administrative Appeals Office (AAO) opinions are: Matter of Izummi, 22 I&N Dec 169 (Assoc. Comm’r 1998); Matter of Ho, 22 I&N Dec. 206, (Assoc. Comm’r 1998); Matter of Soffici, 22 I&N Dec 158 (Assoc. Comm’r 1998); and Matter of Hsiung, 22 I&N Dec 201 (Assoc. Comm’r 1998). These decisions, unlike most AAO opinions, create certain standards that apply to EB-5 applications or investments, such as Matter of Ho compliant business plan, and Matter of Izummi decision interpreting some of the at-risk rules applicable to EB-5 investments. No precedent decisions have been issued since 1998.

Targeted Employment Area

A geographic area is classified as a TEA if its unemployment rate is at least 150 percent of the national average.⁴¹ Most projects seek to qualify as a TEA to attract immigrants whose

³⁶ INA 203(B)(5)(A); INA 203(b)(5)(C)

³⁷ INA 203(b)(5)(A)(ii)

³⁸ 8 C.F.R. 204.6(f)(2)

³⁹ The statute authorizes the Attorney General to raise the dollar limit by regulation. INA section 203(b)(5)(C)(i). The Attorney General sets the TEA capital investment amount, but it must be no less than ½ of the basic (\$1,000,000) amount. INA section 203(b)(5)(C)(ii). Many experts expect the minimum amount to be increased as part of the reauthorization of the Program in September 2015.

<http://www.nytimes.com/2015/05/17/realestate/want-a-green-card-invest-in-real-estate.html? r=0>

⁴⁰ <http://www.uscis.gov/laws>.

⁴¹ A location can also qualify as a TEA if it is a “rural” area, as defined in INA section 204.6. Relatively few projects are located in rural areas, as many investors prefer to invest in projects in or near urban areas. See the Project section of this paper for other EB-5 investor preferences, such as proceeding with established developers and Regional Centers. In the case of an investment through a Regional Center, the location of the JCE rather than the NCE, determines the project’s location for TEA purposes. See USCIS Policy Memorandum, PM-602-0083, dated

main purpose in making the investment is to obtain a visa, and therefore, prefer to invest \$500,000, instead of \$1,000,000.

The Program delegates to each State the authority to determine whether a particular property is located in a TEA, and USCIS defers to this determination.⁴² The State authority issues a TEA designation letter if it determines that the project location meets the requirements. The methodology applied by the various States differs.⁴³ Many states have adopted an expansive view of whether a project is determined to be in a TEA because they often prefer that development occur within their own state rather than in a neighboring state.

One of the first steps that a developer takes to determine the feasibility of an EB-5 project is to request that the State authority issue a TEA designation letter.⁴⁴ The processing of the TEA letter request is much shorter than the other aspects of the EB-5 immigration process.⁴⁵ If the State were to determine that the project is not located in a TEA, many developers would forego EB-5 capital as a capital source because the project would presumably not attract immigrant investors. Again, obviously the immigrant investor prefers to minimize the amount of the investment necessary to obtain the EB-5 visa.

In some states, the TEA “high unemployment standard” is met in locations that one would not expect to qualify, such as the thriving Midtown, Chelsea and Tribeca areas of New York City. A common way developers achieve this is by adding contiguous tracts to the project’s census, thus creating a combined area that achieves the requisite high unemployment rate.⁴⁶

Even the USCIS has questioned whether the State authorities are adhering to the “spirit of the law”.⁴⁷ In 2011, then USCIS director Alejandro Mayorkas pointed out that the \$500,000

May 30, 2013 (“May 2013 Policy Memorandum”) at pages 8 and 9.

<http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>

⁴²8 C.F.R 204.6(i)

⁴³ For example, as of October 2, 2014, the State of California process to request a TEA letter has been automated by a new interactive database tool that allows up to 12 contiguous census tracts to be combined.

<http://www.business.ca.gov/International/EB5Program.aspx>. . New York State delegates the determination making authority to the Empire State Development agency. http://www.labor.ny.gov/stats/immigration_act.shtm. Texas delegates this authority to local mayors or county judges.

http://www.impactdatasource.com/Download_Files/Texas%20TEA%20Designations.pdf

⁴⁴ The TEA status of the project must be valid generally as of the date the individual investor files his I-526 petition, the first step in the immigration process. If the project’s local economy is improving, it is possible that the project will no longer qualify as a TEA when the unemployment statistics are updated. Larger projects are especially at risk where there is a greater time delay between the initial investors who file petitions and the later investors. If later investors cannot qualify with a \$500,000 investment because the project is no longer in a TEA as of the date they file, the EB-5 capital raise could be jeopardized with impacts to the project and the first immigrant investors who filed petitions. The foregoing is based on remarks of Robert C. Divine, Esq. at EB-5 Summit, ILW conference held in New York City on December 19, 2014.

⁴⁵ For example, as of July 2014, the estimated time frame for processing a TEA designation request in New York State was one week. Telephone interview of Ed Kowalewski, the Director of International Investment Programs of Empire State Development, on July 16, 2014.

⁴⁶ “Rules Stretched as Green Cards Go to Investors” by Patrick McGeehan and Kirk Semple, NY Times, December 18, 2011. <http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all& r=0>

⁴⁷ See also May 2013 Policy Memorandum at page 7: “Congress expressly provided for a reduced investment amount in ... area of high unemployment in order to spur [investment] in “areas of greatest need.”

investment threshold should only be available where the project results in employment of people who live in high unemployment areas.⁴⁸ The liberal interpretation by some states has rendered the TEA concept almost meaningless.⁴⁹ Critics have referred to this combination of census tracts as “gerrymandering”.⁵⁰

Job creation

Job creation is the centerpiece of the Program.⁵¹ The project must create at least 10 full-time jobs for American workers⁵² for each EB-5 investor. In other words, for each \$500,000 of EB-5 capital invested, the project must create at least 10 EB-5 program-qualifying jobs.⁵³ Jobs can include those relating to construction activity, as well as to the operations of the project. Below is a simplified explanation of the complex job-creation rules.⁵⁴

However, if the investor invests in a project that is not sponsored by a Regional Center, only direct jobs count.⁵⁵ Direct jobs are generally those full-time jobs filled by W-2 employees of the commercial enterprise.⁵⁶ The applicant demonstrates direct jobs to USCIS by producing W-2 tax forms and legal working status in the U.S. and other evidence of employment. Direct jobs associated with construction activity qualify only if they last for at least two years.⁵⁷ The overwhelming number of jobs associated with construction activity are indirect, rather than direct, for immigration purposes.

If the project is sponsored by a Regional Center, then the type of jobs to be counted also includes “indirect” jobs, as well as a subcategory of indirect jobs referred to as “induced jobs”. These jobs are demonstrated to USCIS based on an economic impact report’s economic-job impact model that shows the impacts of the project’s capital investment and/or on actual employment data.⁵⁸ An economist prepares the economic-job impact report based on a business

⁴⁸ “Rules Stretched as Green Cards Go to Investors” by Patrick McGeehan and Kirk Semple, NY Times, December 18, 2011 <http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all&r=0>

⁴⁹ http://eb5news.com/system/uploads/newsletter/file/7/Nov_Dec_2011_Newsletter.pdf by Michael Gibson

⁵⁰ “Rules Stretched as Green Cards Go to Investors” by Patrick McGeehan and Kirk Semple, NY Times, December 18, 2011 <http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all&r=0>

⁵¹ May 2013 Policy Memorandum at page 17.

⁵² For these purposes, workers include U.S. citizens as well as lawful permanent residents. 8 C.F.R. section 204.6(e).

⁵³ The calculation relating to this requirement is explained in more detail in “Job Creation and Size of EB-5 Capital Raises” sub-section beginning [on page 45](#).

⁵⁴ Some of this discussion is based on a telephone conversation with economist Jeff Carr of Economic & Policy Resources, Inc. on September 11, 2014.

⁵⁵ 8 C.F.R. 204.6(e)

⁵⁶ Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations entitled “Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and form I-829 Petitions; Adjudicator’s Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38)” dated December 11, 2009 (individually “Neufeld December 2009 Memorandum”) and Memorandum from Neufeld entitled “EB-5 Alien Entrepreneurs – Job Creation and Full Time Positions” dated June 17, 2009 (individually “Neufeld June 2009 Memorandum”). The Neufeld December 2009 Memorandum and the Neufeld June 2009 Memorandum are collectively referred to as the “2009 Neufeld Memoranda”. Also see the May 2013 Policy Memorandum at pages 16 and 17.

⁵⁷ Neufeld June 2009 Memorandum

⁵⁸ 8 C.F.R. 204.6(m)(7)(ii)

plan developed by the developer – at times with the assistance of the Regional Center. Generally, at the I-526 investor petition phase of the immigration review, the business plan must reasonably demonstrate that the jobs will be created within two and one-half years after USCIS approves the immigrant’s I-526 petition.⁵⁹

Indirect jobs are those held by persons who are not W-2 employees of the commercial enterprise, but are created as a result of the project.⁶⁰ They work for those who provide goods or services to the project.⁶¹ In contrast to direct construction jobs associated with construction activity, indirect jobs associated with construction activity can qualify for EB-5 program job benefits even if the construction lasts less than two years. The work can be performed anywhere, even in an entirely different geographic location.

For example, indirect jobs include those held by those who work for the steel mill in Ohio that provides metal studs for the construction of a hotel project in California, as well as those who work for the manufacturer in Wisconsin that provides plumbing fixtures to the project. Indirect jobs also include those workers who supply and deliver linens to the hotel after it opens for operation, and those who perform professional services for the hotel, including external accountants and lawyers – ideally there would be a documented third party payment.

Induced jobs are generated when workers – direct as well as indirect – spend part of their increased compensation on consumer goods and services. In practice, these indirect jobs are limited to the geographic area of the project (i.e., within the sponsoring Regional Center’s territory).⁶² For example, purchases at supermarkets, gas stations, and clothing stores by the project’s construction workers (direct employees), as well as by employees of the steel mill (indirect employees), can count towards job creation.⁶³

Construction expenditures are a major determinant of the number of construction activity jobs generated. Revenues from operations are typically a major determinant of the number of operations jobs generated. Other factors include the project’s geographic area and its industry type.

Under some economic models, a multiplier factor is applied to the construction spending or operating revenues to arrive at the number of jobs created. A separate multiplier applies to calculate the direct jobs and the indirect jobs likely to be created by the project. The multiplier factor varies depending on a number of inputs or variables, such as project location, industry or property type, and construction activity and techniques.

Most EB-5 projects strive to create more jobs than the minimum required by the EB-5 law for the number of potential investors, primarily for investor marketing purposes. The excess jobs create a cushion to provide comfort for subscribing EB-5 investors that a sufficient number of jobs will be created to have their investor petitions approved in case actual development

⁵⁹ See May 2013 Policy Memorandum at page 19

⁶⁰ See May 2013 Policy Memorandum at page 18

⁶¹ Indirect jobs (including induced jobs) may be full or part-time, permanent or temporary because input-output tools do not distinguish between full-time and part-time job holders. The work may be performed by an independent contractor or employee. Neufeld June 2009 Memoranda at page 13-15

⁶² If a project seeks to include indirect jobs associated with the operations component in the area outside of the Regional Center’s approved territory, detailed and verifiable evidence must be provided to USCIS showing that there are in fact significant, quantifiable job impacts from the project’s operations outside of the territory.

⁶³ In contrast, indirect jobs generated by tenant or hotel guest spending, are generally not counted as indirect jobs. USCIS Questions and Answers: EB-5 Economic Methodologies (July 3, 2012) Question 1.

<http://www.uscis.gov/news/questions-and-answers/questions-and-answers-eb-5-economic-methodologies>

deviates from the planned development or operations, or the USCIS does not ultimately recognize some of the jobs created by the project as being EB-5 program eligible.

Most projects generate substantially more construction activity jobs than operations jobs. In addition, it is relatively easy to demonstrate and expend actual construction expenditures rather than to forecast and meet revenue targets for a project that is at the planning stages or in the early stages of operations. Consequently, many projects rely substantially, if not exclusively, on construction activity jobs to support the capital raise, assuming the number of jobs to be created is sufficient to support the amount of EB-5 capital to be raised.⁶⁴

Capital Raise – Background

As described below, a developer whose project may be suitable for an EB-5 capital component has several options as to how it can access the EB-5 capital through a Regional Center. The most common routes are the developer forms its own Regional Center or seeks to have its project sponsored by an existing, unrelated Regional Center. Most developers choose to associate with an unrelated Regional Center to access EB-5 capital, as discussed in the Regional Center section.⁶⁵

In any case, six participants are instrumental at the capital raise stage:

1. The Regional Center
2. The EB-5 immigrant investor
3. The new commercial enterprise (“NCE”) – the entity formed by the Regional Center that serves as the investment vehicle into which an immigrant contributes his required equity capital.
4. The job creating entity (“JCE”) – the entity that owns the project that will create the jobs, which also ultimately receives the EB-5 proceeds as a debt or equity investment from the NCE.⁶⁶
5. The migration agent located overseas, or the broker-dealer located in the United States, which solicits the immigrant investor.
6. Various professionals including attorneys, economists and business plan writers.

The EB-5 investor’s proceeds can be invested by the NCE in the JCE, either as a loan or equity. This example assumes that (1) the EB-5 investors’ proceeds will be loaned by the NCE to the JCE, and (2) the developer associates with a third-party Regional Center, rather than forms its own “in house” Regional Center.

After the developer and NCE determine that the project is suitable for EB-5 investment and reach an agreement on the loan terms, a variety of documents are needed to proceed with the solicitation of investors, including the:

1. Project’s business plan, including construction budget and feasibility study;
2. Economic impact analysis report based on an economic model that supports the requisite number of jobs to be created;
3. Regional Center designation letter (I-924 approval) issued by USCIS, including the project preapproval for this particular project, if applicable;

⁶⁴ See the “Job Creation and Size of EB-5 Capital Raises” sub-section beginning [on page 45](#).

⁶⁵ Another alternative is to “rent” the Regional Center. See the discussion in “Renting a Regional Center” sub-section [on page 23](#)

⁶⁶ As indicated below, sometimes when EB-5 capital is deployed as equity, the NCE and the JCE are the same entity. The paper generally refers to the NCE and JCE as two separate entities.

4. TEA letter from the appropriate State agency (assuming the project is located in a TEA, as is almost always the case for an EB-5 project);
5. Offering documents, including private placement memorandum;
6. Subscription agreement whereby the investors commit to the investment in the NCE, as well as the escrow agreement, if any, pursuant to which the investors' contributions will be held pending the satisfaction of a condition, such as USCIS' approval of the petition to become a conditional permanent resident;
7. Limited partnership agreement or LLC operating agreement of the NCE and JCE;
8. Loan and security or mortgage documents between the NCE and JCE, depending on whether a mortgage loan, mezzanine loan or unsecured loan is involved;
9. A deed or ground lease to the property and title report (depending on title status of the property owned by the JCE);
10. Entitlements to develop and construct the project, including building permits;
11. Evidence of commitments from other capital sources to the JCE to fund the balance of the project's costs, including senior mortgage financing and, if applicable, bridge financing;
12. Documents supporting the Regional Center's proven track record;
13. Documents supporting the developer's proven track record – EB-5 projects and otherwise; and
14. Demonstration of developer's source of loan repayment (the "exit" strategy).⁶⁷

At the time of solicitation, most investors will live in foreign countries rather than in the United States. Migration agents specialize in marketing to investors overseas for EB-5 projects. These intermediaries are usually located in the same country, and speak the same language, as the investors. Some investors may live in the United States under a temporary visa, such as a student visa or a work visa. They are more likely to be solicited by broker-dealers in the United States. The Regional Center will often have a relationship with a marketing agent or network of migration agents in one or more countries.

The migration agents are often a paid a fee based on the total of the immigrant investment capital raised by the agent for the project. That fee is usually paid in installments, with the first payment made by the Regional Center or NCE at the time the investor subscribes to the project using the administrative fee proceeds described below, and the balance paid in periodic installments payable at the same time that the JCE makes loan payments to the NCE.

The Project Factors section of this paper describes the many factors that an immigrant investor considers when selecting the particular project in which he will invest.

The Immigration Process – the Investor's Path to Permanent Residency

The immigration process affects the investment structure, and the timing of developer's access to EB-5 funds, as well as the exit strategy for the investor's recovery of his capital.

⁶⁷ Most of these documents are of the type required as part of the Regional Center's initial application to be designated (approved) as such by USCIS, especially if the application includes an exemplar filing as described [on page 25](#). See Initial Evidence Requirements section of Instructions to Form I-924, Application for Regional Center. <http://www.uscis.gov/sites/default/files/files/form/i-924instr.pdf>

After the investor selects a particular project as his investment target, he executes the Subscription Agreement. He wires to the Regional Center or NCE the minimum required investment (usually \$500,000) and the one-time administrative fee charged to the investor by the Center or the NCE⁶⁸. The wiring of the funds occurs before the investor's visa petition is filed.

The first step of the two-step visa application process begins with the investor filing with USCIS a Form I-526 petition (or application) for conditional permanent residency.⁶⁹ USCIS "adjudicates" (reviews and ultimately approves or denies) the petition.

The adjudicator assigned to the application focuses on the project, as well as on the individual investor. At the project level, USCIS' main consideration is whether, based on the business plan and economic model selected by the Regional Center, the project is likely to create the number of jobs required based on the amount of the EB-5 capital to be raised.⁷⁰ At the individual level, USCIS' focus is (1) whether the investor's funds have been obtained from a lawful source and (2) whether the investor's funds will be placed "at risk".⁷¹

Ultimately, USCIS approves or denies the I-526 petition. Approval signifies that USCIS has "deemed credible" the project's business plan's terms and assumptions, "deemed reasonable" its job creation projections, and determined that the investor has met his burden of demonstrating the lawful source and path of the investment capital. If the I-526 petition is approved, the investor executes and submits a form to apply for an interview with USCIS or the Department of State,⁷² depending upon whether the investor then resides inside or outside of the U.S. The focus is to obtain background information about the investor.

If the interview is favorable and the application is approved, the U.S. Department of State issues a visa allowing the investor to enter the U.S. as a conditional permanent resident. This elevates the investor's status to "conditional permanent resident" for a period of two years.⁷³

The second step requires that, during the window period between 21 months and 24 months after the issuance of the conditional green card, the applicant file with USCIS a Form I-829 petition (or application) to remove the conditions. At the project level, USCIS' main focus

⁶⁸ The amount of the administrative fee charged by the Regional Center generally ranges from \$25,000 to \$50,000. See in particular page 7 of this Memorandum: http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf. Note that the investor's capital account is limited to his capital contribution of \$500,000. Thus, upon a successful exit from the NCE, the investor will recover his \$500,000 investment, but no part of the administrative fee. Similarly, the NCE bases the investor's return on the investment only on the \$500,000 investment.

⁶⁹ A separate USCIS process relates to the application to be designated as a Regional Center, based on Form I-924, further described in the Regional Center section of this paper. The paper sometimes refers to the "petition" as an "application", although "petition" is the correct term. The investor's I-526 petition relates to a specific project that is sponsored by a particular Regional Center. Once a Regional Center is designated by USCIS, the Regional Center need not seek re-designation every time it wishes to sponsor a project. The Regional Center designation must be in effect prior to the filing of the I-526 petition. Thus, the timeline for processing the I-924 designation is not factored into the estimated time frame for the individual's visa application process below.

⁷⁰ The various project level documents, including the organizational, transaction and investor documents, are furnished to the investor by the Regional Center.

⁷¹ See discussion in "Regional Center vs. NCE vs. JCE" section [on page 27](#).

⁷² Form I-485 or Form I-230. Arguably, this could be viewed as an additional "step" in the immigration process.

⁷³ The green card remains in effect if the holder files the I-829 petition within 90 days of the visa's expiration. <http://www.uscis.gov/green-card/after-green-card-granted/conditional-permanent-residence>. The filing is made 21 to 24 months after the date of the issuance of the conditional visa.

is whether the required number of jobs has been created.⁷⁴ This entails verification that all of the business plan’s commitments have been kept, especially the actual expenditure of project funds. For example, if the amount of the actual construction expenditures is less than the amount set forth in the I-526 business plan, fewer jobs are likely to be validated and thus, some of the I-829 petitions could be at risk of denial, unless the project has a sufficient job cushion.⁷⁵

At the individual level, USCIS’ main focus is whether the immigrant investor has sustained his investment in the project and the investment continues to be at risk. Even if the project is economically successful, the I-829 petition will be denied if it does not meet the EB-5 requirements, such as the failure to create sufficient jobs or to continuously maintain the capital investment outstanding and at risk.

If the I-829 petition is approved, unconditional permanent resident status is granted and an unconditional (“permanent”) green card is issued. The immigrant investor may permanently live and work in the U.S. Also, the conditional visa period counts towards the five-year residency requirement for U.S. citizenship.

From start to finish, this two-step application process with visa issuance typically takes 4 to 5 years. Below is an estimated timeline for each step of the process.

I-526 application – adjudication process ⁷⁶	14 months
Interview followed by conditional visa issuance	3 to 6 months
Time lapse before eligible to file I-829	21 to 24 months
I-829 application - adjudication process ⁷⁷	<u>12 months</u>
Total	more than 4 years

This immigration process timeline must be distinguished from the expected time frame for the immigrant to recover his EB-5 capital investment. Generally, under the “at-risk” and sustained investment rules, the investor’s recovery of capital cannot occur until after the approval of the I-829 petition. Furthermore, the timing of this “exit” depends on the terms of the investment, as well as the JCE’s liquidity and ability to repay the loan or distribute the equity.⁷⁸ However, in reviewing the investor’s visa petition, USCIS does not consider the likelihood of whether the investor will recover his investment or the extent of his financial return on the

⁷⁴ Technically, USCIS requires that the investor demonstrate that the assumptions and estimates presented in the business plan have been realized, or can be expected to be realized, within a reasonable time. May 2013 Policy Memorandum at page 22.

⁷⁵ See the discussion regarding the calculation of the job cushion [on page 45](#).

⁷⁶ As of March 31, 2015, the average time frame for the processing of an I-526 petition was 14 months. https://egov.uscis.gov/cris/processingTimesDisplay.do;jsessionid=abcFE_Y8x6fBu8nY7FX1u

⁷⁷ As of March 31, 2015, the average time frame for the processing of an I-829 petition was 12.7 months. https://egov.uscis.gov/cris/processingTimesDisplay.do;jsessionid=abcFE_Y8x6fBu8nY7FX1u However, average processing times vary from month to month. Expedited processing can be requested. <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-inquiries>

⁷⁸ As discussed in the Capital Stack section of this paper, the investor is likely to recover his capital earlier if the EB-5 capital is deployed as a loan rather than as equity.

investment.⁷⁹ Thus, even if the I-829 petition is approved and the unconditional visa is issued, the investor is not assured that his capital investment will be recovered.

On a quarterly basis, USCIS publishes the average time frames for the agency to process various types of applications under the Program.⁸⁰ These average time frames have varied widely over recent years, and even from month to month.⁸¹

The immigration law places an annual cap of 10,000 on the number of visas that may be issued under the EB-5 Program. The EB-5 visa is available, not only to the investor, but also to his or her spouse and their unmarried children under the age of 21 (“derivative family members”).⁸² The annual limit applies to the investor and his derivative family members.⁸³ Thus, if the average number of derivative family members was 1.5 to 2 per investor, only 3,000 to 4,000 visas could be issued per year to investors.

In addition, an annual per country visa limit applies. If the 10,000 annual quota has been reached, no more than 7% of all EB-5 investor visas can be issued to immigrants from a single country in a given year.⁸⁴ During fiscal year 2013, more than 85% of the EB-5 visa applicants were from mainland China.⁸⁵

For the first 24 years of the Program, visa demand never triggered the per-country limit. However, in August 2014 when the number of visas issued reached the 10,000 quota, the U.S. State Department announced that the issuance of new EB-5 visas to Chinese applicants would be frozen (“retrogress”) until the start of the government’s ensuing fiscal year on October 1, 2014.⁸⁶

Based on the current caseload, as well as the increasing demand by Chinese investors, many immigration law experts anticipate that Chinese retrogression will reoccur sometime

⁷⁹ The USCIS website provides that “approval of an EB-5 Regional Center application does not in any way constitute USCIS endorsement of the activities of that Regional Center; guarantee compliance with U.S. securities laws; or minimize or eliminate risk to the investor.” <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

⁸⁰ USCIS’ published average processing times are somewhat misleading. For example, the I-924 processing time applies to original I-924 applications, including those based on hypothetical projects as well as on exemplar filings, and I-924 amendments that include project preapproval. The level of review for these various applications varies. An original application based on an exemplar will take longer than one based on a hypothetical. Similarly, the amendment review and decision-making process should take a shorter time period because the amendment involves only an isolated issue. The I-526 petition time frame is also misleading. The time frame depends in part on whether the project was preapproved. If a project preapproval was not issued for the project, then USCIS treats the first I-526 petition filed as an exemplar and determines whether the project meets USCIS approval. If USCIS approves the project, then this project level approval generally applies to other I-526 petitions filed for that project, unless a material change occurs, such as to the business plan.

⁸¹ For example, as of October 31, 2014, the average time to process an I-829 petition was 8.6 months; as of May 31, 2014, the average time was 15.1 months.

⁸² The visas of the derivative family members are based on the single \$500,000 investment made by the “investor”. They are not required to make any additional investment. Thus, the USCIS data on petitions filed, approved or denied does not reflect the potential additional visas to be issued to the family members.

<http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process>

⁸³ INA sections 201, 202 and 203.

⁸⁴ INA sections 202(a)(2), 202(a)(3), 203(a), 203(b), and 204.

⁸⁵ <https://iiousa.org/blog/research-analysis/quarterly-retrospective-january-issue-regional-center-business-journal/>

⁸⁶ <http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/China%20Employment%20Fifth%20Preference.pdf> For US visa purposes, citizens of mainland China are counted separately from Taiwan, Hong Kong and Macau.

during the spring or summer of 2015, and the backlog will increase in future years.⁸⁷ At some point, this may result in a backlog that will extend for more than the current year. Although USCIS will continue to process and approve I-526 petitions submitted by Chinese investors, after obtaining I-526 petition approval, a Chinese investor would not be able to proceed to the visa application stage. Thus, this would likely delay the visa's issuance, as well as the processing and approval of the I-829 petition and the resulting issuance of the permanent green card. These delays can impact the timing of the investor's recovery of his capital. For example, if the delay results in the NCE's loan becoming due before the investor's I-829 petition is approved, an issue could arise as to whether the repayment might jeopardize the investor's approval due to the "at risk" rules.⁸⁸ This might necessitate the restructuring of the loan to extend its maturity date until the approval of the investors' I-829 petitions. A more detailed analysis of retrogression is beyond the scope of this paper.⁸⁹

Moreover, the growing trend of developers utilizing EB-5 capital for large-scale projects, which in several cases includes several hundred EB-5 investors per project, is likely to have a significant impact upon the annual quota.⁹⁰ If a project with 500 EB-5 investors were to have an average of two derivative family members per investor seeking a visa, then a single project alone might theoretically absorb 1,500 visas, or 15% of the total number of EB-5 visas allotted for a particular year. Thus, for example, if only two large-scale projects with a total of 1,000 EB-5 investors had I-526 petitions being processed during the same year, the two projects might absorb approximately 30% of the total EB-5 visa allocation for that particular year.⁹¹

Enactment of proposed Federal legislation would alleviate these restrictions. At least one proposal counts only the investors, and not their family members, to determine whether the 10,000 annual quota has been reached, and eliminates the per-country cap.⁹² If this or similar

⁸⁷ See for example, <http://ecouncilinc.com/head-visa-control-predicts-eb-5-visa-retrogression-2015/>; <http://blog.klaskolaw.com/2014/11/06/surviving-and-thriving-in-times-of-eb-5-quota-backlogs/>

⁸⁸ USCIS has not issued formal guidance by regulations or otherwise as to whether the repayment of a loan by the JCE to the NCE before the investor becomes an unconditional permanent resident violates the "at risk" or sustained investment rules relating to an immigrant's capital investment. It may be argued that mere repayment by the JCE to the NCE (as distinguished from a distribution by the NCE to the immigrant investor) should not cause the capital invested by the immigrant investor in the NCE to be deemed no longer at risk or sustained. For example, depending on the NCE's LP partnership agreement or LLC operating agreement, the NCE manager controls the timing of the distribution of the funds to the investors. Furthermore, until distributed, the funds are subject to the claims of the NCE's creditors, and thus arguably at risk. Some ways to minimize an attack by USCIS include: (1) authorizing the NCE to reinvest the proceeds in other investments and (2) prohibiting repayment prior to the I-829 petition approval. Any further discussion of this topic is beyond the scope of this paper.

⁸⁹ For example, retrogression would also have a major impact on derivative family members who are approaching age 21. Due to delays in the issuance of the conditional visa, these children may "age out" of the Program and not be eligible for a visa. "The Impact of Chinese Quota Retrogression on EB-5 Investors and EB-5 Investments", IIUSA 2012, by Tamy Fox-Isicoff and Ronald Klasko; <http://blog.klaskolaw.com/2014/01/20/faqs-on-eb-5-quota-backlog/>; <http://blog.klaskolaw.com/2014/11/06/surviving-and-thriving-in-times-of-eb-5-quota-backlogs/>

⁹⁰ Some examples include Related's Hudson Yards – 1,200 investors; SLS Las Vegas - 768 investors; Silverstein's Four Seasons Hotel in Tribeca - 498 investors; Greenland Forest City Partner's Atlantic Yards' Phase 1 - 456 investors, and Phase 2 and Phase 3 anticipate 498 and 200 investors, respectively.

⁹¹ Visa number allocation is determined based on the date of issuance of conditional visas, not the date of approval of the I-526 petitions.

⁹² H.R. 616 sponsored by Representatives Polis (D-Colo) and Amodei (R-Nev) was introduced on January 28, 2015. <https://www.congress.gov/bill/114th-congress/house-bill/616>. Four EB-5 related proposals were considered

legislation were enacted, the number of visas that could be issued under the Program would be dramatically increased. In addition, the legislation would eliminate the per-country quota, and thus relieve the Chinese retrogression issue. This would likely result in a substantial increase in foreign investment capital flowing into the United States and create a substantial number of new full-time jobs for American workers.⁹³

Regional Center Overview

As previously discussed, if a developer's project is affiliated with a Regional Center, then the EB-5 job creation requirement may be met by counting indirect jobs in addition to direct jobs.⁹⁴ The inclusion of indirect jobs typically yields a dramatic increase in the potential size of the EB-5 capital raise.⁹⁵ While the main benefit conferred by Regional Center status is the ability to count indirect jobs, two other important benefits result. First, an economic model can demonstrate job creation. Otherwise, detailed data and records are required to prove actual job creation. Second, the EB-5 investors' pooled proceeds could be deployed as a loan to the project entity. If the EB-5 investors invest directly in the project NCE, the capital must be deployed as equity.

The Regional Center concept was not part of the original EB-5 legislation enacted in 1990. However, it soon became apparent that few businesses could generate a sufficient number of direct jobs to support a large EB-5 capital raise necessary to make the Program meaningful. In response, Congress expanded the type of jobs that may be counted by adding the Regional Center concept as a pilot program in 1992.⁹⁶ Congress has extended the life of this program numerous times.⁹⁷

The current three-year extension expires in September 2015.⁹⁸ Legislation is pending to make the Program permanent.⁹⁹ It is anticipated that legislation will be enacted either to extend (reauthorize) the Program or make it permanent, despite the fact that it is related to the

during Congress' 113th Session: Senator Patrick Leahy (D VT), [S 744](#) "Border Security, Economic Opportunity, and Immigration Mobilization Act"; Rep. Jared Polis (D CO) and co-sponsors Rep. Matt Salmon (R AZ), Rep. Joe Garcia (D FL), and Rep. Mark E. Amodei (R NV), [HR 4178](#), "American Entrepreneurship and Investment Act of 2014"; Rep. Darrell Issa (R CA), [HR 2131](#), "Supplying Knowledge-Based Immigrants and Lifting Levels of STEM Visas Act" (also known as the "Skills Visa Act"); and Rep. Schock (R IL), HR 4659, <https://www.congress.gov/113/bills/hr4659/BILLS-113hr4659ih.xml>.

⁹³ Assuming the number of investors who could obtain EB-5 visas were increased from 3,000 to 10,000, 7,000 additional investors per year would result in a minimum of \$3,500,000,000 additional EB-5 capital (7,000 x \$500,000) and 70,000 new jobs (7,000 x 10 jobs per investor).

⁹⁴ May 2013 Policy Memorandum at page 19; 8 C.F.R. §204.6(m)(1), (7)

⁹⁵ See the "Job Creation and Size of EB-5 Capital Raises" section beginning [on page 45](#).

⁹⁶ Section 610 of Public Law 102-395 (October 6, 1992)

⁹⁷ When Congress extended the program in 2012, it renamed the program the "Regional Center Program" and eliminated the term "Pilot". Public Law 112-176 (Sept. 28, 2012)

⁹⁸ <https://www.congress.gov/bill/112th-congress/senate-bill/3245>

⁹⁹ See, for example, H.R. 616 sponsored by Representatives Polis (D-Colo) and Amodei (R-Nev). This legislation would make the Regional Center program permanent, eliminate the per-country caps and not count derivative family members in determining the quota levels. <https://www.congress.gov/bill/114th-congress/house-bill/616>

controversial comprehensive immigration reform legislation.¹⁰⁰ The Program is perceived to create jobs. In addition to the obvious support of the real estate lobby, influential public figures, such as Bill Gates, Warren Buffet and Sheldon Adelson, strongly support the Program.¹⁰¹ Obviously, there is always a risk that pending legislation will not be enacted.¹⁰² If the Regional Center program is not extended, the impact to the Program would be devastating in light of the number of EB-5 projects that rely on indirect jobs for job creation and the loan structure for the deployment of EB-5 capital.

