



RISKY BUSINESS?

**THE UNUSUAL PROBLEM OF
EB-5 INVESTOR INSURANCE**

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CAN AN INSURANCE POLICY PROTECT EB-5 INVESTORS FROM LOSS?

In June of 2011, industry contacts notified EB5info.com about an unusual insurance policy for EB-5 investors. Under the policy, which investors could purchase for \$35,000, an insurer would pay up to \$500,000 in claims to policyholders who suffered a loss at the hands of a regional center project.

That \$500,000 figure, of course, is the same as the investment threshold for Targeted Employment Area (TEA) EB-5 investments. The policy essentially protected EB-5 investors from loss of principal.

Unfortunately, there were problems with the policy. Only investments in a particular Idaho State Regional Center project were eligible for coverage. What's more, Sidecars Insurance, the company selling the policy, told investors that any funds used to pay claims would come from matured life settlement policies purchased from Life Partners Holdings, Inc. (LPHI).

But LPHI was a company in trouble—big trouble. At the time EB5info learned about the policy for EB-5 investors, the Securities & Exchange Commission had just notified three LPHI executives of impending fraud-related charges it was bringing against them. All of a sudden, LPHI's life settlement policies started to look like a poor way to pay claims of up to \$500,000 per EB-5 investor in the event of a loss.

In our report on the matter, which originally appeared in a four-part series, we addressed the following issues:

1. Is EB-5 investment capital still "at risk" if an insurance policy will repay the full principal?

By law, EB-5 investor funds must remain at risk. For many observers, it appeared that the guaranteed repayment of principal undermined the investment's "at risk" status.

2. Where does the insurer obtain funds to pay claims?

Sidecars Insurance stated in a sales presentation that it would use life settlement policies from LPHI to pay any claims. But when we confronted the company with some of the problems inherent in its LPHI connection, the company suggested an alternative arrangement that did not involve LPHI at all.

3. Why is the LPHI connection so problematic? Why should investors be wary of an insurance policy relying on LPHI life settlements to pay claims?

In the event that an individual no longer needs his or her life insurance policy, LPHI will sell fractional ownership in the policy to investors. "Life settlement" is terminology used to describe what those investors are purchasing.

When the policy matures (i.e. the insured person dies), the investors collect. It's a fairly simple process.

But since the company was facing allegations that it intentionally miscalculated life expectancy projections for insured parties, the dependability of using these life settlements to pay EB-5 investors' claims was called into question.

4. What are some uncontroversial EB-5-related insurance products? How are they different from this product?

Niche EB-5 insurance policies do exist, and very few of them inspire controversy. However, most of them are sold to regional centers themselves—not individual EB-5 investors.

