

# 2014 CDFA New York/New Jersey Financing Roundtable Conference

## The EB-5 Program as a Capital Access Tool



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# Standard Disclaimer

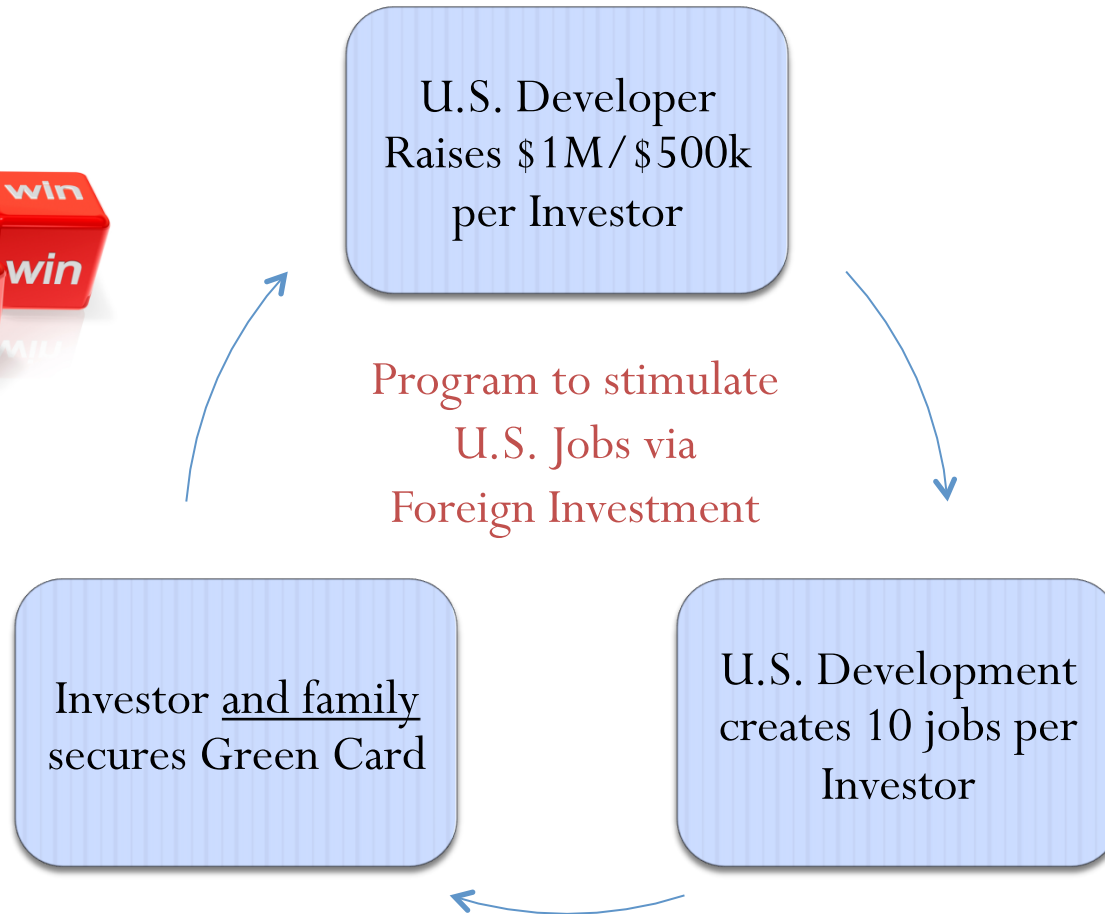
*This presentation is designed to provide practical and useful information on the subject matter covered. However, it is provided with the understanding that no legal, tax, accounting, or other professional services are being rendered or provided. If legal advice or other expert assistance is required, the services of a competent professional should be sought.*

# Today's Agenda

- EB-5 Overview
- Regional Center Description
- Utilization of the EB5 Program
- EB-5 Process/Timeline
- Typical EB-5 Deal Structure
- Challenges and Solutions
- Is EB-5 Right for you?
- About Us



# EB-5 Program Overview



# EB-5 Program Basics

## Capital Raised

- \$1,000,000 minimum investment.
- **\$500,000 minimum if project located in a Targeted Employment Area (TEA)** (i) an area with unemployment at least 150% of the national average or (ii) a rural area not within a metropolitan statistical area or a city or town of 20,000 residents or less.

