

| FEATURED ARTICLE

# THE STATE OF KIDS

Program is most attractive when  
funding sources dry up

BY STEVE LEWIS  
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**E**B5, more properly known as “The Immigrant Investor Program,” has perhaps gained more headlines in recent years from abuses (read: money laundering) versus benefits. Real estate experts say the program is a valuable source of investment funds, particularly during times when more traditional funding sources become scarce. And the abuses? Exaggerated, they say – especially given the government controls that are in place.

“To me, the single most positive effect [of EB5] is that it has been a source of very reasonably priced capital during a time – particularly four to six years ago – when there was not a lot of capital in the marketplace and you could not get money otherwise,” says Gabriel Silverstein, SIOR, managing director, SVN Angelic, SVN Institutional Capital Markets Chair, New York, NY.

Joe Pelayo, SIOR, a broker with Total Real Estate Consultants, Inc. in Coral Springs, Fla., agrees. “The EB5, since its creation, has always been a factor in commercial real estate, but especially when there is a time of crisis overseas, such as situations we see now with Venezuela, Argentina, Korea, and others,” he says. “The impact has been that this particular visa provides a strong source of funding for developers in projects where, for many reasons, either financing options are unattainable or the interest is substantial – while providing an investor the opportunity to create jobs within the community and become part of that community via residency and ultimately citizenship.”

EB5, established by Congress in 1990, requires that participating projects create or maintain 10 full-time jobs for qualifying U.S. workers within two years of an immigrant investor’s admission to the U.S. as a Conditional Permanent Resident (CPR). Depending on where the project is, the foreign entity must make an investment of \$500,000 or \$1 million in a rural area where unemployment

has been at least 150 percent of the national average.

NESFinancial, a company administering “specialized financial transactions,” goes even further, posing this question in a “sponsored” article published in *National Real Estate Investor*: “Is the Convergence of EB5 Capital with Traditional Private Equity the Next Big Thing?”

“The use of EB5 funding in major commercial real estate projects is now mainstream,” NES asserted. “However, NES Financial project data from the last few years has revealed an interesting emerging trend,” the article continued. “While the portion of the development capital stack comprising the senior bank loan has shrunk—presumably due to banks’ tightening of construction loan standards since the financial crisis (and particularly in light of the most recent Basel regulatory standards) — increasingly, we’re now seeing developers using private equity funding to make up the difference.”

Still, the EB5 “boom” is not universal. “In our area, the impact has mostly been in the hospitality sector and has slowed dramatically in the last two years,” says Arlon I. Brown, SIOR, senior advisor, SNV Parsons Commercial Group/ Boston, in Framingham, Mass. “due to foreign students coming to the area to go to college and their families buying expensive condos.”

## ABUSES GRAB HEADLINES

**N**ot all observers of the program are fans. For example, Bloomberg recommended the program either be scrapped or significantly overhauled. “The program’s goal of promoting inward investment and jobs is worthy, but this approach has worked badly,” the March article claimed. “Almost all the investment goes to New York City, San Francisco, Houston and

other metropolitan areas, where it provides cheap financing for real estate developments that achieve their ‘high-unemployment’ designation through gerrymandered districts.”

*The Wall Street Journal* noted similar abuses in a 2015 story, stating that “The bulk of the projects that are raising money, while in prosperous neighborhoods, technically qualify as being in high-unemployment areas. They can do this because state governments are allowed to define the boundaries of a high-unemployment area. They often draw maps that stitch together wealthy census tracts with poor ones to qualify for the benefit. Critics call this ‘gerrymandering.’”

The Bloomberg article went on to note “The program has fallen victim to fraud and abuse, not least by failing to scrutinize investors adequately. For instance, Chinese applicants, who were awarded 75 percent of EB5 visas last year, face limits on the sums they can legally take out of China each year. They are obliged to resort to various maneuvers to come up with the cash. U.S. intermediaries then go fishing for business in these murky waters. (Last August, federal prosecutors subpoenaed Kushner Cos., the property business owned by the family of Jared Kushner, for documents related to their courting of Chinese EB5 investors.)”

However, Silverstein retorts, “in several cases the press has really ignored the reason or the program and its benefits, and instead villainized it as a selling of access to America which primarily benefits already wealthy developers. That couldn’t be further from reality.”

“From seeing things first-hand, people are not talking that much about the level of vetting these investors go through by federal authorities; it is incredibly high,” he continues. What’s more, he adds, most of them could probably have gotten a green card any way. “At least here they do it through a process that creates real

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jobs for people in America -- they do it in a visible, high-profile way and are exceptionally researched before getting their green card," Silverstein asserts.

NES detailed the scrutiny Silverstein alludes to in a statement on its website. "The U.S. banking system is regulated to ensure that money laundering does not occur and to identify potential threats," NES said. U.S. banks accepting foreign funds, the article continued, must comply with "Know-Your-Customer," "Anti-Money-Laundering," and "Bank Secrecy Acts" requirements.

