3rd Edition

THE Developer's EB-5 HANDBOOK for construction financing

How top developers access EB-5 financing with low risk and high certainty of execution

Jim Butler
Chairman,
JMBM Global Hospitality Group®
EB-5 Finance Group ™

David A. Sudeck
Senior Member,
JMBM Global Hospitality Group®
EB-5 Finance Group ™

Published by the Global Hospitality Group®
in cooperation with the EB-5 Finance Group™ of JMBM
Los Angeles, California

3rd edition, April 2022

We wrote the book™ series:

- The Developer's EB-5 Handbook for Construction Financing
- The HMA & Franchise Agreement Handbook
- How To Buy And Sell a Hotel Handbook
- The Lender's Handbook for Troubled Hotels
- The ADA Compliance and Defense Guide

This handbook is provided for informational purposes only.
Legal advice should be based on your specific information
and provided by a qualified attorney.

Table of Contents

Dedication

The Developer's EB-5 Handbook is dedicated to developers' eternal optimism, energy and determination to overcome all obstacles to build worthy projects that will benefit mankind.

We hope the information in these pages will help developers in their struggle to assemble a viable capital stack and to overcome some of the financing hurdles they face in building their projects and making dreams become reality.

This book is a collection of articles that we have written on the topic of EB-5 Financing, with a particular focus on construction financing, and it is intended to be a guide to this process and the key issues developers will encounter in the journey.

We anticipate that most readers will look for the topics of critical interest to them and will not read this cover-to-cover. Therefore, at the risk of some duplication, the articles are each designed to be a self-contained answer to the most common questions we hear from developers. Such a complete response sometimes requires repeating information provided elsewhere to other questions, but it saves a lot of paging back and forth.

Foreword

by David Hirson, Esq.

Why the need for this practical guide to EB-5?

With the EB-5 Reform and Integrity Act of 2022 signed into law by President Joe Biden on March 15, 2022, the EB-5 immigrant investor program and the EB-5 Regional Center Program are well-positioned for the next five years to continue to fulfill Congress' original intent to foster economic development and job creation in local communities and nationally, with the help of foreign nationals who are interested in immigrating to the United States. The EB-5 program has created hundreds of thousands of full-time US jobs over the years. The US economy can certainly benefit from investments made by foreign EB-5 investors. The job creation, the economic stimulus and the billions of dollars invested through the program are all at no cost to US taxpayers.

Jim Butler and David Sudeck of JMBM's Global Hospitality Group® have significantly contributed to the growth and success of the EB-5 program for many years. They continue to advise their clients how to successfully structure EB-5 projects from the financing, securities, business and corporate law standpoints. This handbook represents their collective expertise on the EB-5 industry developed over the last decade. Specifically, JMBM's expertise, which leans towards effectively structuring EB-5 hotel projects, shines through in this book's articles focusing on EB-5 and hospitality projects.

All developers interested in utilizing EB-5 as a part of their project financing (capital stack) will want to take advantage of the expertise found in these pages. EB-5 is a great program to use in support of a development project, but developers must be guided on how to effectively use the program.

The renewal and reauthorization legislation has created a great deal of excitement and is releasing pent up demand for immigration to and investment in the US. The EB-5 program will continue to build the US economy, create jobs for US workers, and positively impact local economies. There are few other government programs that can make this same claim with no cost to the US taxpayer.

It is firms like JMBM and publications like this one that lend credibility to the program and promote its growth into a full-fledged program, spurring economic growth and job creation as the creators of the legislation originally intended.

David Hirson Esq.
David Hirson & Partners LLP
Costa Mesa, California
April 2022

David Hirson, Esq. has more than 35 years of experience in the practice of immigration law. Although he practices in almost all areas of immigration law including family immigration law and all aspects of business law immigration, his focus is on EB-5 investment immigration law. He has been certified as a Specialist in Immigration and Nationality Law by the State Bar of California, Board of Legal Specialization continuously since 1990.

David can be reached at **+1-949-383-5355** or dhirson@hirson.com.

Back to Table of Contents

The importance of the "right team"

by Reid Thomas

EB-5 has emerged as a mainstream source of capital used in many real estate and other types of projects across the country. In addition to its importance to the real estate community as an effective construction financing tool, it provides strategic benefit to the US economy as the only job creation program in existence that has no expense to the taxpayer.

One of the most important keys to success in EB-5 has always been to work with the “right team”, but the new EB-5 Reform and Integrity Act of 2022 codified that there is also a “right way” to operate in the EB-5 industry. JMBM is one of the few firms with the experience in EB-5 and more broadly the expertise in fund structure and operations to help clients successfully navigate the new rules.

While the benefits of using EB-5 as a capital resource for helping finance a construction project can be significant, pursuing it doesn’t come without significant complexities. This book is a great resource and provides practical advice for those considering this opportunity. The key to success is in structuring the right deal and approaching the market in a way that maximizes the opportunity for success. As this book shows, the team at JMBM has the proven track record, the expertise, and an approach to help developers determine the best path forward.

Reid Thomas
JTC Americas
San Jose, California
April 2022

Reid Thomas is responsible for overseeing the day-to-day operations of JTC Americas. To this role he brings decades of leadership experience in both public and private companies, primarily in high-growth Silicon Valley technology companies. Reid has been instrumental in the rapid growth of the company's EB-5 and Opportunity Zone businesses, working to develop the purpose-built software solutions and dedicated client services teams, which have propelled the company into leadership positions in both industries.

Reid can be reached at Reid.Thomas@jtcgroup.com.

Back to Table of Contents

About the Authors

Jim Butler is a founder of the JMBM law firm and chairman of its Real Estate Department. He founded and chairs the Firm's Global Hospitality Group® which provide business and legal advice to owners, developers and investors of commercial real estate, particularly hotels, resorts, restaurants, spas, senior living, and complex mixed-use projects. This advice includes purchase, sale, development, financing, franchise, management, labor & employment, litigation, ADA, IP, and specialty financing such as commercial property assessed clean energy (C-PACE) and EB-5 matters for such properties.

Jim is recognized as one of the top hotel lawyers in the world and has led the Global Hospitality Group® in more than $112 billion of hotel transactions and more than 4,500 hotel properties located around the globe. They have helped clients with more than 2,500 hotel management and hotel franchise agreements and more than 100 hotel mixed-use projects.

JMBM's team has closed more than $350 million of C-PACE financing and has advised on more than 100 EB-5 projects, closed more than $1.5 billion of EB-5 financing, and sourced more than half of that for our clients. *EB-5 Investors Magazine* named Jim one of the top 25 EB-5 lawyers in the United States, and Jim serves on the Public Policy Committee of the IIUSA, the EB-5 industry's trade group for regional centers.

Contact Jim at **+1-310-201-3526** or JButler@jmbm.com.

