

EB 5 Business Plan for Direct Investment

A comprehensive guide from EB5 Attorneys

A direct EB 5 investor must submit a business plan with their I 526E petition that demonstrates the proposed commercial enterprise will create at least 10 full time jobs for qualifying U.S. workers (INA section 203(b)(5)(A)(ii)). USCIS evaluates business plans against the standard established in Matter of Ho, 22 I&N Dec. 206 (Assoc. Comm. 1998), which requires detailed, credible, and verifiable projections rather than speculative or conclusory statements.

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Matter of Ho: The Governing Standard for EB 5 Business Plans

Matter of Ho, decided by the USCIS Administrative Appeals Office in 1998, established the evidentiary standard that governs EB 5 business plan evaluation to this day. The decision arose from an EB 5 petition where the petitioner submitted a business plan that USCIS found insufficiently detailed.

The Ho standard requires that an EB 5 business plan be thorough, detailed, and based on verifiable data. Specifically, the plan must describe the business opportunity and the general plans for the enterprise. It must include a market analysis demonstrating the viability of the business concept. It must contain financial projections for a minimum of five years, showing revenue, expenses, and profitability. It must detail the job creation plan, specifying the number and type of positions to be created and the timeline for hiring. And it must be supported by credible evidence rather than unsupported assertions.

USCIS adjudicators compare submitted business plans against this standard when evaluating I 526E petitions. A plan that fails to address any of these elements invites a Request for Evidence (RFE) or denial. The plan does not need to guarantee success, but it must demonstrate that the business is more likely than not to create the required 10 jobs within a reasonable timeframe, typically two to two and a half years after the investor's admission as a conditional resident.

Ho is not a rigid template. It establishes a minimum standard of thoroughness. Business plans that exceed the Ho standard by including industry research, competitive benchmarking, and third party validation are generally stronger and less likely to generate RFEs.

Market Analysis Requirements

The market analysis section of the business plan must demonstrate that a viable market exists for the products or services the enterprise will offer. USCIS wants to see evidence that the business concept is realistic and that projected revenues are achievable in the target market.

A strong market analysis includes: an overview of the industry and its growth trajectory, with citations to industry reports or government data (Census Bureau, Bureau of Labor Statistics, industry trade associations); the specific geographic market the business will serve, including demographic data about potential customers; an analysis of existing competition, identifying competitors by name and assessing their market share, pricing, and positioning; the enterprise's competitive advantage or differentiation, explaining why customers will choose this business over existing options; and market size and revenue potential estimates, supported by data rather than optimistic assumptions.

Common deficiencies in market analyses that trigger RFEs include: relying on national data when the business serves a local market, failing to identify specific competitors, overstating the addressable market without supporting data, using outdated industry statistics, and asserting demand without evidence.

For certain industries, USCIS adjudicators have developed specific expectations. Restaurant business plans, for example, should include local dining market data, demographic information about the surrounding area, and foot traffic or tourism statistics if relevant. Technology startups should include market adoption data, comparable company analyses, and clearly defined customer segments. Your EB 5 attorney and business plan consultant should tailor the market analysis to both the industry and the specific USCIS expectations for that business type.

Financial Projections: What USCIS Expects

Financial projections form the quantitative backbone of the business plan. USCIS requires at least five years of projected financial statements, including income statements, balance sheets, and cash flow statements. The projections must be internally consistent, grounded in the market analysis, and supported by stated assumptions.

Revenue projections should flow logically from the market analysis. If the market analysis identifies a target customer base of 500 households and projects a 10% market penetration rate, the revenue projection should reflect sales to 50 households at the projected price point. Assumptions about pricing, sales volume, and growth rates must be stated explicitly and supported by market data.

Expense projections should cover all categories: cost of goods sold, payroll (critical for job creation documentation), rent, utilities, insurance, marketing, professional services, and loan servicing. Payroll projections are particularly important because they directly support the 10 job requirement. The business plan should show when each position will be filled, the compensation for each role, and how payroll expense scales as the business grows.

Cash flow projections demonstrate whether the business will have sufficient working capital to operate and grow. Negative cash flow in early months is common and acceptable, provided the plan shows a clear path to cash flow positive operations and identifies the source of working capital during the negative period (typically the EB 5 investment capital itself).

USCIS adjudicators are trained to identify unrealistic projections. Revenue growth rates that far exceed industry averages, expense ratios that are below comparable businesses, or profitability timelines that are unrealistically optimistic will generate skepticism and RFEs. Conservative, well supported projections are more persuasive than aggressive ones.