## Job Creation

- Project must create 10 permanent, full-time jobs per investor
- **Job creation in Regional Center can be direct/indirect/induced (as determined by economist)**
- Investments are aggregated to benefit large Projects generating numerous jobs  
(e.g. 1000 jobs created -- 50,000,000 invested)

## U.S. Residency

- Conditional Green Card issued approximately 9-12 months after Investment (After Investor meets ALL standard immigration requirements.)
- Permanent Green Card issued approximately 2-3 years after Investment, assuming requisite number of jobs created or likely to be created.

# What is a Regional Center?

Entity granted approval from USCIS to oversee EB-5 development in a particular geographical area.

Seeks to promote economic growth through increased regional development, creation of new jobs and increased domestic investment

Markets to foreign investors; Oversight responsibility for Project; Ongoing USCIS reporting requirements

A Regional Center designation is not necessary to participate in the EB-5 Program, but is required if counting “indirect and induced” job creation\*

**\*The job creation effects of indirect and induced jobs are compelling, and can multiply the direct jobs by 5x or more.**

# Utilization of the EB-5 Program

Fiscal Year	Investor Petitions Approved	Estimated Corresponding Capital
2012	3,677	\$1,838,500,000
2011	1,563	\$781,500,000
2010	1,369	\$684,500,000
2009	1,262	\$631,000,000
2008	640	\$320,500,000
2007	473	\$236,500,000
2006	336	\$168,000,000
2005	179	\$89,500,000