David Sudeck is a senior member of JMBM's Global Hospitality Group® and JMBM's real estate department. His practice primarily involves the complex issues associated with major commercial real estate projects, particularly those involving hotels, resorts, and mixed-use projects.

David is a seasoned real estate attorney and deal maker with an international reputation for his expertise on projects with a hospitality component, and he focuses in particular on providing practical counsel on critically important management and branding agreement issues. He is also widely recognized for providing top business and legal advice to hotel owners and lenders in the purchase, sale, development, construction, financing, leasing, and sale-leaseback of properties.

When he is not working on traditional senior debt or mezzanine financings for owners or lenders, David is likely working on creative joint ventures or "alternate" commercial property assessed clean energy (C-PACE) or EB-5 financings, as the head of the Firm's C-PACE and EB-5 Finance groups. In the last 12 months, David and his team have closed more than $350 million of C-PACE financings, and David has been involved in virtually all of the $1.5 billion of EB-5 financings the Firm has handled. David also serves on the Public Policy Committee of the IIUSA, the EB-5 industry's trade group for regional centers.

Contact David Sudeck at 310.201.3518 or dsudeck@jmbm.com.

Hotels we have worked on over the years. Visit our hotel photo gallery to see some of the more than 4,500 properties around the globe that the hotel lawyers of the Global Hospitality Group® have been involved with on behalf of our clients. For a more comprehensive list of hotels properties and projects we have worked on, see our Credentials.

Back to Table of Contents

Why NOW is the time to start looking into EB-5

So much is changing and uncertain. Shouldn't I just hold off on EB-5 until things settle a bit?

Is this the time to jump in or sit on the sidelines? The answer to this important question can only be determined on a case-by-case analysis at the time of inquiry. That is one of the key services we provide to developers so they don't waste time and money on a wild goose chase.

Early signals suggest that there will be a significant rush for United States Citizenship and Immigration Services (USCIS) approval of new EB-5 projects seeking to take advantage of the reauthorization – to get a place near the front of the line for USCIS adjudication, and to serve the backlog of demand by immigrant investors built up during the COVID-19 crisis and dormancy of the Regional Center Program from the Summer of 2021 to March 15, 2022.

There are so many issues that could affect an EB-5 development project or an EB-5 capital raise. Fortunately, the EB-5 Reform and Integrity Act of 2022 ("EB-5 Reform Act") has provided new clarity on many issues, and stability through a five-year renewal and reauthorization of the EB-5 Regional Center Program. Thus, the availability of financing through the EB-5 program has been assured through at least September 2027. Certainly stakeholders will have to make some fast adjustments to satisfy the new requirements of the EB-5 Reform Act; Regional Centers in particular will need to scramble to establish or renew their status and get approval of projects under the new law. Regional Centers and investors will have to comply with the stricter new rules governing Targeted Employment Areas, minimum investment amounts, and compliance with numerous provisions designed to ensure the integrity of the program.

With proper guidance from unbiased experts, there is a relatively easy path to explore EB-5 financing and to reliably execute on it. It requires relatively nominal cost and risk, and such cost can be incurred on an "incremental" basis – meaning you start with very low cost and risk to see if there is a litmus test for a stop-or-go indication.

You never take the next incremental step until there is reasonable comfort at the current one. There are not many steps required to identify the "show stoppers" and get to a stage of solid contractual comfort that the financing can and will be executed by one of the handful of parties capable of doing so reliably.

We have counseled clients for more than 10 years on EB-5 financing so they could risk a nominal amount of money to evaluate the opportunity, secure a position in line, eliminate the "show stoppers," obtain the strongest assurances of performance from reliable players, and execute their financing with a high degree of confidence. While EB-5 financing has been relatively quiet over the past few years, over our working history we have represented clients on closing more than $1.5 billion in EB-5 financing, and we have a 100% track record of success on all projects we took to a letter of intent.

We think this is an opportunity that a top developer would be foolish to overlook, and there is a path to explore it without undue risk. Early adopters will be rewarded.

Back to Table of Contents

FAQs: Essentials of EB-5 construction financing for developers

Below are some of the most Frequently Asked Questions (FAQs) and answers regarding EB-5 funding for developers (click the link for answer, or scroll down)

FAQs (with answers)

1. What is EB-5?

EB-5 refers to a program that is authorized by Section 203(b)(5) of the Immigration and Nationality Act. Its name derives from the fact that the EB-5 regime is set forth in the fifth subparagraph of the "Employment-Based" immigration programs provided in Section 203(b). EB-5 offers an expedited visa processing for foreign investors making a minimum required investment in a project that creates at least 10 new jobs in the United States.

Thus, EB-5 is both an immigration program giving wealthy immigrants the opportunity to earn a “fast-track” to US citizenship, and a source of financing for new enterprises that provide communities the benefit of economic stimulation created by investment and new jobs. This financing or investment must be made in qualified projects, and developers are often able to execute a new development with the EB-5 capital when they could not otherwise complete their capital stack.

EB-5 has incentives to develop infrastructure and other projects located in a “rural area” or an “area of high unemployment” designated by the Secretary of Homeland Security (a qualifying rural or high unemployment area is called Target Employment Area or “TEA”). Incentives include a reduction of the minimum investment from $1,050,000 to $800,000 for a project located in a TEA. Additional incentive is provided by offering prioritized processing with United States Citizenship and Immigration Services (USCIS) for rural projects.

The EB-5 program was given a great lift by the five-year extension through September 2027 for the Regional Center Program and the adoption of other regulatory changes provided by “EB-5 Reform and Integrity Act of 2022” (“EB-5 Reform Act”) signed into law March 15, 2022 by President Joe Biden.

Back to the top of FAQs

2. Why is there so much interest in EB-5 financing?

Over the last 10 years, EB-5 financing became extremely popular in development circles for financing projects in the United States, and became widely used by mainstream, institutional players including government entities such as port authorities, major hotel brands like Marriott, Hyatt, and Hilton, and some of the largest owners of hotels and restaurants.

EB-5 financing has provided low-cost, non-recourse, five- to seven-year term financing for the development and construction of new projects and offers a number of advantages to developers. For several years prior to the pandemic, the demand for EB-5 funding exceeded the 10,000 annual visas available to raise such capital from immigrant investors and/or the capacity of the fund raising channels (mostly regional centers and marketing agents).

Back to the top of FAQs

3. Is EB-5 funding available for new construction?

Generally, yes. Because foreign investor money must create **new** jobs in the United States, construction projects located in the United States are the normal target of EB-5 financing investment. Although the law does not restrict the nature of the investment to real estate, foreign investors have demonstrated a clear preference for real estate-related projects, particularly hotels, restaurants and resorts. EB-5 financing can also be used to add new facilities to existing ones, such as a new tower of hotel rooms, a spa, a restaurant or nightclub. It can also be used for a virtually unlimited range of other projects, such as building new plants or facilities, alternate energy, and many more – as long as the required number of jobs are created and the project appeals to immigrant investors with certainty of completion and likely satisfaction of their investment expectations (generally payback of principal and a modest rate of return). In limited circumstances, EB-5 financing can be used to rescue a bankrupt or failing business (see the "Troubled Business" topic below). The EB-5 Reform Act clarified the ability of developers to count construction jobs and other indirect jobs on a new project.

