



Immigrant Investor Program Office (IPO)
EB-5 Telephonic Stakeholder Engagement (April 22nd)
IPO Deputy Chief's Remarks

Loan Proceeds as Qualifying Capital

Proceeds from a loan may qualify as capital used for EB-5 investments, *provided that* the requirements placed upon indebtedness by 8 C.F.R. § 204.6(e) are satisfied.

Under 8 C.F.R. § 204.6(e), “[c]apital means cash, equipment, inventory, other tangible property, cash equivalents, and *indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.*”

In order to establish an investment of capital, 8 C.F.R. § 204.6(j)(2) allows a petitioner to submit as evidence, among other items, the following:

Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing *which is secured by assets of the petitioner*, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

USCIS classifies proceeds of a loan that are used for EB-5 investment as indebtedness governed by these regulatory requirements. When using loan proceeds as EB-5 capital, a petitioner must demonstrate first that they are personally and primarily liable for the indebtedness. That is, they must demonstrate that they bear primary responsibility under the loan documents for repaying the debt that is being used to satisfy the petitioner's minimum required investment amount.

In addition, the petitioner must demonstrate that the indebtedness is secured by assets the petitioner owns and that the value of such collateral is sufficient to secure the amount of indebtedness that is being used to satisfy the petitioner's minimum required investment amount. Put another way, indebtedness secured by assets owned by the petitioner qualifies as “capital” only up to the value of such collateralized assets.

Restrictions on Use of Loan Proceeds

USCIS frequently encounters situations in which explicit language in a loan agreement or other document restricts a borrower's use of the loan proceeds to a purpose other than EB-5 investment.

A restriction on the use of proceeds contained in a loan agreement is relevant evidence and will be considered in determining whether the petitioner has demonstrated, by the preponderance of evidence, a lawful source of funds. To establish a lawful source of funds, a petitioner must demonstrate that capital invested was lawfully obtained. Where the petitioner obtains a loan from a lawful source (such as a reputable bank), the loan proceeds may, nevertheless, be unlawful if the capital was obtained by unlawful means (such as fraud on a loan application). Additionally, the presence of a restriction on the use of proceeds may weaken the credibility of the evidence in the record establishing that the loan in question was the actual source for petitioner's capital investment. Accordingly, we'd like to caution our stakeholders against submitting documents that contain any provisions that would restrict use of the funds for EB-5 investment.

As always, whether the petitioner has met his or her burden to establish lawful source of funds will be determined on a case-by-case basis, considering any evidence submitted by the petitioner along with the rest of the record.