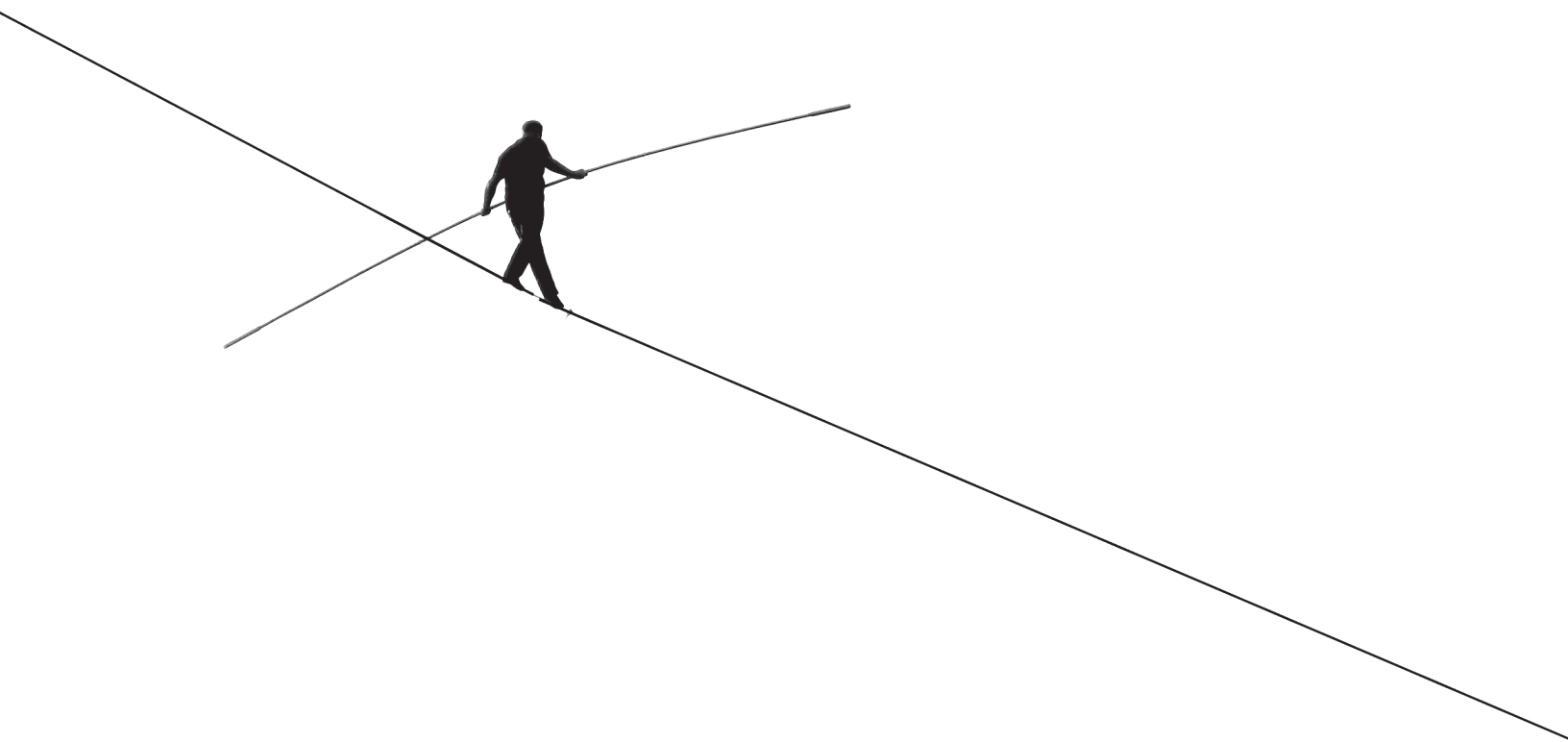
5. Does the Idaho State Regional Center have a relationship with Sidecars Insurance or are the EB-5 project and the insurance policy "unrelated?"

Decidedly ambiguous language from USCIS suggests that it might be acceptable for insurance companies to provide a policy similar to the one offered by Sidecars Insurance.

What is not ambiguous, however, is the agency's contention that such a policy must be "unrelated" to a particular EB-5 regional center. Because Sidecars only insured investors in a particular Idaho State Regional Center EB-5 project, it would appear that the policy and the project did have a relationship.

The following text contains our original report in its entirety. For more information about EB-5 visa projects, the Regional Center Pilot Program, or common insurance products for EB-5 stakeholders, [contact Michael Gibson](#), Managing Director at USAdvisors.org.

USAdvisors.org provides independent due diligence services to EB-5 investors. To receive EB-5-related news updates, [subscribe to our blog](#) at EB5info.com.



RISKY BUSINESS?

THE UNUSUAL PROBLEM OF EB-5 INVESTOR INSURANCE

The EB-5 playing field gets more crowded every day. With so many regional centers competing for so few investors, it almost goes without saying that new players in the market will snag every opportunity to distinguish themselves from their peers.

But regional center operators know that all EB-5 investors are subject to the same requirements: \$500,000 to \$1 million from a single investor must be put at risk and create ten new jobs within two years. While healthy competition among regional centers is a good thing, is providing "creative" incentives to invest really in the best interest of the investor?

That depends on the incentives—and on who you ask.

On several occasions in May 2011, sources in the industry approached EB5info with concerns about an insurance product being offered to a select group of EB-5 investors by a Missouri-based company called [Sidecars Insurance](#).

According to [the company's policy description](#) for its "Project Performance Investment Reimbursement" insurance, it will pay up to \$500,000 toward "the deficiency amount difference between insured's original investment and amount paid to insured" by Blackhawk Gold, LLC—the company handling [the gold mine project](#) promoted by the [Idaho State Regional Center](#). Investors simply provide a premium payment of \$35,000 and the insurance is theirs.