Back to the top of FAQs

4. Can I use EB-5 funding to buy an existing property or business?

Generally, no. Unless a property or business is in bankruptcy or is a "troubled business" (see the "Troubled Business" topic below), EB-5 financing cannot be used for acquisition, because the money will not create 10 new US jobs per EB-5 investor. As noted above, EB-5 financing might be used to add new facilities to an existing property or convert the use of an existing building which will meet the new jobs-creation requirement.

5. What qualifies as a "Troubled Business" for purposes of supporting EB-5 financing to save jobs?

According to the USCIS, a troubled business is "a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve- or twenty-four month period prior to the priority date on the alien entrepreneur's [immigrant investor's] Form I-526, and the loss for such period is at least equal to twenty percent of the troubled business' net worth prior to such loss."

The rules defining what constitutes a troubled business are complex. Before relying on the troubled business exception to count saved jobs, It would be wise to consult with an experienced EB-5 attorney who can review the troubled company's financials with you and your accountant to determine if the requisite 20% loss equal to revenue or assets has occurred during the last two years and what that means for a potential EB-5 case.

If purchasing an existing business, you must simultaneously or subsequently restructure or reorganize the business such that a new commercial enterprise results; it appears the USCIS expects you to expand the existing business such that there is a 40% increase, either in the net worth or the number of employees. The total of jobs saved and new workers must be not less than 10 per investor.

Back to the top of FAQs

6. Is there any limitation on the kind of project funded with EB-5?

There is no limitation in the law as to the type of project that can be funded with EB-5 financing. The critical requirement is that the minimum number of 10 new US jobs for each investor will be created within a specified period of time. However, in order to raise money from foreign investors, the project must satisfy the investors' need for certainty that the project will be completed on time and create the necessary jobs so that the EB-5 investors will obtain their green cards. Secondarily, the project must also be attractive from an investment standpoint, providing a high degree of comfort that it will be able to repay the investment in 5 to 7 years (whether the EB-5 financing is structured as debt or preferred equity).

Analysts estimate that up to 70% or 80% of all EB-5 investors select real estate-related investments, particularly those that create a large number of new US jobs such as hotels, restaurants, night clubs, resorts, hospitals, and senior living. However, we have assisted clients in successfully closing EB-5 financing on solar projects, high tech, entertainment, and projects in other industries.

Certain classes of real estate (retail and office) were problematic for EB-5 investment before the EB-5 Reform Act because of the "tenant occupancy" issue. The USCIS formerly took the position that a project cannot count the jobs created by tenants occupying and leasing space in a property. The retail and office developer typically had few employees of its own at such a property and for such retail or office projects they were prevented from counting the jobs that their tenants provided. Therefore, any new jobs created for EB-5 purposes were largely construction jobs. Hotels do not generally have this problem because most hotels are not leased.

The EB-5 Reform Act gives a favorable resolution of this issue, providing that jobs created by tenants may be counted to meet the jobs requirement provided they are estimated by an economically and statistical methodology, and are not existing jobs that have been relocated.

Back to the top of FAQs

7. How much does EB-5 money cost?

Prior to the reauthorization, EB-5 financing for "preferred" developers typically cost 7% to 8% per annum to the developer on an all-in basis. The typical Chinese immigrant investor usually received 1% or less on his investment, and much of the rest of the per-annum cost went to pay for all the infrastructure and personnel involved in selling the project, raising the money and maintaining EB-5 compliance, securities compliance, and administration. Investors from other countries often negotiated for higher economic returns. With all the increased regulation and oversight requirements of the EB-5 Reform Act, it is unlikely that the cost of EB-5 money will go down.

Back to the top of FAQs

8. How do I know if EB-5 will work for me and my project?

Generally speaking, a project will have advantages if it is in an area that is a TEA[1] or is in a "rural" area because only these projects qualify for the lower minimum investment of $800,000 instead of the standard $1,050,000. Historically, the overwhelming majority of all EB-5 investors over the past 10 years chose projects where they could make the minimum investment (which was $500,000 until the EB-5 Reform Act increased the amount). The initial determination of whether a project location will qualify as a TEA can be made quickly and at little or no cost. The formal designation by the Secretary of Homeland Security takes longer.

After establishing that the project is located in a TEA or rural area, EB-5 feasibility will be determined by all the relevant factors. These include the developer's track record of success with similar prior projects, the developer's (and its completion guarantor's) financial stability and reputation, and the project's financial viability. Another series of factors relate to the comfort level that the project will meet all of the EB-5 requirements for immigrant investors to get their permanent visas. For example, what assurance is there that the minimum number of jobs will be created, the project will be completed and opened on time, and the project will be able to repay the investors' money at the end of 5 to 7 years?

Of course, in addition to a high-quality developer, project, and deal structure, the EB-5 team should be "best of breed" in order to succeed in this competitive environment as ever more developers seek EB-5 capital. If the due diligence, deal structure, marketing, escrow releases and other elements cannot be properly executed, even strong offerings will fail to attract sufficient EB-5 investor interest.

Back to the top of FAQs

9. What is a regional center and do I need one?

A regional center (RC) is an entity that has received formal approval by the US immigration service of an application to be designated as such. The EB-5 Reform Act focused a lot of attention on RCs as an important instrument of regulatory reform subject to multiple compliance and oversight responsibilities. An RC is the only alternative to direct investment, and only RCs can pool investors' moneys. RCs also increase the critical job count (the requirement of at least 10 jobs per investor) by counting direct jobs, indirect jobs, and induced jobs for a project in accordance with one approved economic methodologies. This usually results in a calculation of jobs created that are a significant multiple of those that result without an RC. A multiple job count for EB-5 calculations means a multiple of EB-5 capital that can be raised.

When more jobs are created under the USCIS rules, more investors can get visas, and therefore, more money can be raised. It is also easier to use EB-5 when there is a substantial margin of safety in the job count in case anything goes wrong. As a practical matter, regional centers have historically offered immigrant investors a buffer of 20% to 30% more jobs than the law requires to protect against contingencies.

Back to the top of FAQs

10. Why is getting the "right" regional center so critical?

Our developer clients say their top concern in pursuing EB-5 is to quickly determine if EB-5 will work for them before they spend a lot of time and money. Assuming that it is feasible, they want to raise as much money as they can, at the lowest all-in cost to them, in the shortest period of time and with the greatest certainty of execution. Finding the "right" regional center for each project maximizes the prospects to accomplish these goals with a successful closing.

