

EB-5 Financing

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The rapid growth in the market for EB-5 financing has given rise to increased competition among projects for foreign investors due to the limited number of visas available under the program. This rise in popularity has attracted enhanced scrutiny from federal regulators, including United States Citizenship and Immigration Services (USCIS), the agency primarily responsible for administering the EB-5 program, as well as the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). Perhaps most importantly, the EB-5 financing market is poised for potentially significant change, as Congress considers legislation to reform the program.

Goulston & Storrs is at the forefront of this trend, counseling real estate developers and owners, as well as lenders and institutional investors, through the EB-5 financing process in a way that is tailored to each client's goals and avoids potential regulatory and structuring pitfalls. In particular, for first-time entrants into the EB-5 market (including those still considering whether EB-5 financing may be right for their project or organization), we guide our clients with a pragmatic approach that separates fact from fiction.

Our work with leading real estate developers and owners provides Goulston & Storrs with valuable insight into how best to incorporate EB-5 financing into the project capital stack, particularly for projects of significant scale. We advised Samuels & Associates in connection with the EB-5 mezzanine loan financing of Pierce Boston, a mixed-use development in the city's Fenway neighborhood, which was the first major real estate project to utilize EB-5 financing in Boston.

Congress established the EB-5 program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors seeking U.S. resident visas. It later enhanced the EB-5 program with the introduction of the Immigrant Investor Program (also known as the Regional Center Program), which sets aside EB-5 visas for participants who invest in commercial enterprises associated with federally approved regional centers organized to promote economic growth.

The EB-5 program has seen a surge in popularity in recent years, due in large part to the effects of the global credit crisis. Although neither limited to—nor designed specifically for—commercial real estate finance, the program has been embraced recently as a viable financing source as part of the overall capital stack for development projects. We have also seen an explosion of intermediaries and other service providers, financing sources and other players in the EB-5 space, including regional centers, consultants, marketing agents and specialty providers of bridge financing.

Banks and other institutional lenders have grown more willing to extend senior financing to projects that will include EB-5 financing as mezzanine debt, in part through their introduction of institutional rigor to the process, including consideration of often-thorny intercreditor issues.

Our multidisciplinary EB-5 team, which includes attorneys from key U.S. markets, has deep experience counseling clients in capital markets and securities matters, real estate finance and real estate development. We regularly guide real estate developers and owners, as well as lenders and institutional investors, through the EB-5 financing process, including advising our clients in the following areas:

- Structure and terms of EB-5 debt or equity financing, including aspects unique to EB-5 financing
- Intercreditor issues and arrangements
- Refinancing and other exit strategies, including limitations imposed by the use of EB-5 financing
- Arrangements with regional centers and other key players in EB-5 financing
- Structure, terms and disclosure relating to the offering to foreign investors to raise capital, particularly where the project sponsor will have an active role in the offering
- Related securities law issues and compliance