A [sales presentation](#) presumably being shown to prospective Chinese EB-5 investors—the presentation is in both English and Chinese—makes clear that those who invest in Idaho's Blackhawk Gold project are the only EB-5 investors eligible to purchase this insurance policy.

In other words, if an EB-5 investor in the gold mine project—and only the gold mine project—purchases this policy from Sidecars Insurance, he or she is guaranteed a return of principal. Given that the law requires all EB-5 investments to remain "at risk," is a reimbursement insurance scheme even legal?

THE LEGAL QUESTION

Jason Blatt, an attorney representing the [Idaho State Regional Center](#), believes the policy offered by Sidecars is 100% legal. Responding to questions from EB5info, he offered the following:

"When an insurance company, a third party not related to the EB-5 regional center or its investment projects, sells an insurance policy to an EB-5 investor, and the EB-5 investor uses funds completely unrelated to his or her \$500,000 EB-5 investment funds to buy that insurance, the \$500,000 in EB-5 investment funds invested by an investor in a regional center's project remain 'at risk.'"

Blatt cites [USCIS' response to a question](#) posed during a 2009 EB-5 stakeholder session. In the response, the agency maintains the legality of such insurance schemes in cases when the policy is provided by an "unrelated" third party and "does not constitute a redemption agreement or a guaranteed buy-back arrangement for the alien investor's investment in the commercial enterprise."

But that explanation goes on to state that a "determination"

of whether a specific indemnity policy does or does not violate the law "has to be made on a case-by-case basis."

Language like this leaves other attorneys unsure whether such an insurance guarantee really is permissible.

"These arrangements have a significant possibility of being found to undermine the 'at risk' nature of an investment," said [immigration attorney Robert Divine](#) in comments submitted to EB5info.

Divine, a former Chief Counsel and Acting Director of USCIS, acknowledged that arguments in favor of such insurance products could sometimes be valid. After all, if investors purchase the insurance with their own money in a transaction unrelated to the EB-5 green card investment, one could make a case for the policy's permissibility.

But given USCIS' response during the stakeholder session, Divine admits it's not so simple:

"This USCIS evasive answer is classically unhelpful to people trying to plan their affairs. As a practical matter, since USCIS does not ask about insurance arrangements in Form I-526,



Divine



Souders



What is EB-5?

EB-5 is a visa for Immigrant Investors created by the Immigration Act of 1990. In accordance to a Congressional mandate aimed at stimulating economic activity and job growth, The Immigrant Investor Pilot Program was created to allow eligible aliens the opportunity to become lawful permanent residents.

Qualified investments must meet certain requirements and include regional centers with high unemployment rates, with a required investment amount of \$500,000.

SideCars Insurance Company enables investors to purchase an insurance policy to protect the performance of an individuals' investment in qualified investments or regional centers.

For more information, please contact [Gary Tharp](#), EB-5 Liaison: 505-385-4279 or fill out the form to the right to email Gary and h

ABOVE: Screenshot from the Sidecars Insurance [website](#).

RIGHT: Excerpt from the Project Performance Investment Reimbursement policy. To read it all, click [here](#).

Insuring Agreement

We will pay up to the Limit of Insurance listed on the Declarations page the deficiency of return of investment into projects with the "Blackhawk" the named insured has invested in.

It is fully intended that revenue from the "Blackhawk Gold, LLC" project shall be used to pay all of the insured's original investment. This policy is to pay only the difference between insured's original investment and amount paid to "Blackhawk Gold, LLC" project's revenues or assets. No loss of each investment amount shall be paid.

Valid requests for payment of a claim against this policy are eligible for payment up to the end of the 84th month from the date of policy issue.