Only a few Regional Centers have direct government involvement at the state or local level.¹⁰³ A Regional Center does not hold exclusive jurisdiction over a particular geographic region. Many geographic areas have multiple Regional Centers which can make investments anywhere in that region.¹⁰⁴ Some Regional Centers operate in more than one state. The same Regional Center can sponsor an unlimited number of projects.

The term “Regional Center” sometimes creates the mistaken impression that it is a governmental or quasi-governmental unit. Similarly, names of certain Regional Centers that contain the name of a city or state, such as the New York City Regional Center, the EB-5 New York State Regional Center or the Vermont Regional Center, might suggest that the Regional Center is the exclusive center for a particular geographic area. However, the promoters of the Regional Center select the name, presumably aimed to attract foreign investors. The Regional Center is simply a business entity (public, private or public-private partnership) that promotes and coordinates foreign investment in a defined geographic area within the EB-5 legal framework.¹⁰⁵

The meteoric growth in the number of Regional Centers from 2007 to 2014 mirrors the growth of the industry. In 2007, only 11 Regional Centers existed.¹⁰⁶ That number has mushroomed to 617 as of January 12, 2015.¹⁰⁷ Many more Regional Center applications are currently pending before USCIS.

However, many Regional Centers have not sponsored even a single project resulting in a successful EB-5 capital raise.¹⁰⁸ This could be due to advantages well-seasoned Regional Centers possess to attract developers and foreign investors, as well as the complexity and the lengthy immigration process that discourages some Regional Centers and developers.

¹⁰⁰ In 2012, the Regional Center Program was reauthorized by unanimous consent in the U.S. Senate and by a vote of 412-3 in the House of Representatives. S. 3245 <https://www.govtrack.us/congress/bills/112/s3245>

¹⁰¹ http://www.nytimes.com/2014/07/11/opinion/sheldon-adelson-warren-buffett-and-bill-gates-on-immigration-reform.html?_r=0 “Break the Immigration Impasse” by Sheldon Adelson, Warren Buffett and Bill Gates, NY Times, July 10, 2014.

¹⁰² At the January 2015 CREFC conference held in Miami Beach, Florida, some experts warned that changes to the EB-5 program may be required as part of the negotiation to obtain the extension. <http://commercialobserver.com/2015/01/eb-5-in-peril/>

¹⁰³ Examples include Vermont, Hawaii, Michigan, Iowa, and Miami.

¹⁰⁴ <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

¹⁰⁵ INA 203(b)(5); 8 C.F.R. 204.6

¹⁰⁶ EB-5 Immigrant Investor Program Stakeholder Engagement, 12/05/2014; <https://iiousa.org/blog/wp-content/uploads/2015/02/777.jpg>

¹⁰⁷ <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

¹⁰⁸ www.iiousa.com

The EB-5 Program imposes few requirements or standards upon Regional Centers. Neither the Regional Center's owners nor its executives are required to possess any special qualification, educational background or investment experience. No minimum staff size is set. No minimum net worth or capital is required for the Center's ownership or operations. Neither an accounting audit nor other financial oversight is required.¹⁰⁹

The Regional Center must file a basic annual return, Form 924A, with USCIS, but no independent verification is required. The form requires disclosure of a limited amount of information about the EB-5 capital raised, jobs created and investor petitions. This information is generally not project specific. Thus, the filing presents an opaque view of the Center's operations.¹¹⁰

Third party Regional Center vs. developer "in-house" Regional Center:

If a developer contemplates the inclusion of EB-5 capital in its capital stack for the first time, it has two basic options: the developer can either enter into an agreement with an existing, unrelated third party Regional Center¹¹¹ or form its own "in-house" Regional Center.

Many developers are tempted to form their own Regional Center to access inexpensive EB-5 capital, and to bypass the unrelated third party Regional Center as middleman. The developer seeks to avoid many of the fees and costs imposed by the third party Regional Center, including the points, management fees and interest rate spread. The developer that controls its own Regional Center (and NCE) essentially loans the investors' funds to itself (its related JCE). Typically, the developer JCE's principals will manage the NCE.

The third party Regional Center's profit sources are limited to the upfront administrative fees paid by the investors¹¹², as well as revenues related to the loan, such as points, management fees and any interest rate spread.¹¹³ Obviously, the developer has an additional, and much more substantial, profit center available - namely, the real estate project. Thus, the developer that forms its own Regional Center uses this vehicle as the means to achieve an end - to access cheap capital. In contrast, the third party Regional Center uses its status to operate an ongoing fee-based business.

The total costs and fees to form a Regional Center (whether third party or "in house"), as well as to prepare and process the I-924 Application to be designated a Regional Center, typically range from \$100,000 to \$200,000.¹¹⁴ Most of these costs are relatively the same, irrespective of the initial project's size. These costs can be more easily absorbed in the case of

¹⁰⁹ Note however that at least one Regional Center, the Vermont Regional Center, requires the audit of its projects. <http://vtdigger.org/2014/10/13/patricia-moulton-vtdiggers-eb-5-story-inaccurate/>

¹¹⁰ See I-924 instructions: <http://www.uscis.gov/sites/default/files/files/form/i-924ainstr.pdf>.

¹¹¹ The preliminary agreement between the Regional Center and the developer is reflected in a term sheet, Letter of Intent (LOI) or Memorandum of Understanding (MOU) that sets forth the basic terms and conditions of the arrangement. Alternatively, a commitment letter can be issued by the Regional Center.

¹¹² The Regional Center can use this administrative fee to pay a variety of expenses, including fees of the migration agents and other intermediaries involved in the transaction. The Regional Center may choose to retain a portion to defray the Regional Center's costs of forming and staffing ("overhead and profit"). In contrast, the entire amount of the EB-5 capital contribution must be invested in the JCE. See Matter of Izummi at Page 179; May 2013 Policy Memorandum at page 16.

¹¹³ The interest rate spread is discussed in the Capital Stack section.

¹¹⁴ <http://www.eb5investors.com/qa/how-much-does-it-cost-to-establish-an-eb5-regional-center2>

larger EB-5 capital raises, or the developer that anticipates it will utilize the Regional Center for multiple projects.

For example, consider an EB-5 capital raise of \$200 million. The \$200,000 total “formation” cost represents less than 1/10th of 1% of the capital raise. The fees earned by the Regional Center from a single EB-5 loan transaction can dwarf that cost.¹¹⁵ Origination fees or points equal to 1% represent \$2 million; annual management fees equal to 2% represent \$4 million; and 100 basis points (1%) of interest rate spread charged by the Regional Center equals \$2 million per year.

Whether the developer waives the management fee or essentially pays the fee to itself, the developer saves the fee that would be payable to the manager of the third party Regional Center. This saving is offset by any staff costs the developer will incur to perform these services. In addition, the developer incurs fees charged by the migration agents and brokers, whether or not it utilizes a third party Regional Center and the Center’s network of agents, or the developer retains the agents directly. However, the amount of these brokerage fees in these alternative arrangements may differ.

Despite these tempting cost savings, most developers ultimately elect to affiliate with an existing Regional Center for several reasons.¹¹⁶ First, the existing Regional Center saves the developer the time and expense of forming a Regional Center and obtaining its designation from USCIS so that investors can be solicited and their funds utilized by the developer in an accelerated time frame. Second, the experienced Regional Center should be able to more quickly locate suitable foreign investors through its network of migration agents that have an existing base of potential investors. Third, the Regional Center provides oversight responsibility of the EB-5 immigration process, and assistance to the investors and their counsel, as they proceed through the USCIS immigration process.¹¹⁷

Renting a Regional Center

Renting an existing, third party Regional Center is another increasingly common alternative available to a developer.¹¹⁸ The rental of an existing Regional Center has been mentioned in news articles, but it is difficult to determine how many rentals exist as this information is not tracked, at least publicly, by USCIS.¹¹⁹

¹¹⁵ Technically, some or all of the fees may be paid to the NCE or an affiliate of the Regional Center.

¹¹⁶ See [page 27](#) for the list of the many services that a Regional Center may provide to the developer and the investors.

¹¹⁷ USCIS publishes the list of designated Regional Centers. The list does not distinguish between third party Regional Centers and developer in-house Regional Centers. The IIUSA members include most of the Regional Centers with active projects.

¹¹⁸ A less popular alternative is the purchase of a Regional Center.

http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED-EB5-QA_022614.pdf see Question and Answer #1.

¹¹⁹ See, for example, “More NYC developers tap cheap EB-5 capital”, The Real Deal, by Guelda Voien November 1, 2013. <http://therealdeal.com/blog/2013/11/15/more-nyc-developers-tap-cheap-eb-5-capital/> However, in a telephone conversation on November 25, 2014, in response to our questions, Nick Mastroianni II of the US Immigration Fund New York Regional Center informed us that this article mischaracterizes as rentals the two Durst EB-5 capital projects that his Regional Center is sponsoring. In both cases, USIF is providing typical Regional Center services to the projects.

When a developer rents a Regional Center, it enters into an agreement to utilize the Center's designation, typically for a specific project. USCIS does not provide any rules governing the rental agreement between a developer and an existing Regional Center. The rental fee structure might be a fixed fee or based on a percentage (such as a percentage of the total EB-5 capital raised). The agreement provides the scope of services, if any, that the Regional Center will furnish to the developer (such as coordination of overseas marketing of developer's project).

The developer's objective in renting a Regional Center is to avoid the time and expense required to seek designation as an "in-house" Regional Center, yet obtain comparable benefits by bypassing the middleman.¹²⁰ Presumably, the rental agreement will permit the developer to utilize the Regional Center's designation and thus, gain the various advantages that apply to a Regional Center, including the right to count indirect jobs, and form a NCE which can make a loan to the JCE.

Although the third party Regional Center and the rental version are both unrelated to the developer, the specific Regional Center inclined to enter into a rental arrangement is different from a Regional Center that typically sponsors a developer's project. Many of the existing Regional Centers have never sponsored even one project resulting in a successful capital raise.¹²¹ These relatively inactive Regional Centers might be inclined to consider renting their designation to generate revenue. In contrast, a well-established Regional Center that is sponsoring other projects will generally not be interested to entertain a rental arrangement. The developer's acts or omissions could expose this Center to liability (securities laws and otherwise) and could damage its reputation, which would pose a greater deterrent to a financially successful Regional Center.

Similarly, the rental arrangement exposes the developer and the immigrant investors to risks that may not be apparent, albeit remote. USCIS has the power to terminate a Regional Center. Inactive Regional Centers are more vulnerable to an action by USCIS to terminate or revoke its Regional Center designation. If the USCIS were to terminate the "landlord" Regional Center's designation, the developer's rights as a Regional Center would likewise terminate as these rights derive from the Regional Center. Thus, a termination of the Regional Center's designation would have the devastating effect of preventing the approval of the immigrant investor's I-829 application. Arguably, the existing rental would evidence the Center's activity and minimize the risk of USCIS termination.

The rental of a Regional Center could be viewed as a hybrid type of Regional Center combining aspects of a developer's own Regional Center and a third party Center. Like the developer's own Center, the developer that rents a third party Regional Center handles all aspects of the process, except those to be furnished by the Center pursuant to the rental arrangement. Most importantly, the developer establishes the investment terms between the NCE and JCE because it controls both entities. Like the unrelated Regional Center, which sponsors a developer's project, the developer's rental of a Regional Center, permits the developer to avoid the lengthy and costly Regional Center formation and designation process.

Regional Center application process

¹²⁰ See [page 22](#) regarding cost savings of developer "in-house" Regional Centers.

¹²¹ IIUSA website

To qualify as a Regional Center, the entity must obtain a designation (approval) from USCIS. Filing Form I-924, the Application for Regional Center, initiates this process. Many professionals, including an economist, EB-5 business plan writer, and lawyers (immigration, corporate and securities, as well as real estate) prepare the application and related documentation. The time frame to prepare the application, and have it processed by USCIS, varies. Even though the processing time for some recent applications has taken as little as four months, it is still not unusual for the process to take a year or even longer.¹²²

The Regional Center application must relate to a particular project. A major variable affecting the time frame for preparing and processing a Form I-924 pivots on whether the Regional Center seeks pre-approval of an actual project (an “exemplar project”) as part of the application or merely describes a project in more general terms (a “hypothetical project”).¹²³

If the I-924 application relates to a hypothetical project, with only general information about the project (and general predictions about job creation, the economic model, the business plan and offering documents), then the USCIS designation and approval attaches solely to the Regional Center designation.¹²⁴ When the individual investors submit their I-526 petitions, the project portion of the application will be determined.

However, if the I-924 application includes a sample I-526 petition for an individual investor, together with more detailed information about a specific project (including the actual offering documentation, business plan, economic model and other project specific documents), then the application receives a more in-depth review to determine if the package complies with the EB-5 requirements.¹²⁵ This is referred to as an “exemplar filing” or an “exemplar form I-526 petition”. If the exemplar is approved as part of the I-924 process (known as “project preapproval,”) the project level determination will generally be followed (“accorded deference”) by the USCIS adjudicators who will later review each of the individual investor’s I-526 petitions.¹²⁶

Project preapproval provides a marketing advantage to the Regional Center and developer. The investors gain the comfort of knowing that USCIS has scrutinized the project and issued a favorable determination concerning compliance with the Program’s requirements, especially the job creation methodology and the number of jobs to be created.

However, many Regional Center applicants choose to tie the I-924 application to a hypothetical project. The hypothetical project route saves time at this stage because the USCIS designation approval process is streamlined.¹²⁷ Furthermore, the exemplar filing with the I-924

¹²² As of April 30, 2014, the average processing time was 4.4 months, while the average processing time as of March 31, 2015 was 12.1 months.

https://egov.uscis.gov/cris/processingTimesDisplay.do;jsessionid=abcFE_Y8x6fBu8nY7FX1u

¹²³ May 2013 Policy Memorandum at page 14.

¹²⁴ May 2013 Policy Memorandum at page 14.

¹²⁵ The exemplar contains the same project level information (including the specific business plan, economic report, as well as transactional and investor documents) that would be included in the individual investor’s I-526 petition (but it does not include information specific to a particular investor, such as the source of funds).

¹²⁶ May 2013 Policy Memorandum at pages 14 and 15.

¹²⁷ However, the processing time for the I-924 designation with project preapproval for the Lightstone Regional Center approved on September 18, 2014 took approximately seven months from its application date of February 6, 2014. See Lightstone Regional Center designation letter. <http://lightstoneeb5.com/wp-content/uploads/sites/9/2014/10/Lightstone-NY-Regional-Center-Approval-Letter.pdf> As an alternative to an exemplar or hypothetical project, USCIS allows an I-924 application to be accompanied by an actual project but

delays the filing and processing of the individual investors' I-526 petitions. Also, in some cases, despite the project preapproval, USCIS does not accord deference to the project¹²⁸. For example, if, upon the filing of the I-526 petition by the individual investor, USCIS determines that there has been a material change in facts (such as changes to the business plan), it may decline to accord deference to the project despite the preapproval. Instead, USCIS will view the submission "de novo" based on the new facts. Thus, some developers choose not to devote the time and money to seek project preapproval.

The Lightstone New York Regional Center ("Lightstone Regional Center") is a recently designated developer "in-house" Regional Center for the Lightstone Group, a New York City based real estate developer ("Lightstone"). Its designation application includes an exemplar filing for its initial project, a mixed-use, primarily residential development in Brooklyn. The USCIS designation letter reveals details about the project, including the capital structure and number of jobs to be created, that would not otherwise be made publicly available by USCIS.

Many Regional Centers post a copy of the USCIS designation letter on their websites.¹²⁹ Although a designation letter issued in response to an application, coupled with an exemplar filing, provides information about the Regional Center's initial project, public information is not made readily available with respect to the Regional Center's future projects.¹³⁰

In the case of future projects, the Regional Center can decide, on a project-by-project basis, whether to pursue project preapproval. It can seek a preliminary determination of project preapproval by filing an amendment to the Form I-924 with an I-526 exemplar.¹³¹ The project preapproval is filed before the investors' file their I-526 petitions. Alternatively, project approval can be deferred, and sought when the first individual investor files his I-526 petition for the project.

Furthermore, the amount of information set forth by USCIS in project preapproval letters varies. For example, in 2008, the New York City Regional Center was approved and designated as a Regional Center, without an exemplar filing. However, in 2010, this Regional Center filed an amendment to its designation to seek project preapproval of the Atlantic Yards project in Brooklyn, New York.¹³² There, USCIS issued a letter approving the project but did not include any facts or details about the project, job creation or capital structure.

with less information than required for an exemplar. This type of filing could be accorded some deference (for example, with respect to the business plan), but not to the same extent as an exemplar filing.

http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED-EB5-QA_022614.pdf Question and Answer #8

¹²⁸ May 2013 Policy Memorandum at page 24.

¹²⁹ See, for example, the Regional Center designation letter for each of the following Regional Centers: CanAm, Silverstein and EB-5 Capital. Also, IIUSA has obtained a copy of all designation letters as of 2013 pursuant to a FOIA request it filed. www.iiusa.com

¹³⁰ Obviously in the case of a designation letter based on a hypothetical project, virtually no meaningful project information is revealed.

¹³¹ <http://www.uscis.gov/sites/default/files/files/form/i-924instr.pdf> at page 1, 2B.

¹³² <http://ebfive.files.wordpress.com/2013/05/new-york-city-rc.pdf> This heavily-publicized project received an EB-5 loan of \$228 million for Phase 1 from the New York City Regional Center. EB-5 loans of approximately \$249 million and \$100M are expected to be funded for Phase 2 of the project in two separate tranches. However, these two loans will be funded through a different Regional Center, the United States Immigration Fund New York Regional Center.

Thus, the type of project level information revealed in Lightstone Regional Center’s USCIS determination letter does not appear to be common.¹³³ If it were, we could have developed a more extensive and reliable database.

The main factors considered by USCIS in reviewing the Regional Center application include the geographic region covered by the Regional Center;¹³⁴ how the proposed activity will promote economic growth in that area; specific industry types for the projects to be sponsored; verifiable detail about how jobs will be created; and the specific type of economic model that will be utilized.¹³⁵

The USCIS does not delineate the specific services that must be provided by a Regional Center. Many Regional Centers are “full service”. They provide the following services: overseeing the marketing and solicitation of investors by migration agents and other brokers; obtaining subscription agreements and funds, as well as escrow agreements (if applicable) from the investors; overseeing immigration compliance, including coordination of the investors’ USCIS applications; monitoring direct jobs; tracking capital investment into the job-creating entity; and monitoring compliance with the construction spending and operating revenues that serve as the basis for the business plan and the economic impact report.¹³⁶ Either a third party Regional Center or a developer’s in-house Regional Center can provide these services.¹³⁷

Regional Center vs. NCE vs. JCE

The investor does not invest in the Regional Center.¹³⁸ Instead, he “associates” with the Regional Center by investing in a project that the Regional Center sponsors or arranges. Technically, the EB-5 investor invests in the NCE. That investment must be equity capital. Debt capital, such as a loan by the investor to the NCE, does not qualify.¹³⁹ In turn, the NCE must invest all of that capital in the JCE.¹⁴⁰

¹³³ Another example of a recent approval that provides substantial information about the project, including job creation estimates, relates to the amendment filed for the Golden Gate Global Regional Center. This involves project preapproval of a portion of the first phase of the multi-phased redevelopment of Candlestick Park in San Francisco by the public homebuilder Lennar Corp. This is discussed further in the Project Factors section [on page 39](#). Here is a link to the letter: http://sfbarc.com/wp-content/uploads/2014/01/Amended-Approval_San-Francisco-Bay-Area-Regional-Center_ID1031910162_RCW1126350317.pdf

¹³⁴ The geographic area must be contiguous. See Instructions to Application of Regional Center at page 1.

¹³⁵ Instructions to I-924 Form <http://www.uscis.gov/sites/default/files/files/form/i-924instr.pdf>. The industry types are referenced by the applicable NAICS industry code.

¹³⁶ See IIUSA Best Practices for EB-5 Regional Centers <http://iiusa.org/blog/wp-content/uploads/2013/11/IIUSA-Best-Practices-for-EB-5-Regional-Centers.pdf>; <https://iiusa.org/en/eb-5-regional-center-investment-program/>; also see <http://visaeb-5.com/for-developers-2/>

¹³⁷ The scope of services provided by a Regional Center that sponsors or hosts a project can vary widely.

¹³⁸ The Regional Center is typically structured as an LLC. However, the Regional Center is separate and distinct from its owner or owners. Also, it is not unusual for several Regional Centers to be owned by the same individuals or entity. For example, CanAm, American Life and USIF are entities that own and operate several Regional Centers. Part of the name of each of these Regional Centers includes the owner’s name. For simplicity, this paper interchangeably refers to the Regional Centers and its owners by one and the same name.

¹³⁹ 8 C.F.R. § 204.6(e). May 2013 Policy Memorandum at page 3.

¹⁴⁰ Matter of Izummi at page 179. As described in this section, if the investors’ capital is ultimately deployed as equity, rather than a loan, then the NCE and JCE could be the same entity. In that case, the immigrant investors usually invest directly in the entity, in which case the NCE and JCE are collapsed into a single entity.

However, the NCE's capital investment may be deployed as a loan or equity, even though the immigrant investor's investment must be only equity capital. It might seem contradictory that the NCE can use the EB-5 investor's capital to make a loan that the investors could not make directly. But this is analogous to investors in a private equity real estate debt fund; the fund deploys its investors' equity proceeds as the source of funds for a loan or other debt investment.¹⁴¹ This does not cause the individual investor's equity capital to be recharacterized as debt.

Loan model vs. equity model

Two basic investment approaches are available to invest the immigrant investor's equity capital in the project – the “loan model” and the “equity” model. Most EB-5 investments are structured under the loan model.

Under the loan model, all of the immigrant investor's capital is deployed by the NCE to the JCE as a loan.¹⁴² The Regional Center forms an NCE that makes a loan to the JCE. The loan could be secured by a first or junior mortgage against the property, secured by equity interests (mezzanine financing), or even unsecured.

Simply stated, the third-party Regional Center (or often its principals, affiliates or other related parties, referred to as “affiliates”) acts as a “middleman” between the investors and the developer JCE, utilizing the investors' capital as the loan proceeds.

At the loan closing, the JCE pays origination fees or points to the NCE or its affiliates. During the loan term, the JCE as borrower typically makes periodic interest payments. The periodic payments are equal to the total of the migration agent and other brokerage fees, a management fee to the NCE's manager and the interest component payable to the immigrant investors. Typically, this total amount is paid to the NCE which distributes the appropriate amount to the various parties. The total amount due from the JCE is typically expressed in the loan agreement (or note) as a single, lump sum amount payable in installments as interest. In addition, the NCE can generate an additional profit on the spread if the interest payment charged to the JCE is greater than the total of the interest rate and fees to be paid by the NCE. The entire principal amount is typically paid in one installment at loan maturity. A more detailed discussion of this topic is contained in the Capital Stack section of this paper.

Thus, the loan model involves a two-tier structure. The NCE and JCE are separate entities. The NCE is the lender and the JCE is the borrower. The investor's equity investment will be in the NCE, which uses the proceeds to invest in the JCE. As a lender, the NCE is a creditor, and does not have an equity interest in the JCE. A one-tier structure is not permitted or appropriate because the immigrant investor would then be contributing prohibited debt capital to the NCE-JCE.

Under the equity model, the EB-5 investors are directly or indirectly equity owners in the entity which owns the property and will create the jobs. The equity model can be a one-tier or two-tier structure. The immigrant investors can contribute equity capital directly to the entity that owns the property and will create the jobs. In that case, the NCE and JCE are one and the same entity. Alternatively, a two-tier structure can be employed. The investors can contribute equity capital to the NCE. The pooled capital would then be contributed as equity capital to the

¹⁴¹ See for example,

https://www.pregin.com/docs/newsletters/re/Pregin_RESL_Nov_2012_Growth_of_Real_Estate_Debt.pdf

¹⁴² See generally May 2013 Policy Memorandum at page 16.

JCE, with the investors owning equity in the JCE through the NCE. Apparently, the one-tier structure is more common for EB-5 investments utilizing the equity model.¹⁴³

In the one-tier structure, the immigrant investors are typically preferred equity owners of the NCE-JCE. In the two-tier structure, the NCE is a preferred equity owner of the JCE. The economics of the equity model investment often has similarities to the loan model, as will be discussed in the Capital Stack section.

The Regional Center and/or the NCE, on the one hand, and the project developer, on the other, determine whether the investment in the JCE will be structured as a loan or as equity, and negotiate the terms of that investment. The investment terms are reflected in the offering documents that are marketed to potential investors, who obviously weigh these terms in deciding in which project to invest.

Legal structure of the various entities

Although the Program does not require any specific type of legal entity, an NCE is typically formed as either a limited partnership (LP) or a limited liability company (LLC). Despite the LLC being the predominant form of entity ownership for commercial real estate projects in today's real estate market, the LP is the more typical entity structure for an NCE.¹⁴⁴ The main reason for this is due to an USCIS interpretation that specifically approves the LP format.¹⁴⁵ However, some NCEs are formed as LLCs because they are able to meet the same standard as an LP.¹⁴⁶

Thus, the EB-5 investors in the NCE are either limited partners in the LP or members of the LLC. Typically, a general partner (GP) manages the NCE if the NCE is an LP; or a manager manages the NCE if the NCE is an LLC. The GP or manager (referred to as "manager") is typically a principal of, or otherwise related to, the Regional Center (or the developer) and does not contribute any equity to the LP.¹⁴⁷ The manager is paid a management fee. The manager's duties include handling the daily affairs of the NCE (which are limited), coordinating between the Regional Center and the JCE, answering the investors' questions, communicating with the escrow, and taking care of other investor relations responsibilities.¹⁴⁸

¹⁴³ For example, the one-tier equity model structure is utilized by each of American Life Regional Center's investments referred to [on page 60](#), and the Jay Peak Resort's investment sponsored by the Vermont Regional Center referred to [on page 59](#) of this paper. Presumably, the two-tier structure would make equity model investments more administratively feasible for the developer, especially for large EB-5 capital infusions, because the developer would have investor relations with only one direct investor, the NCE, rather than with multiple individual investors. However, this is beyond the scope of this paper.

¹⁴⁴ In contrast, most Regional Centers are formed as limited liability companies. See the list of Regional Centers found on the USCIS website at <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

¹⁴⁵ 8 CFR 204.6(j)(5)(iii)

¹⁴⁶ See for example SLS Las Vegas, <http://www.adreamfund.cn/en-us/lasi.html>. Also note that the May 2013 Policy Memorandum implicitly permits an NCE to be an LLC. See the redemption example on page 5 of that Policy Memorandum that refers to an NCE's "limited partnership agreement or operating agreement".

¹⁴⁷ However, in a developer in-house Regional Center option, the manager typically contributes equity.

¹⁴⁸ A developer that operates or manages a private equity fund or REIT will have experience in handling investor relations. Thus, this may be a factor in the developer's willingness to form its own Regional Center.

Investor's capital investment must be "at risk" and sustained

The EB-5 investor's capital investment in the NCE (i.e., the \$500,000 or \$1,000,000 equity contribution) must be placed "at risk" for the purpose of generating a return. Thus, the investor can neither be guaranteed a return on any portion of his investment nor guaranteed the return of any portion of his capital investment. Otherwise, that portion of the investment is not deemed to be at risk, and does not constitute equity capital.¹⁴⁹ Thus, it does not qualify as an EB-5 contribution for purposes of the \$500,000 or \$1,000,000 requirement.

The May 2013 Policy Memorandum states that if the investor has the right, under the LP partnership agreement or LLC operating agreement, to demand that some portion of his capital be redeemed by the NCE, that portion is not deemed to be at risk.¹⁵⁰ This interpretation is consistent with the precedent decision, *Matter of Izummi*.

The NCE must invest all of the EB-5 proceeds in the JCE. The NCE may not use the proceeds for any other purpose, such as the payment to migration agents or reimbursement of costs or expenses to the Regional Center.¹⁵¹

Although the NCE cannot guaranty either the return of the investor's capital investment or the return of his capital investment, the repayment of the NCE's loan (principal and/or interest) by the JCE can be guaranteed by a third party. This is permitted even though the repayment of the loan in the debt context is essentially equivalent to the mandatory redemption of equity in the equity context. The USCIS "prohibitions" on guarantees and redemptions focus on agreements that run directly to the immigrant investors. The guaranty of the loan runs directly to the NCE.

The Lightstone Regional Center, referred to above, structured the EB-5 capital investment in the JCE as a mezzanine loan in the approximate amount of \$60 million. David Lichtenstein, a principal of Lightstone, is personally guaranteeing repayment of the loan by the JCE to the NCE.¹⁵² In contrast, if instead the NCE (or anyone else) guaranteed repayment of the immigrant investors' contributions or if the agreement provided for the redemption of the investors' equity interest in the NCE, this would violate the EB-5 "at-risk" rules, presumably resulting in the USCIS's denial of the application.¹⁵³

However, unlike the loan model, the opportunity to provide for the guaranty is not generally available in the case of the equity model. First, a "guaranty" of an owner's equity

¹⁴⁹ May 2013 Policy Memorandum at page 5; 8 C.F.R. section 204.6(j)(2); *Matter of Izummi*, at page 180-188

¹⁵⁰ The example involves an investor who has the right to demand a redemption, such as a "put" option. It does not address whether a redemption right (mandatory or optional) in favor of the NCE would violate the at-risk rules. Furthermore, the example in the Policy Memorandum involves the investor's right to demand a redemption after obtaining his conditional visa. It does not directly address related issues such as whether a redemption right exercisable after unconditional permanent residency (after adjudication of the I-829 petition) would violate the at-risk rules. By comparison, the requirement that the investor's equity investment be sustained applies only until the I-829 adjudication. Finally, it does not address whether a redemption right in the case of a two-tier equity model structure would violate the at-risk rules, that is, where the JCE might have a redemption right with respect to the NCE.

¹⁵¹ This is in contrast to the use of the administrative fees paid by the EB-5 investors. *Matter of Izzumi*; May 2013 Policy Memorandum at page 16.

¹⁵² See Lightstone's EB-5 website: www.lightstoneeb5.com. This structure was discussed by telephone with Meir Milgraum of the Lightstone Group on November 20, 2014.

¹⁵³ USCIS determinations on individual applications are not binding on third parties and do not serve as precedent.

investment is typically antithetical to the concept of risk equity. Secondly, in the case of the more common one-tier structure, the investors directly own the equity interests, with no intervening entity as in the case of the two-tier loan model. Thus, a guaranty or redemption would be in favor of the investor's direct interest in the one-tier equity model. Accordingly, this would violate the at-risk rules. If a two-tiered structure equity model were utilized, then arguably a redemption right in favor of the NCE, or a redemption right or obligation by the JCE, might be permissible because the right would not run directly to the individual investors. However, neither the May 2013 Policy Memorandum nor USCIS regulations addresses this.

In addition to the requirement that the investor's equity capital be invested at risk, the investment in the NCE must be continuously maintained throughout the period until the I-829 petition is approved.¹⁵⁴ This requirement that the investment be "sustained" applies whether the investment is made under the loan model or the equity model.

Despite the at-risk rules and the sustained investment requirement, the NCE can make periodic distributions to the immigrant investor before the I-829 petition is adjudicated, so long as the distribution reflects a return on the investment, such as a profits interest, rather than a return of any portion of the investor's capital, and the distribution is not guaranteed to the investor.¹⁵⁵ However, no distribution of the investor's capital can be made by the NCE to the investors until after the I-829 petition is adjudicated.¹⁵⁶ An earlier distribution would violate the at-risk rules and sustained investment requirement, resulting in the re-characterization of the capital as debt not equity.

Generally, the investment by the investor in the NCE must be paid in full by the investor prior to the filing of the I-526 petition. However, the payment may be deposited into, and held in, an escrow account until the investor has obtained a conditional green card, depending on the terms of the escrow.¹⁵⁷

Factors that Make Certain Projects More Suitable for EB-5 Capital Investment ("Project Factors")

EB-5 capital is available to fund virtually any commercial real estate asset or property class including hotels, casinos, assisted living facilities, hospitals, educational institutions, industrial, office, retail, residential (primarily multifamily), and mixed use.¹⁵⁸

¹⁵⁴ See 8 C.F.R. section 216.6(a)(iii). May 2013 Policy Memorandum at page 21

¹⁵⁵ May 2013 Policy Memorandum at pages 5 and 6

¹⁵⁶ May 2013 Policy Memorandum at page 6

¹⁵⁷ May 2013 Policy Memorandum at page 6

¹⁵⁸ NES Financial is a private company that provides escrow and fund administration for more than 200 EB-5 projects. NES collected data on the product distribution for these projects from 2010 through 2013. 45% of the total EB-5 capital raised for these projects was in the resort, casino or hotel category, and 20% was directed to mixed use/office. NES Financial, *EB-5 Market Data and Industry Trends*, April 2014. However, the Select Large-Scale Projects Database attached to this paper illustrates the wider array of large-scale projects that are utilizing EB-5 capital. This could be attributed, in part, to the 2009 Neufeld Memoranda that liberalized the guidelines for construction activity jobs that count towards job creation. See footnote 56. Even a ferris wheel project is seeking to tap EB-5 capital. The CanAm Regional Center is seeking to raise \$150 million of EB-5 capital to fund The New York Wheel, to be built on the Staten Island waterfront that would become the world's tallest ferris wheel.. http://www.silive.com/news/index.ssf/2014/07/newn_york_wheel_gets_financial.html

Nevertheless, certain projects are more suitable for EB-5 capital because they are more readily able to satisfy the job-creation and other EB-5 requirements, as well as to meet the market preferences of foreign investors. The EB-5 investor's goal to obtain the visa and to receive the safe return of his capital investment drives these factors.

