

Employment Based VISA # 5 update

Presented by:



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Employment Based VISA #5 Update



Employment Based VISA Programs

Preferences	General Description	Labor Certification Required?
First Preference EB-1	This preference is reserved for persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and multinational executives and managers.	No
Second Preference EB-2	This preference is reserved for persons who are members of the professions holding advanced degrees or for persons with exceptional ability in the arts, sciences, or business.	Yes, unless applicant can obtain a national interest waiver (Labor Certification)
Third Preference EB-3	This preference is reserved for professionals, skilled workers, and other workers. (See Third Preference EB-3 page for further definition of these job classifications.)	Yes
Fourth Preference EB-4	This preference is reserved for “special immigrants,” which includes certain religious workers, employees of U.S. foreign service posts, retired employees of international organizations, noncitizen minors who are wards of courts in the United States, and other classes of noncitizens.	No
Fifth Preference EB-5	This preference is reserved for business investors who invest \$1.8 million or \$900,000 (if the investment is made in a targeted employment area) in a new commercial enterprise that employs at least 10 full-time U.S. workers.	No



EB-5 Immigrant Investor Program

- Employment Based VISA # 5 or Immigrant Investor Visa Program
- Established in 1990, The EB5 immigrant investor program is managed by the **United States Citizenship and Immigration Services (USCIS)**
- Offers qualified immigrant investors a temporary green card for the investor, investor's spouse and all children under the age of 21.
- There are two EB-5 Programs
 - Direct Investment in a business
 - Invest through a Regional Center sponsored business
- 10,000 EB5 VISAs per year; 7% per country CAP



Requirements

- Investment must produce 10 jobs per investor
- Jobs must be Full Time Employees (35 hrs. per week)
- 10 jobs must be proven within 27-30 months after the temporary/conditional green card (the I-526) is approved (not when issued, which may be months later)
- Old minimum investment is \$500,000 for a Targeted Employment Area (TEA) otherwise \$1,000,000.
- The investor hires and pays for his own attorney
- I-526 application to issuance of a conditional green cards is normally 12-15 months, more or less
- The EB5 Investor MUST move to the US (not necessarily where the investment is located) and be a “resident” of the US until the conditions are removed and he/she is awarded a permanent green card



EB-5 Regional Center History

- The Immigrant Investor Pilot Program (“Pilot Program”) was created by Section 610 of Public Law 102-395 (Oct. 6, 1992)
- The Pilot Program provides for investments that are affiliated with an economic unit known as a “Regional Center.” Investments made through regional centers can take advantage of a more expansive concept of job creation including both “**indirect**” and “**direct**” jobs
- A **Regional Center** is defined as any economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment.
- Pilot Program Expired June 30, 2021
- The EB-5 Reform and Integrity Act Signed into Law March 14, 2022