Life Partners Holdings Inc (LPHI:US)

Industry: Insurance Brokers • NASDAQ GS • Currency: USD



Earnings - Life Partners Holdings Inc (LPHI)

EARNINGS		FUNDAMENTALS	
Earnings Past 12 Months	1.600	Shares (Millions)	18.644
Quarter Est. EPS (05/11)	0.37	Market Cap (Millions)	76.823
Quarter Est. EPS (08/11)	0.39	Float (Millions)	9.154
Year Est. EPS (02/11)	1.59	Return on Equity	56.657
Price/Earnings (Trailing)	2.575	Short Interest	3,586,849,000
Relative P/E	0.174	Last Dividend Reported	0.200 Regular Cash
Earnings Growth Rate	0.400	Dividend Yield (ttm)	26.329
Estimated P/E	2.500	Relative Dividend Yield	13.705

Officers

Biographies



Brian D. Pardo
Chief Executive Officer

Mr. Pardo has served in various roles in the insurance industry, including as a certified expert witness in numerous insurance settlements as a v... as an expert witness in founding Life Partners Corporation for more than 1964 through 1966 logged more than



R. Scott Peden
General Counsel

Mr. Peden serves as Vice President since its incorporation as an expert in the field of insurance law before legislators legal structure of throughout the industry from Baylor University

LEFT: Life Partners Holdings executives Brian Pardo and Scott Peden will soon be subject to civil charges alleging securities law violations.
Source: LPHI.com

FAR LEFT: The Life Partners Holdings (LPHI) stock price has fallen steadily since the company became the subject of an SEC investigation earlier this year. On May 13, the SEC issued Life Partners a notice indicating impending civil charges against two of its executives. It is through the Life Partners life settlement program that Sidecars Insurance told EB-5 investors it could pay claims to its insureds.
Source: [Bloomberg](http://Bloomberg.com)

someone who bought [the policy] would not tend to disclose it. Given USCIS' murky position, one could argue, if later challenged for nondisclosure, that it was not a material omission. USCIS should clear this up."

Blatt, on the other hand, insists that an investor's choice to purchase the insurance is unquestionably within the bounds of the law. Purchasing the policy from a third party "does not change the fact that the investor's funds are at risk," he said. "Purchase of such insurance is legal."

To provide a frame of reference, other EB-5 specialty insurance products are also on the market—products about which nobody has raised any concern. However, those policies usually cover the regional centers themselves, not immigrant investors.

David Souders, a broker at Todd Associates, Inc., offers errors and omissions (E&O) and directors and officers (D&O) insurance policies that specifically address the potential liabilities of regional centers and their principals.

"Suits can be brought against regional centers and their affiliates for a variety of reasons," Souders explained. "The policies we craft for our insureds are tailored to protect and defend them against potential litigation stemming from investors, competitors, regulatory bodies, etc."

But that is a far cry from guaranteeing the investment. "I don't offer a policy that promises a repayment of principal to the investor," Souders said.

THE BEST WAY TO PAY CLAIMS?

Another particularly troubling feature of the Sidecars policy is one method by which it guarantees a return of the deficiency between one's total EB-5 investment and any repayment of principal by the regional center.