Job creation

As previously discussed in the EB-5 Program Overview, job creation is the most important factor. The total number of jobs that the project will create determines the maximum amount of EB-5 capital potentially available to fund a project.¹⁵⁹ Furthermore, if the project does not create sufficient jobs to support the visa petitions filed by the individual investors, then obviously the essential purpose for the filing fails.

Construction activity jobs provide most, if not all, of the jobs that EB-5 projects rely upon to satisfy USCIS requirements. The amount of the project's construction expenditures is the main driver of construction jobs for these purposes. Obviously, larger projects typically involve higher construction costs and thus result in more jobs. Larger projects with construction expected to last at least two years create even more jobs because in those cases direct jobs also count. Moreover, even if the project does not last two years, the indirect jobs count. Consequently, to be conservative, many capital raises for EB-5 projects are sized based on only indirect jobs. In those cases, direct jobs and operation jobs might be counted towards the job cushion.¹⁶⁰ Projects that can demonstrate a larger job cushion (the creation of more jobs than necessary to support the EB-5 capital raise, as described in the EB-5 Capital Size section of this paper) tend to be more attractive to investors.

Only certain types of projects are likely to create many direct operations jobs due to the requirement that the workers be directly employed by the JCE or that the project's operating agreements meet EB-5 program requirements. Hotels, casinos and resorts can create many direct jobs. These projects have accounted for a sizeable number of large EB-5 projects. Examples of very large recent EB-5 capital raises for hotel construction include the SLS Las Vegas resort, the Four Seasons hotel and luxury condominium in New York City, and the Los Angeles Marriot project.¹⁶¹ Nevertheless, some of these projects do not rely on these types of jobs in sizing the EB-5 capital raise as they expect to create a sufficient number of indirect jobs to support the immigrants' petitions.

Infrastructure projects

A major hurdle confronting many large-scale development projects is funding the installation of horizontal infrastructure costs. Until this work is completed, vertical construction cannot commence.¹⁶² This poses an even greater challenge for megaprojects with particularly

¹⁵⁹ See the discussion in the Capital Stack section [on page 45](#).

¹⁶⁰ http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED-EB5-QA_022614.pdf See Q&A 6 re economically direct jobs.

¹⁶¹ These projects are included in the Select Large- Scale Projects Database in [Appendix B](#) - Select Large-Scale Projects Database. Creating indirect construction activity jobs is easier than creating operations jobs because construction jobs are based on construction expenditures, which are more controllable by the developer than the less predictable revenues to be generated by a project.

¹⁶² See generally <http://www.epa.gov/smartgrowth/pdf/2013-0122-TOD-infrastructure-financing-report.pdf>.

substantial infrastructure installation needs before the start of the first phase of building construction.

Although public funding is often available to finance part of this infrastructure cost, funding the balance could be a challenge, even for major developers. Private debt source providers are generally unwilling to provide this funding, and those who are willing demand a substantial premium. Significant capital outlays are required to be outstanding before the project will generate a cash flow sufficient to support repayment of the debt. Thus, this capital deficit can delay or prevent the start of a project.

The patient capital of EB-5 investors can be a perfect funding solution.¹⁶³ The typical EB-5 loan has a term of at least 5 years, sometimes longer and frequently with options to extend, with payments of interest only until maturity.¹⁶⁴

The funding of infrastructure costs satisfies the objectives of the immigrant investor, the developer and USCIS. First, given that the infrastructure installation represents the first step in the construction and development process, this maximizes the likelihood that the project will commence and the expenditures that qualify as job creation costs will be spent. Second, this provides the “seed capital” necessary to enable the project to proceed to the vertical construction stage, and generate the revenues necessary to fund the EB-5 loan’s repayment and to trigger the funding by public and other capital sources. Depending upon the number of jobs required to meet the USCIS requirements, the infrastructure costs alone might be sufficient; if not, this infrastructure installation “paves” the way for necessary vertical work to proceed.

The Related Companies’ Hudson Yards project and Lennar’s Shipyard project are example of megaprojects where the EB-5 capital is providing funding for the essential infrastructure component.¹⁶⁵

While private developers are utilizing EB-5 capital funds to install infrastructure as the initial phase of their development projects, local governments are using this type of alternative capital source for public projects whose sole purpose is to build infrastructure to serve their communities or regions, rather than as a phase of a building development project. For example, the newly formed NY Goldwater Regional Center is seeking to raise up to \$1 billion towards an ongoing project to reconstruct the Tappan Zee Bridge spanning the Hudson River 40 miles north of New York City and estimated to take at least 5 years to build. The more than 38,000 jobs estimated to be created by that project illustrates the job creation capability of large public infrastructure that is likely to continue to attract EB-5 capital investors.¹⁶⁶ This is discussed

¹⁶³ The funding of the loan might be delayed due to the required escrow of the deposit pending the investors’ I-526 approvals. If that amount of funds were necessary to proceed with the project, the developer would seek to rely upon alternate funding sources for the infrastructure, such as “self funding” the required equity or obtaining a bridge loan. The bridge loan route is likely to cost more than the EB-5 funding but it should be outstanding only for the period until the escrow conditions are satisfied. Escrow and bridge financing are discussed starting [on page 60](#).

¹⁶⁴ The terms of EB-5 mezz loans are discussed starting [on page 53](#).

¹⁶⁵ Hudson Yards is discussed [on page 40](#). Shipyard is discussed [on page 38](#).

¹⁶⁶ <http://www.nygrc.com/>; http://articles.philly.com/2014-12-10/business/56884468_1_new-bridge-tappan-zee-chinese-investors;
http://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=zh-CN&u=http://www.ucamyim.com/zidingyi/meiguo3/2014/0929/412.html%3F1412042286&usg=ALkJrhi4enH-Hx5NI8G1FABHLTSfFaMoog;

further in the “A different type of “bridge” financing: EB-5 gap financing utilized for public infrastructure projects” section of the Paper beginning [on page 64](#).

Similarly, EB-5 capital is being used to fund private infrastructure projects without a separate building development component. For example, “All Aboard Florida” is a high speed railway which will operate along the Florida East Coast Railway and connect Orlando with Miami. Unlike all other intercity rail in the United State, the new service will be privately owned and operated. CanAm’s Florida Regional Center will loan \$300 million of EB-5 capital to fund a portion of the total project costs of more than \$1.3 billion. Almost 8,000 jobs are estimated to be created by this project.¹⁶⁷

Status of property – “shovel ready”

The goal of the EB-5 investor is to obtain a visa as quickly as possible with the least amount of financial risk. To obtain his I-829 approval and permanent green card, the investor must demonstrate that the required number of jobs has been created, generally within two years and six months from obtaining the I-526 approval.¹⁶⁸ Thus, it is important to time the capital raise so that the filing of the investor’s I-526 petition is properly synchronized with the expected time frame within which jobs are likely to be created. This will increase the likelihood that the investor will be able to demonstrate at the I-829 petition stage that the jobs have been created or will be created within the required time frame.

To the extent the economic analysis is based on total construction expenditures, the investor must show that the actual expenditures have been made in accordance with the plan. If project commencement is delayed, the project expenditures will likewise be delayed, thereby jeopardizing the I-829 petition approval. Accordingly, the quicker that the project starts and the funds are spent to complete the project, the more likely the I-829 petition requirements will be met for removal of the green card conditions and issuance of the immigrant investor’s permanent green card.¹⁶⁹

Furthermore, the EB-5 investor’s investment motive makes him more risk adverse than the typical US real estate investor who will be seeking a higher rate of return. The foreign investor also tends to be less familiar with the US market generally, as well as with the particular property and its local market. The immigrant investor has virtually no upside potential in the typical EB-5 structure. Thus, the investor negatively views any contingencies or uncertainties that may cause the construction’s commencement to be delayed because that may jeopardize his ability to seek permanent residency.

¹⁶⁷ <http://www.eb5visa-program.com/all-aboard-florida-project.php> The parent of the entity which owns the project, Florida East Coast Industries, LLC, is owned by certain private equity funds managed by affiliates of Fortress Investment Group, LLC (“Fortress”).

¹⁶⁸ Neufeld Memorandum June 17, 2009. 8 C.F.R. § 216.6(c)(1)(iv). May 2013 Policy Memorandum at page 22. The regulations require that the investor must establish that it is more likely than not that the jobs will be created “within a reasonable time”. 8 C.F.R. § 216.6(c)(1)(iv).

¹⁶⁹ In 2011, USCIS proposed regulations that would accelerate the processing time for “shovel-ready” projects that are fully developed with participating investors who are ready to file I-526 petitions. These regulations were never finalized.

<http://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Operartional%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf>

Given that many investment opportunities are currently available to an EB-5 investor, the investor tends to be inclined to pursue those projects that are less likely to face delays. Thus, investors disfavor projects that are exposed to entitlement risk, title-closing risk, financing risk or environmental risk. Accordingly, EB-5 investors prefer to invest in projects that have either commenced construction or are ready to start construction, for example, with building permits already issued.

The number of projects available to EB-5 investors is expanding as more developers seek to take advantage of this valuable financing tool. Thus, these investors have more opportunities to invest in projects where the land is already owned by the developer, fully entitled and requires no environmental remediation.¹⁷⁰ Additionally, depending on the circumstances, even if the developer controls the property – by a purchase and sale contract or an option – but does not own fee title to the property, this might be viewed negatively due to the closing date’s uncertainty that may result in a construction delay.

Thus, it is preferable that the developer takes title to the property, obtains all entitlements and resolves environmental matters before the EB-5 investment must be funded. Even if resolution of these issues is a condition precedent to the EB-5 investment, the project presumably will incur less investor resistance if these matters are resolved before marketing commences, to avoid the risk that these issues might cause investors to shift their focus to another investment opportunity that does not pose the same risks.

However, the USCIS’ liberal interpretation of bridge financing expressed in its 2013 Policy Memorandum makes the coordination of timing of the EB-5 capital raise and the filing of the I-526 petitions less critical in relation to when the jobs will be created. Under the new bridge financing guidelines discussed in the Bridge Financing section on page 62, jobs created before the EB-5 capital is invested or even contemplated can be credited to the EB-5 investors, so long as the EB-5 capital replaces short-term temporary financing which would subsequently be replaced.¹⁷¹

An example of a project obviously not yet ripe for marketing to EB-5 investors involves China City of America, a proposed project to be built in the Catskills region of New York. It has been described as “Disney-like but with gambling”.¹⁷²

A Chinese émigré, who lives on Long Island, is developing China City. The original plan, filed in 2012, called for a \$6 billion project to be constructed on 2,200 acres. In 2014, after years of local zoning and environmental opposition, the developer divided the project into three phases, with the first phase to consist of a college, as well as student and faculty housing on 575 acres of development.¹⁷³ Reportedly, the project aims to raise \$60 million of EB-5 capital, with the balance of the funding to come from a loan and private equity. The Regional Center application has been pending with USCIS since 2011.¹⁷⁴ Apparently, the developer has not yet

¹⁷⁰ On the other hand, environmental remediation costs might qualify as job creation costs. The developer might wish to utilize this work to commence the project from an EB-5 perspective particularly if this work is ready to commence.

¹⁷¹ May 2013 Policy Memorandum at pages 15 and 16

¹⁷² <http://commercialobserver.com/2014/09/eb-5-ambitious-china-city-project-sits-in-limbo/>

¹⁷³ http://www.washingtonpost.com/business/skepticism-surrounds-china-city-plan-for-upstate-new-york/2014/01/19/dac079de-816e-11e3-8099-9181471f7aaf_story.html

¹⁷⁴ <http://www.chinacityofamerica.com/>

solicited investors, due to either the lack of a USCIS designation or the lack of entitlements to build any portion of the project.

Location of property and type of developers

Until recently, most projects were developed in less urbanized areas by smaller developers. Few large real estate developers utilized EB-5 capital. However, since the Great Recession, more of the larger real estate developers based in major cities are participating in the Program. This trend represents a marked change from the early years of the Program and is likely to continue.¹⁷⁵

Increasingly, EB-5 investors tend to prefer the Gateway cities,¹⁷⁶ rather than rural areas, or urban areas in secondary or tertiary markets. They also tend to prefer developers with a successful track record in developing real estate of the same type that is the subject of the potential investment. Arguably, the immigrant investors' general lack of familiarity with the US real estate market and their awareness of the recent scandals involving small developers who obtained EB-5 capital can account for this preference. Major developers likely will have greater experience, staff and capital sources to perform thorough due diligence and market analysis of the project, to obtain commitments from senior lenders and preferred equity sources, as well as the ability to complete the project on budget and on time. A track record of previous EB-5 projects might be helpful as a marketing tool to EB-5 investors. However, a developer's financial strength and demonstrated ability to build large projects is presumably more important to attract many investors, even if the previous projects did not include an EB-5 capital component.¹⁷⁷

Several reasons could support this preference. First, many immigrant investors are not familiar with any geographic areas in the US. However, if they are familiar with any areas, those are likely to include the areas that receive the most publicity and news attention, such as New York City, Los Angeles, Las Vegas and Washington D.C.¹⁷⁸ Second, large projects will create more jobs that count for EB-5 purposes. Third, major developers with successful track records are more likely to complete the projects and thus, not only generate the jobs necessary to support the visa, but also to generate funds from the project available to repay the investors.

Although, as stated above, the long construction period of large-scale projects helps create qualifying EB-5 jobs, these projects also require many capital sources, particularly due to the astronomically high capital costs and the delay in income production. Thus, the developers of these projects seek EB-5 capital as a patient funding source.¹⁷⁹

¹⁷⁵ By contrast, as of June 2004, no investors in an EB-5 project located in New York State had achieved permanent resident status. GAO Report, Table 4, at page 22. <http://www.gao.gov/new.items/d05256.pdf>

¹⁷⁶ Gateway cities include New York City, Boston, Washington, D.C., Miami, Los Angeles, and San Francisco.

¹⁷⁷ If the Regional Center is a developer in-house Regional Center, the developer's track record in raising EB-5 or other capital may be a relevant factor.

¹⁷⁸ For example, the website of the Chinese migration agent for the successful United State Immigration Fund New York Regional Center features videos of landmark NYC sights and famous American songs about New York City, including Frank Sinatra's version of the song "New York, New York". <http://www.qiaowai.net/zhuanti/bulaien/>

¹⁷⁹ For example, Jeff Blau, chief executive of the Related Companies ("Related") is quoted in a recent Wall Street Journal article about Related's EB-5 capital raise of at least \$600 million to fund part of the \$20 billion Hudson Yards project in New York City. The funds will be used towards building a platform over the working rail yard on which the foundation for the 17 million square feet of buildings will sit. Mr. Blau stated that the capital served as

A few examples of the approximate amount of pending or completed EB-5 capital raises for New York City projects of major developers commenced after the Great Recession include:

<u>Project Name</u>	<u>Developer</u> ¹⁸⁰	<u>EB-5 capital</u>
Hudson Yards	Related Companies	\$600 million
Atlantic Yards (Barclays Center) ¹⁸¹	Greenland Forest City	\$577 million
Four Seasons Downtown	Silverstein	\$250 million
701 TSQ	Witkoff Group	\$200 million
City Point	Acadia Realty	\$200 million
W57	Durst Organization	\$180 million
101 Tribeca	Witkoff/Fisher Bros.	\$175 million
International Gem Tower	Extell	\$ 75 million

The Database set forth in [Appendix B](#) - Select Large-Scale Projects Database contains additional information about some of these projects and other large EB-5 projects in New York City, as well as projects in some other major cities.¹⁸²

Most of the large-scale EB-5 projects are income producing, presumably due to an abundance of caution that sale of the project would generate proceeds to be paid to the NCE that may jeopardize whether the investor’s capital remained fully “at risk” and continuously sustained until the I-829 petitions were outstanding. However, more recently, “for sale” development projects have utilized EB-5 capital. Some recent examples of large projects that include a substantial, if not exclusive, for-sale component, include Lennar Corporation’s master planned development project in San Francisco with more than 12,000 homes to be built, Silverstein’s luxury condominium portion of its Four Seasons project in Manhattan, as well as Fisher Brothers’ and the Witkoff Group’s luxury condominium, 101 Tribeca in Manhattan.¹⁸³

“a very critical part of the puzzle” to fund the project. Further, he pointed out that “[r]aising the money through traditional means would have been difficult because of the years long gap between when the platform over the 13-acre train yard is started and when the buildings are completed and income starts rolling in.”

http://www.wsj.com/articles/hot-source-of-real-estate-financing-green-card-seekers-1418146394?mod=residential_real_estate “Hot Source of Property Financing: Visa Seekers Developers Raise Millions for U.S. Projects Through EB-5 Visa Program” by Eliot Brown, December 9, 2014;
<http://www.hudsonyardsnewyork.com/the-story/building-hudson-yards>;
<http://www.hudsonyardsnewyork.com/article-detail/construction-begins-on-hudson-yards-eastern-platform-135>

¹⁸⁰ This list names the major developer involved. Some of the projects have more than one developer partner.

¹⁸¹ As mentioned in footnote [6](#), Greenland has acquired a 70% ownership stake in the joint venture that is redeveloping the Atlantic Yards project in Brooklyn. Greenland Forest City Partners is the name of the new development company. The EB-5 investors who are from China may favor this project due to the involvement of a Chinese development conglomerate as majority owner.

¹⁸² “Brand name” operators or tenants might also be an inducement. Thus, several recent and pending projects, such as the Four Seasons in Tribeca, and the LA Marriot in downtown Los Angeles, provide support for this.

¹⁸³ These projects are included in the Select Large-Scale Projects Database in Appendix B - Select Large-Scale Projects Database. The condominium portion of the Four Seasons project might be unrelated to the EB-5 capital raised for the hotel component.

Track record of Regional Center

Regional Centers with a successful track record of raising substantial amounts of EB-5 capital and completing projects are more likely than new Regional Centers to attract investors' capital. Ideally, the Regional Center will have a track record of multiple successful projects with I-526 approvals, I-829 approvals and repayment of the investors' capital.

However, not many EB-5 projects have reached the stage where the investors have obtained I-829 approval. A combination of factors accounts for this. The time frame from the solicitation of EB-5 investors through the immigration process resulting in the I-829 approval and issuance of the permanent visa usually takes at least four years.¹⁸⁴ Given that few Regional Centers existed prior to 2009, insufficient time has passed for many projects to reach the approval stage for an I-829 petition. Even fewer projects have resulted in the investors' successful exit from the project resulting in recovery of their investment and return because the investors' investment must be sustained in the project through the I-829 approval.¹⁸⁵

Two notable exceptions to the investors' preference for projects affiliated with more seasoned Regional Centers indicate that while an experienced Regional Center is a factor, this has been overcome by some less established Regional Centers.

First, the US Immigration Fund NY Regional Center ("USIF") was not designated as a Regional Center until 2010. However, this third party Regional Center has quickly emerged as one of the most favored by major developers to sponsor their large-scale projects, especially in New York City. USIF has sponsored numerous projects with an EB-5 capital component exceeding \$100 million, including nearly \$350 million for tranches 2 and 3 of Atlantic Yards, the joint venture between Forest City Ratner and Greenland.¹⁸⁶

In addition, the Golden Gate Global Regional Center (GGG) based in San Francisco, is a third party Regional Center designated in 2009 that did not even include real estate as a covered industry code in its original designation and does not have a substantial track record. Yet GGG has become the sponsor of a multi-phased redevelopment project in San Francisco by one of this country's largest public homebuilders, the Lennar Corporation ("Lennar"). GGG has raised over \$200 million of EB-5 capital for this project that includes more than 12,000 homes to be built on the former site of the NFL's San Francisco 49ers stadium and the Naval Shipyard.¹⁸⁷ The phenomenal increase in the number of approved Regional Centers that have sponsored major transactions over the past five years suggests that a lack of a track record is not a major deterrent for the many entrepreneurs who view the establishment of a Regional Center as an innovative business opportunity.

Second, many investors are willing to invest in projects sponsored by a developer's in-house Regional Center, particularly where the developer is a major developer. Since 2008,

¹⁸⁴ See the explanation in the Immigration Process section [on page 17](#).

¹⁸⁵ See [Appendix C](#) - Assorted Regional Centers Database, the Assorted Regional Centers Database, some of which have sponsored projects that have resulted in the investors' successful exit. In September 2014, the Can Am Regional Center repaid \$122 million to investors, representing the largest EB-5 return of capital in history. <https://globenewswire.com/news-release/2014/10/30/677925/10105360/en/CanAm-Enterprises-Announces-the-Largest-EB-5-Project-Repayment-to-Date-Principal-repaid-to-244-investors-in-full-and-on-time.html?print=1n>

¹⁸⁶ <http://visaeb-5.com/> Also see the Select Large-Scale Projects Database in Appendix B - Select Large-Scale Projects Database.

¹⁸⁷ <http://www.sfbarc.com/projects/hunters-point-shipyard/> Also, see the Select Large-Scale Projects Database in Appendix B - Select Large-Scale Projects Database.

several major developers have formed “in-house” Regional Centers that have successfully accessed inexpensive EB-5 capital and bypassed an existing Regional Center as middleman. The developer is able to convince those investors to focus on the developer’s record of developing and completing large projects.¹⁸⁸ The developer must also demonstrate its ability to raise capital overseas through a migration agent network or other arrangement.

Attached as [Appendix C](#) - Assorted Regional Centers Database is a database of some of the well-established, successful Regional Centers, all but one of which is a third party Regional Center (the “Assorted Regional Center Database”). Key data is included, such as the sponsored Project’s EB-5 capital size, immigration petition approvals, and investors’ successful exit, if any.

Government involvement

Foreign investors tend to prefer projects that have government funding and support. This can take various forms including political endorsement, financial support, subsidies, or tax incentives. Many foreign investors respect the government’s judgment, and believe that government support increases the likelihood that the project will be successful.

However, it is ironic that some of the most noteworthy recent EB-5 failures have involved projects supported by government officials. The “Chicago Convention Center”, involved a project with nearly 300 EB-5 investors. Political leaders strongly endorsed that project, and even made selling trips to China.¹⁸⁹ The City of New Orleans Regional Center sponsored a project with operators (hired by the former mayor) who defrauded the investors.¹⁹⁰ The South Dakota Meat Packers’ plant project, sponsored by the South Dakota Regional Center, filed for bankruptcy, despite substantial government financial support.¹⁹¹

In response to these incidents, at least one state – South Dakota - has proposed legislation to prohibit any State or local government involvement in the EB-5 program.¹⁹² Thus, one might be inclined to conclude that government support will play a lesser role in an immigrant’s decision to invest in a particular EB-5 project.

However, recent projects suggest the contrary. For example, the previously described redevelopment of Candlestick Park involves a public-private partnership between the City of San Francisco and Lennar. This project finally started in 2013 after years of planning and development, dating back to 1999 when the City designated Lennar as the master developer. Willie Brown, the former Mayor of San Francisco, is one of the principals of GGG, the third party Regional Center sponsoring the project.¹⁹³

¹⁸⁸ See the discussion in the Capital Stack section [on page 55](#) regarding potential conflicts and the lesser alignment of interest that exists between the EB-5 investors and a developer in-house Regional Center.

¹⁸⁹ This scandal was featured in Fortune Magazine’s recent feature article regarding EB-5.

<http://fortune.com/2014/07/24/immigration-eb-5-visa-for-sale/>

¹⁹⁰ <http://www.wvltv.com/story/news/local/nagin-trial/2014/09/03/14573278/>

¹⁹¹ This beef packer’s scandal played a major role in the 2014 U.S. Senate campaign of former Governor Mike Rounds. Shortly after state aid was granted to the plant, the Governor’s former cabinet secretary obtained employment with one of the plant’s investors. <http://www.washingtonpost.com/blogs/post-politics/wp/2014/10/22/new-development-in-in-scandal-dogging-mike-rounds-could-spell-more-trouble/>

¹⁹² <http://legis.sd.gov/docs/legsession/2014/Bills/HB1176P.pdf>;

http://www.yankton.net/community/article_8f1388c2-8d76-11e4-bb4c-27bc51e4ac4c.html

¹⁹³ <http://www.sfbarc.com/projects/hunters-point-shipyard/>

Virtually all of the large-scale projects in New York involve a public-private partnership where the local government is providing a combination of real property tax abatements, subsidies and grants. For example, Related's Hudson Yards exemplifies a very strong public-private partnership for one of the largest mixed-use projects in the United States, if not the world.¹⁹⁴ When completed, it will have more than 17 million square feet of commercial and residential space, as well as 14 acres of public open space. The New York City Industrial Development Agency's grant of approximately \$510 million in property tax relief reflects just one aspect of the City's support of the project.¹⁹⁵

Furthermore, local governments are utilizing EB-5 capital to fund their own large-scale infrastructure projects for the construction of bridges, highways, convention centers and other public purposes. For example, the EB-5 capital component for the reconstruction of the Tappan Zee Bridge may approach \$1 billion. The EB-5 capital component for the construction of the link of the Pennsylvania Turnpike to I-95 has reached \$200 million.¹⁹⁶

Location in a TEA

To attract immigrant investors, a project must be located in a TEA; otherwise, it will not be competitive with the vast majority of projects that are so located. Of course, investors favor projects within a TEA because this limits their financial risk to \$500,000 (rather than \$1,000,000), since they are investing merely to satisfy a visa requirement rather than to make a meaningful financial return on their investment. As stated in the Overview section above, meeting the TEA standard is not difficult for most projects. Accordingly, virtually any EB-5 project will be located in a TEA. Thus, this factor does not serve to distinguish one project from another in the eyes of the investor.

The President of the third party Regional Center is a real estate lawyer who represents Lennar. <http://www.sfbarc.com/our-company/our-team/>. Similarly, Charles Gargano, the Executive Director of USIF, is the former Chairman of New York State's Empire State Development Corporation ("ESDC") and former U.S. Ambassador to Trinidad and Tobago. The ESDC is the chief economic development agency that oversees projects such as Atlantic Yards. <http://www.marketwired.com/press-release/us-immigration-fund-appoints-ambassador-charles-gargano-as-executive-director-1892735.htm>

¹⁹⁴ <http://www.hydc.org/html/project/rezoning.shtml>

¹⁹⁵ <http://urbanland.uli.org/planning-design/hudson-yards-rises-rails> ; <http://fall.uli.org/session/hudson-yards/>; <http://www.bloomberg.com/news/2014-03-19/new-york-s-hudson-yards-starts-next-phase-as-deck-begins.html>

¹⁹⁶ http://articles.philly.com/2014-12-10/business/56884468_1_new-bridge-tappan-zee-chinese-investors; http://articles.philly.com/2014-12-01/business/56586514_1_federal-immigrant-investor-program-chinese-investors-delaware-valley-regional-center See the further discussion of this topic starting [on page 64](#).

III CAPITAL STACK

EB-5 capital does not constitute a particular type of capital. It refers to the investors' equity contributions to the NCE that in turn is invested by the NCE in the JCE for use in the project.¹⁹⁷ These EB-5 proceeds can fill any space in the JCE's capital stack.¹⁹⁸

EB-5 capital is remarkably flexible as a capital source. The amount can represent as little as 1% of the total project costs¹⁹⁹ to as much as 100% of the total project costs. The nature of the capital can be debt or equity. It can be any specific type of debt or equity. It can be secured by collateral or unsecured. It can contain virtually any features, with few limitations or restrictions imposed by the EB-5 Program.²⁰⁰

The capital structure for an EB-5 project, just as that for a conventional project, varies from deal to deal. However, a review of large development projects involving substantial capital raises unveils common aspects in EB-5 capital stacks.²⁰¹ Relevant examples are included in this discussion.

The capital stack incorporated into recent EB-5 projects contains similarities and differences with the stack typically encountered in conventional real estate projects. Thus, first we will provide a basic description of the capital stack in a conventional real estate project. Then, we carefully examine how EB-5 capital can be integrated into real estate projects and the various issues raised thereby.

Conventional Projects - Summary background of mezzanine financing and preferred equity in conventional real estate projects

A conventional real estate project (without EB-5 capital) can be financed in several ways. A very basic description of a typical project's capital structure follows. The development entity that owns and operates the property obtains a construction loan to finance all, or a substantial part, of the construction costs. In the case of an income-producing property, the construction loan term is typically the anticipated construction period plus the estimated period for the project to achieve a stabilized cash flow. Thus, the term varies depending on various factors that affect the construction and stabilization periods. The monthly payments under a construction loan are typically interest only (with no principal amortization) at a per annum rate equal to a spread over a key benchmark interest rate, such as Libor. After completion of the construction and

¹⁹⁷ In some cases where EB-5 capital is deployed as an equity investment instead of a loan, the NCE may also be the JCE, in which case the investors invest directly in the JCE. However, this paper generally refers to the NCE as separate from the JCE.

¹⁹⁸ By contrast, the capital stack of the NCE is very simple: 100% of the capital is the equity provided by the EB-5 investors, which is \$500,000 per investor if the project is located in a TEA; otherwise, \$1,000,000 per investor is required.

¹⁹⁹ The total project costs of a real estate development, whether or not it involves EB-5 capital, include the land acquisition costs, the hard costs and soft costs related to construction and development.

²⁰⁰ The most important EB-5 restrictions are that the investment be "at risk" and be sustained throughout the immigration process. See May 2013 Policy Memorandum at pages 5 and 6.

²⁰¹ The paper will refer to these structures and characteristics as typical but this is arguably an overgeneralization and likely to change with the times and the market. For example, until recently, it was common for EB-5 capital to represent more than 50%, and in some cases, 100% of the capital stack.

stabilization of the income (in the case of an income-producing property), the development entity typically obtains a replacement permanent loan to refinance and pay off the construction loan. The permanent loan is often a fixed-interest rate loan with principal amortization. The term of the permanent loan is generally 5 to 10 years. The construction loan, and the permanent loan that refinances it, are typically senior mortgage loans with the borrower granting to the senior lender a first mortgage lien against the property.

Until the mid-2000s, many senior mortgage lenders were willing to lend as much as 90% of a property's total market value, especially for a property that already was developed. However, in today's market, senior lenders are generally only willing to lend in a range from 50% to 70% of the total project costs. The lender obtains a first lien against the property. Lenders demand that the developer invest some equity to evidence a financial stake in the project ("skin in the game"). The amount of developer equity required varies by lender, but generally ranges from 5% to 10%. This leaves a gap somewhere in the range of 20% to 45% of the capital stack. The obvious choice to bridge the gap would be a second mortgage loan from another lender. Although second mortgages were sometimes utilized in the past, today most senior lenders prohibit them.²⁰² Thus, capital sources have developed to satisfy the demand for more leverage by the developer without being characterized as mortgage debt. In conventional commercial real estate deals, mezzanine (mezz) debt or preferred equity fills this gap.²⁰³

Conventional mezz debt

In a senior mortgage loan, the property owner is the mortgage borrower. The collateral for the loan is the mortgage borrower's direct ownership of the property. Mezz debt is a loan secured by the mezz borrower's equity in another entity, and not secured by the property.

If the property owner (mortgage borrower) desires mezz financing, the senior mortgage lender typically requires that a special purpose entity (SPE) be created to serve as the mezz borrower that will own the equity interests in the property owner. The mezz loan is funded to the mezz borrower SPE. The collateral is the mezz borrower's equity interest in the property owner.²⁰⁴

²⁰² The national credit rating agencies require that any mortgage included in a commercial securitized loan offering prohibit the mortgage borrower from incurring any additional (or junior) mortgage debt. Rubin, Paul. 2009. "Strategic Thinking for the Mezzanine Lender" *American Bankruptcy Institute Journal* 28:8, 422-43, 88. Mezz debt is not considered mortgage debt.

²⁰³ "Mezzanine financing" often refers to both mezzanine debt and preferred equity. For simplicity, this paper refers to the loan variety as mezz debt and the equity variety as preferred equity. For a discussion of mezz debt and preferred equity see "Ch. 9: Mezzanine Debt and Preferred Equity in Real Estate" by Andrew Berman, *Alternative Investments: Instruments, Performance, Benchmarks, and Strategies* 163 (H. Kent Baker & Greg Filbeck eds., John Wiley & Sons 2013). For a discussion of mezz lending compared to preferred equity, see http://www.paulweiss.com/media/109627/nylj_30nov11.pdf; Also see "Commercial real estate mezzanine finance: market opportunities" *Real Estate Issues* - September 22, 2003 by David Watkins. http://pages.stern.nyu.edu/~igiddy/articles/CRE_mezzanine.html

²⁰⁴ For example, if the property owner is a limited liability company, the membership interests in that LLC owned by the mezz borrower serve as the collateral for the mezz loan. The collateral constitutes personal property and is governed by the state's commercial law rather than its real property law.

The mezz borrower does not directly own any real property and does not operate a business. Thus, the value of the mezz lender's collateral is derived solely from the indirect ownership of the underlying property.²⁰⁵

If the mezz borrower defaults, the mezz lender may foreclose under the state's commercial law,²⁰⁶ rather than under the state's real property law that is applicable to mortgages.²⁰⁷ Upon the completion of the foreclosure process, the mezz lender replaces the mortgage borrower as the owner of the entity that owns the property (the senior mortgage borrower). However, the mezz lender's interest is subject to all of the liens and encumbrances of the property, including the senior mortgage.²⁰⁸

The mezz loan provides for a fixed maturity date and creates a firm obligation to comply with the loan terms. The periodic loan payments are interest only. Sometimes, the mezz loan provides for a portion of the interest to be paid currently, with the balance to be accrued and not due until loan maturity. In addition, sometimes mezz loans provide for a profit participation to the mezz lender, also known as an "equity kicker". The entire principal balance is typically payable in one installment at maturity. Conventional mezz loan providers ("mezz lenders") include private equity debt funds, mortgage REITs and insurance companies.²⁰⁹

Conventional preferred equity

In contrast, the capital provided by the preferred equity investor does not constitute a loan. Preferred equity provides a direct ownership interest in the project owning entity. The investor makes a capital contribution to the property owner in exchange for an equity share of the ownership entity.