EB-5 Reform and Integrity Act 2022

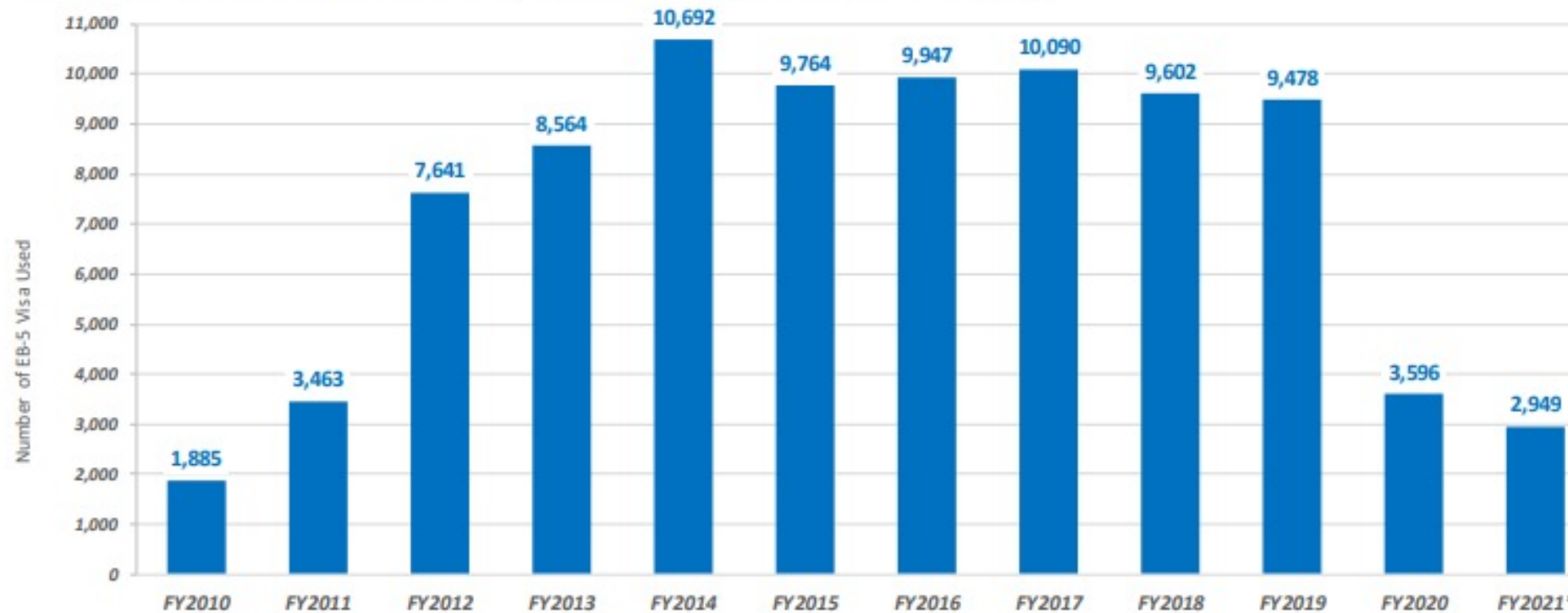
- The EB5 RIA signed into Law on March 14, 2022; 60 days pause for USCIC rule making
- Regional Center Program reauthorized to September 30, 2027
- **Changed investment amounts to \$800,000 TEA and \$1,050,000 Non-TEA**
- USCIS determines Targeted Employment Areas
- **New Set-a-sides; Rural 20%, High Unemployment Area 10%, Infrastructure 2%**
- New Regional Center oversight measures; audits and record keeping
- Mandatory fund administration with waivers or exceptions
- New investor grandfathering – retroactivity shield + continued processing
- **Concurrent conditional green card filings**
- Good faith investor protections- fee disclosures, agent registration
- Doesn't allow Pooling for Direct EB-5 investments



EB-5 Investor Immigration Process



Number of EB-5 Visa Used by Fiscal Year (FY 2010 – FY 2020)



Note: 1 of 3 VISA represent the actual investor. The other 2 visas are normally for family members.



Number of EB-5 Visas Used by Investment Type (FY 2010 – FY 2020)

Investment Type	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021*	Grand Total Since FY2010
Stand-Alone EB-5 (Non-TEA)	324	230	159	243	161	64	273	269	220	101	72	101	2,217
Stand-Alone EB-5 (TEA)	239	152	164	227	155	92	573	417	361	313	240	260	3,193
Regional Center EB-5 (Non-TEA)	1	5	6	7	1	11	13	11	26	7	14	1	103
Regional Center EB-5 (TEA)	1,321	3,076	7,312	8,087	10,375	9,597	9,088	9,393	8,995	9,057	3,270	2,587	82,158
Annual Total	1,885	3,463	7,641	8,564	10,692	9,764	9,947	10,090	9,602	9,478	3,596	2,949	87,671

Source: U.S. Department of State



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Current Estimated VISA backlog

Foreign State of Chargeability	<i>ACTUAL</i> Number of Visa Applicants Waiting in Line at NVC	<i>ESTIMATED</i> Number of Visa Applicants with Petition on File at USCIS	<i>Estimated</i> Grand Total
China	44,357	12,896	57,253
India	1,929	5,489	7,418
Vietnam	1,328	2,626	3,954
All Others	4,722	13,332	18,054
TOTAL	52,336	34,342	86,678