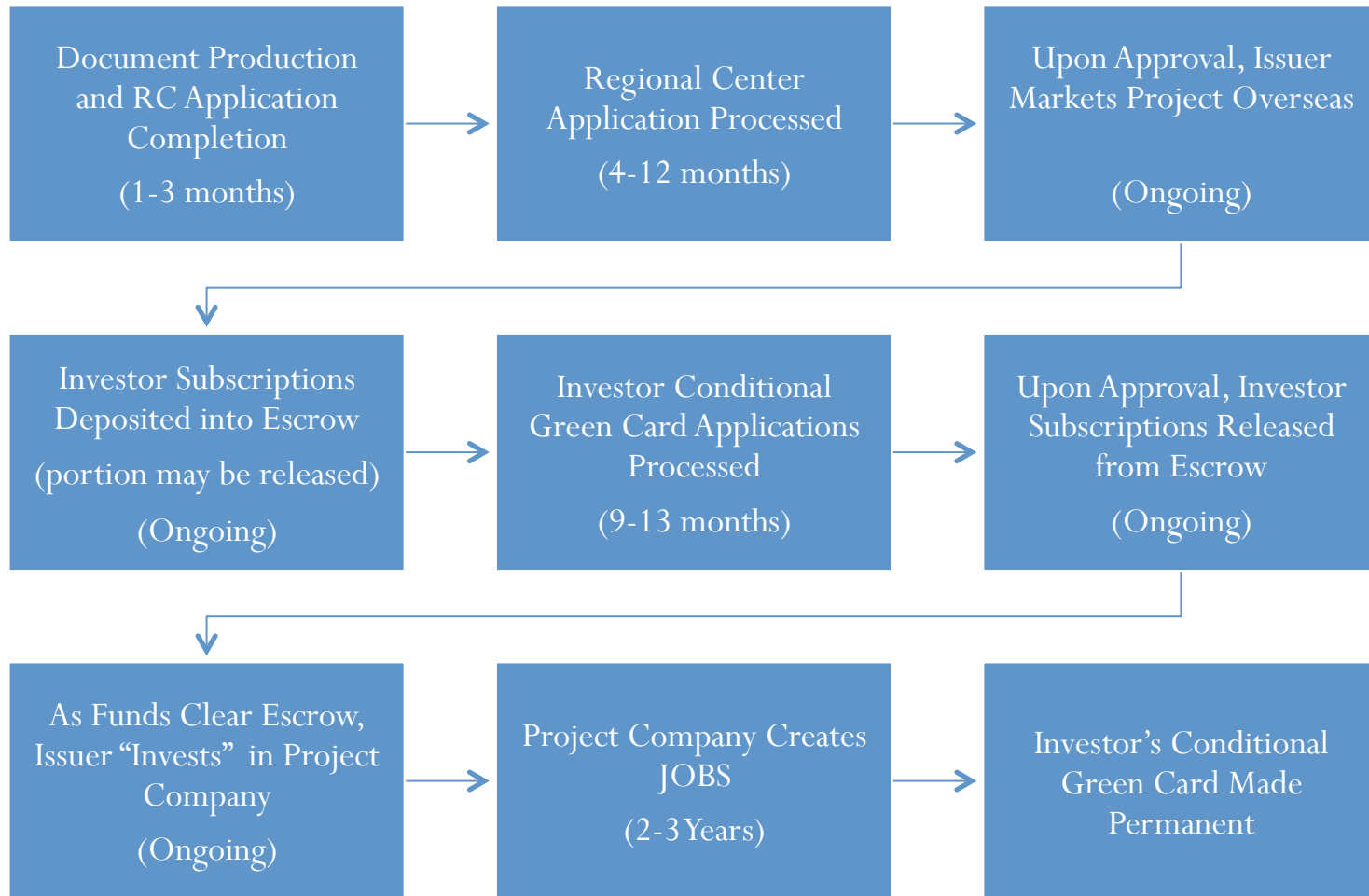
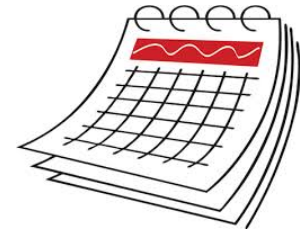
**The U.S. Presidential Council on Jobs and Competitiveness has called for the program to be “radically” expanded over the next few years.**