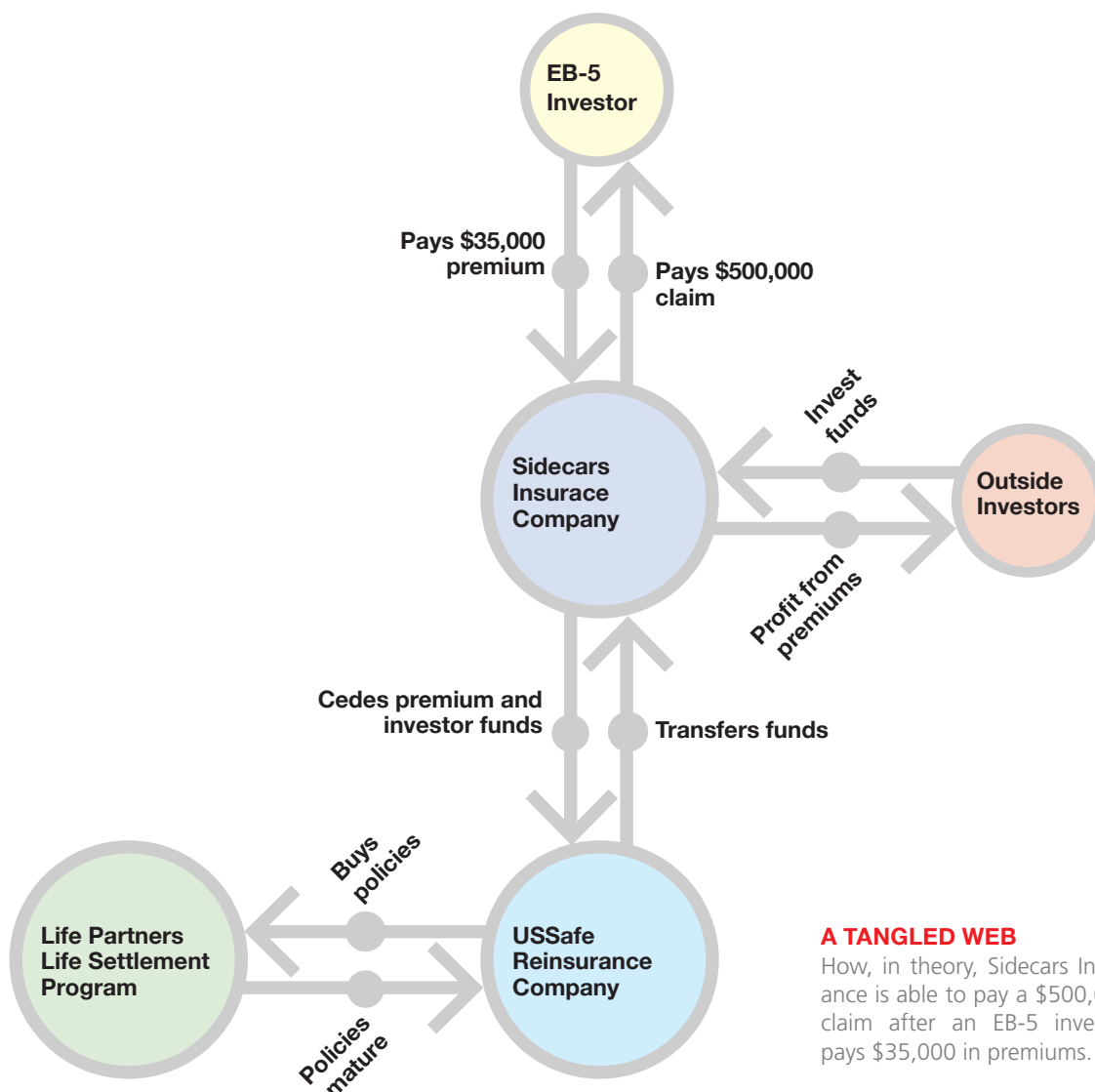
According to the same English and Chinese-language sales presentation confirming that the Blackhawk Gold project is the only one eligible for the Project Performance Investment Reimbursement insurance, the \$35,000 premium paid to Sidecars by an EB-5 investor

is ceded to another company—USSafe Reinsurance Company—which then purchases fractional ownership in life settlement policies from Life Partners, Inc.

Life Partners Holdings (LPHI) is one of the only publicly-traded companies specializing in the sale of life settlements—life insurance policies that are sold when the insured no longer needs them. Investors purchase fractional ownership in the policies and collect when the policy matures (i.e. the policyholder dies).

Unfortunately, Life Partners does not have what one would call a stellar reputation in the industry. A 2010 Wall Street Journal investigation determined that the company frequently underestimates the life expectancies of individuals in whom its customers invest. "In 2003, of 299 policies the firm brokered, the insured as of a year ago had lived past the Life Partners life expectancy in 279 instances," according to the Journal.

That investigation came after a Securities & Exchange Commission task force asked Con-



A TANGLED WEB

How, in theory, Sidecars Insurance is able to pay a \$500,000 claim after an EB-5 investor pays \$35,000 in premiums.

gress to make life settlement transactions subject to federal securities law. The SEC recommendation came in light of "a number of successful actions alleging fraud in connection with life-settlement securities," many of which had to do with misrepresentation of life expectancy data to investors.

In May of 2011, Life Partners received a Wells notice from the SEC indicating impending civil charges to be filed against the company and two of its executives in relation to life expectancy estimates.

The following month, the company received an updated Wells notice indicating that its CFO would also be included among those charged.

Any potential Idaho gold mine investors who were exposed to the Sidecars sales pre-

sentation were informed that the investor insurance policy "provides a 1-to-1 equity ratio" of premiums to claims. That assertion rests on the assumption that any life settlement policies purchased from Life Partners will "mature" by the time an investor files a claim.

And any projected maturity dates for the life settlement policies must be based on Life Partners life expectancy estimates, which the SEC finds questionable.