---

[1] Targeted Employment Area, described below (See FAQ 11. "What is a TEA?")

As in any other line of work, a relatively small proportion of the players have the dominant experience, contacts and track record to deliver results that are vastly superior to others. Just look at the numbers and imagine how difficult it would be to randomly find the best match for a given deal.

As of October 25, 2021, there were 632 regional centers approved by the USCIS. Industry experts say that more than 85% of the total dollar amount of all EB-5 funding since 1990 has been raised by fewer than (the top) 10% of all regional centers. In other words, there is an extreme concentration of experience and success amongst a very small number of the regional centers.

Why have a virtual handful of regional centers raised such vast portion of the EB-5 funding? The top regional centers have been established for some time, have a strong infrastructure in both the United States and foreign countries where there is both already an awareness of the EB-5 program opportunity, and a strong interest in using EB-5 to migrate to the United States. These established regional centers have built reliable marketing organizations and have worked out procedures, documentation, and logistics to evaluate new EB-5 projects.

A substantial amount of work is required to underwrite a deal, consummate arrangements with the developer, prepare the project marketing program and materials, sell projects overseas, and get the funds released for deployment by the project. In addition to the transaction work of making deals and raising capital, the regional center must also insure compliance with securities and immigration laws. And above all, the regional center must establish a track record of success in obtaining permanent visas for its EB-5 investors, because the regional center's ability to raise capital in the future will depend upon being able to establish a high probability of success in getting green cards for its projects based on its prior performance.

Back to the top of FAQs

11. Should I form my own regional center?

Most developers should not form their own regional centers. Here are some of the relevant considerations for and against forming your own regional center:

The "advantages" of forming your own regional center are advanced by certain immigration lawyers and advisors who stand to earn substantial fees for helping you form the regional center. They ask "Why should you pay someone else to serve as a regional center for your deal when you can have your own?" They suggest that you might be able to shave 1% or 2% off the cost of your EB-5 financing. Perhaps you could have greater control over the fund raising process. You could hand-select the marketing agents who will sell your offering. You can use the regional center for future deals and turn it into a profit center for handling other developer's projects.

If the developer cannot find and attract a great regional center to its deal, then, to a greater or lesser extent, the developer may find itself forced into the "immigration business" if it wants to use EB-5 financing. The developer may form a regional center, seek to identify regional centers to "rent," or otherwise cobble together marketing agents and other components of the EB-5 capital raising chain. This is a difficult, time-consuming and somewhat risky course to choose, unless the developer fully understands the nature of the commitment, effort and capital likely to be required. Operating a regional center means running a complicated business that requires financial skills, compliance with regulatory requirements, a deep working understanding of the immigration business, and most importantly, establishing and maintaining a great network of contacts overseas in order to raise capital.

The developer forming its own regional center will be competing with a handful of dominant players who have been established for many years. These established, regional centers have spent a vast amount of time and money to build their presence in China and other markets, along with their marketing organization, infrastructure, systems, forms and reputation amongst the EB-5 investor community. It can be daunting to compete with them in attracting immigrant investors for EB-5 capital.

An extraordinarily high percentage of developers who initially believe they want to form their own regional center and build their own EB-5 infrastructure will ultimately abandon that path. Although we can help clients establish a regional center and related infrastructure, developers need to understand this alternative involves setting up and operating an entirely new business – the immigration business. It takes a long time to get regional center and project approvals and even longer to push projects all the way through the EB-5 pipeline so that you can show new investors that all your prior investors got their green cards.

Most of our clients find that it is far better to connect with and rely upon well-established major players in the EB-5 financing chain. We serve as counselors to assist them through this process.

Back to the top of FAQs

12. What is a TEA?

In the EB-5 world, TEA is not pronounced like the hot drink. It is pronounced by naming each of the capital letters in its name, e.g. "T"… "E"… "A" and those letters stand for "Targeted Employment Area." TEAs are either:

(a) certain narrowly-defined rural areas (a census tract not within a metropolitan statistical area nor within the boundary of a municipality with a population of 20,000 or more), or

(b) other specifically defined census tracts where the unemployment rate is 150% of the national unemployment rate.

Determination of whether a project is in a TEA is critical, because 90% of all the EB-5 investors for the past ten years invested in projects in TEAs. This is the only way the EB-5 investors can make the (reduced) minimum $800,000 investment for the expedited process to get a green card under EB-5. If the project is not in a TEA, then the immigrant must invest a minimum of $1,050,000. The EB-5 Reform Act's stricter requirements for a TEA may ultimately force more foreign investors to make the larger (standard) $1,050,000 minimum investment.

The EB-5 Reform Act specifically declares that only the Secretary of Homeland Security can designate a TEA. The standards are now much more objective and individual states will no longer be permitted to make this designation. This reform should eliminate some of the great disparities in the standards used by different local jurisdictions under the prior law, particularly with the "gerrymandering" of census tracts that some state and local authorities permitted under the old law.

A TEA designation is valid for two years and can be renewed if it qualifies at the time of renewal. However, if a TEA loses it designation, immigrant investors who have already made their EB-5 investment will not be required to increase their investment from the minimum they originally qualified for.

Once you know why it is important to have your project in a TEA, don't waste any further time on this yourself. Call an expert and see if it looks like your project is in a TEA.

Back to the top of FAQs

13. How much money can I raise?

There is nothing in the EB-5 regulatory scheme that sets a limit on the amount of money that can be raised for a project under the EB-5 program, except the requirement that at least 10 new US jobs must be created for each EB-5 investor within the specified time period. So the calculation of new US jobs is one of the most critical factors in determining the maximum amount of EB-5 financing. As noted elsewhere, regional centers have an advantage on job counts, because where they are used, the new job calculation for EB-5 purposes is not limited to the direct, full-time employees with W-2s, as it would be otherwise. With a regional center, new jobs include direct jobs as well as indirect jobs and induced jobs.

After the crucial jobs creation requirement, the other major factor affecting how much EB-5 capital can be raised is the attractiveness of the deal to your marketing organization and the EB-5 investors. These players tend to prefer that the EB-5 investment be limited to 25% or 35% of the total project cost. They want to see substantial equity and they want to see that all other parts of the capital stack are in place to help ensure that the project will be completed on a timely basis, and that at least the minimum number of EB-5 jobs will be created for all investors to qualify for their permanent visas.

With good advice, the amount of money raised by EB-5 can be optimized with proper sizing and positioning of the capital stack and structure of the overall deal.

Back to the top of FAQs

14. What are the six biggest mistakes developers make with EB-5?

There are a number of mistakes developers often make with EB-5 financing. What are six of the most common mistakes? We find that too often, developers fail when they …

- Don't bring in EB-5 experts at the very outset of the project
- Don't document intention to raise EB-5 funding early enough
- Rush to form their own regional center
- Start negotiations with regional centers without guidance
- Don't count all jobs created in a mixed-use or master planned development
- Don't perform enough or the right kind of due diligence

For more details on these mistakes and tips to avoid them, see "Tips to avoid the 6 most common mistakes developers make with EB-5."