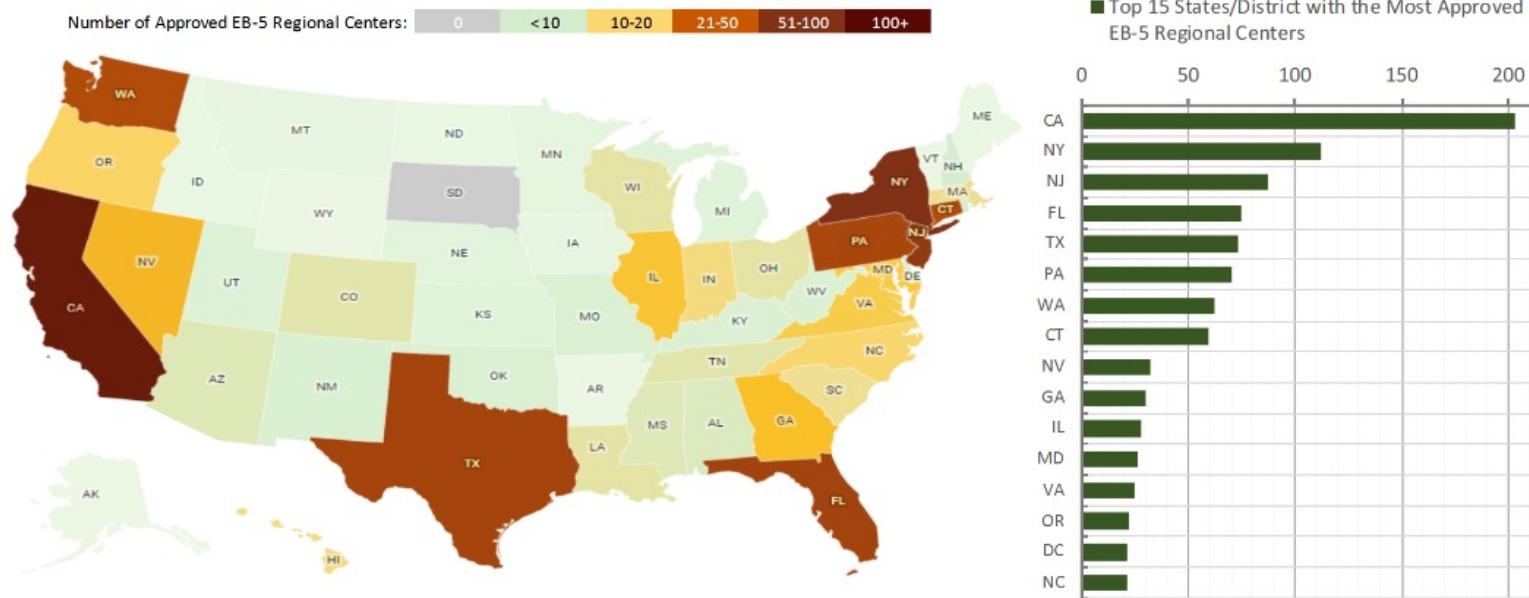
Source: IIUSA



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USCIC Regional Center Program

Map 1: USCIS Approved EB-5 Regional Centers by State Served*



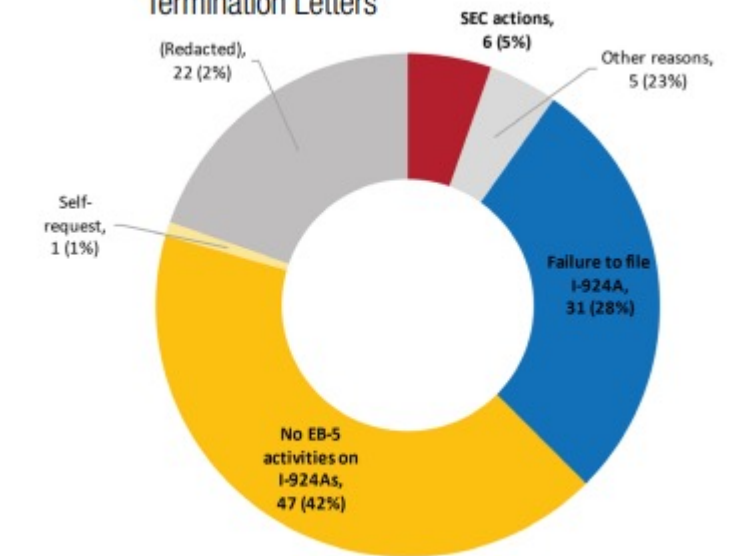
As of September 16, 2019

* 11 EB-5 Regional Centers are serving in the U.S. territories (Commonwealth of Northern Marianas Islands, Guam, Puerto Rico, and U.S. Virgin Islands)

Source: U.S. Citizenship and Immigration Services (USCIS).