# Utilization of the EB-5 Program

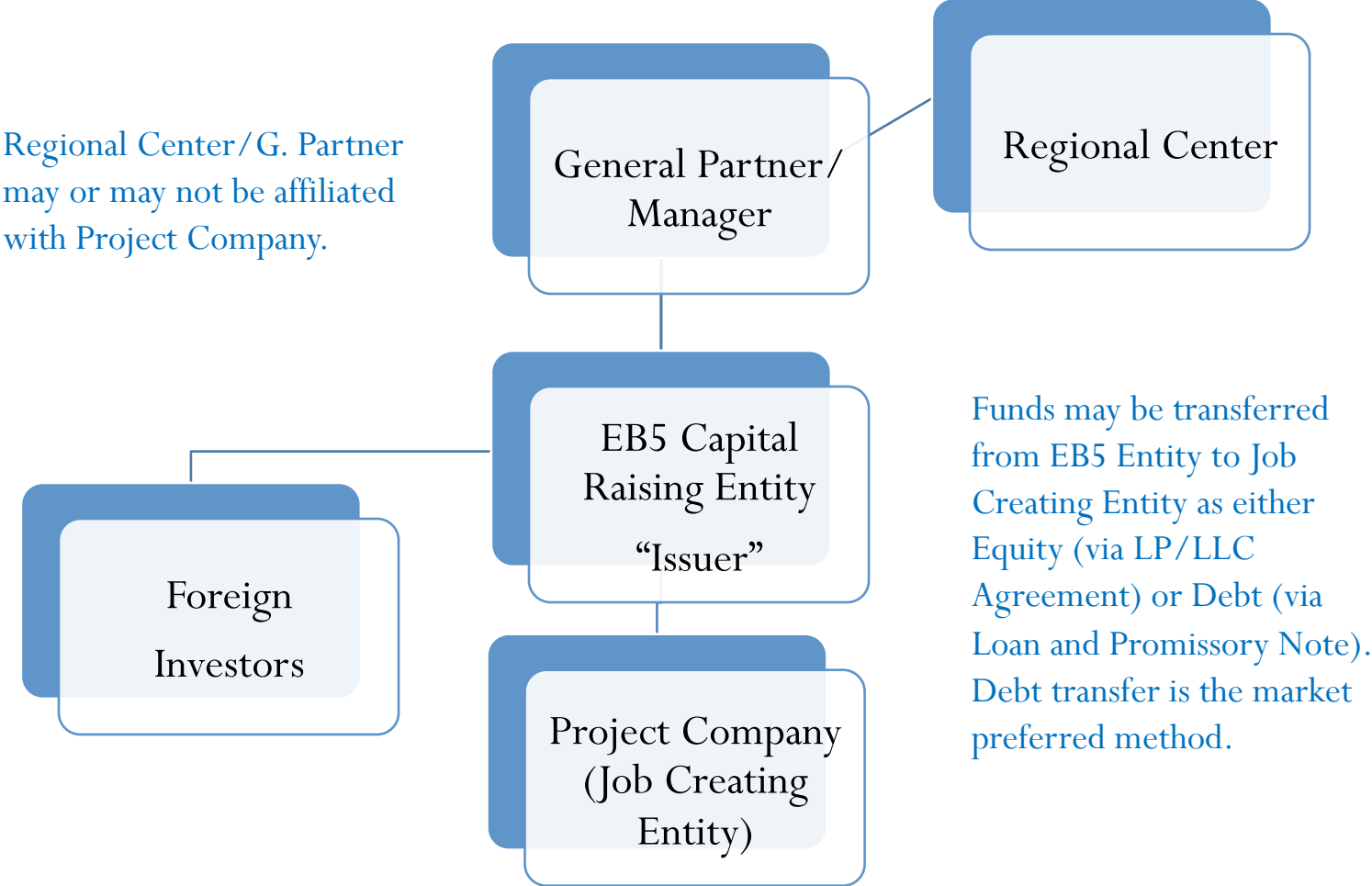




# EB-5 Process/Timeline:



# Typical Regional Center Deal Structure



# Typical EB-5 Investment Terms

- Preferred Equity, Mezzanine or Subordinated Debt
  - Comfortable with Senior or Bridge Lender
- Principal Amount varies – \$5 million - \$400 million
  - SEC limit \$1 Billion (Typical \$20M - \$50M)
- Interest rate – typically 4.75% - 5.50%
  - Less if you control your own Regional Center
- Term – 5 years
  - Can extend to 7 or 10 years under certain conditions

EB-5 is described as “Quiet” and “Patient” money

## Why isn't EB-5 in Everyone's Capital Stack?

# Because its complicated!



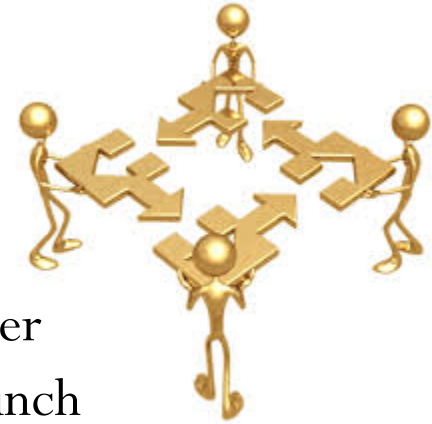
## USCIS Oversight – SEC Regulations L-O-N-G Processing Times

# EB-5 Capital Raising Challenges

- USCIS Job Creation requirements limit the amount you can raise
- Pre-payment Restrictions: 5 years or as Investors permanently exit the EB-5 Program (appx 3 yrs)
- Funding timing: 12 – 24 months after launch
  - Money in escrow until Investor initial approval (9-13 months)
- Visa Retrogression – China expected reach its annual EB-5 Visa maximum
- Securities Exemptions (Reg D, Reg S, '40 Act); Anti-Fraud Req's; Broker/Dealer Issues; FINRA; etc.