Given that Gary Tharp, the "EB-5 Liaison" at Sidecars Insurance, participated in a seminar last year promoting the gold mine project alongside Idaho Governor Butch Otter, it would be hard to deny any connection between the Sidecars policy and the Idaho State Regional Center. After all, "the Blackhawk

Gold EB-5 projects" are the only ones USSafe Reinsurance company is willing to insure.

An independently-performed translation from the Chinese-language Website covering the seminar reveals that Gary Tharp, Governor Otter, and Brian Dickens of the Idaho Department of Commerce all spoke at the event, which included an overview of the insurance program.

EB5info contacted Sima Muroff at the Idaho State Regional Center to learn more about the Sidecars policy offered to his project's investors. He declined to comment on the sales presentation, noting that it was not authored by the regional center or its legal counsel. Muroff also stated that the regional center and its projects "have no relationship

with insurance."

In similar fashion, Gary Tharp told EB5info.com that the "Idaho State Regional Center has no direct relationship with Sidecars Insurance Company or the Sidecars Insurance program for EB-5 investors."

Acknowledging that the company led presentations in China that leaned heavily toward the life settlement policies' ability to pay claims, Tharp also stated that for those EB-5 investors who prefer, Sidecars "will not use life settlement investments for any of the assets associated with their policies." Instead, any money used to pay claims would come from outside investors unrelated to the EB-5 program.

These investors put their money in what Tharp calls an "excess risk program." Assuming all investors buy insurance, the total risk exposure for the EB-5 investment is \$60 million. While Tharp realizes that not all investors in Idaho's gold mine project will buy the insurance, he maintains that Sidecars would have the assets to pay claims even if every investor did purchase a policy.

In other words, if an investor does not trust a Life Partners life settlement to pay claims on his or her purchase of a Sidecars insurance policy, he or she can opt for a version of the policy that taps claims reserves funded by outside investors who have no connection to the EB-5 program.

Tharp also told EB5info.com that he still believes the life settlement policies are a reliable source of funds for any investor counting on the Sidecars promise of 1-to-1 premium to claims reserves. The option to have claims paid via an alternative funding source comes "in light of the negative publicity" received by the Life Partners life settlement program, he said.

The insurance arrangement Tharp describes—the one involving outside inves-

tors—is an uncommon one, but not unheard of in the industry. Companies will sometimes set up a vehicle into which they place funds from investors who have no underwriting experience. In exchange, investors receive a percentage of the insurance premiums. Enough funds must be put up to ensure the payment of claims. The fewer claims that are actually paid, the more money investors stand to make.

The entity into which investors put up funds is known as a "reinsurance sidecar." Hence, Sidecars Insurance Company.

But the use of life settlement policies to pay claims is somewhat unconventional for a reinsurance sidecar. Whether investors opt for the life settlement "option" or not, the Idaho State Regional Center makes a point of disassociating itself from the Sidecars Insurance policy—publicly, at least. Legally, the purchase of such a policy must come from a completely "unrelated" commercial enterprise. "The regional center merely informs investors that such a policy may be available," explained Jason Blatt, maintaining that the regional center has no connection to the insurer. "Whether [investors] buy the insurance is up to them, and is a matter between each individual investor and an insurer," he said.

So even the Idaho State Regional Center cannot actually recommend the Project Performance Investment Reimbursement policy—even though it's the only regional center whose investors Sidecars is willing to insure.

Like many issues in EB-5 visa law, reimbursement insurance for investors is a thorny one. With little precedent for the permissibility of a Sidecars-like policy, it is hard to acknowledge purchasing one as being in an investor's best interest.

And it is hard to acknowledge life settlements from Life Partners as being in the best interest of anybody. ♦

ABOUT USADVISORS.ORG

USAdvisors.org is a registered investment advisory firm that performs independent due diligence for EB-5 immigrant investors. We create reports, provide risk analysis, and keep the EB-5 investment community informed of news and events related to EB-5 regional center projects and industry developments.

As independent financial analysts, economists, accountants, statisticians, and mathematicians, we offer detailed analysis of topics like EB-5 job creation methodology, regional center management, risk factors, risk mitigation, exit strategy, escrow, and industry overviews. Our mission is to help EB-5 visa investors and their counsel make informed investment decisions.

For regular updates on the EB-5 program, visit our news blog and click through our Website at EB5info.com.