Back to the top of FAQs

15. What does JMBM do to help developers with EB-5 financing?

JMBM specializes in representing top developers and projects where we have a high degree of confidence that the desired financing can be obtained and closed on optimum terms. In such cases, we can usually help our client to accomplish the following items, including sourcing the EB-5 capital:

- Source EB-5 financing
- Evaluate EB-5 threshold feasibility
- Optimize developer profile and project structure
- Assemble the right EB-5 team with best players
- Help size and structure the capital stack
- Negotiate optimal deal terms with current input on what is "market"
- Negotiate and finalize funding documents with the capital source
- Validate EB-5 funding strategy
- Oversee issues in the capital raising process
- Close the financing

As the developer's counselor, we negotiate a fairly complex loan or preferred equity transaction in a regulatory environment that requires compliance with USCIS, SEC, & FINRA. This process also necessitates identifying, selecting, negotiating and coordinating with an immigration law firm, an economist, various hotel consultants and one or more regional centers to get your loan properly sized and documented.

As part of the financing process for each EB 5 financing project we work with, we counsel each client and the other appropriate members of the EB-5 team to do the following:

- Obtain a preliminary TEA feasibility (which will be confirmed by USCIS on adjudication of the file)
- Manage “new job count” issues for direct, indirect, and induced jobs to ensure compliance with EB-5 requirements of the USCIS to support the size of your EB-5 financing
- Develop the proper business plan for your project
- Verify calculations from the economist and regional center and strategize best way to maximize loan size and terms for the developer
- Determine appropriate loan sizing and capital stack position
- Negotiate the loan commitment and loan documents to reflect proper collateral, to include appropriate escrow release provisions and security, and to otherwise ensure that the terms will be acceptable to both the developer and to any traditional construction lenders who may be in a senior lien position
- Negotiate and finalize inter-creditor agreements, escrow agreements, completion guaranties, various security agreements (depending upon collateral provided by the developer), and other related financing documents

[Back to the top of FAQs](#)

[Back to Table of Contents](#)

EB-5 construction financing
term sheet for top developers

EB-5 financing comes in many colors and shapes

JMBM believes that for most developers, EB-5 financing is best structured as mezzanine debt or preferred equity, to optimize the total amount of financing and reduce the cost of the capital stack. Normally, senior construction debt (secured by a first priority lien) will be cheaper than EB-5 money, but senior lenders (particularly if the subject project is a hotel) rarely lend more than 50% to 55% of the total cost of construction for hotel projects, although they often provide higher leverage on other classes of real estate development. Most of our clients like to use this cheaper senior debt and then add some low-cost EB-5 mezzanine debt on top of it to bring the total loan-to-cost ratios closer to 75% or more.

We also find that the structure outlined above is popular with the most experienced and reliable regional centers in the business (many of whom we have worked with). JMBM has closed more than $1.5 billion of EB-5 financing and has developed an expertise in structuring the EB-5 financing to address our client's needs and goals. The highlights of the current market terms for this financing are described below.

JMBM is sourcing low-cost mezzanine capital for new construction through EB-5 financing for its top developer-clients

To qualify for this program, the borrower must be an experienced developer with a superb track record, a superior reputation and a great project. If you do not meet those threshold requirements, then you don't need to read any further, because this program likely is not suitable for you.

If you might benefit from mezzanine financing with an all-in cost to you of approximately 7 to 8% per annum, then you may want to consider JMBM's "preferred" EB-5 financing program, which is summarized below.

Highlights of JMBM's Preferred EB-5 Financing Program for new construction

We believe the terms below fairly summarize highlights of recent EB-5 financing we have sourced and closed for our clients (and as of now, this continues to be the preferred structure). These features may well evolve as more experience is gained with the EB-5 Reform Act:

Financing type	Mezzanine debt or preferred equity
Cost	7% to 8% per annum, all-in cost to the developer
Loan Size	$10 million to $200+ million
Term	3 to 7 years (expect a prepayment lockout before the end of year 3 in most instances)
Portion of the capital stack	25% to 35% of the total project cost

The availability and terms for any financing will depend on the underwriting for a specific project and the specific borrower, including then-prevailing economic and market conditions.

Back to Table of Contents

More than $1.5 billion of EB-5 financing closed for JMBM clients

EB-5 is a proven means of financing for development projects

EB-5 financing is an important and viable source of construction financing for hotels, hotel enhanced mixed-use, and other development projects. More than ten years ago, when JMBM started helping hotel developers with EB-5 financing, many worried about whether this is a legitimate and reliable financing source. Then, after billions of dollars of development have been funded with EB-5, this type of financing became mainstream. With the EB-5 Reform Act's revitalization and enhancements, it is expected to renew and continue this role.

Here are the answers to some of the most frequently asked questions from Jim Butler and David Sudeck of JMBM's Global Hospitality Group®.

Q: How much EB-5 financing has JMBM provided to its clients?

In less than a five-year period in the 2010s, the JMBM Team closed more than $1.5 billion in EB-5 financing for our clients' development projects, and we sourced more than half of that amount. In that time we have worked on more than 100 EB-5 projects, primarily representing developers in securing and closing their EB-5 financing projects all over the country; this includes high-profile locations in California, Florida, New York, and Texas, but also includes locations like Georgia, Nebraska and Maryland.

Q: That is more than $1.5 billion in EB-5 financings closed and more than half of that sourced by JMBM. What do you mean by "sourced?"

The "sourcing" is a process. What we do depends on the client. Typically, we help the client position and structure for optimal EB-5 financing — presenting the best profile to get the fastest and most certain funding of the largest amount feasible. It includes identifying and introducing our client to one or more appropriate funding sources, negotiating a term sheet, and taking the deal through to funding.

Q: Who is the ideal client for JMBM in EB-5 financing?

We are looking for quality, not quantity. We only want to work with a small number of top developers – great developers with superior track records and solid projects. We do not accept any engagement to work on an EB-5 project unless we believe there is a very great probability that we can close the deal. We still have a 100% track record of success.

Q: How much money can you help source for a project?

Most of the financings we have arranged have been in a sweet spot ranging from $20 million to $125 million. But we are working with lenders who can do a variety of deals – closing one in the $10 million range, as well as one for more than $450 million.

Of course, there are other critical factors in sizing the EB-5 financing. For example, the total loan-to-cost ratio generally should not be more than 80% to 85%, and the EB-5 loan should not be more than 25% to 35% of total project costs. But there is a big range of projects we work on.

We have even closed five EB-5 financings for just one client! After the first closing, subsequent financings tend to be much faster and more efficient.