As one of the owners of the project entity, preferred equity investors do not possess collateral or foreclosure rights. Instead, the preferred equity investors have contractual rights and remedies under the organizational documents of the project owning entity (such as an LLC Operating Agreement) that governs the relationship of the project entity's owners, including the developer. Theoretically, these rights should be automatic and self-exercising, but in reality, enforcement is typically more complicated and uncertain than mezz foreclosure.²¹⁰ For example, typically in the case of certain defaults as defined in the LLC Operating Agreement or LP partnership agreement, the preferred equity investors can remove and replace the developer. However, if the investors were to seek to assert these rights, it is likely that the developer would challenge the claim in court.

The preferred equity investors will often have a direct ownership interest in the project owning entity. However, similar to the requirement imposed in the case of a mezz loan, some

²⁰⁵ See the Diagram of a Sample EB-5 Mezz Loan Structure attached as Appendix A.

²⁰⁶ States' commercial laws are based on the Uniform Commercial Code (UCC).

²⁰⁷ The state's commercial law foreclosure process that applies to a mezz loan default is much quicker than the foreclosure process under the state's real property law that applies to a mortgage default. See Berman (footnote 204).

²⁰⁸ In contrast, in the case of the typical senior mortgage foreclosure, either the lender becomes the owner of the property with all junior liens wiped out, or the lender's lien is paid off.

²⁰⁹ The mezz lender and senior lender typically enter into a separate agreement, commonly known as an "Intercreditor Agreement", concerning such matters as the rights and responsibilities of the mezz lender, especially in the case of a default of the mezz loan or the senior mortgage loan.

²¹⁰ http://www.paulweiss.com/media/109627/nylj_30nov11.pdf

senior mortgage lenders will require that the preferred equity be invested in a SPE that in turn owns an equity interest in the project entity.²¹¹

The term “preferred” refers to the preferred investor’s right of payment with priority over the common equity owner (typically the developer). In a conventional real estate project, a cash flow distribution waterfall provides that the project’s cash flow be allocated first to operating expenses, reserves and debt service payments. Any available remaining cash flow is then distributed to the equity owners.

Under a typical “true” equity structure, the preferred equity investors are entitled to a preferential return on their investment (typically ranging from 6% to 10% per annum) until the preferred equity investors receive that return and recover their capital investment (sometimes referred to as a “preferred return” or a “pref”). After the pref is recovered, the residual or excess cash flow available for distribution is split with the developer, often disproportionately to the relative capital contributions in favor of the developer (sometimes referred to as the “profit split”).²¹²

Preferred equity typically does not provide a fixed or mandatory redemption date on which the capital must be repaid to the preferred equity investors. Instead, the occurrence of a “capital event”, such as a sale or refinancing of the project, is typically the trigger that generates sufficient cash flow for the investors to achieve the pref and a profit split.²¹³

If the developer contributes equity to the venture, as is typically the case, then often times the pref is structured for payment to the preferred equity investors and the developer (the common equity). In that case, the pref distributions can be *pari passu* to the investors and the developer, or distributed first to the preferred investors.

The preferred equity possesses some debt characteristics. The preferential return on the investment is similar to the interest component on a loan. The recovery of the capital is similar to the repayment of principal under a loan. The payment preference over common equity is similar to the priority that debt has over equity.

Private equity funds, sovereign wealth funds, pension funds, life insurance companies and wealthy individuals often provide this type of equity capital. A more detailed explanation of preferred equity is beyond the scope of this paper.

Relative cash flow priority and loss exposure

A basic understanding of the relative cash flow priority and loss exposure of the various capital sources is fundamental to understanding the capital structure. After the payment of project expenses and the retention of any reserves for anticipated expenses, the project’s available cash flow is allocated first to pay debt service to the senior lender. The remaining cash flow is then allocated to pay any mezz debt, then preferred equity and common equity. Any project losses are absorbed in the reverse order. For example, if the senior lender were to foreclose on the property due to a mortgage default and the foreclosure sale proceeds were equal only to the senior mortgage loan balance, the senior lender would be made whole and the other

²¹¹ Berman at page 175 (See Footnote [203](#))

²¹² See “Internal Rates of Return and Preferred Returns: What Is the Difference?” Real Estate Law & Industry Report, 6 REAL 200, April 4, 2013 by Steven Carey http://www.pircher.com/media/publication/8_PDFArticSAC.pdf for a discussion of preferred equity in the commercial real estate context.

²¹³ The occurrence of a capital event does not necessarily generate sufficient cash flow to pay the pref or to result in a profit split.

capital source providers would suffer the economic loss. (A more in-depth discussion of lien priority is beyond the scope of this paper.) Thus, the senior mortgage loan is the most secure and the common equity is the least secure. Accordingly, the rates of return demanded by these various conventional capital sources reflect these relative risks.

Below is a diagram that shows a generic depiction of the capital stack, with relative risk, expected return, loss absorption and the portion of the total project costs (TPC) funding applicable to each layer in a conventional real estate project.

High	Capital Source	First	% TPC
Risk Level and Expected Return ↑	Common Equity (Developer)	Absorb Losses ↓	1-10%
	Preferred Equity		Gap 10- 40%
	Mezz Debt (Subordinated)		
	Senior Debt (Mortgage Lender)		50-70%
Low		Last	

EB-5 Gap Financing

Job Creation and Size of EB-5 Capital Raises

The typical EB-5 project involves new construction because this is the most common way to satisfy the job creation requirement. This requirement, while irrelevant to the size of capital raises for conventional real estate projects, poses the primary constraint on the maximum size of an EB-5 capital raise. This limitation applies whether the EB-5 capital takes the form of debt or equity.

Outside of the EB-5 arena, in sizing a commercial real estate mortgage loan (and sometimes mezzanine debt), two of the most common metrics a lender typically considers in underwriting a mortgage loan are the loan to value ratio (or loan to cost, in the case of construction loans), and the debt service coverage ratio.²¹⁴

However, in EB-5 projects, developers and Regional Centers also focus on developing a business plan that, at a minimum, demonstrates that the requisite number of jobs will be created to satisfy the EB-5 program requirements. Most developers strive to build in a job cushion to create more jobs than the minimum required.

Again, for each EB-5 investor, the project must create 10 new jobs. Assuming that the project is located within a TEA, 10 jobs must be created for every \$500,000 of EB-5 capital raised. For example, if a project is expected to create 100 new jobs, then the maximum amount

²¹⁴ Job creation is obviously not a factor in the case of those metrics.

of EB-5 capital that can be raised for that project is \$5 million.²¹⁵ Conversely, if the targeted EB-5 capital raise is \$5 million, then the minimum number of jobs required is 100.²¹⁶

All of the new jobs created by an EB-5 project, regardless of the source or amount of invested capital, can be allocated for EB-5 purposes to the EB-5 investors, even if EB-5 capital represents a very small percentage of the total project costs.²¹⁷ This includes jobs created with the use of funds provided by public sources.

The total number of jobs expected to be generated by the project (including the job cushion), based on the business plan and economic model, must be compared with the minimum number of jobs necessary for all of the EB-5 investors to qualify. The total number of jobs divided by the minimum number of required jobs can be considered the “job coverage ratio” for EB-5 projects.²¹⁸ If the project lacks a job cushion (that is, the number of jobs projected is equal to the EB-5 minimum requirement), the job coverage ratio would be 1.0.²¹⁹ In the above example involving a \$5 million EB-5 capital raise, if the project is expected to create 150 jobs (50 more than the 100 minimum required), then the actual job coverage ratio would be 150/100 or 1.5, representing a cushion of 50%.

The job coverage ratio reflects the job-creation requirement imposed by the EB-5 law. In contrast, the loan to value and debt service coverage ratios are underwriting criteria imposed by lenders that vary by lender and by project type. Of course, the senior lender also utilizes standard typical underwriting criteria in evaluating whether to make the loan, whether or not an EB-5 capital component is included.

An alternative, simpler way to view this follows. First, take the total dollar volume of EB-5 capital sought to be raised, multiply the number of millions x 2 to arrive at the number of investors (that is, 2 investors at \$500,000 each for each \$1,000,000 of investment). Then multiply that by 10 to arrive at the minimum number of jobs required to support the capital. Compare the total jobs estimated to be created by the project and compare that to the minimum number required. If the total number of jobs is greater, the job cushion equals the excess jobs. The job cushion ratio would be the total number of jobs divided by the minimum number.²²⁰

Although the USCIS does not consider whether a job cushion exists for a particular project, a recent USCIS determination letter in response to an exemplar filing helps illustrate how the job cushion would be determined. The USCIS determination letter regarding the initial project by the Lightstone Regional Center states that the NCE will loan \$50 million of EB-5 capital towards the total project cost of \$208.915 million.²²¹ Based on the business plan and

²¹⁵ 100 jobs/10 per investor = 10 investors x \$500,000 each

²¹⁶ \$5 million total EB-5 capital raise/\$500,000 per investor = 10 investors. 10 investors x 10 jobs/investor = 100 jobs.

²¹⁷ 8 CFR section 204.6(g); http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf at page 9.

²¹⁸ This could be viewed as somewhat analogous to the debt service coverage ratio (DSCR) in traditional real estate lending which compares the property’s annual net operating income to the annual debt service.

²¹⁹ Like the conventional senior lender that requires the debt service coverage ratio (represented by the project’s net operating income divided by the debt service) to reflect a cushion above 1.0 so that if adverse changes or unforeseen circumstances occur the lender is protected, the immigrant investors seek a job cushion for similar protection.

²²⁰ For example, assume the EB-5 capital sought = \$15 million. 15 x 2 = number of investors, or 30. 30 x 10 = the minimum number of jobs required, or 300. If 340 jobs are estimated to be created, the cushion = 340-300 = 40.

²²¹ See discussion on page 26 above. Also, note that the Lightstone Regional Center’s website projects an EB-5 capital raise of \$60 million. The same principles should apply to this larger raise. <http://lightstoneeb5.com/eb->

economic analysis submitted by Lightstone, USCIS determined that the project is likely to generate 1,423 jobs. However, the \$50 million raise would require the creation of only 1,000 new jobs (\$50 million/\$500 thousand per investor). Thus, a job cushion of 423 jobs exists. The job coverage ratio is 1.423 (1,423 total projected/1,000 minimum jobs required). Furthermore, in the Lightstone example above, even though \$50 million represents less than 25% of the total project costs, all 1,423 jobs for all project capital sources can be allocated to the EB-5 investors, rather than merely the proportionate share represented by the EB-5 capital.

Even though construction activity jobs are based on qualifying construction expenditures, not all construction expenditures are deemed by USCIS to create jobs. For example, USCIS does not treat certain land acquisition costs, contingency budgets or items like interest, developer fees and other soft construction costs as “job creating expenditures”. However, EB-5 investment funds may be used to acquire the land and pay these disallowed soft costs²²² but the expenditure of these funds must be excluded from the economic-job impact study because the USCIS does not allow EB-5 projects to count this towards job creation.

Slice of the Total Capital Stack

The amount of an EB-5 project’s capital raise is a critical determinant of where in the capital stack EB-5 capital fits in relation to the other capital sources that will fund the total project costs. After the potential EB-5 capital amount is calculated, the developer will determine the extent to which it intends to incorporate EB-5 capital into the stack and its placement. For example, if only \$5 million of EB-5 capital can be supported by a project with total project costs of \$100 million, then obviously an insufficient amount of EB-5 capital would be available to fund a senior mortgage loan.

Until recently, it was common for EB-5 capital to comprise more than 50% of the capital stack. In some cases, it comprised the entire stack.²²³ However, as immigrant investors and their migration agents have become more sophisticated, as well as aware of a few well publicized EB-5 project failures and financial abuses by Regional Centers and developers, EB-5 investors are increasingly unwilling to take such a large stake in the capital stack. Instead, the top and bottom levels of the stack in the EB-5 project market consist of a senior mortgage and developer equity, similar to the conventional real estate project’s capital stack.²²⁴

Despite this similarity, the rationale for the EB-5 capital stack differs in some respects. The institutional investor’s decision to make a senior mortgage loan signifies to the EB-5

[5/capital-structure/](#). In fact, the 1,423 estimated jobs would support more than \$70 million of EB-5 capital. $1,423/10 = 142$ investors x \$500,000 investment per investor = \$71 million.

²²² USCIS Q and A: Economic Methodologies, July 3, 2012, question 2. <http://www.uscis.gov/news/questions-and-answers/questions-and-answers-eb-5-economic-methodologies>

²²³ Even today, EB-5 capital funds the entire costs of some real estate projects, but generally not major projects. For example, EB-5 capital is funding 100% of the \$9.5 million to develop a condominium office building in Miami. <http://www.bizjournals.com/southflorida/news/2014/12/03/eb-5-funded-office-building-to-break-ground-after.html>. On the other hand, EB-5 capital funded 100% for the development of America Life’s \$168 million Los Angeles Marriot project, albeit in an unusual arrangement discussed below, beginning [on page 59](#).

²²⁴ See the Select Large-Scale Projects Database in Appendix B - Select Large-Scale Projects Database.

investor that an experienced third party has confidence in the project. The EB-5 investor views this as an added layer of protection because the institution, possessing more experience and sophistication in U.S. real estate deals than the EB-5 investor, undoubtedly has performed due diligence which validates the diligence performed by the investor's professionals.

As is true for the senior lender and other investors (mezzanine and preferred equity) in a conventional real estate project, the EB-5 investors demand that the developer have "skin in the game". Thus, even though EB-5 capital can fit anywhere in the capital stack, gap financing as mezzanine debt or preferred equity is the most common use.²²⁵

Interplay of immigration risk vs financial risk and economic reward

In the conventional project without an EB-5 capital component, the rate of return applicable to each capital source is adjusted to reflect its financial risk. The capital source provider chooses to make the investment based purely on economic factors. For example, the senior mortgage loan bears a much lower rate of interest than the mezz loan.

The EB-5 project introduces a new consideration – immigration risk. The EB-5 investor accepts below market rates because his focus is securing a visa, which constitutes an essential part of the "implied consideration" received in exchange for the investment. He realizes he has better investment alternatives if he were to focus strictly on the economics.

Thus, the project's ability to satisfy the EB-5 job creation requirement becomes a paramount concern for the immigrant investor. Even if the investment is successful in economic terms – for example, it in fact generates a 20% annual rate of return – this is irrelevant to whether or not the investor will ultimately obtain a permanent visa. Instead, the key is whether the project will generate enough jobs to meet the EB-5 requirement of 10 jobs per investor.

Since all of the jobs created by the project are allocated to the EB-5 investors, the lesser the amount of EB-5 capital sought for a project, the greater the likelihood that the project will meet the EB-5 job requirement, and result in the visa issuance to the investor. Thus, EB-5 capital as a smaller slice of the capital stack, as is typically the case with gap financing, reduces the immigration risk and increases the investor's chance of attaining his goal, whereas conventional senior financing increases the immigration risk.

Gap financing in the range of 15% to 30% of the total capital stack accomplishes this reduction in immigration risk. However, in the absence of a mortgage to secure the loan, the investor is not as well protected against the greater financial risk he assumes by becoming a mezz lender rather than a senior lender. Yet, the net interest rate payable on an EB-5 mezz loan is typically similar, if not the same as, the interest rate payable to an EB-5 senior lender.

One Regional Center's approach to EB-5 loans protects immigrant investors against both the immigration risk and the financial risk. CanAm does not generally make mezz loans, but instead requires that each of its EB-5 funded loans be structured as a mortgage, typically in a first lien position to maximize the loss-protection to its immigrant investors. CanAm participates alongside the senior lender that also holds a first lien.²²⁶ Frequently, the amount of the EB-5 loan funded by CanAm's projects represents approximately the same amount as would gap

²²⁵ See the Select Large-Scale Projects Database in [Appendix B](#) - Select Large-Scale Projects Database.

²²⁶ However, CanAm's \$300 million EB-5 funded loan to the All Aboard Florida project described on page 32 is structured as a mezzanine loan. Although a senior loan of \$405 million has higher priority, the EB-5 funded loan has significant loss protection due to the hundreds of millions of dollars of equity in this \$1.3B project.

financing. Thus, this structure enhances the likelihood that the investor will obtain the visa and reduces his financial risk.

However, developers seek to utilize EB-5 capital to reduce their project's weighted average cost of capital. This can be accomplished by replacing a slice of the capital stack that would otherwise be filled by a more expensive capital source. As the real estate market continues to recover from the Great Recession, senior mortgage loans representing between 50% and 70% of the total project costs are becoming readily available, depending on the property type and location. The rates are similar to, if not lower than, the rates available for EB-5 capital structured as a senior loan, when the entire cost of that capital is taken into account.

Given that EB-5 investors accept substantially the same overall interest rate for mezz loans and senior mortgage loans, the spread in interest rates between conventional mezz and EB-5 mezz is much greater than the spread, if any, between conventional senior and EB-5 senior loans. Accordingly, in striving to achieve the project's optimal capital structure, developers generally prefer to maximize the amount of loan proceeds from the conventional senior lender at relatively low rates, and save EB-5 capital as a mezz loan source to fund as much of the gap as the mezz lender and senior lender will permit. Thus, EB-5 capital as a senior loan source will be limited primarily to those situations where the developer is unable to obtain a conventional senior loan.

Similarly, another consideration points a developer to seek a conventional senior loan coupled with an EB-5 mezz loan. As explained in the Escrow of EB-5 investment funds section below, EB-5 loan proceeds are often held in escrow and not released to the project until the immigration process advances to a certain stage, usually approval of at least one investor's I-526 petition and, in some cases, each investor's petition. Given that the average time frame for the approval process exceeds 12 months, substantial delays could result until the immigrant investor's contribution can be utilized by the project. The conventional senior loan proceeds would be available much more quickly to fund the bulk of the project. As explained in the Bridge Financing section of this paper, if the EB-5 funds are escrowed, sometimes the developer will seek bridge financing to provide funds until the escrow proceeds are released. But the bridge loan often adds a layer of cost.

Many immigrant investors prefer mezz over preferred equity

As discussed above, even though the EB-5 investors' contribution to the NCE must be equity capital rather than debt, the NCE's deployment of those proceeds into the JCE can be debt or equity. EB-5 investors who provide gap financing to a project generally prefer that their investment be structured as mezz debt rather than preferred equity. The investors' main concern is that the capital will enable completion of the project. The investors hope that this will create the necessary jobs for them to obtain their visa and green card and the subsequent return of their capital investment in the shortest time possible.

The investors prefer the loan structure, which has a fixed maturity date, periodic interest payments²²⁷ and a foreclosure remedy available in the event of a default by the developer's JCE.

²²⁷ However, often times, payments of EB-5 mezz interest are split between a portion that is payable currently (monthly, quarterly or annually) and a portion is accrued until a future date, such as at loan maturity.

This will impose a legal obligation upon the JCE, and additional pressure for the developer to complete the project on a timely basis.²²⁸

In the case of a mezz loan or preferred equity, as a practical matter, a sale or refinance is necessary to provide sufficient proceeds to result in the recovery of the NCE's capital investment. However, a loan's fixed maturity date, coupled with the right to foreclose upon the other equity (including the developer's) is likely to give the investor more comfort than the features of preferred equity, especially if it does not provide for a mandatory redemption within a similar time frame as the mezz loan alternative.²²⁹ An LLC operating agreement or LP partnership agreement governing the equity that merely provides for a cash flow distribution waterfall, with a sale or refinance as a capital event, does not ensure that the sale or refinance will occur by a certain date. Nor does it impose any time pressure on the developer. Nevertheless, as discussed below, some EB-5 capital is structured as preferred equity, although sometimes differently than in conventional real estate projects.

A diagram illustrating a Sample EB-5 Mezzanine Debt Structure for a project utilizing EB-5 capital as a mezzanine loan is set forth in attached [Appendix A](#) - Sample EB-5 Mezzanine Loan Structure.

EB-5 mezz cost of capital compared to conventional mezz

As explained earlier, EB-5 mezz loans bear a lower overall interest rate than conventional mezz loans because the EB-5 investor is motivated by the visa rather than maximization of financial returns. Obtaining the permanent visa is the main compensation for the investor. Thus, he accepts a below market rate. However, from a developer's perspective, a true comparison of the developer's cost of capital in EB-5 mezz and conventional mezz loans requires more than merely focusing on the interest rate charged to the developer JCE. A developer that is contemplating adding EB-5 capital into a project's capital stack must consider a variety of factors to evaluate the true cost of capital and the potential savings compared to conventional mezz.²³⁰

In conventional real estate projects, mezz is available in at least three different scenarios: core projects with stabilized cash flow; value-added projects where the existing project is re-positioned to change its use²³¹; and opportunistic projects involving new construction and development.

The interest rate charged by the mezz lender varies to reflect the risk associated with the loan. The lowest rate applies to core projects and the highest rate applies to new construction (opportunistic projects).

Until 2007, mezzanine interest rates in conventional real estate deals often ranged from 15% to 20% per year. Lenders were reluctant to fund mezzanine loans during 2008 and 2009.

²²⁸ The investors are likely to be reluctant to pursue the foreclosure remedy for two reasons: the foreclosure process will delay project completion; and they lack the wherewithal to complete the project without selecting a replacement developer, a process in which they have no experience.

²²⁹ If the EB-5 investors invest their equity directly in the entity that owns the property, the NCE and JCE are the same. In that case, the redemption right might violate the "at risk" rules.

²³⁰ The discussion in this section is overly simplistic and does not consider such factors as the term of the loan, closing costs, as well as whether the interest is paid currently or accrued.

²³¹ Many value-add projects involve some construction or rehabilitation.

However, as the market has rebounded and benchmark interest rates have remained low, competition for mezz lending has resulted in reduced interest rates. In today's market, mezz rates for stabilized, cash flowing properties are in the 8 to 9% range per year; and for new construction properties are in the 11 to 14% range per year.²³²

Typically, EB-5 projects involve new construction because construction is a major job creator. Thus, the highest mezz interest rate, the rate applicable to new construction, would serve as the best comparable rate to the EB-5 mezz rate's cost of capital to the developer. This comparison is more relevant to the developer because it benefits from this savings due to the spread between the conventional mezz rate for new construction and the EB-5 cost of capital. In contrast, the interest rate paid to the EB-5 investors will be low in any event.

The developer's EB-5 mezz loan cost of capital is not always apparent. The typical EB-5 capital loan has many cost components that are borne by the developer JCE beyond merely the interest payable to the immigrant investors. All of these costs must be taken into account in determining the true cost of capital for this capital source as some of these costs would not otherwise be incurred by the developer in a conventional project. As discussed in the Regional Center section, these various costs are reflected in alternative ways depending on the parties.

A common method is to embed ("bake in") all the costs in the loan agreement as one rate; for example, 6% per year, to be paid by the JCE. Upon receipt of the periodic interest payment, the NCE then pays the relevant amount to the various participants in the transaction, such as: (1) a management fee to the general partner or manager of the NCE; (2) a fee (commission) to the migration agent or broker; and (3) a minimal interest payment to the investors. Sample annual fees could be 2% to the general partner or manager; and 2% to the agents and brokers,²³³ with 2% annual interest to the investors. The portion allocated to the investors is often less than 2% per year.²³⁴ Any residual remaining after the payment of the various participants may be retained for the NCE or related parties.

Alternatively, in lieu of a single interest payment to the NCE, a more transparent approach provides for the JCE to pay separate amounts to the immigrant investor, the migration agent and the NCE's manager. This approach was employed in the case of the EB-5 capital loans for the SLS Las Vegas project described in detail below.²³⁵ The total cost of capital to the developer JCE could theoretically be the same under either method, but is likely to differ.

The calculation of the developer-borrower's cost of capital for an EB-5 mezz loan could be more complex and much less transparent than for a conventional loan, unless all of the costs are embedded in a single rate or separately disclosed. In a conventional loan, the borrower's cost

²³² Email dated November 21, 2014 from Tal Bar-Or, Managing Director of Meridian Capital Group. This is consistent with the rates in effect in 2013. See "Money in the Middle" by Beth Mattson-Teig, National Real Estate Investors Journal June/July 2013 at page 54 <http://www.dukerealty.com/wp-content/uploads/2013/07/NREI-July-2013-Issue-List-of-Top-Owners-etc-.pdf>

Also see Michael Stoler, The Return of Mezzanine Financing, Mortgage Observer June 25, 2013. <http://commercialobserver.com/2013/06/the-return-of-mezzanine-financing/>

²³³ Investors sometimes pay a fee to the migration agent, but may be unaware that the Regional Center is also compensating the agent unless this is disclosed in the offering documents.

²³⁴ For example, in the case of the EB-5 loan made to SLS Las Vegas, involving one of the largest EB-5 capital raises to date, the investors are entitled to interest payments based on ½ of 1% (0.5%) per year.

²³⁵ See [page 56](#).

of capital is based on the interest cost.²³⁶ However, the interest rate paid to the immigrant investors is not the only cost that must be considered in calculating the cost of capital²³⁷ for an EB-5 loan. The cost of capital must reflect all of the additional costs and fees that a developer-borrower must pay in order to obtain the loan, many of which are unique to EB-5 capital transactions. As explained above, this includes the fees paid to the migration agent and other brokerage fees, as well as the management fees and any interest rate spread paid to the NCE.²³⁸

In the case of a developer in-house Regional Center, the cost of capital requires a slightly different analysis based on its cost structure. First, the developer JCE pays the related NCE an amount equal to the interest to which the investors are entitled. For example, Lightstone's Bond Street multifamily project provides for interest payments to the investors equal to 1% per year.

²³⁹

Second, the developer must take into account the cost of providing the immigration, investor relations and administrative services that a third party Regional Center would otherwise provide.²⁴⁰ The developer or a related entity will maintain a staff and possibly outside professionals to perform these functions. If the staff performs services for other projects, whether EB-5 projects or not, the staff costs would be allocated among the various projects.

Third, the developer must take into account the cost of soliciting and raising capital. The developer will typically enter into an arrangement with one or more migration agents or broker-dealers to raise capital from immigrant investors. The fee agreement with those agents and brokers must be taken into account. This total capital raise cost is likely to differ from the percentage that the JCE would be charged by the third party Regional Center. If any of the immigrant investors invest without the involvement of a broker-dealer, presumably the developer JCE will save fees.

All of these costs – the interest to the immigrant investors, the staff costs and the brokerage fees – must be taken into account. The one-time administrative fee paid by the investors to the NCE or Regional Center offsets these costs. The total costs can be converted into an interest rate charged for the loan to the JCE by taking into account the outstanding loan balance, adjusted to reflect the term of the loan.²⁴¹

To quantify the savings available to the developer that utilizes EB-5 capital as mezzanine financing, it is important to select the appropriate conventional measure for comparison purposes. Since the EB-5 mezzanine funds are typically used to fund construction and placed in use prior to the project's occupancy and cash flow is stabilized, the higher conventional

²³⁶ This discussion ignores the cost of capital attributable to the relative closing costs, including points or origination fees and exit fees, as well as the delay in the funds being available to the project, such as due to the time associated with the capital raise process or the escrow of the funds.

²³⁷ This can also be considered the effective or equivalent interest rate.

²³⁸ In addition, the costs should include any fees paid to the Regional Center for loan origination. Note that some of these fees would be paid to a lender in a conventional loan.

²³⁹ See the Lightstone website Q3 on FAQ tab. <http://lightstoneeb5.com/faq-2/>

²⁴⁰ The developer JCE may or may not charge itself a management fee for these services. For example, if the developer performing the services has unrelated non-EB-5 investor partners for the project, it might desire to charge a management fee to the JCE so that the fee is allocated solely to the developer rather than be shared with the other investor partners.

²⁴¹ A similar analysis would apply in the case of a developer that rents a Regional Center and performs some of the services on its own.

construction mezz rate is appropriate as the benchmark, rather than conventional mezz rate for stabilized projects.

Assuming the appropriate conventional mezz rate is 11 to 14% per annum and typical cost of capital for EB-5 mezz is in the 6 to 7% range, the difference between the two overall costs is at least 5% per annum. On a \$100 million EB-5 mezz loan, the savings to the developer would be \$5 million per year. For a 5-year term, obviously the total savings would be \$25 million. The SLS Las Vegas EB-5 mezz-type loan described below illustrates the substantial savings that accrue to developers utilizing EB-5 mezz loans.²⁴²

In addition to interest charges, many conventional mezz lenders charge points in the 1% range upon origination of the loan and an additional point (1%) upon exit (the repayment). The lender in an EB-5 mezz loan often charges points as part of the loan origination, but an exit fee is not as common.

As discussed above, conventional mezz financing sometimes includes an equity kicker. Under the kicker, the developer shares in a percentage of the appreciation or increased value of the project, particularly upon a sale or refinancing of the property.²⁴³ Equity kickers are extremely rare in EB-5 mezz loans because neither the Regional Center nor the developer needs to offer this feature to investors who do not focus on maximizing their financial returns.

EB-5 mezz loan term

The term of the EB-5 mezz loan is typically five years²⁴⁴, but could be longer depending on the terms negotiated between the Regional Center/NCE and the JCE developer. This reflects the EB-5 requirement that the immigrant's investment be sustained and at risk through the date that the I-829 petition (the petition that results in the issuance of the permanent green card) is adjudicated by USCIS. The 5-year period typically provides sufficient time for the immigration process to be completed. In some cases, the loan grants the developer the right to extend the loan, such as for two one-year periods.

The 5 year EB-5 loan term is particularly suitable for projects with a substantial infrastructure component. Many conventional construction lenders set the construction loan term at 2 to 3 years, on the assumption that stabilization of cash flow will be achieved within that period based on the construction period (period to complete construction) and "lease up" of the project. However, the substantial infrastructure required for some building development projects results in a much longer time horizon from infrastructure commencement until achieving stabilization. Thus, the "patient" 5-year money provided by EB-5 capital provides an excellent capital source for these types of projects.

USCIS has not issued definitive guidance as to whether the at-risk and sustained investment requirements prohibit loan repayment by the JCE to the NCE until the I-829 application is approved. However, the USCIS requirements seem to focus on the ultimate repayment by the NCE to the investor, rather than by the JCE to the NCE. Reportedly, some lenders provide that the loan does not mature until the later of five years from the commencement of the loan or the approval of the investor's I-829 petition (which entitles the

²⁴² The discussion begins at [page 56](#).

²⁴³ As the mezzanine financing market has become more competitive among lenders, equity kickers have become less common.

²⁴⁴ See, for example, CanAm website: <http://www.canamenterprises.com/how-to-apply.html>

investor to a permanent green card). Similarly, the NCE may seek to prohibit prepayments by the JCE until the I-829 approvals are obtained.²⁴⁵

Other EB-5 mezz loan terms

In addition to more favorable interest rates, EB-5 mezz loans are likely to have terms more favorable to the developer than conventional mezz loans. Conventional mezz loans are provided by debt funds, mortgage REITS and other sophisticated institutional capital providers. These sophisticated lenders are in the business of funding numerous large deals. They will tend to be more sophisticated in these matters and more familiar with the nuances of the transaction than a Regional Center, especially one that has not funded many deals. Thus, the developer may be able to negotiate more favorable terms in the case of an EB-5 mezz loan.

In addition, the EB-5 investors are less likely to insist upon some protections that a conventional mezz lender might pursue. For example, the EB-5 lender or investor might accept a longer cure period and a less exhaustive list of events that trigger a loan default. Moreover, as a practical matter, the EB-5 investors are presumably less inclined to declare a default than a conventional mezz lender. Conventional lenders are more likely to aggressively commence a foreclosure action or pursue other remedies.

The loan made to the developer of a recent project in Brooklyn, New York illustrates the favorable loan terms that would not be found in a real estate loan made by a conventional lender.²⁴⁶ The New York City Regional Center's NCE loaned \$200 million to a consortium of developers, including Acadia Realty, for the development of Phase 2 of the City Point project. \$100 million took the form of an unsecured loan and the other \$100 million was secured.²⁴⁷ Consequently, this enabled the developer/borrower to avoid mortgage tax of nearly \$3 million, and provided the lender with weaker rights and remedies in the case of a borrower default. That loan was made during the recent downturn when conventional lenders were generally unwilling to make even a secured mortgage loan at competitive rates. Furthermore, the risk to the lender was magnified because the borrower merely held a ground lease interest in the land that was owned by New York City.²⁴⁸

Comparing EB-5 loan terms offered through a third party Regional Center vs. those offered through a developer Regional Center

²⁴⁵ The EB-5 loan to the Kushner project in Hoboken, New Jersey contains both restrictions. http://visaeb-5.com/wp-content/uploads/2013/03/88-KUSHNER_KABR-book-ENGLISH-email-version.pdf

²⁴⁶ Based on comments by Robert Master, Esq., former general counsel to Acadia Realty Trust during a panel discussion at IMN Real Estate General Counsel annual meeting on September 30, 2014 at the NYC's Marriot Downtown Hotel. Also see <http://www.nycedc.com/project/city-point>; <http://www.washsquare.com/portfolio/city-point.html>; <http://goodjobsny.org/economic-development/albee-square-city-point>; <http://bfcnyc.com/city-point-2/>; <http://nycrc.com/project.html?id=7>

²⁴⁷ It is unclear whether that loan was secured by the property or by other collateral.

²⁴⁸ The authors were unable to obtain information about the interest rate on the two loans. However, the interest rate on a mortgage loan secured by the ground lessee's interest in a property commands a higher rate than a mortgage loan secured by a fee interest. Of course, an unsecured loan bears a higher rate than a secured loan due to the greater risk involved.

