

# EB-5 Funding: A Possible Financing Option for Commercial Ventures Undertaken by Colleges and Universities

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Universities and colleges seeking to start commercial ventures should consider raising capital through the EB-5 program. If you are a university or college and you are considering building a new student union or a stadium as a for-profit venture, EB-5 financing may be a practical option for you. The EB-5 program could also be used to fund a technology licensing enterprise to commercialize new innovations, or to finance an incubator for emerging businesses.

## What is the EB-5 program?

USCIS administers the EB-5 Immigrant Investor Program, which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a pilot immigration program first enacted in 1992 and regularly reauthorized by Congress, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth. Foreign investors may secure permanent residence status through the EB-5 program.

## What are the core requirements of the EB-5 program?

First, all EB-5 investors must invest in a **new commercial enterprise**, which means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to:

- A sole proprietorship
- Partnership (whether limited or general)
- Holding company
- Joint venture
- Corporation
- Business trust or other entity, which may be publicly or privately owned

Under the law, this definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.

Second, each investor must invest, on an at-risk basis, either **\$500,000 or \$1 million** into a new commercial enterprise. The investment amount depends on where the new enterprise is located. Investments in a Targeted Employment Area ("TEA") may be at the \$500,000 level. Under the Immigration & Nationality Act, a TEA is defined as an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150% of the national average rate.

Third, for each EB-5 investor who wishes to qualify for a green card, the new commercial enterprise needs to create **10 new jobs** for U.S. workers. For EB-5 projects that are under the umbrella of a USCIS designated Regional Center, the job creation may be indirect. Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a Regional Center. A foreign investor may only use the indirect job calculation if affiliated with a Regional Center.

## Conclusion

EB-5 financing may be a solution for universities or colleges seeking funding for ventures that qualify as new commercial enterprises and that create jobs for U.S. workers. EB-5 deals may be structured as debt or equity offerings.

There continues to be a growing interest in the EB-5 program. Prospective investors from China, Vietnam, Brazil and other countries often wish to secure permanent residence so that their children may live and study in the United States. The EB-5 program will continue to be an attractive immigration option for these investors.

Additionally, EB-5 projects connected with a university or college may be particularly attractive to such foreign investors, who may have a favorable view of investments that have a connection with educational institutions.

If you are a college or university and you are seeking financing for a project that will create jobs, explore the EB-5 program.

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