Job Creation Plan and Timeline

The job creation plan is the most immigration specific element of the EB 5 business plan. USCIS requires evidence that the enterprise will create at least 10 full time positions for qualifying employees (INA section 203(b)(5)(A)(ii); 8 CFR 204.6(e)).

For direct investments, all 10 jobs must be direct W 2 employees of the new commercial enterprise or its wholly owned subsidiaries. Each position must require at least 35 hours per week. Qualifying employees are U.S. citizens, lawful permanent residents, asylees, refugees, or other work authorized individuals. The investor, their spouse, and their children do not count toward the requirement.

The business plan must specify: the title and description of each position to be created, the expected hire date for each position (or a hiring timeline showing when positions will be filled relative to the business launch), the compensation for each position, and whether the position is full time as required.

An organizational chart is typically included, showing the reporting structure and where each of the 10 (or more) positions fits within the enterprise. The chart should be consistent with the financial projections: if the business plan projects hiring a marketing manager in month 6, the payroll projection should reflect that hire starting in month 6.

The hiring timeline must be realistic. USCIS generally expects that all 10 jobs will be created within two to two and a half years of the investor's admission as a conditional resident. If the business plan projects a slower hiring pace, the petition must explain why the delay is reasonable and provide evidence that the jobs will be created before the I 829 filing date.

The Role of Economists in EB 5 Business Plans

While economists are required for regional center business plans (to prepare the economic impact analysis that supports indirect and induced job creation claims), they are not always required for direct investment business plans. However, an economist's involvement can significantly strengthen a direct investment filing.

An economist can prepare a credible financial model that withstands USCIS scrutiny, including sensitivity analyses showing job creation under best case, base case, and worst case scenarios. This demonstrates to USCIS that the investor has considered potential obstacles and that the 10 job requirement is achievable even under conservative assumptions.

For direct investments in industries with complex economic dynamics, such as manufacturing, technology, or franchise operations, an economist can provide industry benchmark data, validate revenue and expense assumptions, and prepare a labor market analysis showing that the projected positions are consistent with the local employment market.

Some EB 5 attorneys routinely engage economists for direct investment cases, while others reserve economist involvement for cases with higher complexity or greater risk of RFEs. The cost of an economist report typically ranges from \$5,000 to \$15,000, depending on the scope of analysis required. Relative to the \$800,000 or \$1,050,000 investment at stake, this is a modest expense that can materially reduce the risk of a denial.

If your business plan preparer is a general business consultant rather than an economist, ensure they have specific EB 5 experience and understand Matter of Ho requirements. A plan that reads well as a general business document but fails to address USCIS specific evidentiary standards will not satisfy the adjudicator.

Direct Investment vs. Regional Center Business Plans

The business plan requirements differ significantly between direct and regional center EB 5 petitions, and understanding these differences is essential for direct investors.

A regional center business plan focuses on the economic impact of a large capital deployment. The primary purpose is to support an econometric analysis (using RIMS II, IMPLAN, or similar models) that projects indirect and induced job creation from construction expenditures and ongoing business operations. The regional center's I 956F filing (required under the RIA) includes the business plan and economic analysis at the project level, and individual investors reference the approved I 956F in their I 526E petitions.

A direct investment business plan focuses on the operations of a single business entity that the investor will establish or acquire. The primary purpose is to demonstrate that the business itself will directly hire 10 or more full time W 2 employees. There is no econometric modeling of indirect or induced jobs. Every job must be a real person on the company's payroll.

This distinction has several practical implications. First, the direct investment plan requires more operational detail because USCIS needs to understand how the business will actually function, not just how capital will be spent. Second, the direct investment plan must include a detailed staffing plan that names specific positions, not aggregate job estimates from an input output model. Third, the direct investment plan bears a higher burden of demonstrating business viability, because the investor is claiming that this specific enterprise will succeed and hire the required number of workers.

Direct investment business plans are typically longer and more detailed than their regional center counterparts. A strong direct investment plan runs 50 to 100 pages or more, including appendices with supporting data, market research, and financial exhibits.

Common Deficiencies That Trigger RFEs

USCIS issues Requests for Evidence on business plan related grounds when the submitted plan fails to meet the Matter of Ho standard or raises questions about the viability of the proposed enterprise. Understanding the most common deficiencies helps you prepare a plan that avoids these pitfalls.

Insufficient market analysis. Plans that assert demand without evidence, fail to identify competitors, or rely on national data for a local business frequently generate RFEs. USCIS wants to see that the market analysis is specific to the geographic area and industry where the business will operate.

Unsupported financial projections. Revenue figures that appear inflated, expense ratios that diverge significantly from industry benchmarks, or growth rates that exceed reasonable expectations without explanation will prompt USCIS to request supporting evidence. Every number in the financial projections should be traceable to an assumption that is stated and supported.