The developer in-house Regional Center presents an even greater opportunity for more favorable terms for the developer (in addition to lower interest rates or more favorable financial terms).²⁴⁹ Obvious conflicts of interest arise between the developer's JCE and the investors who are "represented" by the NCE lender controlled by that developer or its related parties.

When a third party Regional Center sponsors the project and its related NCE makes a loan to the unrelated JCE, the Regional Center negotiates the loan terms on behalf of the investors. The interests of the EB-5 investors and Regional Center are aligned to the extent that the Regional Center's affiliates only receive their periodic management fees and potential spread if the JCE continues to make payments pursuant to the loan. However, in the case of a project sponsored by the developer Regional Center, the interests of the EB-5 investors and the JCE are not aligned, or at least not as aligned compared to the third party Regional Center loan scenario. The EB-5 investors do not have an experienced Regional Center to protect their interests vis-a-vis the developer JCE's interest. The EB-5 investors presumably are not as focused and experienced as third party Regional Center lenders. The investors, who generally do not have experience in real estate matters in the U.S. (if anywhere), are not as likely to retain counsel as sophisticated as those retained by the developers or the private equity funds and other lenders that make these loans in the conventional real estate world. Thus, it would not be surprising if many of the terms of the loan are not as protective of the lender in the case of a loan by a developer "in-house" Regional Center, including for example, loan covenants or default remedies.²⁵⁰ Furthermore, in the case of a default under the terms of the loan, the EB-5 in-house lender (that is, the NCE) is less likely, as a practical matter, to declare a default or to aggressively pursue the borrower which is under common control with the lender.

Some of the largest developers in the country have formed developer in-house Regional Centers, such as Related, Extell and Silverstein, to help finance their megaprojects. However, in-house Regional Centers have not been limited to the mega-developers. For example, the Lam Group and the Lightstone Group have each formed an in-house Regional Center to fund its large projects, albeit on a lesser scale than those of the mega-developers. Lam Group, in particular, has utilized EB-5 capital for several projects.²⁵¹

These in-house Regional Centers are increasingly attracting more EB-5 capital. The EB-5 investors might choose to invest in these projects because the investors are more focused on the project developer's successful track record and high-profile projects, than the technical details of the loan structure, such as default triggers and remedies.

SLS Las Vegas: a "transparent" EB-5 capital raise approaching \$400,000,000

More information is publicly available about the EB-5 capital component of one of the largest EB-5 capital raises in history²⁵² because the sale of the securities by the JCE was

²⁴⁹ This is indicated in the "EB-5 mezz cost of capital compared to conventional mezz" sub-section above at [page 52](#) regarding the cost of capital charged by the developer's in-house Regional Center.

²⁵⁰ However, as described earlier, Lightstone's principal guaranteed the loan repayment to its EB-5 in-house lender.

²⁵¹ http://www.pantacles.com/upi/EB5_201306_ENG_NYZ%20%282%29%281%29.pdf;

<http://commercialobserver.com/2014/12/new-virgin-hotel-renderings-revealed-at-icsc/>

²⁵² The EB-5 capital raise was raised in two tranches of up to \$200,000 each. As of June 30, 2014, a total of \$384 million had been raised, of which \$355.5 million had been advanced to the borrower. Presumably, the difference will be released from escrow to the borrower upon approval of the remaining I-526 petitions. Larger capital raises in a single tranche to date include Forest City Ratner's/Greenland's Atlantic Yards Phase I (\$228 million), Phase II

registered with the SEC.²⁵³ As discussed previously, the NCE and JCE are typically able to avoid registration of their securities by relying on SEC exemptions.²⁵⁴

SBE/Stockbridge Investment Company, LLC is the joint venture (“JV”) that indirectly owns the recently opened, Las Vegas hotel casino, SLS Las Vegas.²⁵⁵ The JV is presumably the JCE. The property, formerly the Sahara Hotel and Casino, was acquired in 2007.²⁵⁶

The JV’s SEC Form 10-Q filing for the quarter ended June 30, 2014 reveals a considerable amount of information about the details of the EB-5 loan made to the JV.²⁵⁷ This disclosure is presumably more reliable than the details provided about other EB-5 projects through secondary sources, such as news articles and websites.²⁵⁸ Among other things, the disclosure illustrates the remarkable savings afforded to the borrower by utilizing EB-5 capital to replace the conventional financing originally placed on the property.

In 2012, the JV received a \$300 million senior construction loan at a minimum interest rate of 13%, with a “closing fee” or points of 5% of the principal amount.²⁵⁹ In 2013, the JV raised two tranches of EB-5 capital in association with the American Dream Fund, the owner of the Las Vegas Regional Center, to provide the proceeds to fund construction of the renovation of the hotel. The amount of the first tranche was \$200 million and the second tranche was at least \$184 million, involving a total of 768 investors.

In this case, the EB-5 loans are structured as “subordinated mortgage” interests.²⁶⁰ The interest rate on each of the EB-5 loans is 0.5% per annum, which represents only the portion payable to the investors.

In addition to the interest on the EB-5 loans, the JV is obligated to pay various fees. The JV pays a periodic fee to the Regional Center and affiliates (including presumably the manager of the EB-5 investment vehicle, or NCE) for management of the EB-5 loans,²⁶¹ as well as a one-

(\$249 million), and Silverstein’s Four Seasons Hotel in New York City, approximately \$250 million. It is unclear whether the capital raise for Silverstein’s project has been completed.

http://www.adreamfund.com/investment_procedure_chart.php

²⁵³ 10-Q of Stockbridge/SBE Investment Company, LLC for the quarter ended 6/30/2014 (“SBE 10Q”)

<http://www.sec.gov/Archives/edgar/data/1606965/000119312514317197/d775866d10q.htm>; Registration 10-12G <http://www.secinfo.com/d14D5a.n8R3n.htm>

²⁵⁴ See [page 7](#)

²⁵⁵ Technically, the joint venture owns the equity of the entity that owns the property. Note 1 of SBE Form 10Q

²⁵⁶ In contrast to the transparency provided by the SEC filings, the Regional Center was unwilling to respond to the authors repeated efforts to discuss the transactions, including the need for the SEC registration. Furthermore, the processing of USCIS petitions relating to this project was part of the focus of a critical investigation by the ABC-TV News show Nightline that aired on February 3, 2015. <http://abcnews.go.com/US/whistleblowers-us-gave-visas-suspected-forgers-fraudsters-criminals/story?id=28671577&singlePage=true>

²⁵⁷ Note the registration and disclosures relate to the JCE that owns the property and is the borrower of the EB-5 loan by the NCE. The NCE is presumably exempt from registration based on Regulation D and/or Regulation S.

²⁵⁸ SBE Form 10Q

²⁵⁹ A substantial portion of the senior construction loan served as a bridge loan, pending the funding of the EB-5 loan. See the bridge loan discussion in the Escrow and Bridge Financing section starting at [page 60](#).

²⁶⁰ Footnote 5 to SBE Form 10Q. Technically, Nevada uses a deed of trust rather than a mortgage to secure real property. The footnote does not reveal the priority of the EB-5 lien.

²⁶¹ The SBE Form 10Q does not disclose whether the manager is related or affiliated with the Regional Center or developer.

time success fee based on the aggregate amount of the EB-5 capital raised.²⁶² In addition, the JV pays a periodic fee to the migration agents, an annual percentage fee based on the outstanding EB-5 loan balance.²⁶³ The aggregate cost of capital is apparently much lower than the cost to borrow from the senior lender. In January 2014, to take advantage of the low cost of EB-5 capital, the JV elected to prepay \$100 million of the senior loan, even though this triggered a 15% prepayment premium, or \$15 million.²⁶⁴

The developer elected to retain a third party Regional Center, rather than form its own, despite the tremendous dollar amount of the loan. This structure seems to reduce the developer's cost of capital by denying the Regional Center the benefit of any spread between the total fees charged to the developer and the fees paid to the EB-5 investors, the migration agent and the Regional Center.

This structure appears to be a flexible and financially attractive arrangement to the developer.²⁶⁵ For example, instead of charging the developer an interest rate that includes a spread above the amounts payable to the investor, the migration agent and the Regional Center, the Regional Center charged the interest rate for the immigrant investor's component, and separate fees for the balance. Since this EB-5 capital raise was among the largest in history, the developer apparently had leverage to negotiate more favorable loan terms and fee structure with the Regional Center than the typical developer.²⁶⁶

EB-5 preferred equity

Even though many EB-5 investors prefer the loan model, some Regional Centers and EB-5 developers offer preferred equity to the immigrant investors, rather than mezz debt.²⁶⁷ The preferred equity structure's relative flexibility attracts these Regional Centers and developers. In some cases, preferred equity might be offered because the senior lender prohibits any subordinated debt, including mezz debt.

This structure lacks a fixed obligation to distribute a fixed amount to the preferred equity investors. This is particularly advantageous to the developer during the project start-up period when insufficient cash flow exists. Preferred equity also does not typically have a mandatory redemption feature (a set date by which the equity capital must be distributed in full to the investors). A guaranty by a principal or affiliate of the JCE, even a carve-out guaranty, is generally not required or appropriate. Thus, the structure imposes less financial pressure upon

²⁶² The SBE Form 10Q does not disclose whether the Regional Center is serving as a full service Regional Center or to what extent the developer is performing any of the services normally performed by a Regional Center.

²⁶³ The SBE Form 10-Q does not indicate whether any points were payable on the origination of the EB-5 loan or will be payable at loan maturity.

²⁶⁴ <http://yahoo.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=10407652-25806-89643&type=sect&TabIndex=2&companyid=934236&ppu=%252fdefault.aspx%253fcik%253d1606965>

²⁶⁵ This might be similar to a rental of a Regional Center.

²⁶⁶ One of the questions we hoped to discuss with the Regional Center was the existence of a preexisting relationship between the Regional Center and the developer JCE. The Casino reportedly encountered financial and legal difficulties soon after its opening in 2014. <http://www.latimes.com/business/la-fi-nazarian-vegas-20141217-story.html#page=1>

²⁶⁷ In some cases, preferred equity is offered because the developer's senior lender will not permit additional debt, such as mezz debt, as a capital source for the project. However, senior lenders infrequently prohibit mezz debt in the current market.

the project to make payments during the investment's term and no deadline to fund the investors' financial exit from the project by a particular date.²⁶⁸

However, for similar reasons that the preferred equity structure is attractive to the developer, it is generally unattractive to the EB-5 investor. Thus, preferred equity might present a marketing disadvantage to those Regional Centers and developers exclusively offering preferred equity as EB-5 capital.

Nevertheless, some Regional Centers and developers have been able to attract the immigrant investors based on their perceived potential to achieve greater returns through actual ownership than under the loan model, especially if the preferred equity is the waterfall type that includes a profit split, rather than the fixed dividend type. The Regional Center and developer also may be able to convince the investors that the preferred equity structure provides more flexibility and thus, increases the likelihood that the project will succeed and their visas will be issued. Moreover, some of the Regional Centers offering the equity structure are among the most established and thus, are able to cite their past successes in which preferred equity was employed, instead of mezz debt.²⁶⁹

Two fundamentally different formats can serve as the preferred equity structure in the EB-5 financing context. The conventional cash flow waterfall distribution type is one format, as described in the Conventional Projects section above at page 43. However, a fixed-rate preferred format is another approach that better reflects the immigrant investor's primary motive for investing in the project.²⁷⁰

Since the EB-5 investors do not demand high returns and instead seek low risk, it may be unnecessary for the developer to offer a profit split or "upside" appreciation in the value of the project (which is an integral feature of preferred equity in a conventional structure).²⁷¹ Instead, the preferred equity in an EB-5 deal can be structured as fixed-rate preferred, with many features similar to debt. The NCE is entitled to a dividend equal to a fixed percentage of its investment, which is payable only to the extent of the JCE's available cash flow. Typically, the fixed-rate preferred would be cumulative so if a dividend is missed, it would be paid in a subsequent period. The investors are not entitled to any profit split or participation. This preferred equity structure is sometimes utilized in the conventional real estate world, but not nearly as frequently as the cash flow waterfall type of preferred equity.

Fixed rate preferred in conventional real estate projects often includes a mandatory redemption feature where upon the occurrence of a certain date, the developer must return the investor's capital investment. However, this feature does not appear to be common in the EB-5

²⁶⁸ Under the typical arrangement, as long as the immigrant investor's capital is outstanding, the manager of the NCE (related to the Regional Center) is entitled to a fee. Thus, arguably the interests of the Regional Center and the investors might not be aligned.

²⁶⁹ See, for example, the American Life Regional Center and the EB5 Capital Regional Center. As discussed below, American Life does not limit its use of preferred equity to gap financing. Instead, it relies on preferred equity to fund substantially most, if not all, of the total project costs. In addition, the EB-5 capital component of one of the signature projects of the EB-5 Program, the Jay Peak Resort, sponsored by the State of Vermont Regional Center, is structured as preferred equity.

²⁷⁰ Due to the lack of transparency in the marketplace, the authors have not reviewed a sufficient sample of EB-5 preferred equity structures to reach a conclusion as to which basic format is more frequently utilized by developers and Regional Centers.

²⁷¹ Arguably, if the developer were to offer a profit split to the EB-5 investors, it would not be surprising if the investors were to interpret this as evidence of more speculative risk of this particular investment.

capital context.²⁷² Instead, the distribution is deferred until a capital event (such as a sale or refinancing) occurs,²⁷³ and then only to the extent of available cash flow. Since the preferred equity structure is not as popular with investors, and does not provide them with the same level of security and certainty as a mezz loan, the JCE may need to pay a higher dividend rate to the NCE to reflect a greater return to the investors than the equivalent interest rate offered in the loan structure. However, presumably this return is relatively nominal in any event.

Some EB-5 projects offering preferred equity to the EB-5 investors might elect to offer preferred equity based on a cash flow distribution waterfall more similar to conventional preferred equity. The investors would be entitled to a preferred rate of return on their investment and a profit split on the residual cash flow after the pref is achieved. The preferred rate of return might be set at a rate similar to the interest rate under the mezz loan. The profit split would serve as an incentive for the investors to accept this structure.

The cash flow waterfall type of preferred equity typically lacks a mandatory redemption feature. Also, a guaranty by a principal is even less likely to be appropriate in this alternative given that the preferred equity investors are assuming the risk in exchange for the profit potential. Similar to the more favorable terms available to an EB-5 mezz loan borrower than to a conventional mezz loan borrower, the terms of an EB-5 preferred equity investment to an EB-5 project developer are often more favorable to the project developer than encountered in conventional preferred equity structures.

Jay Peak Resorts is one of the signature projects of the EB-5 program, sponsored by the state operated Vermont Regional Center. However, a recent dispute between Jay Peak's developer and the EB-5 investors illustrates the more favorable preferred equity terms available to the developer in an EB-5 project. This partnership involves a single-tier structure where the EB-5 investors invested directly in the partnership that owns the Tram Haus Lodge, a luxury hotel that is part of the multi-phase expansion of the ski resort.

During 2014, the general partners of the limited partnership were able to dissolve the partnership without obtaining the consent of the limited partners, the EB-5 investors. As a result, the general partners were able to unilaterally convert the limited partners' interest to unsecured claims (characterized by the investors as "IOUs") rather than ownership interests. It is extremely unusual for a limited partnership agreement in a non-EB5 context to permit a dissolution by the vote of the general partners, without also requiring the consent of limited partners.²⁷⁴ After significant adverse publicity in the local media outlets, the general partners agreed to make an additional partial distribution to the investors.²⁷⁵

A different approach – American Life

Although the trend, especially in large real estate projects, is for EB-5 capital to serve as gap financing, some projects still rely upon EB-5 capital to provide a more significant share of the capital stack. One radically different type of capital structure for an EB-5 project involves the American Life Enterprise Regional Center ("American Life), one of the first Regional

²⁷² See footnote 150 in the Investor's capital must be "at risk" section of this paper.

²⁷³ As noted above, the capital event is also the typical event that triggers the payment of the pref and the split in a conventional structure.

²⁷⁴ <http://vtdigger.org/2014/08/10/jay-peak-pay-35-tram-haus-investors-10000-dividends/>

²⁷⁵ <http://vtdigger.org/2014/08/10/jay-peak-pay-35-tram-haus-investors-10000-dividends/>

Centers to be formed and one of the most successful. American Life is a developer Regional Center. It manages 10 Regional Centers in various geographic areas throughout the US.

The Frequently Asked Question Section of the Regional Center's website describes its investment structure.²⁷⁶ Simply stated, the investors invest all of the capital required for the project.²⁷⁷ No developer equity and typically no debt, or a limited amount of debt, is involved. American Life, as managing general partner, is allocated 30% of the available cash flow without making any capital contribution.

Each of the investors, as individuals, invests directly in the entity that owns the property. This is a one-tiered structure. The entity is typically a limited partnership, where the investors are the individual limited partners and American Life is the managing general partner.

Using this structure, American Life recently raised \$168 million to provide all of the capital for the acquisition and construction of a dual-branded Marriott hotel located in the "LA Live" area of downtown Los Angeles. The hotel opened in 2014.²⁷⁸ American Life is currently seeking to raise over \$300 million from EB-5 investors, presumably using the same structure, for a new hotel project in Seattle.²⁷⁹

It appears that American Life attracts immigrant investors who are willing to commit to this structure based on the Regional Center's successful track record, as well as the potential financial return that the investors believe could far exceed the financial return of alternate EB-5 investments. On the other hand, these investors must accept that the exit strategy is solely within the developer's discretion whose interest might be to prolong the financial arrangement.

Escrow of EB-5 Investment Funds

The immigrant investor's funds paid pursuant to the Subscription Agreement are often not paid directly to the Regional Center or NCE. Instead, the funds are typically remitted to an independent third party, including, for example, a bank, that holds the funds in escrow prior to its release to the NCE.²⁸⁰

USCIS does not require the escrow of these funds. The escrow is market driven in response to the investor's concern that the USCIS might deny the I-526 petition. Virtually all Regional Centers and NCEs agree to refund the investors' entire investment if their I-526 petitions are denied, whether or not the funds are held in escrow.²⁸¹

Generally, the developer seeks to gain access to the inexpensive EB-5 capital as soon as possible, especially where the funds are necessary to commence or continue construction. On the other hand, many investors strongly prefer not to allow their investment to be released to the NCE until their I-526 petitions are approved, due to the unpredictable nature of the USCIS approval process and the risk of petition denial. If the funds are held in escrow pending the

²⁷⁶ American Life Inc. website FAQ Investment Terms: <http://amlife.us/eb-5-visa/faq-investment-topics>

²⁷⁷ The projects include some non-EB investors according to the American Life Regional Center website.

²⁷⁸ In response to questions posed by us as part of the research for this paper, the principal of American Life furnished us with the Private Placement Memorandum (PPM) for the capital raise for the LA Marriott. However, we have elected not to provide in this paper a link to that PPM.

²⁷⁹ <http://www.bizjournals.com/seattle/blog/2014/07/for-local-firm-la-live-deal-was-warm-up-to-300m.html?s=print>

²⁸⁰ See the NES website for a description of the escrow process in EB-5 investments. <http://nesfinancial.com/solutions/escrow-administration/>

²⁸¹ Per email communication with Reid Thomas of NES Financial on January 12, 2015.

USCIS approval of the application, then if the petition is denied, the investors can, at least theoretically, simply furnish evidence of the denial to the escrow holder and recover their investment. If, instead, the funds are released immediately to the NCE, then the investors might have difficulty in recovering the funds and would merely have a legal claim against an entity that might lack readily available assets to pay this claim.

The tension has become exacerbated as the processing time for I-526 petitions lengthens and developers seek to tap the inexpensive EB-5 capital as soon as possible. The condition that triggers the release of the funds to the NCE varies from EB-5 project to project.

The most protective trigger to the investor is the USCIS approval of the individual investor's specific I-526 petition. The escrow agreement can provide that the funds be released at an earlier stage. Depending on the project, the triggering event might include one of the following: USCIS approval of a certain number of I-526 petitions for investors in the same project; USCIS approval of the project portion of the I-526 petition (based primarily on job creation);²⁸² the funding of the senior construction loan; and a mere filing of the I-526 petition.

Holding the immigrant's investment in escrow pending I-526 petition approval does not violate the USCIS requirements that the investor's funds remain at risk and be sustained.²⁸³ However, after the I-526 is approved, the funds must be released to the NCE, which in turn must deploy the investment funds – debt or equity – in the JCE. Otherwise, the investment will violate the “at risk” requirement.

Although escrow of the investment provides a marketing advantage, the growing trend is not to offer an escrow. Some Regional Centers, especially those with a successful track record of EB-5 projects, provide for funds to be immediately released to the NCE for use by the JCE in the project. Some developers and Regional Centers take the position that escrow is unnecessary. They seek to convince the investors that it is in their mutual best interest to start construction of the project as soon as possible in order to catch a strong market, reduce carry costs, and create jobs within strict USCIS time limits.

These Centers rely upon their history of successfully completed projects in which an extremely high percentage of investor petitions have been approved by USCIS. Examples of Regional Centers that do not offer an escrow include American Life and EB5 Capital.²⁸⁴ Another large fund that does not hold investors' funds in escrow is USIF, which apparently has funded the largest volume of EB-5 capital transactions since its inception in 2010. These

²⁸² Once the USCIS approves the project portion of the I-526 petition, the main remaining issue is whether the particular investor can demonstrate that his funds originated from lawful sources. This trigger recognizes that the investor is in a better position than the Regional Center to know as to whether the funds originate from a lawful source.

²⁸³ The May 2013 Policy Memorandum at page 6 permits the funds to be held in escrow until the investor becomes a conditional permanent resident, without violating the “at-risk” rules.

²⁸⁴ EB-5 Capital Question 5 Investor FAQ – funds released when I-526 petition filed.

<http://www.eb5capital.com/faqs/>. American Life website FAQ - Investment Topics: Question: “How do I invest?” <http://www.amlife.us/eb-5-visa/faq-investment-topics>. Only a few Regional Centers have sponsored projects that have reached the stage where permanent visas have been issued to the investors. Few Regional Centers existed prior to 2009, and the timeline from the solicitation of the investors through the approval of the I-829 petition is approximately 5 years. Even fewer Regional Centers have sponsored projects that have resulted in the investors recovering their investment. Recovery generally cannot occur until after the permanent visa is issued because the investor must sustain his investment in the project.

Regional Centers commit to promptly return each investor's contribution if his I-526 petition is denied.²⁸⁵

The Chicago Convention Center scandal illustrates the importance of an escrow.²⁸⁶ There, each of the investors was able to promptly recover his full \$500,000 investment - because the funds were still held in escrow.

In contrast, the Regional Center's upfront administrative fee is typically not held in escrow, and instead at least a portion is released immediately to the Regional Center or NCE. It is often nonrefundable. In the Chicago Convention fraud case, the EB-5 investors still have not recovered the administrative fees (totaling \$11 million) that were used for promoter's purchase of luxury personal items, rather than solely for project expenses as promised to investors.²⁸⁷

Bridge Financing

To relieve the tension between investors (who desire escrow protection of their funds) and developers (who wish to proceed with the project without waiting for release of the EB-5 capital), some developers have turned to bridge financing. Bridge financing in the EB-5 context is interim financing or temporary financing – in the form of debt or equity – prior to the developer's receipt of EB-5 capital.²⁸⁸

Bridge financing describes the use of the funds – that is, to bridge the financing of a portion of a project until the ultimate intended source of financing is available. Bridge financing does not refer to the type of financing. Similar to EB-5 capital, bridge financing could be structured as senior debt, subordinated debt, unsecured debt or equity. However, bridge financing typically takes the form of a loan.

The USCIS had long been concerned that bridge loans might be an after-the-fact pretext by an EB-5 developer for lowering its cost of capital by replacing financing, with minimal impact on new job creation. It had been argued that EB-5 bridge financing simply increases the profit margin of developers. Until recently, the bridge loan market for EB-5 capital was weak due to uncertainty about whether USCIS would count, for EB-5 purposes, jobs created before the EB-5 capital was released into the project.

However, the USCIS took a very favorable view on this issue in its May 2013 Policy Memorandum. This has brought a measure of certainty to the area and has resulted in an increase in demand for bridge financing for EB-5 projects.²⁸⁹

The Policy Memorandum states in pertinent part: “[T]he developer or the principal of the new commercial enterprise, either directly or through a separate job-creating entity, may utilize...bridge financing... If the project commences based on the bridge financing prior to the receipt of the EB-5 capital and subsequently replaces it with EB-5 capital, the NCE may still receive credit for the job creation... Even if the EB-5 financing was not contemplated prior to acquiring the temporary financing, as long as the financing to be replaced was contemplated as short-term temporary financing which would be subsequently replaced, the infusion of EB-5

²⁸⁵ <http://www.amlife.us/eb-5-visa/faq-investment-topics>; <http://www.eb5capital.com/for-investors/>

²⁸⁶ This case was the focus of a July 2014 Fortune Magazine article on EB-5.

<http://fortune.com/2014/07/24/immigration-eb-5-visa-for-sale/>

²⁸⁷ See <http://fortune.com/tag/eb-5-visa/>

²⁸⁸ May 2013 Policy Memorandum at page 15

²⁸⁹ September 10, 2014 telephone call with Gina Nisbeth, director of Citigroup's Structured Lending and Investments Group, which includes making EB-5 bridge loans.

financing could still result in the creation of, and credit for, new jobs. Developers should not be precluded from using EB-5 capital as an alternative source to replace temporary financing simply because it was not contemplated prior to obtaining the bridge or temporary financing.”²⁹⁰

Thus, even if the EB-5 financing was not contemplated prior to placement of the bridge financing, so long as the financing to be replaced was viewed as temporary financing (which would ultimately be replaced) the developer could later use EB-5 capital as the source of replacement capital and still obtain credit for the job creation. This interpretation supports a potentially far greater EB-5 capital raise than if the EB-5 capital were not credited with job creation generated for the period prior to the release of the EB-5 capital to the project.

Based on this interpretation and the increased popularity of EB-5 capital as a financing tool, more banks and other institutions are willing to make bridge loans to fill the financing gap until the EB-5 funds are released from escrow. Some banks, such as Citibank, have formed a special division to provide these loans. These banks still underwrite the loan based on the project without EB-5 capital, in recognition that USCIS approval of the I-526 petitions is uncertain. Thus, the bridge lender must be prepared to have an exit strategy that does not rely upon the EB-5 capital as the takeout source. Similarly, the EB-5 escrowed funds are not available as a source of collateral. According to Citibank²⁹¹, the principal amount of the bridge loan is a percentage, from 50% to at most 80%, of the project’s total EB-5 capital component.²⁹²

It must be emphasized that the USCIS does not limit bridge financing to situations where the EB-5 capital is being held in escrow. The USCIS interpretation does not mention escrow and by its terms allows the bridge financing to be in place before EB-5 capital is even contemplated.

Where a bridge loan is required, obviously the costs to the project will be higher than where the EB-5 capital could be immediately funded when needed. The bridge loan proceeds are typically used to fund project construction costs. The bridge lender typically secures the loan with a senior mortgage loan, even if the ultimate loan to the JCE by the NCE will be a mezz loan.²⁹³

The mortgage tax rate varies by jurisdiction. For example, in New York City the rate approaches 3% of the loan’s principal amount, which is significant especially given the short duration of the bridge loan.²⁹⁴ Additional closing costs will apply. Furthermore, the interest rate on the bridge loan might be higher than on the EB-5 capital loan.

Thus, the bridge loan adds a layer of costs and complexity to the financing transaction. Accordingly, in evaluating whether to use EB-5 capital in its capital stack, a developer must take into account whether a bridge loan will be necessary and, if so, must estimate the additional costs of capital associated with that bridge loan.

The bridge loan also creates an opportunity for the developer to reduce the risk that the immigrant investor assumes by funding capital during the risky construction phase of a project. The bridge lender initially funds some of the costs that otherwise would be funded by the EB-5 capital. Although the developer presumably desires that the immigrant fund these costs as early

²⁹⁰ May 2013 Policy Memorandum at pages 15 and 16.

²⁹¹ Gina Nisbeth, https://www.citibank.com/mss/issuer_svcs/agency/escrow/pdf/eb5_bridge_financing.pdf

²⁹² Citibank’s bridge program is limited to projects that are located in “low income” communities qualifying for Community Reinvestment Act credit. Even though virtually all EB-5 projects are located in a TEA, few are located in qualifying census tracts.

²⁹³ If another senior lender is involved, the bridge lender might obtain a participation in the senior mortgage loan.

²⁹⁴ <http://www.tax.ny.gov/pit/mortgage/mtgidx.htm> The mezz loan is not subject to the mortgage tax.

as possible, and preferably without the necessity of a bridge loan and its additional costs, bridge financing arguably might be viewed favorably by the immigrant investor, particularly since the jobs created during the period the bridge financing is in place are allocated to the EB-5 investor. Subsequent to the issuance of the Policy Memorandum, USCIS has indicated that there are limits on its liberal interpretation of job creation funded by bridge financing. For example, if EB-5 funds are used to refinance debt initially contemplated as longer-term debt, then the EB-5 funds would not be credited with job creation.²⁹⁵ Nevertheless, the broad terms of the Policy Memorandum open many avenues for EB-5 capital to be credited with job creation, even where the jobs are created before the EB-5 capital is released to the project.

Technically, in most cases, the bridge lender makes the loan to the NCE as that is the entity that will be the recipient of the EB-5 capital upon its release from escrow. The NCE then transfers the bridge loan proceeds to the JCE. As the EB-5 capital is released from escrow, the funds are applied to reduce the bridge loan balance.²⁹⁶

Other sources of bridge financing are also available. Affiliates or other related parties to the developer sometimes fund the bridge loan. For example, the Lightstone REIT, an affiliate of the developer, is providing bridge financing for the Lightstone's EB-5 project. There the bridge financing of \$45 million represents 75% of the EB-5 capital raise.²⁹⁷ Obviously, this alternative is not available to many developers.

A different type of "bridge" financing: EB-5 gap financing utilized for public infrastructure projects

As indicated above, not only are private developers tapping EB-5 capital to finance their large-scale projects, but local governments are increasingly utilizing this source to fund their own large-scale public infrastructure projects. However, the local governments utilize the capital in a slightly different manner.

For large projects, some local governments obtain Federal funding to support part of the capital improvement cost that may be borne by the local government. The gap between the total project cost and the government funding is often filled by the issuance of municipal bonds. However, in a few instances, local governments have used EB-5 capital in creative ways to fill all or part of this gap. These projects obviously rely upon the loan model because individuals do not own interests in the local government or agency.

For example, the Pennsylvania Turnpike Commission is linking the Pennsylvania Turnpike to I-95. The Federal government provided financing of approximately \$220 million towards this \$420 million project, leaving a gap of about \$200 million, or approximately 47% of the total project cost.²⁹⁸ Reportedly, rather than issue municipal bonds, the State agency was persuaded by a group that formed a Regional Center to make a loan of approximately \$200 million at an effective rate of 2% per annum, about half the rate for municipal bond

²⁹⁵ http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED-EB5-QA_022614.pdf Question and Answer #11.

²⁹⁶ See the junior construction loan facility that replaced a substantial portion of the senior loan in SLS Las Vegas, discussed at [page 57](#). That project illustrates the substantial costs sometimes involved in bridge financing.

²⁹⁷ <http://lightstoneeb5.com/eb-5/capital-structure/>

²⁹⁸ http://articles.philly.com/2014-12-10/business/56884468_1_new-bridge-tappan-zee-chinese-investors

borrowing.²⁹⁹ This is projected to save the State about \$35 million over the 5-year loan term.³⁰⁰ Not only are the investors providing cheap capital to the project, they are serving as a hedge against interest-rate increases because at the loan's 5 year maturity the investors will be repaid with cash or a municipal bond, with the bond price set on the date the loan is made. The Regional Center is collecting an administrative fee of \$50,000 per investor, plus \$15,000 for attorneys' fees. Apparently, the Regional Center is able to maintain a low interest cost to the government by minimizing the involvement of, or fees paid to, migration agents.

The Tappan Zee Bridge reconstruction project presents a different approach. The Chinese website seeking to attract immigrant investors to this project contains a photograph of a billboard with the message: "Bonds for Visas".³⁰¹ The newly formed Regional Center is using a simple approach that one of its principals applied in the State of Washington to raise EB-5 capital for a bridge project. The investors, through the New York Goldwater Regional Center, simply purchase municipal bonds issued by the local government agency. If the Regional Center is successful in raising up to its \$1 billion target, that would represent approximately 25% of the \$3.9 billion total project cost, in the same range as the percentage commonly found in the EB-5 mezz financing utilized by private developers.

Thus, these alternative structures for EB-5 capital used to fund public infrastructure project are very different from the gap financing typically found in large-scale private developments utilizing EB-5 capital.

EB-5 capital may be combined with tax credit programs

Some developers choose to combine EB-5 capital with tax credit programs to close a funding gap or reduce the need for other capital. These tax credit programs include New Market Tax Credits (NMTC)³⁰², Low Income Housing Tax Credits (LIHTC),³⁰³ Historic Tax Credits (HTC)³⁰⁴ and/or Brownfield Tax Credits.³⁰⁵

²⁹⁹ <http://thedvrc.com/initial-project/>

³⁰⁰ <http://www.nbcphiladelphia.com/traffic/transit/Chinese-Investors-Sign-Up-to-Help-Finance-Pennsylvania-Turnpike-284256031.html>

³⁰¹

http://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=zh-CN&u=http://www.ucamyim.com/zidingyi/meiguo3/2014/0929/412.html%3F1412042286&usg=ALkJrhi4enH-Hx5Nl8G1FABHLTSfFaMoog; http://articles.philly.com/2014-12-10/business/56884468_1_new-bridge-tappan-zee-chinese-investors

³⁰² http://www.newmarkets.org/section/aboutus/tax_credits

³⁰³

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/lihtc/basics

³⁰⁴ <http://ntcicfunds.com/tax-credit-basics/historic-tax-credit-guide/>

³⁰⁵ The Federal Brownfield Tax Credit and other tax incentive program expired in 2011.