[Back to Table of Contents]

Are hotels still the darling of EB-5 financing?

As EB-5 financing has become an important part of new development and construction financing over the past 10 years, EB-5 investors and EB-5 lenders have shown a strong preference for real estate developments, and particularly for hotel projects. Here are some of the reasons that hotels will continue to be the “darling” of EB-5 financing:

1. **Hotels are a preferred investment for EB-5 investors.** Experts say that more than 80% of foreign EB-5 investors want to invest in real estate, and these investors demonstrate a consistent preference for hotels within the real estate segment. Why? They have hotels in their country. They know what hotels are, and they think they understand how they operate and succeed (heads in beds). The hotel industry has many well-established brand names, and foreign investors have a strong affinity for such brands. Maybe they even get a sense of pride in being able to drive by “their hotel” and point it out to family and friends (or tell them about it). For many reasons, hotel investments just “feel good.”

2. **Hotel developers have greater need for EB-5 capital than other developers.** Since the Great Recession, real estate financing became abundant again for all classes of real estate, except hotel development. Traditional bank and CMBS financing is readily available for hotel acquisitions, rehab, repositioning and refinancing. But financing is very limited for hotel construction. And where construction financing is available, it typically will only provide 50% to 55% of the construction cost. Therefore, hotel developers are more willing to put up with the hassles and delays involved in EB-5 financing, because they have fewer attractive options for construction financing and need the EB-5 financing to help fill in their capital stack.

3. **New hotels create lots of jobs, making it easier to raise more EB-5 money.** Under current law, a minimum of 10 new jobs must be created in the United States to support each application for an immigrant investor visa (under EB-5). Because hotels are operating businesses, they tend to create more jobs than other types of real estate development projects. There are a number of technical reasons for this mentioned below, but the practical result is that hotel projects usually make it easier to meet the “new jobs” requirement and raise more money for a development project.

   For hotels, the jobs count is higher with more direct employees hired by the hotel (W-2), and more indirect and induced jobs (under USCIS formulas). In addition, potentially significant construction jobs can be added to meet up to 75% of the jobs count if construction takes 24 months or more to complete (which is often the case for hotels). If the construction takes less time, the EB-5 Reform Act prorates the construction jobs based on the ratio of actual construction period to 24 months. Hotels have also generally avoided the USCIS “tenant occupancy” rules that excluded from the jobs count any jobs created by tenants in the project. The “tenant occupancy” restriction has been effectively eliminated by the EB-5 Reform Act. Some believe it will encourage new retail and office developments.

4. **Ready source of repayment for EB-5 investors.** The dynamics of hotel value and financing create a generally reliable source of repayment to the EB-5 investors in five to seven years, which is a common maturity date for EB-5 financing. This is because hotels typically take two to four years after the completion of construction to “ramp up” operations from a dead stop to full sustainable levels (stabilization). After opening and stabilizing, the value of the hotel typically jumps a substantial amount above the project cost.

   And more importantly, hotels can usually access traditional capital markets for favorable financing once they have established cash-flows. For example, today, most hotels could not get any financing from CMBS capital markets for new hotel construction, but if a hotel has a stabilized earnings history, then CMBS lenders compete vigorously to finance or refinance that cash-flowing hotel (offering 10-year, fixed-rate money at low interest rates). This phenomenon is what helps drive hotel developers to EB-5 financing and what makes their projects solid candidates to repay the EB-5 investment on stabilization.

5. **Mature industry, professional management, and third party validation.** The lodging industry dates back to ancient times. By the 1950s and 1960s, the industry had undergone huge changes that marked its evolution into a sophisticated business with a plentiful supply of brands, independent third party managers, and industry-specific professional advisors. The involvement of such highly professional and experienced independent parties provides an additional layer of underwriting, validation, and oversight that is independent of the developer. Most such players use their experience, resources and insights to avoid risky deals. This can be a valuable perspective (independent from the developer), and this may provide investors more comfort that the proposed project and business plan are viable. Of course, investors should still perform their own due diligence.

Back to Table of Contents

The five questions every developer is asking about EB-5 financing

EB-5 financing has gone mainstream for hotel development

The use of EB-5 financing exceeded all expectations for several years in the 2010s until a marked slowdown near the end of 2017. The loss of EB-5 momentum was caused by a confluence of many factors. Partisan politics erupted during the Trump administration on everything from Supreme Court nominees and trillion-dollar economic stimulus packages, to deciding the fate of the EB-5 program. The Chinese government imposed new limits on exporting capital from China, and the time required for the USCIS to process an EB-5 visa from a Chinese immigrant investor jumped from a few months to an unacceptable 15 years. These events combined with the economic panic and lockdowns of the pandemic to virtually stop all new EB-5 investments from Chinese residents; for several years, Chinese applicants comprised up to 85% of the immigrant visa applications in 2015-2017.

As lawyers who have worked on more than 100 EB-5 projects all over the country, we have noticed that every developer who investigates EB-5 financing wants answers to five big questions about the EB-5 financing opportunity for their project. It should come as no surprise that most of our EB-5 projects involve financing for new hotel development, because hotels are the most popular type of project for EB-5 investors. However, our team has also successfully used EB-5 financing for a number of non-hotel projects, including hospitals, senior living, restaurants, solar farms, and infrastructure projects.

The five questions every hotel developer is asking about EB-5 financing

Our developer clients say their top concerns in pursuing EB-5 financing is to quickly and reliably determine the answers to the five questions below before they spend substantial time and money or forego other opportunities. They don't want to waste their time on a wild goose chase. We think every developer considering EB-5 financing should be asking the same questions.

1. Will EB-5 work for me on my project?
2. How much money can I get?
3. How much will it cost?
4. How long will it take?
5. How can I get certainty of execution?

Getting the answers

JMBM helps developers get reliable answers to these questions, quickly – addressing threshold feasibility and identifying potential "show stoppers" as the first priority at the very outset. The answers to the questions will vary with the developer, project, and economic conditions in the US and abroad. It is also affected by any further changes Congress may make to the EB-5 provisions of law, and evolving rules and policies of the USCIS, Department of Homeland Security and various domestic and foreign regulators (including the SEC and FBI), as well as foreign investor sentiments about immigration to the US, similar competing expedited paths to residency or citizenship in other countries (such as Canada, Great Britain, and Australia), and foreign government rules on capital flows outside their country.

We understand what our clients want – quickly determining if EB-5 will work, optimizing EB-5 funding amounts, excellent and reasonable financing terms, speedy closings, and certainty of execution. We always try to help our clients achieve their goals – it is our legal and ethical duty as lawyers. And our interests are aligned with our clients because we are too busy to waste time on problematic deals, we don't want to damage our reputation for a 100% success rate on all the EB-5 financings we have gotten to an letter of intent, and we are motivated by a success fee approach on our engagements.

