

How Emigration Agents Can Help Strengthen the EB-5 Program

During the temporary extension period for the EB-5 regional center program that is set to expire on December 11, 2015, Congress is expected to progress toward new EB-5 legislation that will include significantly greater government oversight of the regional center program. Several EB-5 bills have been introduced in Congress, and all of them contain similar provisions aimed at improving program integrity and oversight. USCIS and the SEC have also increasingly stepped up actions to identify and remove bad actors from the EB-5 arena.

The U.S. government's prioritization of EB-5 program integrity will help protect EB-5 investors against immigration nightmares caused solely by fraud or misrepresentation on the part of a project or regional center. However, the government's monitoring and due diligence efforts with respect to a project normally occur after the project has raised investment and commenced activity. At that point, if fraud occurs, investors may lose all of their investment funds and have their EB-5 petitions denied. Government intervention often comes too late.

Therefore, due diligence and self-policing by EB-5 players early on in the process is crucial to better protect investors against fraud. Along with regional centers and projects, emigration agents play a very important role in EB-5 due diligence. Such agents, who source investors for EB-5 projects, benefit investors greatly when they take a closer look at the EB-5 investment opportunities that are presented to the market.

While all emigration agents conduct due diligence in some form, there is often room to implement more robust due diligence policies and procedures. Below are some of the key questions agents can ask when vetting EB-5 investment opportunities for their clients:

- Ask for complete resume of all education and work experience, including references, of the project principals.
- Do a background check:
 - Do any of the regional center or project principals have a criminal record?
 - Do any of the regional center or project principals have any adverse civil judgments or pending civil lawsuits? What were the causes of action?
- Ask objective and trustworthy third-party sources about their experience with the regional center and project principals. Do they seem reputable?
- Talk to the regional center and project principals and evaluate what they say. Trust your gut when you notice red flags, such as inconsistent statements, vague answers, or verbal deal term descriptions that are not contained in the private placement memorandum and other subscription documents for the project.
- Check the experience and reputation of the key project consultants and advisors (e.g., architect, developer, immigration counsel, etc.).
- Are construction costs supported by third-party verification? How are they substantiated?



- Are the regional center, new commercial enterprise, and job creating entity ultimately owned and controlled by the same person or group of people? If so what systems are in place to ensure accurate accounting? Specifically:
 - Who will ensure that disbursements from the new commercial enterprise's bank account are for legitimate business purposes only?
 - If loan structure is used, what controls are in place to ensure that the job creating entity/ borrower will use the funds for the specified purposes?

The more that EB-5 program integrity can be facilitated from all angles, the better off all stakeholders will be.