<http://www.epa.gov/brownfields/tax/> However, many states provide Brownfield tax incentives, including tax credits. For example, New York State recently extended its Brownfield tax incentive program for 10 years.

<http://www.democratandchronicle.com/story/news/local/2015/04/02/brownfield-environmental-cleanup-extension-new-york-budget/70858298/>

A discussion of how these programs can be combined with EB-5 funds in the capital stack is beyond the scope of this paper. However, it is noted that the availability of EB-5 capital has much broader application than capital provided through those tax credit programs.

NMTC is restricted to “low-income communities” based on an individual census tract in a “low income” area (a much narrower category than EB-5 TEAs). LIHTC is restricted to an asset class and has income limitations - below market rate, residential projects. HTC is not limited to an asset class, but it has very limited application since it applies generally only to the rehabilitation of historic and certain other older buildings. Brownfield credits typically involve industrial sites and are limited to properties that require extensive environmental remediation. Each of these programs provides for the issuance of tax credits that can be sold by the owner to generate equity for the project, although it is not common in the Brownfield context.

In contrast, EB-5 capital does not involve tax credits or any governmental subsidies. Unlike the tax credit programs that are available to limited asset classes or existing properties of a particular condition, EB-5 capital is available to a far broader array of properties, with fewer limitations. On the other hand, the project’s job creation capacity serves as a limit on EB-5 capital, but does not pose a limitation on the tax credit programs.

Conclusion

The recent use of EB-5 capital to provide gap financing for large-scale real estate projects in major urban areas represents a dramatic shift from the historic use of EB-5 funds. Increasingly, that capital constitutes a smaller slice of the capital stack, but for projects of immensely greater size. This smaller slice increases the likelihood that the necessary jobs will be created to satisfy the visa requirements.

EB-5 capital provides an extremely inexpensive - perhaps the least expensive (other than tax credits and public sources) - capital source available to developers for gap financing. Although forming its own Regional Center enables the developer to minimize the cost of EB-5 capital, thus far few developers have pursued this avenue. Most major developers that have utilized the program for their initial, and even subsequent projects, have relied upon sponsorship by a third party Regional Center. Increasingly, the recent launching of EB-5 capital raises by major developers include those that possess the corporate infrastructure and expertise to coordinate international sales and investor relations, such as Related, Silverstein and Extell. These developers have opted to form their own Regional Centers, despite the setup and processing costs, because they perceive the savings and benefits to significantly outweigh these costs. These developers contemplate, or are in the process of, utilizing their respective Regional Center for future projects.

As the dollar volume of typical EB-5 capital raises increases and the number of projects utilizing EB-5 capital multiplies, it should be anticipated that more developers will opt to form their own Regional Centers or seek to rent an existing Regional Center. However, one cannot quantify the savings that a developer may derive from using its own Regional Center without knowing the terms of the offering and the market rate charged by third party Regional Centers for comparable deals.

However, irrespective of the route they pursue, one point is clear: a greater number of developers are utilizing the Program to access relatively inexpensive and flexible capital. If and when USCIS, the Regional Centers or the developers make publicly available detailed information about the investment terms, a more accurate evaluation of the savings could be conducted. Similarly, one would then be able to make a more accurate comparison of EB-5 capital terms with terms available from conventional sources, as well as comparison of one EB-5 capital deal to another. In the meantime, it is undeniable that EB-5 capital is firmly established as a financing tool that any developer is likely to consider in creating the optimal mix for a real estate development project's capital stack.

The large-scale projects funded by EB-5 capital will contribute to a shortage of available visas as the number of applicants dramatically escalates. We believe it is likely that during 2015 legislation will be enacted to extend or make permanent the Regional Center Program; however, in the current political climate this is far from guaranteed. If the Program is to reach its full potential, the annual quota limit would have to be amended to permit more investors and their derivative family members to pursue EB-5 as their path to a visa.

EB-5 capital in the current market presents many interesting questions for future research including the following:

What are the factors a developer considers when deciding which, if any, of its development projects should incorporate EB-5 capital?

Will more developers opt to form their own Regional Center, rather than affiliate with Third Party Regional Centers?

Under what circumstances do developers rent a Regional Center and what are the terms of the rental?

How are relatively new Third Party Regional Centers able to attract major developers of large-scale projects, compared to well-established Regional Centers?

Will a higher percentage of major developers with large-scale projects opt to form Developer In-House Regional Centers?

How do the terms of the investment differ between an in-house and Third Party Regional Center, including, but not limited to, the return on the investment to the investor, the interest rate and other charges imposed on the borrower, loan covenants and required guarantees?

How can one determine the true overall cost of capital for EB-5 loans? Related areas of study could include: (a) to whom are the various costs paid; (b) how different Regional Centers structure the payment of costs and fees including migration agent fees, the management fees, , including any interest rate spread, as well as the administrative fees; and (c) the fee structure imposed by different Regional Centers.

Which factors influence whether a Regional Center deploys EB-5 capital as a loan or equity?

Which factors influence whether developers seek to utilize EB-5 capital as a loan or equity?

Will gap financing continue to be the most common use of EB-5 capital?

How do various EB-5 financing structures affect the developer/borrower's weighted average cost of capital?

Will more multi-phased, large-scale projects (such as Related's Hudson Yards and Lennar's Shipyard projects) utilize EB-5 capital, and if so, to fund which aspects of the project?

What is the relationship between infrastructure funding by EB-5 capital and public sources?

How can EB-5 capital be most efficiently utilized to fund environmental remediation and related costs?

What factors does the Regional Center or the developer consider in sizing each tranche or series of EB-5 capital raises for a particular project?

Are there typical terms for bridge financing used in EB-5 capital financing?

Which type of lenders will dominate the bridge financing space?

Is it likely that investor demand for EB-5 financing opportunities will expand or contract and what impact, if any, will this have upon the investment terms and structure?

Which external market forces impact the EB-5 capital investment terms and structure?

How will the demand for EB-5 visas and the number of projects seeking EB-5 capital affect future pricing?

Depending on the terms of the legislation that is presumably enacted to extend or make permanent the Regional Center program, how will this impact the structure of EB-5 capital?

If retrogression reoccurs and continues for an extended period, what impact might this have upon investment terms and structures?

Which are the most pressing EB-5 capital issues require clarification or action by USCIS, by regulation or otherwise?

How will the SEC's heightened scrutiny and investigation of EB-5 transactions affect the various participants in the EB-5 immigrant and capital process?

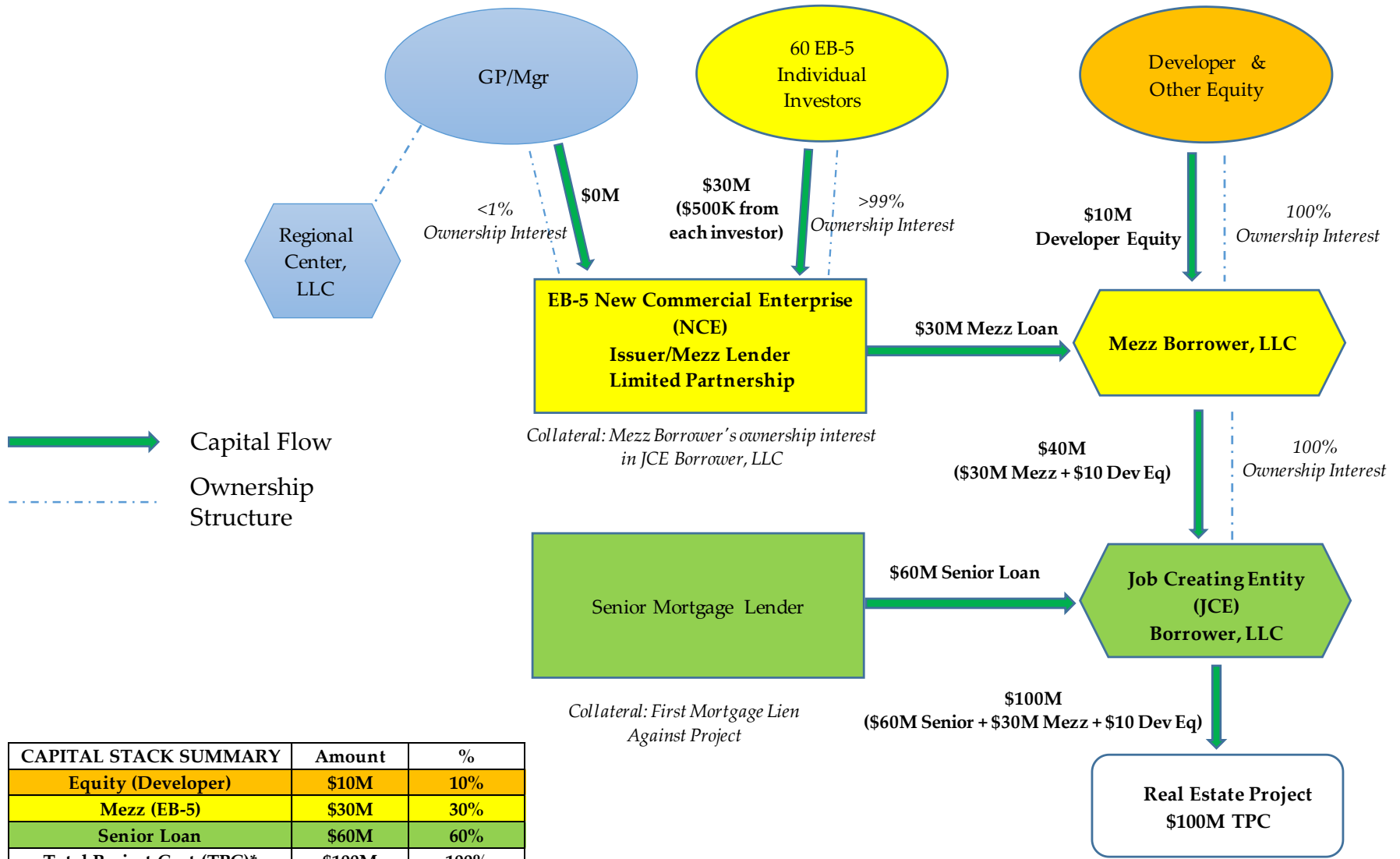
In addition, case studies can be prepared focusing on the large-scale projects including those covered in this paper, tracing the project's history and financing efforts before EB-5 capital was incorporated into the project, and then observing the build out and market absorption. This could include studying all aspects of the project, including visa issuance, project completion, job creation, investor exit, refinancing of capital and the overall success of the project for the developer, the investors and the local community.

Finally, we are in the process of preparing a series of papers focusing on the different slices of the capital stack represented by EB-5 capital, with specific case studies. We will also continue to update and expand our project database to include other large-scale projects.

Appendix

- A. Sample EB-5 Mezzanine Loan Structure
- B. Database: Select Large-Scale Real Estate Projects
- C. Database: Assorted Regional Centers

Appendix A - Sample EB-5 Mezzanine Loan Structure



CAPITAL STACK SUMMARY	Amount	%
Equity (Developer)	\$10M	10%
Mezz (EB-5)	\$30M	30%
Senior Loan	\$60M	60%
Total Project Cost (TPC)*	\$100M	100%

*Only portion of TPC qualifies as job creating expense

Sample Mezz Loan Terms		EB-5 Immigraton Consideration
Loan Size	See Maximum EB-5 Loan Size below	Based on job creation, not LTV or DSCR
Loan term	5 to 6 years + 2, 1 year optional extensions	Investment must be "at risk" and "sustained" until after I-829 removal of conditions approved
Interest rate allocable to EB-5 investors	1% or less per year to Investors	Investor's prime focus: obtain a visa; 2nd: recover capital investment; Distant 3rd: return on investment
GP management fee	2%+ per year	EB-5 investors' investment is pooled in NCE entity with Regional Center or affiliate as GP
Migration agent fee	2%+ per year	Overseas agents are often critical to attracting investors to a particular project
"All-in" cost of capital to Mezz Borrower	4% to 8% per year	Interest rate payable to EB-5 investor, GP management fee and migration fee might be separately stated or "baked into" one rate in the loan agreement that reflects these cost components
Points/origination fee	1% of loan amount	Paid to GP or RC
Principal amortization	None. Interest only, principal due at maturity	Otherwise, EB-5 capital investment not "at risk"
Equity kicker	None	Investors' prime motivation: obtain a visa. Thus, developer does not need to offer equity kicker.
Collateral	100% of the equity ownership interests of JCE	Classic mezz structure (not EB-5 specific). Mezz structure maximizes WACC and size of EB-5 investment as % of TPC reduces immigration risk because fewer jobs required to meet immigration requirement
Guaranty	Non-recourse carveout guaranty, if any	Completion guaranty presumably required by construction lender
Funding	Funds might be escrowed and not released to JCE project developer until escrow condition satisfied	Funds often escrowed due to risk that I-526 approval might be denied. Early Release escrow might provide for short escrow period. Otherwise, bridge loan might be considered in interim.

Appendix B - Select Large-Scale Projects Database

Attached as Appendix B is a Database of some of the largest real estate development projects in major metropolitan areas that have incorporated EB-5 capital as a component of the capital stack. The Database is compiled from information provided by the Regional Centers' websites, developers' websites, as well as other internet sources, including migration selling agents' websites and news media articles. Some Regional Centers publicly release more data than others. Representatives of only a few Regional Centers were willing to reveal or confirm information about their sponsored projects.

We have credited the information sources on each individual project Data Sheet (described below), including links where appropriate. In some cases, we have included links to Chinese websites that include project information, translated into English. The authors have not verified the accuracy of these translations.

The authors emphasize that neither of them has independently verified the information and data. We also acknowledge that the list is subjective and obviously, does not purport to constitute an exhaustive list all of the large-scale real estate projects in major metropolitan areas that have utilized or are currently utilizing EB-5 capital. We have limited the Database to 25 projects to make it manageable to navigate and in recognition that relevant data is extremely difficult to obtain.

The Database generally defines large-scale projects as commercial real estate projects in major metropolitan areas with total project costs of at least \$150 million and an EB-5 capital component. As indicated in the Database, the capital raises for some of the projects are still ongoing and not fully subscribed.

Some of the projects utilize separate tranches, or series of offerings, to raise EB-5 capital (such as Lennar's Shipyard, Greenland Forest City's Atlantic Yards and SBE's SLS Las Vegas,). Similarly, some of the projects involve multiple phases of construction with separate financing for each phase, as well as for sections within a phase. For the sake of simplicity, the data for all of the tranches, phases or series for a single project has been consolidated in the Summary table, whether or not the tranches relate to the same phase of construction. In the case of Atlantic Yards, separate Data Sheets are included because the capital for the first tranche was raised under the sponsorship of the New York City Regional Center, while tranches two and three are being sponsored by USIF Regional Center.

The Summary page summarizes some of the key EB-5 financing data that is applicable to these projects. A separate sheet for each project has been prepared listing these and other variables in more detail (the "Data Sheets"). Each Data Sheet is divided into four sections: Project Description, Capital Stack, EB-5 Details and Information Sources. In addition, a Pie Chart showing the components of the Capital Stack is included towards the center of each Data Sheet.

In the case of some projects with multiple tranches of EB-5 capital, information was available with respect to one tranche, but not another. In those cases, we relied on the information relating to one tranche and extrapolated to the others, based on the assumption that the same criteria or results would apply. The Data Sheets indicate where this approach was followed.

Furthermore, the Project Information section of each Data Sheet describes the entire project rather than the "project" that may have been established to meet the USCIS job creation requirements. Developers carefully structure the project for USCIS purposes to match the timing

of the construction expenditures that create jobs with the immigrant investors' visa application. In most cases, this is the same as the overall project. However, in the case of the multi-phased or multi-tranched projects, the project is not limited to the portion that relates to the EB-5 funding. For example, in the case of Hudson Yards and the San Francisco Shipyard, the entire project is described, while the EB-5 funding was used primarily, if not exclusively, to fund infrastructure, thereby shaping the narrow scope of the project for purposes of obtaining USCIS approval. The broader, overall project description is intended to give the reader a better sense of the type of project that might incorporate EB-5 capital into the stack.

The authors recognize that this limited sample of projects is subjective and not suitable for drawing general conclusions about the use of EB-5 capital. However, we believe the list is sufficiently representative of large-scale projects to illustrate some recent trends in the use of EB-5 capital.

Below are some observations about these 25 projects:

1. The total EB-5 capital component of these 25 projects exceeds \$4.6 billion. This represents a mean average of \$186 million per project, and a median average of \$168 million per project. As stated above, all tranches for a project are treated as part of the same project for purposes of the Database.
2. 15 of the 16 projects sponsored by Third Party Regional Centers deployed, or will deploy, the EB-5 capital as loans, principally as mezzanine loans. At least 5 of the 9 Developer In-House Regional Center projects deployed, or will deploy, the EB-5 capital as mezzanine loans.
3. The EB-5 capital components for these projects typically represents 15% to 30% of the total project costs.
4. The number of large-scale EB-5 projects has risen dramatically in the past two years. The projects with some of the largest capital raises, pending or completed, in the Program's history – Hudson Yards (\$600 million), SLS Las Vegas (\$384 million), Four Seasons New York Downtown Hotel (\$250 million) and the Shipyard (\$272 million) – did not start fundraising until 2013 or later.
5. These projects also represent the largest EB-5 projects in history based on total project costs. As explained in the paper, it was more common in the past for the EB-5 capital component to represent a larger share of the capital stack. Several of the projects listed in the Database have total project costs approaching or exceeding \$1 billion. That size project was virtually nonexistent in the EB-5 context prior to 2010. As noted in the paper, where the EB-5 capital represents a smaller slice of the capital stack, the likelihood increases that the EB-5 job creation requirements will be met.
6. The projects include two of the largest, multi-phased projects to be developed in their respective city's history, namely, Related Hudson Yards in New York City and Lennar's Shipyard project in San Francisco. Reports estimate that the Shipyard will be a 20-year project involving more than \$8 billion of invested capital. One would expect that each of these two projects will seek to raise additional EB-5 capital as each project progresses, similar to the way that Greenland Forest City Partners has raised capital in phases or tranches for its long-term, multi-phased Atlantic Yards project.
7. Third Party Regional Centers sponsored 16 of the projects and Developer In-House Regional Centers sponsored 9 of the projects.

8. The types of large-scale projects funded by EB-5 capital vary widely. The project type category in the Database lists the product type of the project to be constructed as a whole, even if the EB-5 project submitted to USCIS is focused on the funding of infrastructure for the project.
9. EB-5 capital as a funding source for the infrastructure component of a project is particularly important for mega-projects. Following the lead of Atlantic Yards/Pacific Park, Hudson Yards and the Shipyard, each is seizing the opportunity to incorporate EB-5 capital into the capital stack to fund substantial infrastructure improvements. These improvements must be installed before vertical construction can commence. Thus, EB-5 capital serves as seed capital to jump start the project, even though the necessary cash flow to fund the infrastructure repayment will not be generated for several years in the future.
10. We have expanded the scope of the Database to include some unconventional real estate related projects in metropolitan areas. Examples include NY Wheel, All Aboard Florida and the Brooklyn Navy Yard.
11. The Brooklyn Navy Yard is the only project on the list that is owned by a city (it is managed by a nonprofit agency). However, as the Navy Yard constitutes New York City's largest industrial park and is becoming one of the most successful urban manufacturing districts in the country, the project merits inclusion. The four loans relating to the Navy Yard are consolidated into one Data Sheet. However, two of the loans were made to the nonprofit manager to fund the redevelopment, and two of the loans were made to Steiner Studios to assist in its television and soundstage expansion.
12. One project, All Aboard Florida, involves a private entity that will finance and operate public infrastructure (high speed rail transportation) with no other development component. This represents a growing trend of stand-alone infrastructure projects that are being funded with substantial amounts of EB-5 capital. Other examples are cited in the paper.
13. Several of the projects are sponsored by the In-House Regional Centers of large developers, such as the Lam Group and Lightstone Group. Thus, large-scale projects utilizing EB-5 capital are not limited to In-House Regional Centers of mega-developers, such as Extell, Related and Silverstein.
14. Each of the projects is located in a major metropolitan area. The statistical breakdown by metropolitan area is as follows: New York – 19; San Francisco – 1; Los Angeles – 1; Las Vegas – 1; Miami – 1; Seattle – 2. Again, we recognize that our limited Database is small and subjective.
15. Multifamily housing serves as a major component of 10 of the projects. However, it is unclear whether EB-5 capital will be used for the multifamily portion of these projects, particularly for those projects with a hotel component. For example, internet sources have suggested that the luxury condominium portion of Silverstein's Four Seasons New York Downtown Hotel, and HFZ's Battery Park Hotel might not incorporate the luxury condominium portion. Several of the other projects are predominantly residential condominium in form. It is unclear how those projects will be organized to comply with the USCIS "at-risk" and sustained investment requirements, assuming the condominium units will be sold prior to issuance of the permanent visas to the immigrant investors.
16. Hotels serve as the major component of 8 of the projects. Hotels generate more direct jobs than most other real estate projects. However, since the USCIS' issued guidance in 2009 on the acceptance of construction jobs to meet the job creation requirements, it appears

that the type of projects that incorporate EB-5 capital has greatly expanded. Furthermore, many projects create a sufficient number of jobs for the size of the intended capital raise based solely on indirect jobs. In those cases, if direct jobs are considered, these merely serve as part of the available job cushion.

17. Several of the projects were stalled for years due to a variety of factors as described in the links in the Information Source section of the relevant Data Sheets. Contributing factors included: lack of financing due to resistance by the credit markets to the industry, property type generally, or the project in particular; lack of major infrastructure funding sources; lack of government entitlements; and the impact of the 2008 financial crisis. Similar to the way EB-5 capital assisted the initial development of projects like Atlantic Yards and City Point in Brooklyn in the aftermath of the financial crisis, the availability of EB-5 capital for the more recent projects might be credited for enabling the project to proceed.
18. None of these projects has resulted in the investors' recovery of their capital investment. The EB-5 capital funding for these projects generally occurred after 2009, so insufficient time has passed for the investors in most, if not all, of these projects, to obtain their permanent visa. Thus, these projects are not yet ripe for the investors to recover their respective capital investments.

Summary Page for Third Party Regional Center Projects

#	Project Name	Project Locale	City	Project Developer (Lead developer)	Regional Center	Project Type/ Predominant Type	Number of EB-5 Investors	EB Capital Investment (estd)	Approximate Total Project Cost (TPC)	EB-5 Investment as % of TPC	EB-5 Loan or Equity?	Type of EB-5 Loan or Equity	Fully Subscribed (Yes/No) - estimated	Tranches	Minimum # Jobs Required	Total Jobs Estimated to be Created
1	SLS Las Vegas	The Strip	Las Vegas	SBE (Investment Co)	American Dream Fund	Hotel/Casino	768	384M	894M	43%	Loan	2nd Mortgage	Yes	2	7,680	8,719
2	855 Ave of Americas (6th Ave)	Midtown Manhattan	NYC	Durst	USIF	Mixed use/multi-family rental	160	80M	423M	19%	Loan	Mezz	Yes	1	1,600	2,009
3	W57	Midtown Manhattan	NYC	Durst	USIF	Mixed use/multi-family rental	360	180M	685M	26%	Loan	Mezz	Yes	1	3,600	4,896
4	Bryant Park	Midtown Manhattan	NYC	HFZ	USIF	Hotel/Luxury Condominium	105	53M	253M	21%	Loan	Mezz	Yes	1	1,050	1,385
5	101 Tribeca	Tribeca section of Manhattan	NYC	Fisher Bros./Witkoff Group	USIF	Luxury condominium	350	175M	735M	24%	Loan	Mezz	Yes	1	3,500	4,548
6	701 TSQ	Times Square	NYC	Witkoff Group	USIF	Marriot Hotel	400	200M	984M	20%	Loan	Mezz	No	1	4,000	5,136
7	The Charles	Upper East Side of Manhattan	NYC	Blue Rock	USIF	Luxury condominium	44	22M	157M	14%	Loan	Mezz	Yes	1	440	555
8	222 E. 40th	Midtown Manhattan	NYC	Fisher Brothers	USIF	Luxury apartments rental	100	50M	297M	17%	Loan	Mezz	No	1	1,000	Unknown
9	Trump Plaza - Jersey City Ph II		Jersey City	Kushner	USIF	Luxury apartments rental	130	65M	194M	34%	Loan	Mezz	Yes		1,300	1,668
10	City Point	Brooklyn	NYC	Acadia (REIT)	NYC Regional Center	Mixed use/Retail	400	200M	474M	42%	Loan	Unsecured \$100M/Mezz or 2nd Mortgage \$100M	Yes	2	4,000	Unknown
11	Atlantic Yards	Brooklyn	NYC	Greenland Forest City Partners	USIF (Tranches 2&3); NYCRC (Tranche 1)	Mixed Use/Multi-family	1,154	577M	3239M	18%	Loan	Mortgage/Mezz	Yes	3	11,540	20,696
12	Shipyard	Candlestick Park, Naval Shipyard	San Francisco	Lennar	Golden Gate Global	Mixed use/Multi-family for sale	544	272M	Unknown	Unknown	Loan	Mezzanine	No	5	5,440	6,637
13	Knickerbocker Hotel	Times Square	NYC	Felcor (REIT)	NY Immigration Fund	Hotel	90	45M	243M	19%	Equity	Preferred Equity	Yes	1	900	1,700
14	Brooklyn Navy Yard (BNY)	Brooklyn	NYC	BNY Development (Nonprofit)/Steiner Studios	NYC Regional Center	Industrial	494	247M	Unknown	Unknown	Loan	Unknown	No		4,940	Unknown
15	All Aboard Florida	Miami & Orlando	Miami-Orlando FL	FECI	CanAm	High speed intercity rail	600	300M	1327M	23%	Loan	Mezz	Unknown		6,000	7,923
16	New York Wheel	Staten Island	NYC	Plaza Capital	CanAm	Ferris wheel	300	150M	400M	38%	Loan	Mortgage	Yes	1	3,000	3,500

Summary Page for Developer In-House Regional Center Projects

#	Project Name	Project Locale	City	Project Developer (Lead developer)	Regional Center	Project Type/ Predominant Type	Number of EB-5 Investors	EB Capital Investment (estd)	Approximate Total Project Cost (TPC)	EB-5 Investment as % of TPC	EB-5 Loan or Equity?	Type of EB-5 Loan or Equity	Fully Subscribed (Yes/No) - estimated	Tranches	Minimum # Jobs Required	Total Jobs Estimated to be Created
1	International Gem Tower	Midtown Manhattan	NYC	Extell	In house/ Extell	Diamond & Jewelry Market	150	75M	750M	10%	Loan	Mezz	Yes	2	1,500	3,500
2	555 W. 10th Ave.	West Side of Manhattan	NYC	Extell	In house/ Extell	Luxury apt. rentals	200	100M	500M	20%	Equity	Preferred Equity	No		2,000	2,900
3	Liberty Gardens	Brooklyn (Carroll Gardens)	NYC	Lightstone	In house/ Lightstone	Luxury apt. rentals	120	60M	224M	27%	Loan	Mezz	No	1	1,200	1,532
4	213 Pearl Street	Downtown Manhattan	NYC	Lam Group	In house/ Lam	Hotel	90	45M	220M	20%	Loan	Mezz	Yes	1	900	1,030
5	Renaissance Hotel	Nomad area of Manhattan	NYC	Lam Group	In house/ Lam	Hotel	80	40M	150M	27%	Loan	Mezz	Yes	1	800	1,419
6	Four Seasons Hotel	Tribeca section of Manhattan	NYC	Silverstein	In house/ Silverstein	Hotel/Luxury Condominium	500	250M	930M	27%	Loan	Mezz	No	1	5,000	5,543
7	Hudson Yards	West Side of Manhattan	NYC	Related Companies	In house/ Related	Mixed use/office, retail & residential	1,200	600M	Unknown	Unknown	Unknown	Unknown	Yes	1	12,000	Unknown
8	LA Marriott	Downtown	Los Angeles	American Life	In house/ American Life	Hotel	336	168M	168M	100%	Equity	Equity (LP)	Yes	1	3,360	3,860
9	Embassy Suites Hotel/Stadium Place	Stadium area	Seattle	American Life	In house/ American Life	Mixed use/Hotel	600	300M	300M	100%	Equity	Equity (LP)	No		6,000	Unknown

Total (Third Party and Developer In House)	9,275	4.64B	13.55B	*
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*Did not calculate EB-5 as a percentage of TPC because omission of TPC of certain projects would distort the average.

Individual Project Data Sheet

Project Information			
Developer	Formerly SBE Entertainment. In Dec 2014 removed as manager by Stockbridge.		
Co-developer or Major Investors	Stockbridge Capital Group		
Project Name	SLS Las Vegas		
Project Address	North end of Strip Las Vegas	Former Sahara Hotel	
Regional Center	American Dream Fund	3rd Party RC	
Property Owner	Stockbridge/SBE Holdings, LLC		
Land/Bldg Acquired	2007		
Property Type	Hotel/Casino		
Project Size	Total gsf	2.2M	1,622 keys
Construction Status	Started	2013	Completed 2014
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$150M	17%	JP Morgan Chase/Keycorp Real Estate
EB-5	\$384M	43%	
Developer & Other	\$360M	40%	TPC minus EB-5 and senior loan
Total Project Cost (Estd)	\$894M	100%	TPC per ADF website
<p>Total Project Cost \$894M</p> <ul style="list-style-type: none"> Senior Loan: \$150M (17%) EB-5: \$384M (43%) Developer & Other: \$360M (40%) 			
EB-5 Details	Notes		
Loan or Equity	Loan		
Type	Subordinated	Unclear if deed of trust or mezz	
# Investors	768	Unclear whether still raising funds in tranche 2	
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	8,719		
Min reqd jobs to be created	7,680		
Job cushion	1039	Job Coverage Ratio 1.14	
Escrow of EB-5 funds?	Yes		
I-526 application status		Funds were released from escrow upon approval of 23 I-526 petitions	

Information Sources

See especially footnotes to 10Q 6/30/2014 and 9/30/14

<http://www.adreamfund.cn/en-us/lasi.html>

http://www.adreamfund.com/investment_projects.php

<http://biz.yahoo.com/e/140821/160696510-q.html>

<http://yahoo.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=10407652-25806-89643&type=sect&TabIndex=2&companyId=934236&ppu=%252fddefault.aspx%253fcik%253d1606965>

<http://www.vegasinc.com/business/gaming/2012/apr/04/financing-details-unveiled-sahara-renovation-sls-l/>

<http://online.wsj.com/news/articles/SB10001424127887323511804578300380568358910>

<http://www.reviewjournal.com/business/casinos-gaming/sbe-entertainment-secures-last-415-million-financing-sahara>

<http://www.lasvegassun.com/news/2014/may/11/why-china-loves-vegas/>

<http://www.reviewjournal.com/business/casinos-gaming/good-bye-sahara-hello-sls-las-vegas>

<http://www.bhfs.com/People/aotto?wosView=representativeMatters>

<http://www.prnewswire.com/news-releases/sbe--stockbridge-secure-300-million-for-redevelopment-of-the-sahara-into-the-sls-las-vegas-hotel--casino-149642475.html>

http://www.adreamfund.com/investment_projects.php

http://www.adreamfund.com/investment_projects.php

<http://abcnews.go.com/US/whistleblowers-us-gave-visas-suspected-forgers-fraudsters-criminals/story?id=28671577&singlePage=true>

Individual Project Data Sheet

Project Information				
Developer	Durst Organization			
Co-developer or Major Investor				
Project Name	855 Avenue of the Americas			
Project Address	855 Ave of America, NYC	Block 806, Lot 34		
Regional Center	USIF	3rd Party RC		
Property Owner	855 MRU, LLC			
Land/Bldg Acquired	2010	2013 deed transfer from related entity		
Property Type	Rental apts	379 units	Office & retail	7 floors
Project Size	Total gsf	534,000		184,000
Construction Status	Started	Oct-13	Completed	
Capital Stack				
Capital Structure	Amount	% TPC	Lender/Investor (or notes)	
Senior Loan	\$260M	61%	NYS HFA	per ACRIS
EB-5	\$80M	19%		
Developer & Other	\$84M	20%		
Total Project Cost (Estd)	\$424M	100%		
<p>The donut chart illustrates the composition of the total project cost. The largest portion is the Senior Loan at 61% (\$260M), followed by Developer & Other at 20% (\$84M), and EB-5 at 19% (\$80M).</p>				
EB-5 Details		Notes		
Loan or Equity	Loan			
Type	Mezz			
# Investors	160			
Investment per investor	500,000			
Fully subscribed?	Yes	As of July 2013		
Subscription made available		As of April 2013		
Jobs created (approx.)	2,009			
Min reqd jobs to be created	1,600			
Job cushion	409	Job Coverage Ratio 1.26		
Escrow of EB-5 funds?				
I-526 application status				

Information Sources

- <http://newyorkyimby.com/wp-content/uploads/2013/06/855-Ave.-of-Americas-book-ENGLISH-email.pdf>
- <http://www.855avenueoftheamericas.com/>
- <http://www.durst.org/properties/855-avenue-of-the-americas/availabilities/lower-level>
- <http://www.eb5-usavisa.com/our-projects/855-avenue>
- <http://www.eb5-usavisa.com/portfolio/new-york-city-855-avenue-of-the-americas>
- <http://online.wsj.com/news/articles/SB10001424127887324125504578509382446057460>
- http://therealdeal.com/issues_articles/eb-5-in-overdrive/

The Real Deal article indicates Durst "rented" the regional center for the 855 Ave of Americas EB-5 raise but does not explain how this differs from entering into an arrangement with a third party center. "Rent" here might be a misnomer or merely indicates that the Regional Center is providing less than "full services" to Durst.