Back to Table of Contents

Tips to avoid the six most common mistakes developers make with EB-5

There are a number of mistakes developers often make with EB-5 financing. Here are a few tips to avoid six of the most common mistakes:

1. **Bring in the EB-5 experts as early as possible.** All of the common mistakes can be avoided if the developer brings in an experienced advisory team early in the process, rather than blundering around and trying to figure it out themselves. There is a steep learning curve! It is always better to "do it right the first time" rather than trying to untangle a mess.

2. **Document the intention to raise EB-5 financing (and replace any early expenditures with EB-5 financing) at the very outset, before you spend any money.** Failure to do so may significantly reduce (or eliminate) the amount of EB-5 funding available.

   Why this concern? Remember that a critical requirement for EB-5 immigration is investment in a new enterprise to create new jobs. If money is spent on a project prior to EB-5 funding, how could the EB-5 money have created the jobs spent prior to its infusion? Where the intention to replace initial funding with EB-5 financing is properly documented, the EB-5 dollars are traced back to, and are allowed to count the jobs created with, the early monies first spent on the project.

3. **Do not form your own regional center.** Most developers should not consider forming their own regional centers. Doing so means going into an entirely new business – the immigration and securities business. This can be time-consuming, frustrating, and nonproductive. Of course, there are exceptions.

4. **Do not make any arrangements with a regional center before you have proper guidance.** It is too easy to stumble into the "wrong" regional center and get your shoelaces tied together with early discussions.

   A regional center is an entity that has received formal approval by the US immigration service (the USCIS) of an application to be designated as such. The EB-5 Reform Act makes regional centers a key enforcer of the all the new regulatory compliance, due diligence, oversight and audit. This is not a job for the inexperienced.

   As of October 2021, there were more than 600 approved regional centers listed on the USCIS website, but only a small percentage of those have ever raised significant EB-5 financing, much less gotten their immigrant investors' permanent visa approvals through the I-829 process. Virtually all of the successful EB-5 financings to date have been handled by the top 10% of the regional centers.

5. **Do not forget to count all the parts of a mixed use project.** In terms of generating the critical jobs count for sizing an EB-5 financing, all elements of a project, and sometimes immediately adjoining projects, should be considered. Just because you want to put all the EB-5 money into a hotel, it may not prevent you from counting the jobs created from other parts of the project (as long as the jobs created by these other elements are not being used for another EB-5 financing).

6. **Due diligence. Due diligence. Due diligence.** Do not start talking to anyone about EB-5 financing until you know the right questions to ask and have performed enough due diligence to take the next steps.

Back to Table of Contents

Why you do not want to form your own regional center

How should developers pursue EB-5 financing?

Although the EB-5 immigrant visa program has been around since 1990, the current trend of using it as a source of financing for hotel and other real estate started 20 years later – around 2010. We worked on one of the first hotel EB-5 financings for the W Hotel & Residences in Hollywood, and we have since worked on more than 100 EB-5 projects all over the country. In the 2010s, the use of EB-5 financing for hotel and other real estate development projects went from experimental to mainstream. High profile EB-5 financing closings include $450 million for the Century Plaza Los Angeles, $100 million for the Ritz Carlton & JW Marriott in downtown Los Angeles, $150 million for the Waldorf Astoria in Beverly Hills, and $1 billion for the Silverstein project at the World Trade Center in New York City (with a Four Seasons Hotel).

As a growing number of savvy hotel developers hurry to assess the EB-5 financing opportunity, they frequently receive conflicting advice as to the best way to pursue EB-5 financing. Many immigration lawyers and advisors tout the advantages of the developer forming its own regional center – basically to shave a few points off the all-in cost of EB-5 financing.

This advice may work well for the EB-5 advisors (in that they may get $100,000 or more in fees for processing a regional center application) and for certain hotel developers. But for most of the hotel developers we know, forming a captive regional center is a bad idea. This section should provide a note of caution for developers considering this course.

Based on our extensive experience with financing hotel development from EB-5 funding sources, we believe that the answer for most hotel developers will be to obtain "preferred" status for themselves and their projects – if they can do so – and to tap into the very best established EB-5 funding sources.

Restricted capacity in channels for accessing EB-5 capital

As hotel developers compete in a very crowded field seeking the finite amount of EB-5 funding available each fiscal year (because there are only 10,000 visas available per year), there is something of a "race" to gain access to the limited resources for tapping EB-5 capital. The restricted capacity is the limited bandwidth of the channels for accessing the pipeline of foreign investors (experienced regional centers and marketing agents). And, increasingly, there are also limits on foreign investors' interest and ability in the US program due to foreign capital flow restrictions and other countries (such as Canada, Australia and Great Britain) offering competing programs to attract the same investors with fast-track programs to visas and citizenship. The channels for bringing the EB-5 investor money to US developers have simply not been able to keep pace with the demand.

As some indication of the explosive growth straining the existing capacity of the system, 126 visas were issued under EB-5 in 2004 – in 2014, 2015 and 2016, the number of visas exceeded or pressed against the maximum statutory limit of 10,000. Most of the interest in the program has manifested itself since 2010. The EB-5 program will get a big restart after the pandemic, and with the new EB-5 Reform Act rules and procedures.

Too many regional centers – most of which have no fund-raising experience

A regional center is an entity that has received formal approval by the US immigration service of an application to be designated as such. As of October 2021, there were more than 600 approved regional centers listed on the USCIS website, but only a small percentage of those have ever raised significant EB-5 financing, much less gotten their immigrant investors' permanent visa approvals through the I-829 process. Virtually all of the successful EB-5 financings to date have been handled by the top 10% of the regional centers.

In other words, there is an extreme concentration of experience and success amongst a very small number of the regional centers.

Why have a virtual handful of regional centers raised such a vast portion of the EB-5 funding? The top regional centers have been established for some time, have a strong infrastructure in both the United States and places where there is already an awareness of the EB-5 program opportunity and strong interest in using EB-5 to migrate to the United States – places such as China and hot new markets such as Vietnam, Korea, Indonesia, Latin America and parts of the Middle East. These established regional centers have built reliable marketing organizations, and have worked out procedures, documentation, and logistics to evaluate new EB-5 projects.

A substantial amount of work is required to underwrite a deal, consummate arrangements with the developer, prepare the project marketing program and materials, sell projects overseas, and get the funds released for deployment by the project. In addition to the transaction work of making deals and raising capital, the regional center must also insure compliance with securities and immigration laws. And above all, the regional center must establish a track record of success in obtaining permanent visas for its EB-5 investors, because the regional center's ability to raise capital in the future will depend upon being able to establish a high probability of success in getting green cards for its projects based on its prior performance.