These investors, they added, are subject to Office of Foreign Asset Control requirements, under which Specially Designated Nationals (SDNs) are prohibited from doing business based on foreign policy or national security concerns. "For a person included on or linked to the SDN list, attempting to participate in the EB5 program would be unsuccessful; funds would be blocked before the initial investment was ever made," said NES.

"It's very smart from an immigration as well as a development standpoint," adds Silverstein. "It's not about selling green cards to the Chinese; they really do a very good job of it and provide very real benefits. It made a project happen that probably would not have, and means a lot to a lot of people." A \$105-million senior housing redevelopment in Florida, he notes, will house 500 people when full, creating an estimated 40

permanent jobs "and a bit of a blighted building in a third-tier city will have been renovated that would otherwise not have been."

## THE PLUSSES AND MINUSES

Even those who are supporters of EB5 note that such projects can have their challenges, but they assert that the "good" strongly outweighs the "bad." "In my opinion, all that are involved in such a transaction have the potential to benefit – from the attorneys to new employees to the investors," says Pelayo. "However, the main benefit would be for the developer and the individual applying for the EB5. The developer is receiving capital for a project that may have otherwise not have come to fruition, and the EB5 applicant is on one of the fastest tracks to residency in the US."

"The benefit in our area has been the employment of low-skilled workers working primarily in the hospitality area," adds Brown.

"EB5 brings new money into the U.S. from overseas and channels it to development projects that create both immediate and long-term employment," notes Silverstein.

Pelayo notes the benefits of two recent projects, one in Hollywood Beach, Fla., and another that was a statewide

project. "The project in Hollywood Beach actually brought together three foreign investors who successfully attained their EB5s while providing the funding and opportunity for the project to be successful," he notes. "In the state-wide project, which was a hotel chain, the EB5 holders also successfully provided reasonable capital return for their investment in the development of hotels."

As a downside, the fact that the EB5 programs must create 10 jobs might be seen as a pitfall, Pelayo says. "Perhaps some projects over-create where three jobs could do – in order to fulfill a requirement," he notes. "I would say that when the economists, attorneys, and accountants provide the amount of full-time jobs that a project will support, sometimes they're extremely generous without taking into consideration the efficiency of the free enterprise." He also notes that while EB5 creates the presence of commercial properties in multiple sectors, like hospitality, it is very limited in manufacturing or high technology industries.

"The pitfall of this program is that it's a government program; there's a lot of regulation, a lot more paperwork, and it comes under more public scrutiny," says Silverstein. Because of the negative reporting, he adds, the program was on the brink of being cancelled two or three years ago.

Other challenges, he says, are the fact that it takes “an awful lot” to set up a regional center, and that a number of centers were heavily Chinese. “At some point the government set limits – certain percentages for Chinese, and some Latin and European countries,” Silverstein observes. “It’s bad if you do not have a truly global network and money runs out for the country you work with, and you can’t finish the capital raise.”

## NEWBIES BEWARE

If an EB5 project is something you’d like to get involved in, caution might be the most important advice an expert could give you.

“The pitfall for commercial real estate brokers has been the amount of free advice and time some of these people have taken and in the final analysis they have done nothing,” says Brown. The way to avoid these pitfalls, he advises, “is to ask a lot of questions on the front end and see if they have a business plan that you can read.”

“Experience” is probably Silverstein’s watchword. “The best way to make things go smoothly,” he advises, “is to work with people who’ve done it before. That should ALWAYS be true with your law firm.”

This is not, he reiterates, the kind of thing you want to learn on the fly. “There’s too much paperwork, too

many ways to get in trouble -- even if unintentionally,” Silverstein warns. “You need someone who’s done that over and over, who knows the issues and how to accelerate some of the process.”

The responsibilities of advisors on such projects, he continues, are considerable. “My role is financing the senior mortgage,” he notes. “There are a lot of steps one has to take you might not have to do otherwise, like sometimes explaining EB5 to the senior lender to begin with.” They have to be shown the money and program is legitimate; they have to understand the nature of the agreement, he adds. The developer, of course, wants to get their money back, so they have to be made comfortable with the project. “In the Florida project, there were 53 investors – and a whole bunch of different countries,” Silverstein shares.

The future impact of EB5, he says, “depends a lot on Congress. As long as EB5 remains intact . . . it should continue to attract investors to projects.”

“In my opinion it will continue to be a source of capital for CRE projects (as long as the legislation stands), but especially hospitality projects, such as hotels and resorts, with residential condos following,” Pelayo predicts. “The EB5 is ultimately a reasonable method of financing in which the investor is given the opportunity of permanent residency with the path to citizenship

– not just for themselves but for their immediate families. It’s a ripple effect as the investors, spouses, or children can then go to college in the states, and jobs are created – all of which impacts the economy.” ▾



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