# EB-5 Emerging Solutions

- Job Creation Limit on Raises
  - Hotel Visitor Spending may be incorporated into Job Creation
- Pre-payment Restrictions
  - Greater Flexibility – Exit prior to 3-5 years
- Funding timing
  - Escrow “Pre-release” upon Investor filing.
  - Typically, 50% to 80% pre-released to developer
  - Initial Funds in typically 3 – 6 months from launch
- Additional markets opening – Latin America, India, Korea
- Guidance – USCIS Policy Memo; SEC Actions; FINRA Letter

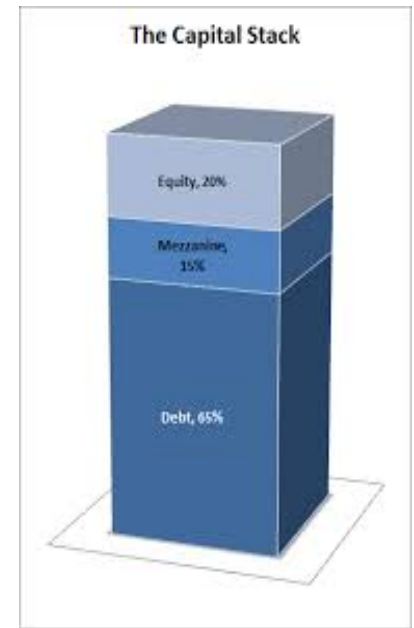


EB-5 Program Regulations and Offshore Market slowly adapting to Developer needs. **Remains a complex process.**

# Is EB-5 Financing Right for You

A Gem is not is not polished without rubbing, nor a [Federal Program] perfected without trials. – Chinese Proverb

- EB-5 is in its adolescence as a global market
- Increased regulatory guidance *improving* usefulness and predictability
- Overwhelming political support on both sides of the aisle
- Compares very well with Mezzanine Debt



EB-5 Funding may be a  
Nice Addition to your Capital Stack

# Homeier & Law, P.C.

- Collective 50 years Corporate and Securities Experience
- Approximately 150 EB-5 Offerings since 2009
- Counsel to approximately \$2 Billion EB-5 Capital Raises
  - Hotels and Casinos
  - Restaurants/Franchises
  - Medical Facilities/ Assisted Living Facilities
  - Manufacturing
  - Charter Schools; Etc.
- Deep Relationships in EB5 Service Industry; representation on EB5 Trade Association's Policy and Editorial Committees
- Big Firm Experience – Small Firm Rates
  - Partners prior firms include: Skadden, Arps; Paul, Hastings; Sherman & Sterling; etc.



# Clem Turner, Esq.

Clem Turner is a shareholder and the Managing Attorney of the New York Office of Homeier & Law, PC. Clem practices in the area of general corporate, corporate finance and business transactional law. With over 15 years experience in the corporate and business transactional fields, both as in-house corporate counsel and with private law firms (such as Skadden, Arps, Slate, Meagher & Flom LLP) Clem brings a deep level of legal knowledge and expertise to the EB-5 industry.

Clem has counseled numerous corporations and Regional Centers raising capital through the EB-5 Program on matters of structuring, strategy, securities law and corporate law. He has handled numerous EB-5 transactions in the hotel and accommodations, casino, restaurant, senior and medical facilities, manufacturing, technology and other industries. Clem has written several articles and routinely lectures at EB5 events throughout the U.S. and he is the highest ranked corporate/securities attorney on [www.eb5investors.com](http://www.eb5investors.com) and the only corporate/securities attorney in the top five on [www.eb5info.com](http://www.eb5info.com). (The other lawyers practice immigration law.)

Clem received his B.A. from Princeton University and his J.D. from Georgetown University Law Center. He is a member of the New York State Bar and California State Bar.

# For Further Information

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