Prepared by: IIUSA

FIGURE 5: Reason(s) Cited on Regional Center Termination Letters



Source: U.S. Citizenship and Immigration Services (USCIS).

Prepared by: IIUSA

986 Active Regional Centers

545 Terminated Regional Centers

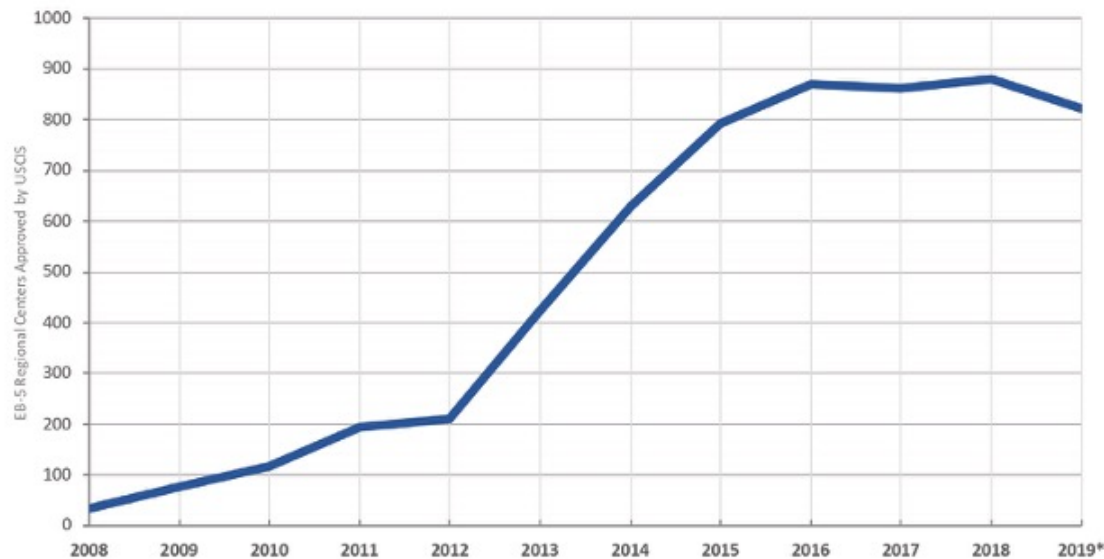
<https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers>



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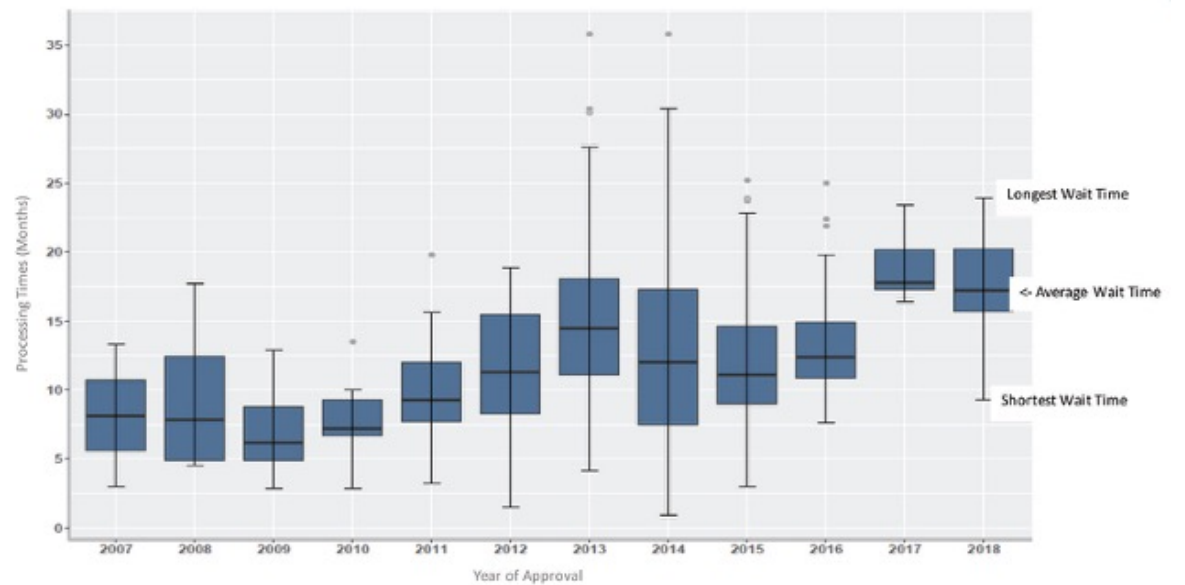
USCIC Regional Center Program