A regional center approval from the USCIS is akin to a license to participate in the EB-5 chain of capital raising. It is only the first step in a long and difficult process of establishing a successful capital-raising machine. While status as an approved regional center enables increased job count for projects handled by the center (by counting direct, indirect, and induced jobs), it does not confirm any ability or experience to raise funds. The strongest regional centers that have successfully closed EB-5 deals have been committed to the business for years. They also have a long line of developers who want to employ their services. These veteran organizations have established (and maintained) a regular operating presence in China and other countries, built a strong and permanent marketing organization in these countries, grown investor demand for their offerings based on their track record of getting visas for investors, and delivered funding on their promises.

Daunting hurdles for new regional centers

Newcomers to EB-5 funding will find competition with the established regional centers to be daunting. The EB-5 investors want to know the track record of the regional center marketing a project. What percentage of their investors have gotten their green card? How many have failed? How many have been deported after moving to the US?

The best marketing agents to present projects to investors want to work for the best and most established regional centers. Why should they try to compete with established track records, duplicate organizational structure, and teach someone about the business?

It is difficult to recruit, train and oversee talented marketing agents, particularly in an increasingly regulated environment where the US Securities and Exchange Commission continues to impose new requirements on top of all the complexities of immigration laws.

In short, there are too many regional centers already, and most of them – particularly the new ones – have no organization or proven ability to raise EB-5 financing, much less to do so in a timely, cost-effective or reliable way. Immigrant investors prefer records of success, and so do smart developers.

Warning! Forming a regional center means getting into the immigration business

Many developers are being led to form a regional center because of bad advice. This approach should be selected only by those developers who cannot qualify for the “preferred” status or those who genuinely want to get into the immigration business for other reasons. This path should not be chosen to save a few percentage points in the cost of funds or in the mistaken belief that it is an easy path to follow.

Perhaps an example will help. In the heyday of real estate syndications (selling limited partnership interests to raise capital to buy commercial real estate), syndicators often started raising capital among their "friends and family." But as more deals came, and as the capital requirements for projects grew larger, the syndicators usually ended up going to regional brokerage firms to raise their capital. In one sense, the capital was “expensive.” The cost of using such brokerage firms often ranged up to 8% of the offering proceeds. But the use of professional securities salesmen permitted the syndicators to focus on their core business of identifying and acquiring great real estate investments, repositioning them, and managing them profitably.

Perhaps one syndicator in 1,000 decided to take over the capital raising function by forming a captive brokerage firm. This was really an entirely different business from the core real estate business of the syndicator. It has unique capital requirements, licensing issues, regulatory compliance, liabilities and costs. Most real estate investors were well advised to stay out of the investment banking/capital raising business.

The same considerations apply to a developer looking at EB-5 financing. If the developer cannot qualify for “preferred” status, to a greater or lesser extent the developer may find itself getting into the immigration business. The developer may form a regional center, or will seek to identify regional centers to rent or otherwise cobble together with marketing agents and other complements of the EB-5 capital raising chain. This is a difficult, time-consuming and somewhat risky course to choose unless the developer fully understands the nature of the commitment, effort and capital likely to be required. This is not for the faint of heart.

The developer will be competing with a handful of dominant players who have been established for years. They have spent a vast amount of time and money to build their presence in China (and other countries with a significant demand for EB-5 visas), along with their marketing organization, infrastructure, systems, forms and reputation amongst the EB-5 investor community.

A few final words on developers forming their own regional centers

An extraordinarily high percentage of developers who initially believe they want to build their own EB-5 infrastructure will ultimately abandon their path. Although we can help clients pursue this path with any or all of the steps it takes, developers need to understand this alternative involves setting up an entirely new business – the immigration business. It takes a long time to get regional center and project approvals, and even longer to push projects all the way through the EB-5 pipeline so that you can show new investors that all your prior investors got their green cards.

Most of our clients find that it is far better to connect with and rely upon well-established major players in the EB-5 financing chain. We serve as counselors to assist them through this process.

Back to Table of Contents

What does JMBM do to help developers with their EB-5 construction financing?

Exactly what can JMBM do to help me with EB-5 financing for my development project?

Client confidentiality precludes us from listing clients and projects we have assisted with this program, but suffice it to say that some of the best known names in the business have tapped into this funding source to fill out their capital stack at a favorable cost. And we have helped some of the biggest and highest profile players.

JMBM has closed more than $1.5 billion of EB-5 financing and has sourced more than half of that for our development clients. We specialize in representing developers and projects that we believe can qualify for "preferred" status.

For developers and projects that qualify for "preferred" status, we provide business and legal advice to guide the developer through the entire capital raising process. This includes validating that the developer can qualify for the favorable financing and actually sourcing the capital.

Here is a more complete list of how we can usually assist:

- Source EB-5 financing
- Evaluate EB-5 threshold feasibility
- Optimize developer profile and project structure
- Assemble the right EB-5 team with best players
- Help size and structure the capital stack
- Negotiate optimal deal terms with current input on what is "market"
- Negotiate and finalize funding documents with the capital source
- Validate EB-5 funding strategy
- Oversee issues in the capital raising process
- Close the financing

As the developer's counselor, we negotiate a fairly complex loan or preferred equity transaction in a regulatory environment that requires compliance with USCIS, SEC, & FINRA. This process also necessitates identifying, selecting, negotiating and coordinating with an immigration law firm, an economist, various hotel consultants and one or more regional centers to get your loan properly sized and documented.

If you are an experienced developer with a great track record and project, we may be able to help you access "preferred" status on EB-5 financing.

[Back to Table of Contents]

61222336v3

THE Developer's EB-5 HANDBOOK for construction financing

The Developer's EB-5 Handbook for construction finance is written to help developers evaluate and seize the potential opportunities for EB-5 financing while avoiding potential traps for the unwary. The key is getting advice from the best-of-class experienced professionals in this narrow field. And the analysis must be specific to the current time of decision, the particular developer and the specific project.

This *Handbook* is written by legal and business advisors to top developers with great projects in the United States. We have worked on more than 100 EB-5 projects all over the United States (and Guam). We have closed more than $1.5 billion of EB-5 construction financing for our clients, have sourced more than half of that for them, and have a 100% track record of success.

In this ***Handbook***, we will address the most common critical issues our developer clients have raised about EB-5, including the following:

- **What EB-5 is all about? What are its essentials?**
- **Is EB-5 still viable for developers with everything going on today?**
- **How can you evaluate an EB-5 construction financing opportunity for your project?**
- **What is the optimum EB-5 construction financing structure for development projects?**
- **What drives the size and terms of EB-5 financing in the capital stack?**
- **How much? How cheap? How certain? How long?**
- **How can you spot key "show stoppers" before you get too involved?**
- **What are the most common mistakes developers make with EB-5 financing?**
- **Who do I need on my EB-5 financing team?**

Jim Butler
Chairman,
JMBM Global Hospitality Group®
EB-5 Finance Group ™

David A. Sudeck
Senior Member,
JMBM Global Hospitality Group®
EB-5 Finance Group ™