Vague job creation timeline. A plan that states "10 jobs will be created" without specifying when, what positions, at what compensation, and in what sequence is insufficient. USCIS needs a specific, dated hiring plan that is consistent with the business's projected growth and revenue.

Inconsistencies between the plan and the I 526E petition. If the business plan describes one type of business activity and the I 526E petition describes another, or if the financial projections in the plan do not match the investment amount stated in the petition, USCIS will issue an RFE to reconcile the discrepancies.

Lack of credible sources. Unsupported assertions about market size, revenue potential, or industry trends will not satisfy USCIS. Every material claim in the business plan should cite a source: a government database, an industry report, a market research study, or other verifiable reference.

Template or boilerplate plans. USCIS adjudicators review thousands of EB 5 business plans and can recognize generic templates that have been minimally customized for a specific business. A plan that reads like it could apply to any business in any market will not satisfy the Ho standard.

Selecting a Business Plan Preparer

The quality of your business plan depends heavily on who prepares it. For direct EB 5 investments, the business plan is one of the most scrutinized elements of the petition, and choosing the right preparer can make the difference between approval and denial.

Your EB 5 attorney may prepare the business plan in house, engage a specialized EB 5 business plan consultant, or work with an economist who also prepares business plans. Each approach has advantages.

In house preparation ensures that the attorney controls the content and aligns it with the rest of the I 526E filing. However, not all immigration attorneys have the business analysis skills needed to prepare a credible market analysis and financial model.

Specialized EB 5 business plan consultants focus specifically on preparing plans that meet Matter of Ho requirements. They understand what USCIS adjudicators look for and can prepare a plan that addresses the specific evidentiary standards. The cost typically ranges from \$5,000 to \$25,000 depending on the complexity of the business and the amount of original research required.

Economists bring quantitative rigor and can prepare financial projections that withstand scrutiny, including sensitivity analyses and scenario modeling. Their involvement is particularly valuable for businesses in complex or capital intensive industries.

When evaluating a business plan preparer, ask how many EB 5 business plans they have prepared, what their clients' RFE and approval rates are, whether they have experience with your specific industry, and whether they will revise the plan if USCIS issues an RFE. Also confirm that your attorney will review the final plan for legal accuracy and consistency with the petition.

Frequently Asked Questions

1. What is the Matter of Ho standard for EB 5 business plans?

Matter of Ho, 22 I&N Dec. 206 (Assoc. Comm. 1998) is the USCIS decision that established the evidentiary standard for EB 5 business plans. It requires a thorough business plan that includes a description of the business, a market analysis, financial projections for at least five years, and a detailed job creation plan. The plan must be based on verifiable data, not speculative or conclusory statements.

2. How many jobs must a direct EB 5 investment create?

At least 10 full time positions for qualifying U.S. workers (INA section 203(b)(5)(A)(ii)). Each position must require at least 35 hours per week (8 CFR 204.6(e)). For direct investments, all jobs must be direct W 2 employees of the enterprise. The investor, their spouse, and their children do not count toward the requirement. Jobs must be created within approximately two to two and a half years of the investor's admission as a conditional resident.

3. How long should a direct investment business plan be?

There is no mandated page count, but a strong direct investment business plan typically runs 50 to 100 pages or more, including appendices with financial exhibits, market research data, organizational charts, and supporting documentation. The plan must be detailed enough to satisfy the Matter of Ho standard. Brevity is not a virtue; thoroughness and verifiable data are what USCIS adjudicators evaluate.

4. Do I need an economist for a direct EB 5 business plan?

An economist is not required for direct investment filings (unlike regional center filings, which need econometric job creation analysis). However, engaging an economist can strengthen the petition by providing validated financial projections, sensitivity analyses, and industry benchmarking. The cost is typically \$5,000 to \$15,000, which is modest relative to the investment amount at stake.

5. What are the most common reasons for business plan related RFEs?

Frequent RFE triggers include insufficient market analysis (no local data, no competitor identification), unsupported financial projections (inflated revenue, unrealistic growth rates), vague job creation timelines (no specific positions, dates, or compensation), inconsistencies between the plan and the I 526E petition, and reliance on generic template plans that do not reflect the specific business or market.

6. How does a direct investment business plan differ from a regional center plan?

Direct investment plans focus on the operations of a single business and must demonstrate that the enterprise will directly hire 10 or more W 2 employees. Regional center plans focus on large scale capital deployment and use econometric models (RIMS II, IMPLAN) to project indirect and induced job creation. Direct plans require more operational detail, specific staffing plans, and demonstration of business viability for the individual enterprise.

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