FIGURE 1: Number of Approved EB-5 Regional Centers by Year (2008 - 2009)*
*As of September 16, 2019



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

FIGURE 2: Processing Times Trends on EB-5 Regional Center Designations



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

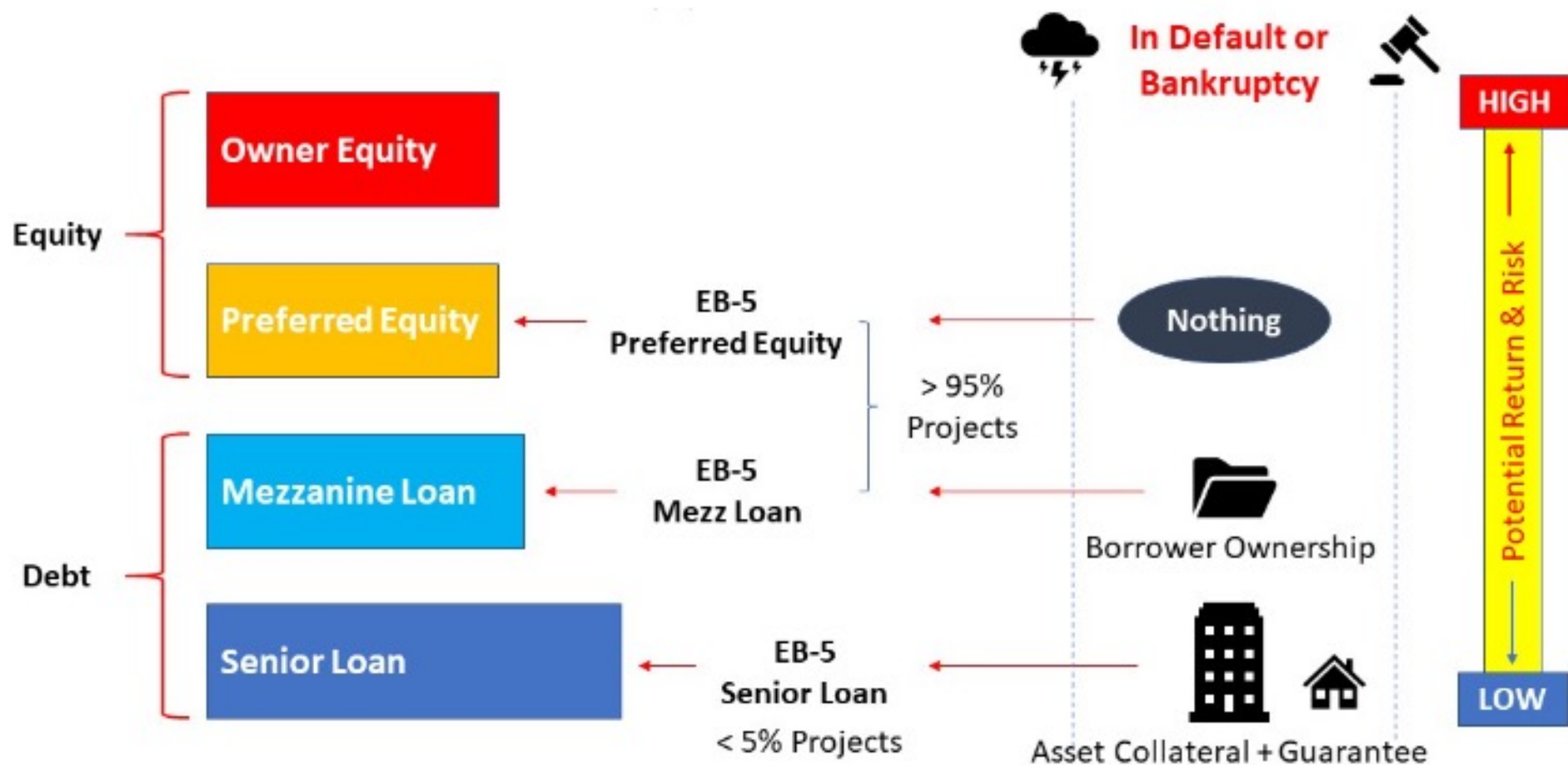
Source: IIUSA

Regional Centers will

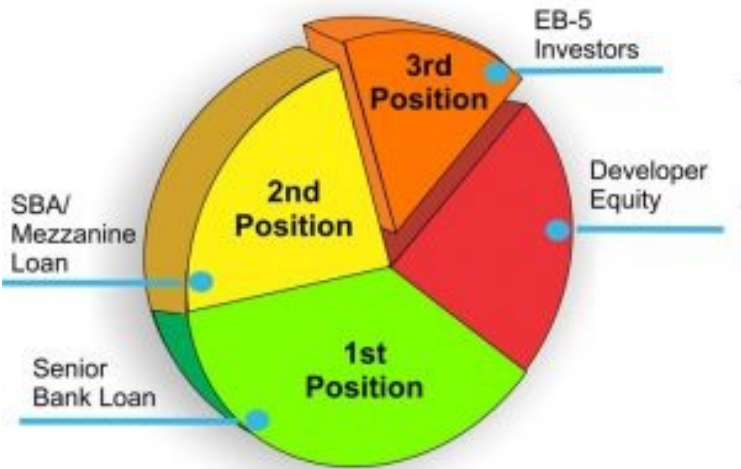
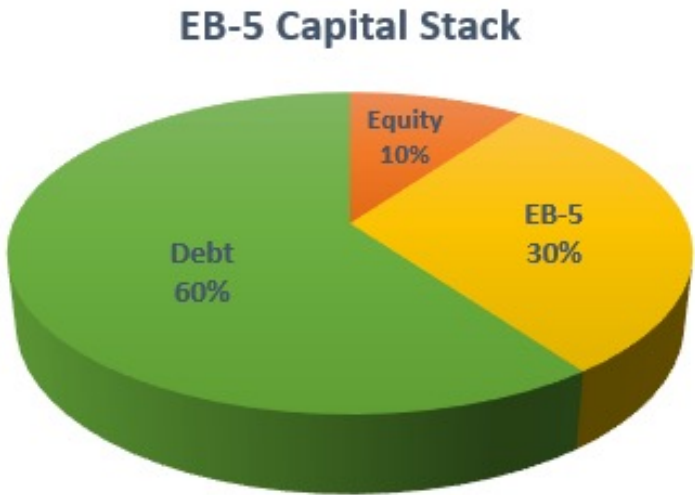
- Develop, market and manage EB-5 qualified investment projects
- Create and manage a limited partnership for each investment
- Assist with investors Green Card application
- Manage the temporary and permanent Green Card process
- Manage and report on all EB5 invested funds and assets quarterly
- Submit an annual Regional Center report to the USCIS (I-924)
- Remain in compliance with all Federal and State laws, rules and regulations
- Hire a fund manager
- Monitor activities of the Job Creating Entity