Individual Project Data Sheet

Project Information			
Developer	Durst Organization		
Co-developer or Major Investor			
Project Name	(1) W57 and (2) The Edison		
Project Address	625 West 57th (b/w 11th & 12th), NYC Block 1105, several lots		
Regional Center	USIF	3rd Party RC	
Property Owner	Owner appears to be Swallow LLC, subject to a Ground Lease		Per ACRIS
Land/Bldg Acquired	Durst Pyramid appears to be ground tenant		Per ACRIS
Property Type	2 mixed use buildings located on the same site: Apts and retail		
Project Size	1,076,934 total gsf	819 units	
Construction Status	Started	2014 Completed	Est. Fall 2015
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$407M	59%	Wells Fargo & 4 others
EB-5	\$180M	26%	West 57th Funding, LLC
Developer & Other	\$98M	14%	Per USIF's website
Total Project Cost (Estd)	\$685M	100%	
<p>Total Project Cost \$685M</p> <ul style="list-style-type: none"> Senior Loan: \$407M (59%) EB-5: \$180M (26%) Developer & Other: \$98M (14%) 			
EB-5 Details		Notes	
Loan or Equity	Loan	5 year loan based on page 15 of USIF web brochure	
Type	Mezz		
# Investors	360		
Investment per investor	500,000		
Fully subscribed?	Yes	Within 16 weeks of offering	
Subscription made available			
Jobs created (approx.)	4,896		
Min reqd jobs to be created	3,600		
Job cushion	1,296	Job Coverage Ratio 1.36	
Escrow of EB-5 funds?	Yes	Fully subscribed as of 1/1/2014	
I-526 application status	72	EB-5 investors filed I-526 petitions as of 3/25/2014	

Information Sources

http://visaeb-5.com/wp-content/uploads/2014/05/USIF_West_57th_Newsletter_April_2014_ENGLISH.pdf
<http://visaeb-5.com/wp-content/uploads/2013/09/W57-book-ENGLISH-email.pdf>
<http://online.wsj.com/news/articles/SB10001424127887324125504578509382446057460>
<http://www.eb5-usavisa.com/our-projects/new-york-w57th-street>
<http://commercialobserver.com/2014/10/wells-fargo-and-bny-mellon-lead-financing-for-durst-fetner-west-side-rental/>
<http://www.durst.org/properties/west-57th-street#>
<http://therealdeal.com/blog/2015/01/21/durst-fetner-split-ways/>

Individual Project Data Sheet

Project Information			
Developer	HFZ Capital		
Co-developer or Major Investor	MDC Capital		
Project Name	Bryant Park Hotel-Condo		
Project Address	20 W. 40th Street, NYC	Block 841, Lot 30	
Regional Center	USIF	3rd Party RC	
Property Owner	20 West 40 Bryant Park Owner, LLC		
Land/Bldg Acquired	2013	followed 2010 foreclosure-type sale to related entity	
Property Type	Hotel/Condo	159 keys	Luxury condo 66 units
Project Size	220,000 gsf	Total	EB-5 funding might not include residential
Construction Status	Start(ed)		Completed
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$143M	57%	Bryant Park Funding 100, LLC
EB-5	\$53M	21%	
Developer & Other	\$57M	23%	
Total Project Cost (Est'd)	\$253M	100%	
<p>The donut chart illustrates the composition of the total project cost of \$253 million. The largest portion is the Senior Loan at \$143 million (57%), followed by EB-5 funding at \$53 million (21%), and Developer & Other contributions at \$57 million (23%).</p>			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	105		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	1,385		
Min req'd jobs to be created	1,050		
Job cushion	335	Job Coverage Ratio 1.32	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

[http://visaeb-5.com/wp-content/uploads/2014/05/USIF Bryant Park Newsletter April 2014 ENGLISH.pdf](http://visaeb-5.com/wp-content/uploads/2014/05/USIF_Bryant_Park_Newsletter_April_2014_ENGLISH.pdf)
<http://ny.curbed.com/tags/20-west-40th-street>
<http://therealdeal.com/blog/2014/02/04/hfz-files-plans-for-long-delayed-bryant-park-tower/>
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<http://blog.kwnyc.com/bryant-park-will-have-a-new-luxury-tower/>

Individual Project Data Sheet

Project Information			
Developer	The Witkoff Group; Fisher Brothers		
Co-developer or Major Investor			
Project Name	101 TriBeCa		
Project Address	101 Murray Street NYC (Tribeca)	Block 142, Lot 100	
Regional Center	USIF	3rd Party RC	
Property Owner	Henry V Murray Sr LLC		
Land/Bldg Acquired	2013	\$223M	Former St. John's University satellite site
Property Type	luxury condo building with retail		
Project Size	368049 gsf	Total	129 condo units 900' high +/-
Construction Status	Start(ed)		Completed
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$429M	58%	Land loan July 2013 M&T \$105M
EB-5	\$175M	24%	
Developer & Other	\$131M	18%	
Total Project Cost (Estd)	\$736M	100%	
<p>The donut chart illustrates the composition of the total project cost of \$736 million. The largest portion is the Senior Loan at \$429 million (58%), followed by EB-5 at \$175 million (24%), and Developer & Other at \$131 million (18%).</p>			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	350		
Investment per investor	500,000		
Fully subscribed?	Yes	Nov-14	
Subscription made available			
Jobs created (approx.)	4,548		
Min reqd jobs to be created	3,500		
Job cushion	1,048	Job Coverage Ratio 1.30	
Escrow of EB-5 funds?		Upon funding by senior and developer per USIF website	
I-526 application status			

Information Sources

<http://residencyinvest.com/101-tribeca-eb5-project-new-york/>
<https://translate.google.com/translate?sl=auto&tl=en&js=y&prev=t&hl=en&ie=UTF-8&u=http%3A%2F%2Fwww.qiaowai.net%2Fzhuanti%2Ftribeca101%2F&edit-text=&act=url>
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<http://ny.curbed.com/tags/101-murray-street>
http://ny.curbed.com/archives/2013/07/22/condos_of_the_future.php
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Individual Project Data Sheet

Project Information			
Developer	Witkoff Group		
Co-developer or Major Investor	Winthrop Realty Trust; Maefield Development; Vector Group		
Project Name	701 TSQ		
Project Address	701 7th Ave, NYC (Times Square)	Block 1000 Lot 1	
Regional Center	USIF	3rd Party RC	
Property Owner	701 Seventh Property Owner, LLC		
Land/Bldg Acquired	2012	430 million	
Property Type	Hotel	Marriott Edition	
Project Size	Total gsf	452 keys	100,000 gsf retail
Construction Status	Started	Completed	Est. 2017
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$615M	63%	Starwood Property Mortgage, LLC and affiliates
EB-5	\$200M	20%	Originally planned as 10%, not 20%
Developer & Other	\$169M	17%	
Total Project Cost (Estd)	\$984M	100%	
<p>Total Project Cost \$984M</p> <ul style="list-style-type: none"> Senior Loan: \$615M (63%) EB-5: \$200M (20%) Developer & Other: \$169M (17%) 			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	400		
Investment per investor	500,000		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)	5,136		
Min reqd jobs to be created	4,000		
Job cushion	1,136	Job Coverage Ratio	1.28
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

http://visaeb-5.com/?attachment_id=18740
http://translate.google.com/translate?hl=en&sl=zh-CN&u=http://www.qiaowai.net/zhuanti/701tsq_2/&prev=search
<http://translate.google.com/translate?hl=en&sl=zh-CN&u=http://baike.baidu.com/view/13886977.htm&prev=search>
<http://news.marriott.com/2014/01/times-square-set-to-welcome-newest-edition.html>
 Marriott reportedly granted put option to Starwood for 314M if default within first 2 years of loan:
<http://nypost.com/2014/01/20/marriott-brings-schragers-vision-to-times-squares-new-edition/>
[http://www.costar.com/News/Article/Times-Square-Development-Site-Trades-for-\\$430-Million/142472](http://www.costar.com/News/Article/Times-Square-Development-Site-Trades-for-$430-Million/142472)
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<http://commercialobserver.com/2014/04/times-square-marriott-sets-theater-district-record-with-big-air-rights-buy/>
<http://michaelstolerrealestatereport.blogspot.com/2013/02/is-there-money-for-hotel-financing.html>
<http://www.rew-online.com/2014/01/22/all-eyes-on-701-seventh-retail/>

Individual Project Data Sheet

Project Information			
Developer	Blue Rock Real Estate, LLC		
Co-developer or Major Investor			
Project Name	The Charles	between E. 72nd and E. 73rd	
Project Address	1355 First Avenue NYC (UES)	Block 1447, Lot 27	
Regional Center	USIF	3rd Party RC	
Property Owner	The Charles Condominium, LLC		
Land/Bldg Acquired	2010	From German lender	See ACRIS
Property Type	Condo luxury		
Project Size	Total gsf	104,000	31 floors, 27 units 1 unit per floor
Construction Status	Started	2013	Completed
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$80M	51%	Starwood Property Mortgage, LLC
EB-5	\$22M	14%	
Developer & Other	\$55M	35%	
Total Project Cost (Est'd)	\$157M	100%	
<p>Total Project Cost \$157M</p> <ul style="list-style-type: none"> Senior Loan: \$80M (51%) Developer & Other: \$55M (35%) EB-5: \$22M (14%) 			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	44		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	555		
Min req'd jobs to be created	440		
Job cushion	115	Job Coverage Ratio 1.26	
Escrow of EB-5 funds?			
I-526 application status		All approved by USCIS as of 11/29/13	

Information Sources

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<https://translate.google.com/translate?sl=auto&tl=en&js=y&prev=t&hl=en&ie=UTF-8&u=http%3A%2F%2Fwww.qiaowai.net%2Fzhuanti%2Fmhd%2F&edit-text=>
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<http://therealdeal.com/blog/2013/02/05/charles-developer-secures-86m-construction-loan/>
http://www.nytimes.com/2014/03/09/realestate/higher-prices-migrate-to-far-upper-east-side.html?_r=0
<http://charlesnyc.com/building>
<http://streeteasy.com/building/the-charles>
<http://www.businesswire.com/news/home/20111130005289/en/Canyon-Funds-25.6-Million-Senior-Loan-Stalled#.VNenuy7b6Hu>

Individual Project Data Sheet

Project Information			
Developer	Fisher Brothers		
Co-developer or Major Investor			
Project Name	222. E.40th		
Project Address	222 E.40th, NYC	aka 225 E.39th	Block 920 Lot 13
Regional Center	USIF	3rd Party RC	
Property Owner	Gemini Residential, LLC		
Land/Bldg Acquired	2014	Former Hertz garage	
Property Type	Multifamily rental or condo		
Project Size	Total gsf	374,490	372 units 20% affordable
Construction Status	Started	2014	Completed Est 2017
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$166M	56%	Northwestern Mutual Life Dec-14
EB-5	\$50M	17%	
Developer & Other	\$81M	27%	
Total Project Cost (Estd)	\$297M	100%	
<p>The donut chart illustrates the composition of the total project cost. The largest portion is the Senior Loan at 56% (\$166M), followed by Developer & Other at 27% (\$81M), and EB-5 at 17% (\$50M).</p>			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	100		
Investment per investor	500,000		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)			
Min reqd jobs to be created	1,000		
Job cushion		Job Coverage Ratio TBD	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://residencyinvest.com/222-east-40-eb5-new-york-project/>
<http://newyorkyimby.com/2014/05/permits-filed-225-east-39th-street.html>
http://ny.curbed.com/archives/2014/06/16/fisher_bros_plans_affordable_rentals_with_pool_for_murray_hill.php
<http://newyorkyimby.com/2014/05/permits-filed-225-east-39th-street.html>
http://ny.curbed.com/archives/2014/06/16/fisher_bros_plans_affordable_rentals_with_pool_for_murray_hill.php
<http://translate.google.com/translate?hl=en&sl=zh-CN&u=http://www.qiaowai.net/zhuanti/mlsj/&prev=search>

Individual Project Data Sheet

Project Information			
Developer	Kushner Companies		
Co-developer or Major Investor	KABR Group		
Project Name	88 Kushner - KABR (Trump Bay Street)		
Project Address	65 Bay Street Jersey City, NJ	2nd phase of Trump Plaza in Jersey City	
Regional Center	USIF	3rd Party RC	
Property Owner	Kushner-KABR		
Land/Bldg Acquired	2011	Bought \$35M debt on the property for \$6M	
Property Type	Rental apartments		
Project Size	Total gsf	417 apartments	4,000 gsf retail
Construction Status	Started 2014	Completed	Est. 2016
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$90M	47%	
EB-5	\$65M	34%	
Developer & Other	\$39M	20%	
Total Project Cost (Estd)	\$194M	100%	
<p>Developer & Other \$39M 20%</p> <p>Senior Loan \$90M 47%</p> <p>EB-5 \$65M 34%</p> <p>Total Project Cost \$194M</p>			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	130		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	1,668	Based on \$121.4M of qualifying construction costs	
Min reqd jobs to be created	1,300		
Job cushion	368	Job Coverage Ratio 1.28	
Escrow of EB-5 funds?	Yes	Pending approval of each investor's I-526 petition	
I-526 application status		As of Sept-2014, 120 of EB-5 investors filed I-526 petitions	

Information Sources

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<http://visaeb-5.com/wp-content/uploads/2014/10/88-Kushner-Kabr-OCT2014-newsletter-ENGLISH-v1.pdf>
http://visaeb-5.com/wp-content/uploads/2014/05/USIF_88_Kushner_Newsletter_April_2014_ENGLISH.pdf
<https://translate.google.com/translate?sl=auto&tl=en&js=y&prev=t&hl=en&ie=UTF-8&u=http%3A%2F%2Fwww.qiaowai.net%2Fzhuanti%2Fzx%2F%23&edit-text=&act=url>
<http://www.qiaowai.net/zhuanti/xzx/#>
<http://therealdeal.com/blog/2014/05/12/kushner-to-team-up-with-trump-organization-on-jersey-city-development/>
<http://newyorkyimby.com/2014/03/revealed-65-bay-street.html>
<http://www.multiphasingnews.com/news/northeast/groundbreaking-for-second-trump-plaza-building-in-jersey-city-expected-in-june/1004101125.html>

Individual Project Data Sheet

Project Information			
Developer	Greenland Forest City Partners		
Co-developer or Major Investors	Forest City Ratner (NYSE:FCE) and	Greenland USA	JV as of 7/2014
Project Name	Pacific Park (formerly Atlantic Yards)	Total project will consist of 2 phases	
Project Address	Downtown Brooklyn	Parts of Block 1118-1121, 1127-1129	
Regional Center	USIF (tranches 2 & 3)	NYCRC (tranche 1) preceded Greenland's entry	
Property Owner	Greenland Forest City Partners		
Land/Bldg Acquired		JV excludes Barclay Center and B2 building	
Property Type	Mixed use/residential, office and retail including Barclays Center		
Project Size	Total gsf	approx. 7.7M gsf	6,400 res units; 16 bldgs. 22 acres
Construction Status	Started	2010	Completed Est. 2025
Capital Stack			
CONSOLIDATION OF TRANCHES 1, 2 AND 3			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan			Reflects consolidation of EB-5 capital raises by USIF (tranches 1 and 2) and by NYCRC (tranche 3)
EB-5	\$577M	18%	
Developer & Other			
Total Project Cost (Estd)	\$3.2B	100%	See detail below
<p>EB-5 \$577M 18%</p> <p>Total Project Cost \$3.2B</p> <p>Senior Loan, Developer & Other \$2.6B 82%</p>			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz	Unconfirmed but NYCRC appears to have been a mortgage loan, not mezz	
# Investors	1,154		
Investment per investor	500,000		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)	20,696	Tranche 1: 7,696	Tranche 2: 9,739 Tranche 3: 3,621
Min reqd jobs to be created	11,540		
Job cushion	9,156	Job Coverage Ratio 1.79	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://residencyinvest.com/wp-content/uploads/Atlantic%20Yards%20Brochure%20-%20ENG.pdf>
<http://ir.forestcity.net/phoenix.zhtml?c=88464&p=irol-newsArticle&id=1944055>
http://ny.curbed.com/archives/2014/08/04/atlantic_yards_rebrands_as_pacific_park_reveals_next_building.php
http://esd.ny.gov/subsidiaries_projects/AYP/AYAboutUs.html
<http://www.thirteen.org/metrofocus/2011/07/timeline-atlantic-yards-grows-slows-in-brooklyn/>

Capital raise based on various internet sources including USIF brochure for Tranche 2:

Capital Stack Tranches 1, 2 and 3	EB-5	Total Project Costs	%	Type of Loan
Tranche 1 NYC Regional Center	\$228M	\$1.448B	16%	Mortgage
Tranche 2 USIF Regional Center	\$249M	\$1.235B	20%	Mezz
Tranche 3 USIF Regional Center	\$100M	\$0.556B	18% *	Mezz
Consolidated	\$577M	\$3.239B	18%	

* Assumes 18% based on average of Tranche 1 and 2 Composite Percentage

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Individual Project Data Sheet

Project Information			
Developer	Lennar (NYSE:LEN)		
Co-developer or Major Investors	Macerich co-developer of retail portion only		
Project Name	Hunter Point Shipyard	aka SF Shipyard	
Project Address	Former Candlestick Park	San Francisco, CA	775 acres
Regional Center	Golden Gate Global ("3G")	3rd Party RC	
Property Owner	Lennar		
Land/Bldg Acquired	1999	Designated master developer by City of San Francisco	
Property Type	Mixed use/Primarily Residential		
Project Size	12,000 housing units; 3.5M gsf comm'l; 895K gsf retail		
Construction Status	Started	2014	Completed Est. 2034
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan			Unavailable.
EB-5	\$272M		Based on 3G website referenced below
Developer & Other			Unavailable
Total Project Cost (Estd)			Unavailable. Entire project est. \$8B TPC
Pie chart not applicable due to insufficient information			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	544		
Investment per investor	500,000		
Fully subscribed?	Yes	except for 5th tranche	
Subscription made available			
Jobs created (approx.)	6,637	Assumes job ratio for tranches 3,4 and 5 is same as avg of 1 and 2	
Min reqd jobs to be created	5,440		
Job cushion	1,197	Job Coverage Ratio 1.22	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://www.sfbarc.com/projects/hunters-point-shipyard/>
 Click Hunters Point Shipyard EB-5 Program overview of 3G website to see details re 5 tranches of EB-5 capital raised for this project.
<http://sfgsa.org/Modules/ShowDocument.aspx?documentid=7323>
<http://thesfshipyard.com/>
<http://www.benzinga.com/news/14/11/5014684/lennar-announces-launch-of-redevelopment-of-candlestick-park-in-san-francisco#ixzz3JKtXV6hO>
http://sfbarc.com/wp-content/uploads/2014/01/Amended-Approval_San-Francisco-Bay-Area-Regional-Center_ID1031910162_RCW1126350317.pdf
 2013 exemplar
http://sfbarc.com/wp-content/uploads/2014/01/USCIS-Regional-Center-Designation-letter.2009.EN_.pdf
 2009 designation letter (real estate was not an industry code)
http://sf.curbed.com/archives/2014/01/10/mega_development_and_housing_approved_for_candlestick_site.php
 site development plan
<http://www.bizjournals.com/sanfrancisco/feature/structures/2014/lennar-urban-selling-at-san-francisco-shipyard.html?page=all>
 timeline
<http://www.bloomberg.com/news/2014-11-17/lennar-macerich-plan-1-billion-san-francisco-project.html>
http://www.builderonline.com/land/development/long-delayed-san-francisco-redevelopment-finally-ready-to-go-vertical_o

Individual Project Data Sheet

Project Information			
Developer	Acadia Realty Trust	(NYSE:AKR)	Public REIT
Co-developer or Major Investors	Washington Square Partners, and	PA Associates	
Project Name	City Point		
Project Address	1 DeKalb Ave, Brooklyn	f/k/a Albee Square Mall	
Regional Center	NYCRC	3rd Party RC	
Property Owner	Acadia P/A/T	Ground Tenant	NYC owns the fee
Land/Bldg Acquired	2007	Ground lease from NYC	
Property Type	Mixed Use/Retail		
Project Size	Total gsf	675,000	Phase 1 & Phase 2
Construction Status	Started	2010	Completed
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	N/A	N/A	Not available
EB-5	\$200M	42%	100M unsecured loan + 100M mezz loan
Developer & Other	N/A	N/A	Not available
Total Project Cost (Estd)	\$474M	100%	Per Novogradac (see below)
<p>The donut chart illustrates the funding sources for the total project cost of \$474M. EB-5 financing accounts for 42% of the total, amounting to \$200M. The remaining 58%, or \$274M, is provided by Senior Loans, Developer contributions, and other sources.</p>			
EB-5 Details	Loan	Notes	
Loan or Equity	Unsecured/Mezz	100M unsecured	100M mezz
Type	400		
# Investors	500,000		
Investment per investor	Yes		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)		Information not available	
Min reqd jobs to be created	4,000		
Job cushion		Job Coverage Ratio TBD	
Escrow of EB-5 funds?	Yes	Released upon approval as individual I-526 application approved	
I-526 application status		As of Sept-2014, at least 396 I-526 approvals granted	

Information Sources

Despite repeated communications to Acadia & NYCRC, authors unable to obtain more information relating to the project including capital sources and jobs.

See Calderon/Friedland paper for source of information about EB-5 loan structure.

Novogradac January 2013 conference about NMTC and EB-5 with City Point case study per website below:

http://www.novoco.com/events/conferences/nmtc/2013/san_diego/manual/presentations/novogradac_eb-5_and_nmtcs_san_diego_2013_01_25.pdf

<http://www.law360.com/articles/534182/eb-5-on-the-rise-in-retail-mixed-use-projects>

Article suggests only \$250M of total project costs.

<http://ir.acadiarealty.com/phoenix.zhtml?c=61503&p=irol-newsArticle&ID=1449186>

<http://citypointbrooklyn.com/>

<http://citypointbrooklyn.com/about/our-story/>

<http://citypointbrooklyn.com/wp-content/uploads/All-Plans-11-11-14.pdf>

<http://citypointbrooklyn.com/wp-content/uploads/CityPoint-BasePackage-Generic-LO1.pdf>

Individual Project Data Sheet

Project Information			
Developer	Felcor Lodging Trust	Public REIT (symbol: FCH)	
Co-developer or Major Investor	Highgate Holdings, LLC - hotel manager/operator		
Project Name	Knickerbocker Hotel		
Project Address	1466 Broadway, NYC	Block 994, Lot 1103	
Regional Center	NY Immigration Fund	3rd Party RC	
Property Owner	FCH HH Knickerbocker Owner, LP (affiliate of Felcor)		
Land/Bldg Acquired	2011	\$115M	
Property Type	Hotel	Redevelopment of condo unit in mixed use condo building	
Project Size	330-key, 15-story		
Construction Status	Start	Complete	
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$85M	35%	Bank of Nova Scotia
EB-5	\$45M	19%	
Developer & Other	\$113M	47%	
Total Project Cost (Estd)	\$243M	100%	
<p>Total Project Cost \$243M</p> <ul style="list-style-type: none"> Senior Loan: \$85M (35%) EB-5: \$45M (19%) Developer & Other: \$113M (47%) 			
EB-5 Details		Notes	
Loan or Equity	Equity		
Type	Preferred Equity	Per Google search summary (site limited to non-US investors)	
# Investors	90		
Investment per investor	500,000		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)	1,700		
Min reqd jobs to be created	900		
Job cushion	800	Job Coverage Ratio 1.89	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

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http://dealbook.nytimes.com/2012/09/06/visas-for-dollars-program-a-boon-to-hotel-developers/?_php=true&_type=blogs&_php=true&_type=blogs&r=1
<http://nyifund.com/news/2014/07/16/reborn-knickerbocker-hotel-retains-little-of-old-except-name/>
<http://www.globeimmi.com/eduexhibit/120626/120626.shtml>
<http://www.adh.cn/yimin/yiminkuaixun/1340.html>
<http://www.chengchen.com.cn/show-content-1202.html>
<http://www.hotelnewsresource.com/article66150.html>
 Google search summary EB-5 (website limited to non-US investors)

Individual Project Data Sheet

Project Information			
Developer	Brooklyn Navy Yard Development (Corp. A nonprofit agency acting as mgr		
Co-developer or Major Investors	Steiner Studios, the developer/borrower for 2 of the 4 loans consolidated in this Data Sheet		
Project Name	Brooklyn Navy Yard	A portion is referred to as Steiner Studios	
Project Address			
Regional Center	NYCRC	3rd Party RC	
Property Owner	New York City		
Land/Bldg Acquired	1996	Naval Yard closed	
Property Type	Industrial park (urban redevelopment) Largest industrial park in NYC		
Project Size	EB-5 funds to renovate 1.2M gsf	Adaptive reuse 40 historic structures, 300 ac.	
Construction Status	Started	2009	Completed Unknown
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan			Unreported
EB-5	247M		Reflects 4 tranches
Developer & Other			Unreported
Total Project Cost (Estd)			
Pie chart not applicable due to insufficient information			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type			
# Investors	494		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)		Unreported	
Min reqd jobs to be created	4,940	Unreported	
Job cushion		Job Coverage Ratio TBD	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://nycrc.com/article.html?id=61>
http://newyork.construction.com/new_york_construction_news/2010/0801_BrooklynNavy.asp
http://www.crainsnewyork.com/article/20120103/REAL_ESTATE/120109996/navy-yard-funds-big-rehab-with-green-cards
http://www.icic.org/ee_uploads/images/ICIC_EB5_infographic.pdf
<http://brooklynnavyyard.org/>
<http://www.wsj.com/articles/SB10001424127887324678604578342672183089596>
<http://www.eb5exclusive.com/eb-5-news-and-updates/eb-5-visas-news/brooklyn-project-gets-help-from-eb-5.html>
<http://www.steinerstudios.com/directions/>

Project Information			
Developer	Florida East Coast Industries, LLC (FECI)		
Co-developer or Major Investor	Note: FECI is owned by certain private equity funds managed by Fortress		
Project Name	All Aboard Florida (AAF)	South Segment Only	
Project Address	Orlando to Miami, Florida		
Regional Center	CanAm Florida	3rd Party RC	
Property Owner	FECI		
Land/Bldg Acquired	Not applicable		
Property Type	Infrastructure - high speed intercity rail		
Project Size	Phase 1: 67 miles of track		
Construction Status	Started	2015	Completed
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$405M	31%	
EB-5	\$300M	23%	
Developer & Other	\$622M	47%	
Total Project Cost (Est'd)	\$1327M	100%	
<p>Total Project Cost 1.327B</p> <ul style="list-style-type: none"> Senior Loan: \$405M, 31% EB-5: \$300M, 23% Developer & Other: \$622M, 47% 			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	600		
Investment per investor	500,000		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)	7,923		
Min req'd jobs to be created	6,000		
Job cushion	1,923	Job Coverage Ratio 1.32	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://www.eb5visa-program.com/all-aboard-florida-project.php>

Individual Project Data Sheet

Project Information			
Developer	Plaza Capital		
Co-developer or Major Investors			
Project Name	New York Wheel	Next door to Empire Outlets	
Project Address	Staten Island		
Regional Center	CanAm	3rd Party RC	
Property Owner	NY Wheel, LLC		
Land/Bldg Acquired			
Property Type	Ferris Wheel	630 ft tall, upon completion will be world's tallest	
Project Size	Total gsf		
Construction Status	Start(ed)	Est. 2015	Completed Est. 2017
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan			
EB-5	\$150M	38%	Per news reports and CanAm
Developer & Other			Senior and developer consolidated in pie chart
Total Project Cost (Estd)	\$400M	100%	400M reported, Sr.and Dev portion unknown
<p>The chart is a donut chart with a white center. The center text reads 'Total Project Cost \$400M'. Two lines point from the center to the segments. The left segment is labeled 'EB-5 \$150M 38%'. The right segment is labeled 'Senior Loan, Developer & Other \$250M 62%'.</p>			
EB-5 Details	Notes		
Loan or Equity	Loan		
Type	Mortgage		
# Investors	300		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	3,500	Only reflects construction job estimate	
Min reqd jobs to be created	3,000		
Job cushion	500	Job Coverage Ratio 1.17	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

http://usa.chinadaily.com.cn/us/2014-07/25/content_17924666.htm
<http://newyorkwheel.com/>
<http://www.plzacap.com/>

Individual Project Data Sheet

Project Information			
Developer	Extell affiliate		
Co-developer or Major Investors			
Project Name	International Gem Tower		
Project Address	50 W. 47th Street NYC	Block 1262, Lot 11-16,59,60,62,63 and 162	
Regional Center	Extell	Developer In-House RC	
Property Owner	Extell		
Land/Bldg Acquired	2006		
Property Type	Diamond and jewelry center	Commercial condominium units	
Project Size	Total gsf	730,000	
Construction Status	Started	Completed	2014
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$300M	40%	Deutsche Bank
EB-5	\$75M	10%	2 tranches \$50M + \$25M
Developer & Other	\$375M	50%	
Total Project Cost (Estd)	\$750M	100%	
<p>Total Project Cost \$750M</p> <ul style="list-style-type: none"> Senior Loan: \$300M (40%) EB-5: \$75M (10%) Developer & Other: \$375M (50%) 			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	150		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	3,500		
Min reqd jobs to be created	1,500		
Job cushion	2,000	Job Coverage Ratio 2.33	
Escrow of EB-5 funds?			
I-526 application status		As of June 2014, 120 of the I-526 petitions were approved	

Information Sources

<http://eb5extell.com/>
http://www.joshuastein.com/docs/index.php?mdoc_id=10
<http://www.internationalgemtower.com/#thefuture>
<http://therealdeal.com/blog/2013/08/20/extell-sells-three-condos-at-intl-gem-tower-for-51m/>
http://www.nytimes.com/2009/05/20/nyregion/20diamond.html?_r=0

Individual Project Data Sheet

Project Information			
Developer	Extell affiliate		
Co-developer or Major Investor			
Project Name	555 Tenth		
Project Address	555 Tenth Ave (W. 41st Street), NYC	Block 1069, Lot 29, 34 and 9136	
Regional Center	Extell	Developer In House RC	
Property Owner	Extell 4110 LLC Ground tenant	Goldman Estate owns the fee	Per ACRIIS
Land/Bldg Acquired	2011 Ground lease	Air rights acquired 2012	Per ACRIIS
Property Type	Residential rental		
Project Size	Total gsf	710,907	600 apartments, 20% affordable + dorm facility with 300 beds
Construction Status	Started	Started 2013	Completed Estd 2016
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$325M	71%	Helaba (German bank)
EB-5	\$100M	22%	
Developer & Other	\$30M	7%	
Total Project Cost (Estd)	\$455M	100%	
<p>The donut chart illustrates the composition of the total project cost of \$455 million. The largest portion is the Senior Loan at \$325 million, representing 71% of the total. EB-5 funding contributes \$100 million, or 22%, and Developer & Other funds contribute \$30 million, or 7%.</p>			
EB-5 Details		Notes	
Loan or Equity	Equity		
Type	Preferred Equity		
# Investors	200		
Investment per investor	500,000		
Fully subscribed?	No	as of Feb 2015	
Subscription made available			
Jobs created (approx.)	2,900		
Min reqd jobs to be created	2,000		
Job cushion	900	Job Coverage Ratio 1.45	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

Brochure about project in or around June 2014:

<http://nebula.wsimg.com/29fb67d6f2dbb3352d247f5b4a4251cf?AccessKeyId=5557B8BD48BF4754599D&disposition=0&alloworigin=1>

<http://www.mofo.com/people/e/~media/747382C5DFEA4BFA88AF141140119AE4.ashx>

<http://www.usis.us/en/eb-5-projects/555-tenth-avenue/>

http://absre.com/news_pdfs/Development_3Q14.pdf

http://ny.curbed.com/archives/2013/01/23/extell_plans_600unit_rental_tower_on_10th_avenue.php

<http://commercialobserver.com/2014/08/extell-plans-rentals-dorm-for-west-midtown/>

Project Information			
Developer	Lightstone Group		
Co-developer or Major Investor			
Project Name	Liberty Gardens		
Project Address	365 Bond Street	Block 437 Lot 35	
Regional Center	Lighthouse	Developer In-House RC	
Property Owner	Lightstone affiliate		
Land/Bldg Acquired			
Property Type	Luxury apartments/retail	429 units	20% affordable
Project Size	400,000 gsf total	Res Rental	289,687
Construction Status	Started	2014	Completed Estd
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$120M	53%	Canyon Capital Rlty Advisors 30 mos.
EB-5	\$60M	26%	
Developer & Other	\$49M	21%	
Total Project Cost (Estd)	\$229M	100%	
<p>Developer & Other \$490M 21%</p> <p>EB-5 \$60M 26%</p> <p>Senior Loan \$120M 53%</p> <p>Total Project Cost \$229M</p>			
EB-5 Details	Notes		
Loan or Equity	Loan		
Type	Mezz		
# Investors	120		
Investment per investor	500,000		
Fully subscribed?	First project of this Developer Regional Center		
Subscription made available			
Jobs created (approx.)	1,532		
Min reqd jobs to be created	1,200		
Job cushion	332 Job Coverage Ratio 1.28		
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://lightstoneeb5.com/eb-5/>
<http://lightstoneeb5.com/eb-5/capital-structure/>
<http://lightstoneeb5.com/2014/10/31/lightstone-turns-hefty-profit-sale-fulton-st-site-2/>

Individual Project Data Sheet

Project Information			
Developer	Lam Group		
Co-developer or Major Investor	None		
Project Name	Pearl Street Plaza Hotel		
Project Address	213 Pearl Street, NY, NY	Block 69, Lot 1	
Regional Center	Lam	Developer In-House RC	
Property Owner	Lam Pearl Street Hotel, LLC		
Land/Bldg Acquired	2007		
Property Type	Hotel	2 Marriots and 1 Sheraton Four Points	
Project Size	Total gsf	165,655 gsf	2 phases EB-5 funds Ph 2
Construction Status	Started	Jun-13	Completed Est Summer 2015
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$55M	45%	Shanghai Commercial Bank
EB-5	\$40M	33%	Pearl Street Foreigner's Fund
Developer & Other	\$28M	23%	
Total Project Cost (Estd)	\$123M	100%	
<p style="text-align: center;">Total Project Cost 123M</p> <ul style="list-style-type: none"> Senior Loan: \$55M (45%) EB-5: \$40M (33%) Developer & Other: \$28M (23%) 			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	80		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	889		
Min reqd jobs to be created	800		
Job cushion	89	Job Coverage Ratio 1.11	
Escrow of EB-5 funds?	Yes	release upon I-526 approval	(brochure p. 5)
I-526 application status		admin fee held in escrow pending I-526	(brochure p. 5)

Information Sources

https://eb5projects.com/system/project_files/files/000/000/101/original/213PearlStreet_Brochure_11152013.pdf?1395770980

Different information was set forth in another brochure by Lam Group that had been posted on the Internet but was recently deleted.

http://www.pantacles.com/upi/EB5_201306_ENG_NYZ%20%282%29%281%29.pdf

That brochure described an EB-5 loan that would have been secured by the equity interest in both phases (all three hotels), rather than just the second phase described in the brochure above. The combined project estimated the creation of 1,030 jobs.