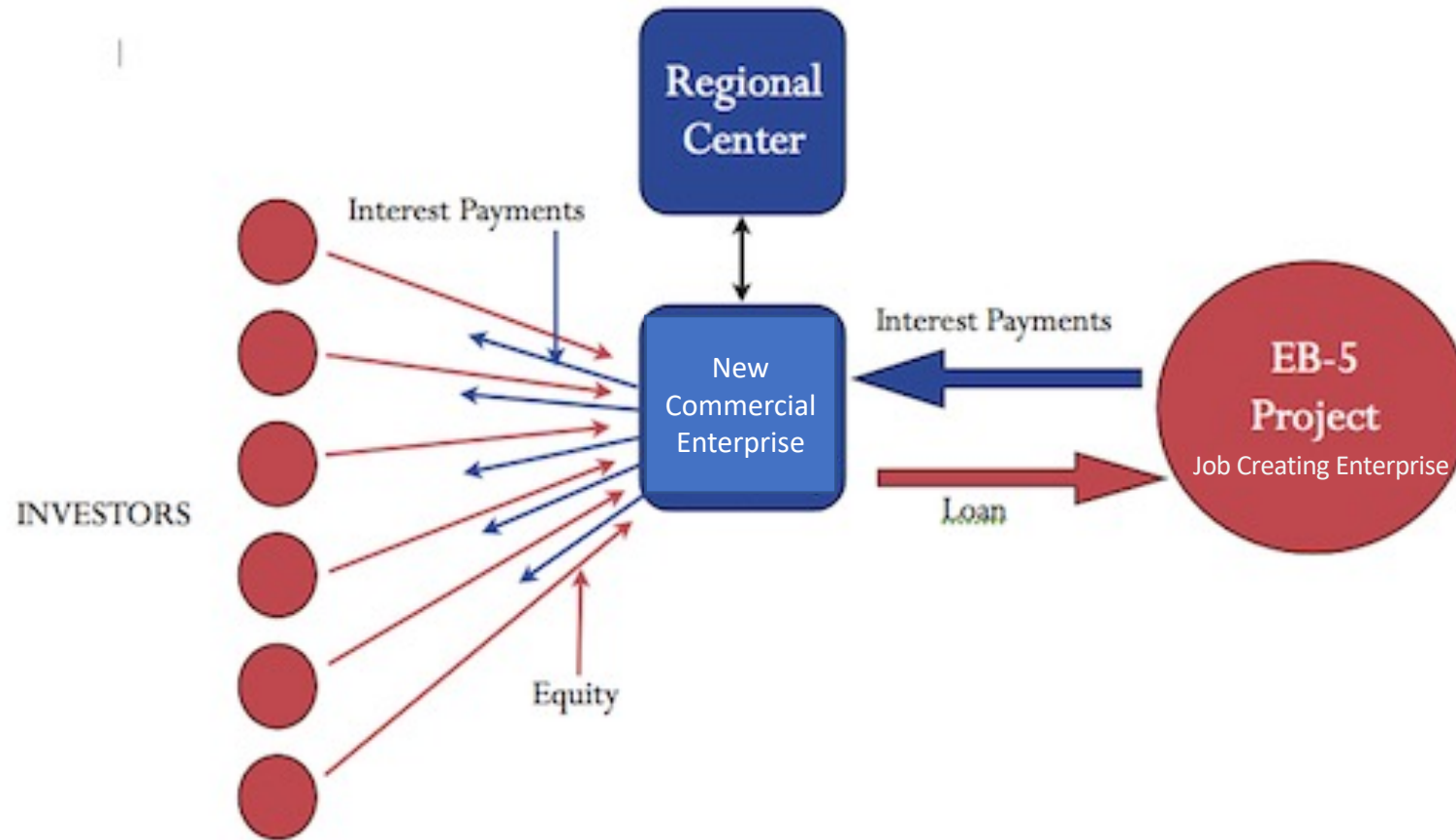
EB-5 Capital Stack



EB-5 Capital Stack



EB-5 Loan Model



Investment EB-5 Project Attributes

- Lots of Direct Jobs and Capital Expenditure; More is Better
 - Economic Capital Expenditure Model – IMPLANS II
 - Aggregate all Direct, Indirect and Induced jobs (10 per investor)
- Located in a Rural or Targeted Employment Area (TEA)
- Experienced and successful operator/developer
- Exit Strategy (Return of Capital)
 - Business cash flow covers debt service
 - Cash out refi
 - Acquisition or buy out



Preferred EB-5 Projects

- \$50 Million to \$100 Million
 - Single or multiple phase
- Strength of the developer and operator team
 - Experience
 - Reputation
 - History of success
- Sound business fundamentals
- Solid exit strategy
- Public/private partnerships
- Glitz/Glamor factor



Win - Win Projects

- Mixed-use real estate projects; e.g., green field brown, field or historic rehabs
- Entertainment or Recreation venues; e.g., restaurants, ski, water or outdoor resorts
- Hotels – Full Service; Flagged
- Manufacturing facilities
- Public/Private infrastructure or real estate projects
- Assisted Living Facilities
- Agriculture projects



Questions?



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