Project Information			
Developer	Lam Group affiliate		
Co-developer or Major Investor			
Project Name	Renaissance Midtown Hotel	Block 800 Lot 49	
Project Address	112 W. 25th Street		
Regional Center	Lam	Developer In-House RC	
Property Owner	Lam Gen 25, LLC		
Land/Bldg Acquired	2013	Purchased from Extell	
Property Type	Hotel	330 keys	39 floors
Project Size			
Construction Status	Started	Jan-15	Completed Estd July-2017
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$80M	53%	Shanghai Commercial Bank
EB-5	\$40M	27%	25th Street Investors Fund, LP
Developer & Other	\$30M	20%	
Total Project Cost (Estd)	\$150M	100%	
<p>The donut chart illustrates the composition of the total project cost. The largest portion is the Senior Loan at 53% (\$80M), followed by EB-5 at 27% (\$40M), and Developer & Other at 20% (\$30M).</p>			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	80		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	1,419		
Min reqd jobs to be created	800		
Job cushion	619	Job Coverage Ratio 1.77	
Escrow of EB-5 funds?	Yes	Release upon each I-526 approval	
I-526 application status			

Information Sources

https://eb5projects.com/system/project_files/files/000/000/136/original/Lam_Group_112_W_25th_Renaissance_EB-5_brochure_EN.pdf?1407388752

Individual Project Data Sheet

Project Information			
Developer	Silverstein Properties		
Co-developer or Major Investor	California State Teachers' Retirement (CalSTRS)		
Project Name	30 Park Place	Four Seasons Hotel NY Downtown	
Project Address	30 Park Place NYC (Tribeca)	aka 99 Church Street	Blk 123, Lot 10
Regional Center	Silverstein Properties (Gotham)		
Property Owner	Developer In-House RC		
Property Owner	with 30 Park Place Residential, LLC		
Land/Bldg Acquired	2006		
Property Type	Hotel/Condo	185 key hotel	157 luxury condo
Project Size	Total gsf		
Project Size	EB-5 limited to hotel component		
Construction Status	Started	2013	Completed Est 2016
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	\$410M	44%	Children's Investment Master Fund*
EB-5	\$250M	27%	
Developer & Other	\$270M	29%	
Total Project Cost (Estd)	\$930M	100%	
<p>Total Project Cost \$930M</p> <ul style="list-style-type: none"> Senior Loan: \$410M, 44% EB-5: \$250M, 27% Developer & Other: \$270M, 29% 			
EB-5 Details		Notes	
Loan or Equity	Loan		
Type	Mezz		
# Investors	500		
Investment per investor	500,000		
Fully subscribed?			
Subscription made available			
Jobs created (approx.)	5,543		
Min reqd jobs to be created	5,000		
Job cushion	543	Job Coverage Ratio 1.11	
Escrow of EB-5 funds?	Yes		
I-526 application status			

Information Sources

ACRIS

*Per the websites below, a portion of the senior loan will serve as a bridge loan pending the I-526 approval process.

Thus, we assume the difference between the reported \$660M mortgage loan from the senior lender and the \$250M EB-5 loan represents the senior mortgage that will remain after the EB-5 funds are released.

The difference between (1) \$930M total project cost and (2) the total of the senior and the EB-5 capital is assumed to represent the developer and other equity.

<http://commercialobserver.com/2013/05/silverstein-secures-financing-for-926-foot-lower-manhattan-hotel-condo/>

<http://www.visas.to/en/usa/eb5projects/fsny/2902/>

<http://silversteinrc.com/zh-hans/our-story-2/>

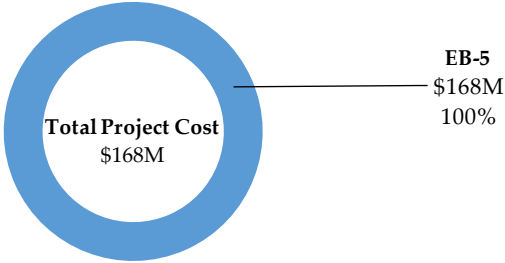
<http://silversteinrc.com/wp-content/uploads/2014/11/SilversteinProperties-EB5brochure.pdf>

Project Information			
Developer	The Related Companies		MTA designated master developer
Co-developer or Major Investor	Oxford Properties		
Project Name	Hudson Yards	Part of Phase 1 Eastern Yard	
Project Address	From 10th to 11th Ave., between W. 30th and 34th St		
Regional Center	Related NY Metro	Developer In-House RC	
Property Owner	Metropolitan Transit Authority		
Land/Bldg Acquired	Related is ground lease tenant		
Property Type	Mixed use/office, retail and residential	EB-5 project focuses on platform over rail yard	
Project Size	Total gsf	17M+ gsf all phases	28 acres - all phases
Construction Status	Started	2013	Completed Est. multi-year
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan			Deutsche Bank or Starwood (reportedly)
EB-5	600M		Minimum amount reported by WSJ
Developer & Other			Unavailable, but apparently includes some mezz and govt
Total Project Cost (Estd)			
Pie chart not applicable due to insufficient information			
EB-5 Details		Notes	
Loan or Equity	Unreported		
Type	Unreported		
# Investors	1,200		
Investment per investor	500,000		
Fully subscribed?		Unavailable	
Subscription made available			
Jobs created (approx.)		Unavailable	
Min reqd jobs to be created	12,000		
Job cushion		Job Coverage Ratio TBD	
Escrow of EB-5 funds?			
I-526 application status			

Information Sources

<http://www.hudsonyardsnewyork.com/the-story>
<http://www.bloomberg.com/news/articles/2014-03-19/new-york-s-hudson-yards-starts-next-phase-as-deck-begins>
<http://www.wsj.com/articles/hot-source-of-real-estate-financing-green-card-seekers-1418146394>
<http://www.relatedusa.com/en/about-related>
<http://www.hydc.org/html/project/mta-rail.shtml>
<http://therealdeal.com/blog/2013/08/16/anatomy-of-a-deal-inside-relatedoxfords-unusual-hudson-yards-financing/>

Individual Project Data Sheet

Project Information			
Developer	American Life, Inc. (ALI) affiliate		
Co-developer or Major Investor	WDA Olympic Development, an affiliate of Homer Williams		
Project Name	LA Marriott		
Project Address	901 W. Olympic Blvd., Los Angeles	"LA Live" neighborhood	
Regional Center	American Life	Developer In-House RC	
Property Owner	901 W. Olympic Blvd LP		
Land/Bldg Acquired	2011	20.2 million	
Property Type	Hotel	Dual branded	Residence Inn and Courtyard Marriott
Project Size	Total gsf	373,000	393 keys
Construction Status	Started	2012	Completed 2014
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	0	0%	100% funded by EB-5 investors
EB-5	\$168M	100%	Approx. 131M construction costs
Developer & Other	0	0%	
Total Project Cost (Estd)	\$168M	100%	
 <p>The chart is a donut chart with a blue ring. The center of the ring contains the text "Total Project Cost \$168M". A line extends from the right side of the ring to the text "EB-5 \$168M 100%".</p>			
EB-5 Details		Notes	
Loan or Equity	Equity		
Type	Preferred Equity	Investors are LPs. ALI is GP.	
# Investors	336		
Investment per investor	500,000		
Fully subscribed?	Yes		
Subscription made available			
Jobs created (approx.)	3,860	5,850 jobs estimated when hotel is stabilized	
Min reqd jobs to be created	3,360		
Job cushion	500	Job Coverage Ratio 1.15	
Escrow of EB-5 funds?	No		
I-526 application status			

Information Sources

Above information is based on Private Placement Memorandum furnished to authors by ALI for use in connection with this paper and database. The authors have chosen not to link the PPM to this database.

This unusual EB-5 structure is described in the paper.

<http://www.amlife.us/real-estate-portfolio/property/marriott-hotel-los-angeles-downtown>

http://www.ladowntownnews.com/news/marriott-s-new-downtown-project-is-two-hotels-in-one/article_ed9118e8-fe46-11e3-b1c3-001a4bcf887a.html

Individual Project Data Sheet

Project Information			
Developer	American Life, Inc. (ALI) affiliate		
Co-developer or Major Investor			
Project Name	Embassy Suites Hotel, part of Stadium Place		
Project Address	Seattle, WA		
Regional Center	American Life	Developer In-House RC	
Property Owner	American Life		
Land/Bldg Acquired	2013	\$18M	
Property Type	Hotel	Embassy Suites Hotel	
Project Size	Total gsf	300 keys	
Construction Status	Started	Not as of Feb-2015	Completed
Capital Stack			
Capital Structure	Amount	% TPC	Lender/Investor (or notes)
Senior Loan	0	0%	To be funded 100% by EB-5 investors
EB-5	\$300M	100%	
Developer & Other	0	0%	
Total Project Cost (Estd)	\$300M	100%	
<p>The chart is a donut chart with a blue ring. The center of the ring contains the text 'Total Project Cost \$300M'. A line points from the text 'EB-5 \$300M 100%' on the right to the ring.</p>			
EB-5 Details		Notes	
Loan or Equity	Equity		
Type	Preferred Equity	Assuming typical ALI structure: Investors will be LPs; ALI, GP.	
# Investors	600		
Investment per investor	500,000		
Fully subscribed?	No		
Subscription made available		Not as of Feb-2015 (to be confirmed)	
Jobs created (approx.)		Not available	
Min reqd jobs to be created	6,000		
Job cushion		Job Coverage Ratio TBD	
Escrow of EB-5 funds?	No		
I-526 application status			

Information Sources

<http://seattle.curbed.com/archives/2014/07/stadium-places-grand-vision-for-sodos-future-begins-with-an-embassy-suites-hotel.php>

See ALI LA Marriott tab sheet, as well as Calderon/Friedland paper, to see information about typical ALI structure.

http://www.northlotdevelopment.com/stadium-place-east_exec.html

<http://www.amlife.us/news>

Appendix C - Assorted Regional Centers Database

Attached as Appendix C is an Assorted Regional Centers Database listing some of the most active Regional Centers with their associated real estate projects. The database is compiled from information provided by each Regional Center website, as well as other internet sources. Some Regional Centers publicly release more data than others.

Unlike the Select Large-Scale Project Database, this Regional Center Database focuses on variables more specific to the Regional Center. The variables include: the project; the size of the EB-5 capital component; the total project cost where available; I-526 petition approvals; I-829 petition approvals; and investors' recovery of their capital investment. In certain cases, some of the information was not available. The format for each of these projects differs because the amount of available information differs.

The information for the USIF Regional Center appears in the Select Large-Scale Projects Database as many of their projects appear on that list which includes more information than this Database

Most of these Regional Centers have one or more of the following attributes in common:

1. A successful track record in EB-5 projects with a demonstrated ability to raise substantial amounts of EB-5 capital;
2. At least one project where at least \$20 million of EB-5 capital has been raised;
3. Projects where a significant number of I-526 petitions have been approved;
4. Projects where a significant number of I-829 petitions have been approved; and
5. Projects where some investors have recovered their EB-5 capital investment and return on the investment (few Regional Centers have met this hurdle as explained in the paper).

The paper's authors have not independently verified the data compiled from the internet sources. The number of investors assumes that each of the projects is located in a TEA. A Regional Center's track record, including the amount of EB-5 capital raised for a particular project or returned to investors, is not audited generally by independent accountants or other professionals. In conventional real estate deals, it is not unusual for the developer to have the same investment partners for future projects. However, in EB-5 projects, typically the immigrant investor invests in only one project as that investment is intended to satisfy the investor's investment purpose – to obtain the visa.

The authors provide the following notes and observations from this Database:

1. Most of these Regional Centers operate and manage projects in more than one geographic area of the country. Except for the United States Immigration Fund Regional Center ("USIF"), the Regional Centers listed in this Database were established before 2009.
2. This list does not include the "In-House" Regional Centers formed by mega-developers, such as Silverstein, Extell and Related, that have a successful real estate development track record outside of the EB-5 arena.
3. The list includes only one In-House Regional Center, the American Life group of Regional Centers (individually or collectively "ALI"). ALI was one of the first Regional Centers to be created, and it has expanded to 10 centers that are managed by American Life. Most, if not

all, of its projects are developed as EB-5 projects, and not as conventional real estate projects without an EB-5 capital component. See the “A Different Approach” section of the paper.

4. These Third Party Regional Centers team with developers that have the financial strength to obtain financial commitments from other capital sources necessary to implement the project.
5. The New York City Regional Center (“NYCRC”) was the first Regional Center to sponsor megaprojects in a major urban area. In the aftermath of the financial crisis, it sponsored two Brooklyn projects, City Point and Atlantic Yards, raising \$200 million and \$228 million, respectively.
6. The trend is towards larger projects with larger EB-5 capital raises, but the EB-5 capital component comprises a smaller percentage of the total project costs.
7. In addition to NYCRC, USIF is the only other Regional Center in this Database to have sponsored private real estate projects in a major urban area that has raised at least \$200 million. It raised \$249 million in phase 2 of Atlantic Yards. Thus, developers seem to be relying less on well-established, older third party Regional Centers, especially for large-scale projects. For example, in addition to USIF, two relatively new Third Party Regional Centers, GGG (the sponsor of Lennar’s San Francisco Shipyard) and the American Dream Fund, have been successful in attracting major developers and immigrant investors.
8. All of the Regional Centers in the Regional Center Database, except for EB5 Capital Regional Center, have raised, or are in the process of raising, more than \$1 billion of EB-5 capital. CanAm and American Life each are in the process of raising \$300 million for the All Aboard Florida and Embassy Suites Hotel in Seattle, respectively.
9. As noted in this paper, very few Regional Centers have sponsored any projects that have repaid capital to their EB-5 investors. In many cases, the investors’ immigration visa application process has not yet reached the point where the EB-5 law would permit the repayment. However, CanAm, a long established Regional Center, has repaid principal in full to its EB-5 investors in 26 of its 45 projects funded to date. Moreover, the September 2014 repayment to the 244 investors of the \$122 million EB-5 loan relating to the Pennsylvania Convention Center project represents the largest recovery in the EB-5 Program to date. Furthermore, CanAm is sponsoring the \$300 million EB-5 capital mezzanine loan to fund a portion of the inner-city high speed rail system that will operate from Miami to Orlando, Florida, as discussed in the paper.
10. Most of these Regional Centers utilize the loan model structure. However, ALI utilizes the equity model for all of its projects, and the EB5 Capital Regional Center utilizes the equity structure for many of its projects.
11. CanAm utilizes the loan model structure. However, its EB-5 loans are typically first mortgage loans, not mezzanine loans.

CanAM Regional Center	
First Regional Center approved:	2001
Number of Regional Centers	6
Model:	Loan
Third party Regional Center	
Source:	https://www.canamenterrises.com/about-us/track-record.html
Also see closed projects:	https://www.canamenterrises.com/pidc-projects-list.html

PIDC Regional Center Track Record (as of December 2014)							
#	Project	Loan Amount	# Investors	Maturity Date	I-526 Approvals	I-829 Approvals	Principal Repaid
1	Philadelphia Navy Yard	\$2.5M	5	12/16/2009	100%	100%	100%
2	Starr Restaurants - Continental Midtown	\$3.M	6	1/28/2010	100%	100%	100%
3	Lannett Company, Inc.	\$4.5M	9	12/13/2010	100%	100%	100%
4	Duane Morris, LLP	\$6.M	12	10/19/2010	100%	100%	100%
5	Philadelphia Navy Yard	\$2.5M	5	9/9/2010	100%	100%	100%
6	Starr Restaurants - Butcher+Singer	\$2.5M	5	9/16/2010	100%	100%	100%
7	Advanced Sports, Inc.	\$1.5M	3	8/4/2011	100%	100%	100%
8	The Day & Zimmermann Group, Inc.	\$2.5M	5	10/27/2013	100%	100%	100%
9	Temple University Health System, Inc.	\$13.M	26	4/22/2011	100%	100%	100%
10	Wordsworth - List Associates	\$9.M	18	8/25/2011	100%	100%	100%
11	Rhoads Industries, Inc.	\$7.M	14	8/3/2011	100%	100%	100%
12	121 Point Breeze Terminal, LLC	\$2.M	4	11/28/2011	100%	100%	100%
13	K.P. Grant Enterprises	\$2.5M	5	5/16/2012	100%	100%	100%
14	Agusta Aerospace Corporation	\$15.M	30	12/16/2011	100%	100%	100%
15	Aker Philadelphia Shipyard, Inc.	\$20.M	40	3/27/2012	100%	100%	100%
16	Comcast Corporation	\$26.M	52	9/20/2012	100%	98%*	100%
17	University City Science Center	\$20.M	40	11/29/2012	100%	100%	100%
18	Philadelphia Navy Yard	\$13.5M	27	2/5/2013	100%	100%	100%
19	Philadelphia Post - Acute Partners, LLC	\$9.M	18	4/17/2013	100%	100%	100%
20	Cintas Corporation	\$7.5M	15	11/26/2013	100%	100%	100%
21	Kimpton Hotel - Palomar Philadelphia	\$6.M	12	11/30/2013	100%	83%*	100% early
22	Agusta Aerospace Corporation	\$14.5M	29	6/27/2014	100%	90%*	n/a
23	Pennsylvania Convention Center**	\$122.M	244	9/3/2014	100%	94%*	100%
24	Kimpton Hotel - Monaco Philadelphia	\$45.M	90	10/27/2016	100%	n/a	n/a
25	Southeastern Pennsylvania Transportation Authority (Tranche I)	\$35.M	70	5/30/2017	100%	n/a	n/a
26	Southeastern Pennsylvania Transportation Authority (Tranche II)	\$75.M	150	7/1/2019	100%	n/a	n/a
27	Southeastern Pennsylvania Transportation Authority (Tranche III)	\$65.M	130	n/a	98%*	n/a	n/a
28	Courtyard by Marriott - Navy Yard	\$16.5M	33	2/28/2019	60%*	n/a	n/a
29	Aker Philadelphia Shipyard, Inc.	\$60.M	120	n/a	n/a	n/a	n/a
	TOTAL*	\$608.5M	1,217				

Pennsylvania DCED Regional Center Track Record (as of December 2014)							
#	Project	Loan Amount	# Investors	Maturity Date	I-526 Approvals	I-829 Approvals	Principal Repaid
1	Lionsgate Entertainment, Inc.	\$65.5M	131	4/10/2013	100%	99%*	100%
2	Bakery Square	\$30.5M	61	6/5/2014	100%	100%	100%
3	AE Polysilicon Corporation	\$18.M	36	11/4/2014	100%	97%*	n/a
4	University of Pittsburgh Medical Center	\$71.M	142	7/6/2015	100%	53%*	n/a
5	Valley Forge Convention Center	\$40.M	80	5/26/2016	100%	13%*	n/a
6	Cambridge-Lee Industries, LLC	\$35.M	70	10/31/2018	94%*	n/a	n/a
7	Allentown City Center	\$35.M	70	n/a	n/a	n/a	n/a
TOTAL		\$295.M	590				

Los Angeles County Regional Center Track Record (as of December 2014)							
#	Project	Loan Amount	# Investors	Maturity Date	I-526 Approvals	I-829 Approvals	Principal Repaid
1	Time Warner, Inc.	\$47.5M	95	10/29/2014	100%	100%*	100%
2	Time Warner, Inc.	\$100.M	200	6/3/2015	100%	77%*	n/a
3	Sony Pictures Entertainment	\$125.M	250	12/15/2016	99%*	0.4%*	n/a
4	Time Warner, Inc.	\$125.M	250	9/30/2018	94%*	n/a	n/a
5	Molina Healthcare	\$35.M	70	n/a	n/a	n/a	n/a
TOTAL		\$432.5M	865				

Hawaii Regional Center Track Record (as of December 2014)							
#	Project	Loan Amount	# Investors	Maturity Date	I-526 Approvals	I-829 Approvals	Principal Repaid
1	Hawaii Airport - Consolidated Rental Car Facility (CONRAC)	\$50.M	100	n/a	70%*	n/a	n/a
2	Kalaelo Solar One, LLC (SOPOGY, Inc.)	\$15.M	30	n/a	100%	n/a	n/a
3	University of Hawaii - West O'ahu	\$18.M	36	4/22/2018	100%	n/a	o
TOTAL		\$83.M	166				

New York Metropolitan Regional Center Track Record (as of December 2014) (designated 2013)							
#	Project	Loan Amount	# Investors	Maturity Date	I-526 Approvals	I-829 Approvals	Principal Repaid
1	Gulfport Marine Terminal	\$40.M	80	12/24/2018	n/a	n/a	n/a
TOTAL		\$40.M	80				

Project	Loan Amount	# Investors
TOTAL ALL	\$1459.M	2,918

Assumes \$ 500,000 per investor

* Remaining percentage of applications are pending approval at USCIS

Pending, not included in above schedules:

NY Wheel - Staten Island, NY	\$150.M	300	TBD
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<http://www.canamenterprises.com/about-us/news-updates/280-ny-wheel-reels-in-chinese-eb-5-investors.html>

All Aboard America	\$300.M
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- * Loan are all first mortgage loans, with 5 year term, no prepayment right.
- ** The recent repayment of this loan represents the largest project repayment in the history of the EB-5 Program. \$122 Million to 244 investors in full and on time.

http://www.fortmilltimes.com/2014/10/22/3807665_canam-announces-the-largest-eb.html?rh=1

CanAm PIDC completed projects: <http://www.canamenterprises.com/pidc-closed-projects.html>

CMB Regional Center

First Regional Center approved: 1997

Number of Regional Centers 7

Model: Loan

Regional Center type: Third Party

Sources:

<http://www.cmbeb5visa.com/projects/current-project/fully-subscribed-projects><http://www.cmbeb5visa.com/projects/current-project/fully-subscribed-completed-eb-5-partnerships>

#	Project	Loan Amount	# Investors	Total Project Cost	I-526 Approvals	I-829 Approvals	Principal Repaid
1	IVDA/SBIAA -1	20M	40	94M	100%	100%	100%
2	IVDA/SBIAA -B	7M	14	24M	100%	100%	100%
3	IVDA/SBIAA -A	5M	10	39M	100%	100%	100%
4	Smith Home Farms	70M	140	369M			
5	La Entrada	50M	99	177M			
6	West Hills	30M	60	88M			
7	Dakota Spirit	75M	150	212M			
8	The Warren	8M	16	33M			
9	Buckingham	46M	92	139M			
10	San Francisco Residential	50M	99	237M			
11	Loch Lomond	22M	44	95M			
12	Pomona	14M	28	52M			
13	Cecil	8M	16	26M			
14	Stillwater	26M	52	82M			
15	College Station	50M	99	153M	1		
16	Cannery Park	26M	52	136M			
17	Fairfield	17M	33	53M			
18	Texaco	32M	63	66M	45		
19	Ken Shaw	39M	78	92M			
20	DFW	16M	32	54M			
21	Webster	65M	130	399M	91		
22	Orange Show Road	16M	32	62M			
23	Great Wolf Lodge	116M	232	292M			
24	Downey	18M	36	51M	34		
25	Berryessa	35M	70	129M	59		
26	Chino	22M	44	97M			
27	Newport (not in a TEA)	42M	42	163M	17		
28	ACS Cobra	80M	260	974M	145		
29	Goodyear & Hoover	104M	208	322M	201		
30	Crescent Dunes	90M	180	1023M	171		
31	San Bernardino	65M	130	2256M	124		
32	BrightSource	90M	180	2159M	99%		
33	McClellan C	49M	98	430M	100%		
34	McClellan B	41M	82	386M	100%		
35	McClellan C	45M	90	421M	100%		
36	IVDA	22M	44	152M	100%		
37	IVDA SBIAA 4	46M	92	218M	100%		
38	IVDA SBIAA 3	21M	42	93M	100%		
39	IVDA SBIAA 2	26M	52	147M	100%		
	Total	1.6B	3,261	11.99B			

New York City Regional Center (NYCRC)	
Number of Regional Centers:	1
First Regional Center designation	2008
Location: New York City	
Model:	Loan
Regional Center type:	Third Party
Sources:	
	http://nycrc.com/about.html#prettyPhoto
	http://nycrc.com/previous-projects.html

#	Project	Loan Amount	# Investors	Loan vs. Equity?	I-526 Approvals	I-829 Approvals
1	Brooklyn Navy Yard Redevelopment Project (Phase I)	60,000,000	120	Loan	120	112
2	Steiner Studios Expansion Project	65,000,000	130	Loan	130	99
3	Brooklyn Arena and Transportation Infrastructure Project	228,000,000	456	Loan	456	205
	http://www.nycrc.com/article.html?id=6					
4	Battery Maritime Building East River Waterfront Project	77,000,000	154	Loan	154	
5	Pier A Redevelopment Project	16,500,000	33	Loan	33	
6	George Washington Bridge Bus Station Redevelopment Project (Ph I)	72,000,000	144	Loan	141	
7	Brooklyn City Point Redevelopment Project	200,000,000	400	Loan	398	
8	Brooklyn Navy Yard Redevelopment Project (Phase II)	42,000,000	84	Loan	83	
9	Bronx Hutchinson Metro Center Project	80,000,000	160	Loan	160	
10	Washington Heights Mixed-Use Development Project	17,500,000	35	Loan		
11	Chrystie Street Mixed-Use Development Project	80,000,000	160	Loan		
12	New York City Subway Wireless Infrastructure Project	75,000,000	150	Loan		
13	Steiner Studios Expansion Project - Ph II	80,000,000	160	Loan		
14	George Washington Bridge Bus Station Redevelopment Project - Ph II	19,000,000	38	Loan		
	Total	1,112,000,000	2,224			

<http://nycrc.com/experience.html>

Overall statistics for NYCR	Total Investors	I-526 approvals	I-829 approvals	Investors and Family members with CPR	Investors and family members permanent residency
	2,224	1,675	416	4,568	1,221

US Immigration Fund Regional Center	
First Regional Center approved:	2010
Number of Regional Centers:	4
Locations:	Florida, NY, NJ, North Carolina
Projects	15
Regional Center Type:	Third Party
Model:	Loan

See Appendix B, the Large-Scale Project Database, for detailed information about most of this Regional Center's projects.

In addition to the projects on that Database, USIF sponsored projects include:

in NY: Nassau County Coliseum redevelopment with Forest City Ratner

in FL: Harbourside Place; Via Mizner; Water Pointe; and ESI Jupiter Technology Park

USIF's website indicates that it is sponsoring 15 projects, representing \$1.4B in EB-5 capital with 2,800 investors.

Sources:

<http://visaeb-5.com/>

<http://visaeb-5.com/usi-fund-projects/florida-regional-center/>

<http://visaeb-5.com/usi-fund-projects/new-york-regional-center/>

<http://visaeb-5.com/new-jersey-regional-center/>

American Life	
First Regional Center formed:	1996
Number of Regional Centers:	10
Model:	Equity
Regional Type:	Developer In-House
Sources:	
http://www.amlife.us/real-estate-portfolio	
http://www.amlife.us/about	

Information provided by Regional Center					
#s per website	Project (in Seattle WA unless otherwise noted)	Equity Amount [2]	# Investors [fn 1]	EB-5 Amount [fn 2]	Project Type
1	Lancaster Lodging Lancaster CA	31.0 M	62		Hotel
2	Homewood Suites by Hilton - Atlanta	15.1 M	30		Hotel
3	Urban Self Storage LA Courtyard	17.5 M			Storage
4	Marriot/Residence Inn LA, CA	168.0 M	336		Hotel
5	14575 Industrial Riverside CA	11.5 M	23		Office and Warehouse
6	2413 Pacific Ave, LP Tacoma WA	13.0 M	26		Office and Retail
7	1501 First Avenue South, LP	155.0 M	310		Office and Retail
8	1531 Utah Avenue South, LP	59.8 M	120		Industrial
9	618 Second Avenue, LP (Courtyard Marriot)	88.6 M	177		Hotel
10	Canal Boiler, LP	3.2 M	6		Office and Retail
11	Pacific Industrial Center, LP	35.6 M	71		Industrial and Retail
12	4746 Ohio Avenue South, LP	27.4 M	55		Industrial and Office
13	1000 1st Avenue South, LP (Palmer Court)	21.1 M	42		Office and Retail
14	1016 1st Avenue South, LP Olympic Repographics)	12.4 M	25		Office and Showroom
15	3100 Airport Way South, LP (Rainier Storage)	29.2 M	58		Office and Storage
16	3601 W. Marginal Way S.W., LP (Fraser Marine Building)	5.3 M	11		Industrial and Showroom
17	2931 1st Avenue South, LP (Ederer Building)	22.3 M	45		Retail
18	2959 Utah Avenue South, LP (Hill Building)	3.0 M	6		Industrial and Showroom
19	66 South Hanford, LP (Hanford Building)	11.6 M	23		Flex
20	2944 1st Avenue South, LP (Gorlick Building)	9.2 M	18		Flex
21	624 South Lander, LP	3.0 M	6		Warehouse
22	2700 4th Avenue South, LP (Esquin Building)	12.5 M	25		Retail and Warehouse
23	Owl Transfer Building, LP	6.0 M	12		Industrial and Warehouse
24	3317 Third Avenue South, LP	6.0 M	12		Warehouse
25	2962 1st Avenue South, LP	2.0 M	4		Industrial and Retail
26	Lonestar Investors, LP	4.9 M	10		Warehouse
27	2nd and Hinds Street (Mendelson Land)	.5 M	1		Yard
28	2418 20th Avenue, LP	1.0 M	2		Flex
29	2440 1st Avenue South, LP	1.0 M	2		Flex
30	3223 3rd Avenue South, LP	3.0 M	6		Flex
31	2444 1st Avenue South, LP	6.8 M	14		Flex
32	2764 1st Avenue South, LP	1.5 M	3		Bank and Office
33	2724 6th Avenue South, LP	2.4 M	5		Office and Warehouse
34	2960 4th Avenue South, LP	10.4 M	21		Flex
35	Hullin Transfer Building, LP	8.7 M	17		Industrial and Office
	Total	809.4 M	1,584		
Pending	Embassy Suites Seattle	300.0 M	600		
	Total Including Pending	1.1B	2,184		
FN 1	Assumes that each project is in a TEA. To be "reconciled" with AIJ spreadsheet re historical records. US, non-EB5 investors to be excluded (approx. 450).				
FN 2	Based on investment amounts listed on spreadsheet furnished to authors by the Regional Center. As our paper explains, this Center uses an unconventional partnership structure. Authors have not yet had the opportunity to carefully review the spreadsheet.				

EB5 Capital	
Number of Regional Centers:	2
First Regional Center designation	2008
Location:	Washington, D.C. Metro area; California
Third Party Regional Center	
Model:	Typically equity*
Sources:	http://www.eb5capital.com/projects/

Below data is based on information posted on website in late 2014 as well as Regional Center's printed brochure

#	Project	EB-5 capital	# of Investor	Investment Type	I-526 Approvals	I-829 Approvals***
1	Sugar Bush, VT**	\$20,000,000	40		100%	100%
2	City Market at O Street - Group 1	\$5,000,000	10	Mezz Loan	100%	100%
3	Mariott Marquis	\$5,000,000	10		100%	
4	City Market at O Street - Group 2	\$12,500,000	25	Mezz Loan	100%	
5	DC Hilton Hotels	\$39,000,000	78	Senior Loan	100%	
6	San Jose Mariotte Hotels	\$35,000,000	70	JV Equity	pending	
7	Kensington Place of Redwood City	\$6,500,000	13		pending	
8	Riverfront at Navy Yard	\$17,000,000	34	Preferred Equity	pending	
9	1000 F Street	\$9,000,000	18		pending	
	Total	\$149,000,000	298			

* Per email communication with Brian Oster of EB5 Capital on October 11, 2014.
 ** Angel Brunner, principal of EB5 Capital, arranged this project through the Vermont Regional Center in 2007.
 *** 100% capital recovered by investors in these projects.

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